

In Memoriam: Elisabeth A. Owens

*The editors of the Harvard Law Review respectfully dedicate this issue to
Professor Elisabeth A. Owens.*

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In 1966, the year I entered Harvard Law School, the Boston Red Sox tied with the New York Yankees for last place in the American League. I took in a few afternoon games that year, usually with my classmate Kent Neumeister, now a professor at Creighton. We would take the T to Kenmore Square, buy general admission tickets for very little, and then move down after the third inning to the nearly empty box seats behind the Red Sox dugout.

The following year, tickets were much harder to get. The Red Sox were in the hunt from April on. With two games left in the 154-game season, the Tigers, White Sox, Twins, and Red Sox were all within a game of first place. The Red Sox were playing their last two games against the Twins at Fenway and needed to win both. Tickets were bloody scarce, with supply fixed at around 33,000 and demand in the millions. Fortunately for me, Kent had had the foresight to get a pair of tickets for those last two games in June before going back to Nebraska for the summer. So on two beautiful afternoons in September of 1967, I sat in the Olde Ball Park and watched the Red Sox fulfill the impossible dream of their long-suffering fans.

Miss Owens was a Red Sox fan, as she let drop on a few occasions. I met her briefly during my second year at Harvard, when I stopped by her office to ask her if I could write my third-year research paper under her direction. She agreed. In my third year, I took her course in International Tax and wrote my paper on what I perceived to be the

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overly broad permanent establishment clause in international tax treaties. Miss Owens's course in International Tax had a reputation as the hardest course in the law school. The subject material was difficult, and Miss Owens had a reputation for presenting it without much levity.

The course lived up to its reputation, and so did Miss Owens. I found the course challenging and not a lot of fun. Like most of the students in the class, I worked pretty hard, reading her assignments with particular diligence. But I rarely felt fully prepared for class. On most days, Miss Owens found the classroom responses to fall below her high standards. We were always just a little disorganized, a bit vague, insufficiently sensitive to the nuances of tax policy.

The respect of my classmates for Miss Owens as a scholar was enormous. Her command of the subject matter and her level of class preparation were awesome. I felt, as I think most of my classmates felt, that we were learning international tax from America's leading expert.

For the most part, my research paper went very well. Miss Owens was always helpful, directing me to useful books and other sources. But I did curse the law library more than a few times as I tried to track down these sources. Oliver Wendell Holmes once said, "The Harvard Law School library has 100,000 volumes, all of which are missing." My experience as a student was that the law school had added many thousands of missing volumes to its international collection since the student days of Justice Holmes. Frustrated with all the time I was wasting on futile searches for missing materials, I harbored a continuing fantasy of adopting the tactics of the Weathermen and blowing the whole building to smithereens.

For whatever good reason, I fell behind in the research paper and wanted to get the deadline extended. Most of the Harvard faculty treated a paper deadline as the opening position in what was expected to be a series of negotiations. The first extension typically was available for the asking. Not so with Miss Owens. Deadlines were serious, and she viewed a lame excuse as an insult to her good sense. So I was more than a little apprehensive as the due date for my paper approached, for all the excuses I could conjure were lame.

After giving the matter some thought, I put on my Red Sox cap, picked up my ball and glove, and set off for Miss Owens's office in Lawrence Hall, one of those old houses that Harvard had adapted for academic use. As usual, Miss Owens was working at her desk, with her

office door ajar. I knocked lightly, and she beckoned me in. I stood a few feet in front of the desk and began fingering the baseball.

"I'd like to talk to you about my paper," I said, tossing the ball softly so that the sound of it hitting my glove punctuated the end of my sentence.

"What did you want to talk about?" she asked, her face relaxed with just the hint of a smile as she took in the whimsy of the unfolding scene.

"Well," I said, "I've been pretty busy of late on matters of some importance to me, and the paper isn't done." I looked down at the glove and continued. "I was hoping for a short extension." Again I flipped the ball and caught it in my glove.

There was a very brief pause. "How long do you think you need?" she asked flatly.

"Ten days guaranteed," I said, as casually as I could muster.

"Okay, bring it to me then," she said, smiling and shaking her head.

So I bounced out of the building, feeling pretty good. I had verified what few of my classmates suspected — Miss Owens could be cool.

The paper did get done, a couple of days before the end of the extension, and I received detailed and pointed comments from Miss Owens. Soon thereafter, I graduated and took a job with a Washington tax firm, Ivins, Phillips & Barker.

Two years later, I was back at Harvard, as Director of Training in the International Tax Program (ITP). For the next four years, I saw Betty Owens almost every working day. The International Tax Program had transplanted itself from Lawrence Hall, the sad casualty of the wrecking ball, to a large suite of offices in the new Pound building. Betty had a corner office in one of the wings, where my office was also located.

Betty and I exchanged pleasantries every day and occasionally talked tax, but most of her time was spent in her office, with the door half closed, working on her classes and her several research projects. As Director of Research at the ITP, she did some editing of manuscripts and worked on the several books for which she is famous. She was a tireless worker, not easily distracted. She did, however, often join me and other members of the tax program for afternoon tea, especially if we were celebrating a birthday or other special event. She always waited for an invitation, which we always extended.

In the Harvard yearbook for the graduating class of 1972, Betty is listed as "Lecturer on International Tax Law," and her name is misspelled ("Elizabeth" instead of "Elisabeth"). The 1973 yearbook lists

her as "Professor of Law, Research Director of International Tax Program," and her name is spelled correctly. This abrupt change in rank from lowly lecturer to full professor is uncommon in academia. I don't know exactly how uncommon, but certainly less common than what the Red Sox did in 1967 when they went from the cellar to first place in the American league.

Was Betty fulfilling her impossible dream when she became the first woman to be awarded continuing tenure at Harvard Law School? As her suitemate at that eventful occasion, I can say with conviction that the change in rank did not change her daily life. Just as the yearbook picture of Betty did not change from 1972 to 1973, the Betty behind the picture also did not change. She continued to come into the office in the morning and leave at night, with no adjustment in the routine. She was polite and quiet before and polite and quiet after. She dressed the same after the promotion. She was as blunt and plain-spoken as before. Her research remained the focus of her life at the office. She continued to avoid professional conferences and glad-hand events. She never seemed to care about status, before or after. She accepted our congratulations when the promotion was announced and seemed pleased enough by it. But she never mentioned the topic again in my presence.

In her *New York Times* obituary, Elisabeth A. Owens is memorialized for breaking the gender barrier at Harvard Law School.¹ Yet the all-male Harvard Law School faculty deserves the credit for selecting Owens as the person to break that barrier — for selecting as its first female member a woman with an impeccable record of scholarly achievement. The school brought honor to itself with that selection, just as Owens brought luster to the Harvard faculty when she joined it as full professor with tenure.

The real legacy of Elisabeth A. Owens is what she achieved herself, as America's foremost scholar on international tax. The greatest triumph of her professional life was her first book, *The Foreign Tax Credit*, published in 1961. It has been described as the most important book on international tax ever published. This scholarly and very practical work certainly deserves a prominent place in the pantheon of great books on any tax topic.

¹See William H. Honan, Elisabeth Owens, 79, *Pioneer at Harvard Law*, *N.Y. Times*, Nov. 20, 1998, at B11.

In writing that book, Owens brought to bear an extraordinary set of skills. She was a superb technical writer — concise, precise, and clear. She had a nearly encyclopedic knowledge of the international aspects of American tax law. She was a prodigious worker. She had the ability and perseverance to organize complex tax materials according to function. And she had a sound grounding in economics.

When Owens wrote *The Foreign Tax Credit*, the legal rules governing that important area of the law were chaotic, and whatever principles they were intended to embody were obscure. Owens successfully imposed a robust organizational structure on those rules. She anticipated and accounted for most of the major foreign tax credit issues that have arisen over the past four decades. Subsequent scholarly works, including some excellent books co-authored by Owens, have refined and embellished that structure. Because that structure has endured, *The Foreign Tax Credit* continues, almost forty years after its publication, to exert a strong influence on the development of international tax rules.

I remember Miss Owens as a dedicated teacher and fellow Red Sox fan. I also remember Betty fondly as a congenial colleague who was generous with her time and who never imposed burdens on her co-workers. But it is Elisabeth A. Owens, scholar and grandee of the Harvard Law School, who continues to influence and inspire.