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Oral History of Distinguished American Judges

**HON. RUTH BADER GINSBURG
JUSTICE, U.S. SUPREME COURT**

An Interview

with

Trevor W. Morrison, Dean and
Eric M. and Laurie B. Roth Professor of Law
New York University School of Law

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NYU SCHOOL OF LAW DEAN TREVOR

0:00:20

MORRISON: Justice Ginsburg, thank you for speaking with us this afternoon. We're really thrilled to be able to hear from you about your early life as well as your work on the D.C. Circuit and the Supreme Court.

JUSTICE RUTH BADER GINSBURG: And I'm very glad to be here with the Dean of the NYU Law School, who was my

0:00:37

law clerk in, what year was it?

DEAN MORRISON: 2002-2003.

JUSTICE GINSBURG: Hmm.

DEAN MORRISON: It seems like just yesterday.

JUSTICE GINSBURG: It does.

DEAN MORRISON: Justice, let's start early. When and why did you decide to pursue law?

0:00:52

JUSTICE GINSBURG: I decided to pursue law sometime during my junior year at Cornell.

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 I expected to be,

0:01:05 as many girls of my vintage did, a high school teacher. But then I had two professors, one Robert E. Cushman,¹ who taught constitutional law, the other, Milton Konvitz,² who taught American ideals.

0:01:29 JUSTICE GINSBURG: I was a student at Cornell in the early 50's. It was the heyday of Senator McCarthy,³ who saw a communist in every corner. Both Cushman and Konvitz helped me to see that our nation was straying from its most basic values -

0:01:57 and that there were lawyers standing up for people called before the House Un-American Activities Committee⁴ or the counterpart Senate investigating

¹ Robert E. Cushman (1889-1969), a professor of constitutional law and American government at Cornell University.

² Milton R. Konvitz (1908-2003), a professor of constitutional and labor law, and of civil and human rights, at Cornell University.

³ Joseph R. McCarthy, a Republican senator from Wisconsin who is known for his anti-communist investigations of government and industry leaders in the 1950s, a period now known as 'McCarthyism' or the 'Red Scare'.

⁴ The House Un-American Activities Committee (HUAC) of the U.S. House of Representatives was formed to investigate communist and subversive activity. The committee was formed around 1938 and abolished in 1975.

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committee.⁵

0:02:07 So I came to think of law as an occupation, yes, but one you could use to make things a little better for the community in which you lived.

JUSTICE GINSBURG: My family had misgivings, because at that time women were less than 3% of the

0:02:26 lawyers in the United States. That problem was overcome when I married Marty.⁶ Then it didn't matter if I couldn't get a job --

DEAN MORRISON: [Interposing]
[Chuckling]

JUSTICE GINSBURG: -- I would have a man to support me.

DEAN MORRISON: You met him at

⁵ The Senate Committee of the Judiciary's Special Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws (informally known as SSIS) was the Senate equivalent of the HUAC, and like its counterpart was active during the Cold War.

⁶ Martin D. Ginsburg was an international tax lawyer at the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP and a Professor at Georgetown University Law Center. He and Justice Ginsburg married in 1954. He died of cancer in 2010 at age 78. Martin Ginsburg was known to have been supportive of Justice Ginsburg's career. "I have had more than a little bit of luck in my life, but nothing equals in magnitude my marriage to Martin D. Ginsburg." Ruth Bader Ginsburg, with Mary Hartnett and Wendy W. Williams, *MY OWN WORDS*, Simon & Schuster 2016 (p.xv, 25).

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lawyer you hoped to be?

JUSTICE GINSBURG: Yes. Very much so.

0:03:21 DEAN MORRISON: You saw yourself as -
- hoped to be -- a civil libertarian
I guess --

JUSTICE GINSBURG: [Interposing] Yes.

0:03:26 DEAN MORRISON: -- then. And of
course then you pursued the study of
law at Harvard for your first two
years and then at Columbia for your
final year. There weren't many women
at either of those institutions
studying law or teaching law at the
time. What was it like to be a woman
in those institutions and law school
at that time?

0:03:46 JUSTICE GINSBURG: My Harvard class
had about 500 members, 9 of whom were
women. Columbia was a little better.
Columbia had somewhere around 250-
300, and 12, 12 women. Columbia had
been enrolling women since the late
20's. Harvard didn't admit women
until 1950-51.

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Timecode	Quote
0:04:13	How did it feel?
0:04:20	Special one might say [chuckling]. DEAN MORRISON: [Chuckling] JUSTICE GINSBURG: The nine of us were divided among four sections. There was one other woman in my section. When we were called on, we felt that we were answering not just for our 0:04:40 self but for all women in law. That is, if we gave a dull answer, the reaction would be, well, what would you expect from a woman. DEAN MORRISON: Hmm. JUSTICE GINSBURG: So we were super prepared. That was true of the women in my Columbia class as well. DEAN MORRISON: You've spoken before about the story that brought 0:05:05 you from Harvard to Columbia but why don't you retell some of that? JUSTICE GINSBURG: I was at Harvard for two years. Marty, my husband,

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was one year ahead of me.

0:05:16 In his third year of law school he was stricken with cancer, a very bad kind. And I did not want to be separated from him for that last year. Also I didn't want to be a single mom with --
-- Jane⁸ to take

0:05:38 care of alone. So I went to the then Dean of the Harvard Law School, the famous Dean Erwin Griswold,⁹ and said "if I successfully complete my studies at Columbia will you give me a Harvard degree?" He said absolutely not. You have to be here for the third year. I didn't ask Dean Warren¹⁰ at Columbia. I didn't want to have a no answer from him.

⁸ Martin and Ruth Ginsburg have two children: Jane C. Ginsburg born in 1955, and James S. Ginsburg, born in 1965. As of this interview date, Jane is the Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia Law School where she also directs the Kernochan Center for Law, Media and the Arts. James is a music producer and founder and president of Cedille Records, a not-for-profit music label based in Chicago, Illinois.

⁹ Erwin Griswold, served as Dean of Harvard Law School for 20 years. He also served as the United States Solicitor General under the presidential administrations of Richard Nixon and Lyndon B. Johnson.

¹⁰ William C. Warren, Dean of Columbia Law School from 1952-1970.

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Timecode	Quote
0:06:06	Three years of law school and no degree from any institution, it was too much to contemplate. But
0:06:14	Columbia was very kind to me. I got a degree. They put me on the <i>Law Review</i> which gave me a fabulous credential. I had been on the <i>Harvard Law Review</i> and also the <i>Columbia Law Review</i> . When I went abroad in those days, people didn't know that the <i>Harvard Law Review</i> and the <i>Columbia Law</i>
0:06:33	<i>Review</i> were student publications. DEAN MORRISON: You mentioned Jane. So you were a mother while also being a law student. JUSTICE GINSBURG: [Interposing] Jane was 14 months when I started, yes. DEAN MORRISON: What was it like to - - and how did you juggle both being a mother and a law student?
0:06:52	JUSTICE GINSBURG: It was easily managed when both of us were students, it was natural then to divide taking care of Jane. We had a

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nanny who came in at 8:00 in the

0:07:03

morning and left at 4:00 in the afternoon. From 4:00 until Jane went to bed was Jane's time. It was a welcome break from law studies, you know?

Going to the park with a child, playing silly games,

0:07:23

singing funny songs. And then, when she fell asleep for the night, I went back to the books, glad to do so. As I regarded my life then, each part of it was a respite from the other. It was good to get away from the books, but after spending

0:07:47

late afternoon and evening with a child, it was good to get back to the books.

DEAN MORRISON: Were you always a late worker? You certainly work late

0:07:55

now at the court --

JUSTICE GINSBURG: [Interposing] Well it started with Marty in that last year. He was undergoing a regime of daily radiation. There was no

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chemotherapy in those days. The only
food he

0:08:12 could ingest was between midnight and
2:00 in the morning. We dined late
on my hardly memorable meal
preparations. And then about 2:00
when he went back to sleep, that's
when I started preparing for law
school the next day.

DEAN MORRISON: Wow. You've talked
on various occasions about

0:08:33 challenges that you faced in securing
a job after graduating from law
school. Tell us a bit about that and
were you surprised at the time to be
facing those challenges?

0:08:46 JUSTICE GINSBURG: I was surprised in
my third year. In my second year, I
signed up for an interview with Paul
Weiss¹¹ for work as a summer
associate. I spoke barely one
sentence when Garrison,¹² who
interviewed me, said you're hired. I

¹¹ Paul, Weiss, Rifkind, Wharton & Garrison LLP.

¹² Lloyd Kirkham Garrison (1897-91), a partner in the firm bearing his name.

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then realized that they had decided to have "a" woman as a summer associate --

0:09:10

I had the best grades of the women who signed up, so I got that offer. I fully expected that I would receive a permanent offer from Paul Weiss, which I didn't. And I figured out probably why. They had recently engaged Pauline Murray who was African

0:09:31

American and a woman. They hired her as a regular associate. They didn't need me to show how liberal they were. For years they insisted that they had

0:09:50

extended an offer and I had preferred a clerkship. It wasn't so.

DEAN MORRISON: Huh.

JUSTICE GINSBURG: Years later, someone finally checked the records, I was right.

DEAN MORRISON: Huh.

JUSTICE GINSBURG: Anyway, that came as a shock to me. I interviewed with

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every firm that

0:10:09 would interview me. Many wouldn't because they wanted men only.

I got only two callbacks to come down from Columbia to the law offices, and neither firm gave me a permanent offer. Gerry Gunther,¹³

0:10:28 my Federal Courts teacher, was in charge of getting clerkships for the

0:10:34 Columbia students. He was bound and determined to get me a clerkship.

I think he called every judge in the Second Circuit, every judge in the Southern District and the Eastern District. When he called Judge Palmieri,¹⁴ who was a graduate of *both* Columbia College and Columbia Law School, he said he had a deal Palmieri could not refuse. It had a carrot. The carrot was give her a chance, if she doesn't work out, there's a young man in her class who's going to a downtown firm, he'll

¹³ Gerald Gunther (1927-2002), a constitutional scholar.

¹⁴ Judge Edmund L. Palmieri, then of the United States District Court for the Southern District of New York. He died in 1989.

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come in and take over.

DEAN MORRISON: [Chuckling]

JUSTICE GINSBURG: That was the
carrot.

0:11:20 And then the stick, if you don't give
her a chance I will never recommend
another Columbia clerk to you.

DEAN MORRISON: Wow.

0:11:29 JUSTICE GINSBURG: So with that deal,
Judge Palmieri took a chance on me.
This was something unknown to me
until years later when Gerry wrote
about it.

DEAN MORRISON: Hmm. Probably better
you didn't know at the time --

JUSTICE GINSBURG: [Interposing] Yes.

0:11:41 DEAN MORRISON: Were you the only
clerk or did Judge Palmieri have --

JUSTICE GINSBURG: [Interposing] In
those days, Judge Palmieri had one
clerk and a bailiff.

DEAN MORRISON: And then from there
was it the next year that you were in
Sweden?

JUSTICE GINSBURG: Two years later;

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the clerkship was two years --

0:11:58 DEAN MORRISON: [Interposing] Two years, yeah. Okay.

JUSTICE GINSBURG: At the end of the second year, it was not a problem to garner a law firm job then.

0:12:06 Judge Palmieri would tell prospective employers she's always there when I need her, even on a Sunday. So I was to work for what has become the Fried, Frank¹⁵ law firm.

DEAN MORRISON: Mm-hmm.

0:12:21 JUSTICE GINSBURG: Years later, Marty became of counsel --

DEAN MORRISON: [Interposing] Yes.

JUSTICE GINSBURG: -- to Fried, Frank. And then Hans Smit¹⁶ from Columbia asked if he could take me to lunch. And I said yes. I met him at the Harvard Club¹⁷ where I had to

¹⁵ Fried, Frank, Harris, Shriver & Jacobson LLP.

¹⁶ Hans Smit (1927-2012), a Columbia Law School professor who covered civil procedure, international law and transactions, international arbitration, and conflicts of law. Smit directed the Parker School of Foreign and Comparative Law and the Center for East European Law.

¹⁷ The Harvard Club of New York City was established as a membership space for male-only Harvard alumni. There was a

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enter by the side entrance, through
the little red door --

0:12:38

DEAN MORRISON: [Interposing]

[chuckling]

JUSTICE GINSBURG: Women weren't

allowed to cross the main hall. Hans

in his

0:12:49

inimitable way said, "Ruth, how would

you like to write a book about civil

procedure in Sweden?"

[Laughter] I recall thinking 'now do

I really know where Sweden is in

relation to Norway?' --

DEAN MORRISON: [Interposing]

[Laughing].

JUSTICE GINSBURG: Anyway. It was an

0:13:07

opportunity to write a book, my words

between hard covers.¹⁸

To learn about a culture I knew

nothing about.

DEAN MORRISON: Mm-hmm.

JUSTICE GINSBURG: I had been

separate dining Annex for women guests. The Club began admitting women members in the 1970s.

¹⁸ Ruth Bader Ginsburg & Anders Bruzelius co-authored, CIVIL PROCEDURE IN SWEDEN (1965), published as part of the Columbia University School of Law Project on International Procedure.

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 married at that point eight years and
 never lived alone.

0:13:23 I went from a college dormitory -- to
 being

0:13:26 married. I wanted to have a taste of
 that. Marty being very
 understanding, kept Jane for the last
 month of her school year. A month
 later, he sent her to join me. And I
 had my four to six weeks on my own.

0:13:50 I never had the desire to do that
 again.

DEAN MORRISON: [Chuckling]

JUSTICE GINSBURG: It was out of my
 system. So three good reasons for
 spending two years of my life with
 civil procedure in Sweden.

0:14:07 DEAN MORRISON: How did, if at all,
 your time in Sweden change your
 thoughts about American law? And to
 what extent did it affect your
 thinking about issues in the law or
 more broadly in society

0:14:19 about gender and gender equality?

JUSTICE GINSBURG: In the law there's

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nothing directly transposable --

DEAN MORRISON: [Interposing] Right.

JUSTICE GINSBURG: -- but the
experience did teach me that there
were other ways of doing things and
serving the same end. The reason
Sweden was chosen for this project,
0:14:38 it had adopted a new code of
procedure,

DEAN MORRISON: Mm-hmm.

JUSTICE GINSBURG: in which it
attempted to infuse what the Swedes
thought was the best of the Anglo-
American system. That is up until
then, in a typical continental
0:14:53 pattern, the judge did the
questioning. The judge decided what
witnesses to hear, what
0:14:58 documents to examine. And in a civil
trial, there was not one continuous
trial episode. The proceedings went
on until the judge was satisfied that
there was enough evidence to decide
the case. The Swedes decided to have
one concentrated trial episode as we

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do. And to have the lawyers rather
than the judge question --

0:15:25 -- the witnesses.

The new procedure code went into effect in 1948. By '62, the first summer I spent in Sweden, the code had been in effect long enough to see how it was working.

DEAN MORRISON: Hmm.

JUSTICE GINSBURG: It was -
enlightening for me to see

0:15:52 a system that had important differences. On the criminal side the police could question anyone for I think 48 hours, without allowing the suspect to make a phone call for --

0:16:08 and I thought, hmm, that's pretty bad. Until I realized an enormous difference The police looked just like the suspect. There was a kind of a rapport --

0:16:23 that didn't exist in the United States. On the position of women, first of all, women were then 3% of

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U.S. law students. They were already
20% in Sweden.

DEAN MORRISON: Wow.

JUSTICE GINSBURG: There was one
woman on the law faculty at Lund.

0:16:46

Most memorable, I went to a
proceeding in Stockholm, a trial
court proceeding, a judge in the
center presiding. And the
counterpart of jurors, sitting on

0:17:03

either side of her, lay judges. She
was eight months pregnant.

This was at a time when in the United
States school teachers were still
told you must go four or five months
into your pregnancy. And there was a
column

0:17:19

in the Stockholm daily paper to this
effect. Why should the woman have
two jobs and the man only one?
That is, it was expected that the
woman would be a second earner.
Inflation was high. And if you
wanted to do well by your children
you needed two incomes. But the

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	woman was also
0:17:45	expected to have dinner on the table at 7:00, take the children for their new shoes, their doctors
0:17:52	checkups. Women were arguing about the column. Some thought he should do much -- much more than take out the garbage.
	DEAN MORRISON: [Chuckling]
	JUSTICE GINSBURG: And others took the view, I can do it all. The Queen Bee type.
	Yes, I can have an
0:18:07	active medical practice and still have his slippers out there when he comes home.
	DEAN MORRISON: [Chuckling]
	JUSTICE GINSBURG: So I began to think about these things, then put them on a back burner because in the United States it was too soon to expect change. 1963 the only thing we had was the Equal Pay Act ¹⁹ .

¹⁹ [The Equal Pay Act of 1963, 29 U.S.C. Chapter 8 § 206\(d\)](#). prohibits employers from discriminating in pay to employees

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0:18:27	It took a while before that sunk in, before employers took it seriously.
0:18:35	Title VII ²⁰ of the Civil Rights Act the next year. But it wasn't until the late 60's when one could see that our society was ready -- ready to move- in the -- in the same way. DEAN MORRISON: Did you go into your work on the Swedish civil procedure project or come out of it thinking that you would like to
0:19:03	pursue a career as a legal academic? JUSTICE GINSBURG: In the back of my mind was that I would like to end up on a law school faculty. But my plan was I'd have about five years at a law firm before
0:19:18	I started teaching. But life doesn't always turn out the way one expects. Sometimes it turns out much better

solely on the basis of gender. The Act is part of the Fair Labor Standards Act, a federal law.

²⁰ [Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.](#), is a federal law that prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.

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Timecode	Quote
0:19:29	than one expected. When I was finished with the Swedish project, Walter Gellhorn, ²¹ a celebrated professor at Columbia and a one-man, placement bureau for law teaching jobs, called me into his office and said, "Ruth, what is your name doing on a Harvard list when
0:19:49	you're a Columbia graduate?". Harvard list. What list is he talking about? Well Harvard had sent a questionnaire; you're on the Harvard list if you attend one day, and so you get every solicitation -- anyway- Harvard had sent a list to people who attended the law school. Are you interested in teaching, if you are, fill out this form?
0:20:13	Which I did. Never thinking anything would come of it. Then I jumped to the wrong conclusion, I asked "Walter, is
0:20:26	Columbia interested in me?". "Not

²¹ Walter Gellhorn (1906-1995), a Columbia Law professor known for his championing of civil liberties and his contributions to the development of administrative law.

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Columbia Ruth. Rutgers."

0:20:47 And why Rutgers? Rutgers had an excellent civil procedure teacher, Clyde Ferguson²². He left Rutgers to become the Dean of the Howard Law School. Rutgers tried mightily to replace him with another African American male. Having failed in that quest, a woman was the next best thing. As I said, I wanted to have some years of practice first but here was a bird in hand.

0:21:12 There were, I think, it was -- well certainly less than 20 women teaching on law faculties across the country. That story is being told by my dear friend

0:21:23 Herma Hill Kay,²³ whose book should come out soon. It describes the lives of the women who were teaching law

²² Clarence Clyde Ferguson Jr. (1924-1983), a professor of law and the Dean of Howard University School of Law. In addition to other roles, he served for two years as the United States Ambassador to Uganda.

<https://history.state.gov/departmenthistory/people/ferguson-clarence-clyde-jr>

²³ Herma Hill Kay (1934-2017), the Barbara Nachtrieb Armstrong Professor and former Dean of the University of California, Berkeley, School of Law.

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before Herma was appointed to the Berkeley faculty in 1961. They numbered some 16.

So the chances

0:21:46

that there would be another opportunity for me were slim.

DEAN MORRISON: So you took it.

JUSTICE GINSBURG: Yes. I took that job and I reverse commuted. We lived in Manhattan. I would travel to Newark. I still sometimes have nightmares --

[Laughter]

JUSTICE GINSBURG: -- about

0:22:04

that trip from the east side of Manhattan to Newark.

DEAN MORRISON: You, before too many years, became the co-author of the first law school case book on sex

0:22:16

discrimination.²⁴ The existence of such a book --

JUSTICE GINSBURG: [Interposing] Yes.

²⁴ Herma Hill Kay, Ruth Bader Ginsburg, and Kenneth M. Davidson, *SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS*, West Publishing Company (1974).

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DEAN MORRISON: -- would have been unthinkable, I think during the years that you were in Sweden. Such a book in the United States, how did it come about?

0:22:34 JUSTICE GINSBURG: The idea was put to me by Herma Hill Kay who had associated with Kenneth Davidson. He was on the faculty of Buffalo Law School²⁵. Those two were writing a book about women and the law, a case book, for law school. And Herma asked if I would join them. That must have been about 1971.

0:22:58 DEAN MORRISON: Were you by this time on the Columbia law faculty?

0:23:05 JUSTICE GINSBURG: No, it was just before. It was the year before I went to Columbia. I started at Columbia in '72.

DEAN MORRISON: Okay. What was the scope of that book? And did you think of yourselves as trying to

²⁵ University at Buffalo School of Law.

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create a field of legal study or even of legal practice?

JUSTICE GINSBURG: Students in many law schools were clamoring for a course on women and the law. I had put together a set of materials for my students at

0:23:26

Rutgers. --The rights of women--or the lack thereof--should be included in all the subjects taught in law school. But that was not likely to happen soon and it would be good to have a separate course in any event. So I did the part

0:23:54

about constitutional law. Herma did family law. Kenneth Davidson did employment law. But we each read each other's parts.

0:24:09

DEAN MORRISON: Now by the time you finished litigating so many important cases at the Supreme Court what one could say about constitutional law and women's rights or gender equality was quite different than what one could have

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 said when you were first putting the materials together --

 JUSTICE GINSBURG: [Interposing] When I was putting the materials together

0:24:25 there was precious little.

 DEAN MORRISON: Yeah.

 JUSTICE GINSBURG: And the Supreme Court had never seen a gender classification it didn't like or at least that it didn't think was constitutional. It was an amazing time to be alive and a lawyer. It

0:24:41 was no longer the liberal Warren 6 Court, ²⁶ it was the Burger Court.²⁷

 And yet in that decades of the 70's, the Burger Court

0:24:50 struck down gender classification after gender classification as incompatible with the equal protection principle. I tell the story about the litigation in the 70's and contrast it with Hoyt v.

²⁶ Earl Warren (1891-1974), the 14th Chief Justice of the Supreme Court of the U.S. The Warren Court is known for progressive rulings on issues of race and civil liberties.

²⁷ Warren E. Burger (1907-1995), was appointed by President Richard Nixon to succeed Justice Warren as Chief Justice of the Supreme Court of the U.S.

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	Florida, ²⁸ a case that came up when Warren was the Chief Justice.
0:25:18	A woman we would today call a battered woman had been humiliated by her philandering husband to the breaking point. Beside herself with rage--a little bit like Billy Budd-- she spied her young son's baseball bat in the corner of the room, took it, and with all her might
0:25:43	hit him over the head. He fell against the stone floor, end of their argument, end of husband, beginning of murder prosecution. The woman, Gwendolyn Hoyt, thought if there were women on her jury they might better understand her situation. Not that they would acquit her, but perhaps they would convict her of the lesser crime of manslaughter -- rather than murder. She was convicted of murder by an all
0:26:16	-male jury. And when her case got to the Supreme Court, the Warren Court,

²⁸ [Hoyt v. Florida, 368 U.S. 57 \(1961\).](#)

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the attitude was, 'what is she complaining about? Women have the best of both worlds, they can serve if they want to--they had to go to the clerk's office to put their names on the list--and if they don't want to serve, they don't have to.'

0:26:38

I could imagine Gwendolyn Hoyt in prison reading that decision and thinking they don't understand.

In the 70's there were a few cases involving women and jury duty. And the upshot was that women had to serve just like the men -- which is as it should be.

DEAN MORRISON: As you began litigating a number of these cases

0:27:06

through the, ACLU Women's Rights Project --

JUSTICE GINSBURG: [Interposing] Yes.

DEAN MORRISON: -- which you co-founded, were you optimistic that the change you were seeking was likely to come from the court before which you were appearing or did you think this

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could be a 25-year battle

0:27:21 that you were just beginning? Or longer?

JUSTICE GINSBURG: I thought we were riding a wave. That was the revived feminist movement

0:27:29 in the United States. The cases we picked were carefully selected. The first one was *Reed v. Reed*.²⁹ Sally Reed was a divorced woman with a teenaged son. When her child was young-- the legal expression of tender years--she had custody. When the boy reached his teens, his father said now it's time for him to be prepared for a man's world. Sally Reed, the mother fought giving custody to the father. As it turned out, sadly, she was right, the boy became severely depressed in his father's custody. One day he took out one of his father's many

0:28:22 guns and committed suicide. Sally wanted to be appointed administrator

²⁹ [*Reed v. Reed*, 404 U.S. 71 \(1971\).](#)

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 of his estate.

The Idaho law--they were from Boise, Idaho--read: As between persons equally entitled to administer a decedent's estate, males must be preferred to females. So we had the ideal law to challenge -- the ideal real life situation. All of the 1970s gender-discrimination cases in which I was involved had that kind of plaintiff.

0:29:02 Sally Reed took her case through the Idaho courts, three levels of the Idaho courts, on her own dime. The ACLU didn't get into the act until the Supreme Court. Anyway, when I saw that the court had granted

0:29:19 review, noted probable jurisdiction, I called Mel Wulf,³⁰ who I knew from summer camp days. He was then the legal director of the ACLU --

0:29:31 and told Mel, I would like to write the brief in Reed. He replied, Ruth,

³⁰ Melvin L. Wulf, national legal director of the American Civil Liberties Union (ACLU) from 1962-1977.

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we will write the brief. We meaning Mel and me. And so we did with the aid of students from Yale Law School, Columbia Law School, Rutgers Law School and NYU.

DEAN MORRISON: Justice Ginsburg, tell us about the first case that you argued at the Supreme Court.

0:29:52

JUSTICE GINSBURG: The first case I argued at the Supreme Court was *Frontiero v. Richardson*.³¹ It was a divided argument. I was so nervous. In those days the court sat in the afternoon and the morning and *Frontiero* was an afternoon argument. I didn't dare eat lunch. I had a very well worked out opening

0:30:28

sentence. And then I looked up at the bench and realized I had a captive audience. They have no place to go. They have to listen to me and I knew a lot more

0:30:43

about this than they did. As it

³¹ Justice Ginsburg argued [*Frontiero v. Richardson*, 411 U.S. 677 \(1973\)](#), as advocate on behalf of the American Civil Liberties Union, amicus curiae, by special leave of the Court.

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turned out at that first argument,
not a single question was asked.

Amazing for the Court. And I
wondered, I still wonder, why. Were

they indulging me? Or was I really
opening their eyes? The problem we

had was that judges, who in those
days were overwhelmingly men, they

0:31:23

considered themselves good fathers,
no doubt they were, good husbands, so

what is this sex discrimination

about? I mean they knew about race
discrimination. That was bad. My

mission was to open their eyes to the
reality. As Justice Brennan put it so

well, too often the pedestal on which
women were thought to stand turned

out to be a cage.

Getting them to understand that was a

-- a challenge. It was also

exhilarating. The other arguments I
had,

0:32:10

prompted a series of questions. But

that first one..., I felt like a

teacher lecturing.

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DEAN MORRISON: What were the techniques that you chose to try to get the court to understand, what Justice Brennan put as a pedestal ultimately functioning as a cage?

JUSTICE GINSBURG: The effort was to show the arbitrariness of gender

0:32:36 -based classifications. And that men as well as women could be the target. All of the discrimination stems from a certain way of looking at the world. It has been described as the separate spheres notion. That is, the man was the representative of the family outside the home. He was the wage earner. And the woman's charge was

0:33:16 raising the children and keeping the hearth. If a woman stepped out of that role or a man did, the law worked to her or his disadvantage. So my ideal case was Stephen

0:33:35 Wiesenfeld's case.³² A young man's 7 wife was the dominant earner in their

³² [*Weinberger v. Wiesenfeld*, 420 U.S. 636 \(1975\).](#)

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Timecode	Quote
0:34:07	family, she was a high school teacher. She had a healthy pregnancy, was teaching into the ninth month, and went to the hospital to give birth. The doctor came out and told Steven you have a healthy baby boy but your wife died of an embolism. Well Steven Wiesenfeld vowed that he would not work full time until his child was in school full time. And he figured out that with Social Security benefits plus earnings up to the earnings limit, he could just about make it. So he went to the Social Security office to apply for what he thought were child-in-care benefits. He was told we're sorry Mr. Wiesenfeld,
0:34:39	these are mother's benefits. Stephen Wiesenfeld wrote a letter to the editor, his local Edison, New Jersey newspaper, saying I hear a lot about women's lib. Here's what happened to
0:34:59	me. And the tagline was "Does Gloria Steinem know about this?" It

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happened that a woman on the Spanish faculty at Rutgers lived in the same town, read Wiesenfeld's letter, and called me. I said suggest that he contact the local affiliate -- the New Jersey affiliate of the ACLU. That's how the Wiesenfeld case began. I said it was my dream case

0:35:33

because when we got to the Court the judgment was unanimous but they divided three ways in their reasoning. The majority led by Justice Brennan said of course it's discrimination against the woman as wage earner. She pays the same Social Security taxes but her family doesn't get the same protection. A few of them thought that it was discrimination

0:35:59

against the man as child-rearer. He would not have the opportunity to care personally for his child. And one, just one, then Justice

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Timecode	Quote
	Rehnquist, ³³ who later became my
0:36:14	Chief, thought it was arbitrary from the point of view of the baby. That the baby would have the opportunity for the care of a sole surviving parent if that parent was female but not if the parent was male. DEAN MORRISON: Which way had you argued the case?
0:36:35	JUSTICE GINSBURG: All three ways -- DEAN MORRISON: [Interposing] Oh, all three. JUSTICE GINSBURG: -- of course leading with -- women. In Frontiero, in which Rehnquist was the only dissenter, Brennan had pushed to have sex
0:37:06	declared a suspect classification. DEAN MORRISON: Yes. JUSTICE GINSBURG: Four signed onto that. Four isn't five. The Executive Director of the ACLU, Aryeh

³³ William H. Rehnquist (1924-2005) was appointed to the U.S. Supreme Court in 1971 by President Richard Nixon. He served as Chief Justice from 1986 until his death in 2005.

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Timecode	Quote
0:37:20	Neier, came to tell me you won Frontiero big. Four signed onto sex as a suspect classification. I said, oh, that's it. We're not going to get -- we're not going to get a fifth. My notion was we would have four, five, maybe six cases in which the court came out the right way, but didn't declare any grand doctrine. Then they'd see
0:37:46	that these classifications are arbitrary in a variety of settings. Then they might say let's put the suspect label on it. Well that wasn't going to happen when Frontiero had only four votes for sex as a suspect category. The remaining justices, although they came out the right way, wouldn't go that far. We then came up with a middle tier
0:38:15	which later got translated into, to justify a sex classification you must have an exceedingly persuasive justification.

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DEAN MORRISON: You emphasized that

line in -- the VMI case-- as the

description of intermediate --

scrutiny. So I guess it was the

Craig against Boren³⁴ case where there

JUSTICE GINSBURG: [Interposing] Yes.

DEAN MORRISON: -- finally was that

fifth vote.

0:38:49

JUSTICE GINSBURG: -- And in there we

wrote a Friend of the Court brief.

The local

0:38:57

lawyer from Oklahoma City, wrote a

brief and argued the case. I sat

next to him at the argument. And I

wondered, 'why did the Court pick

such a frothy case to announce a

higher level of review.' It was --

DEAN MORRISON: [Interposing]

[Chuckling]

JUSTICE GINSBURG: The case

challenged an Oklahoma law under

which about boys couldn't buy 3.2

beer until they were 21. Girls could

³⁴ [Craig v. Boren, 429 U.S. 190 \(1976\).](#)

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Timecode	Quote
0:39:24	18. Why pick that case to announce this elevated status of review for gender-based classifications? But you take what you can get. It -- was a funny case. The same age differential showed up in other contexts. How long does a parent have to support a child? Girl until
0:39:53	18, boy until 21. What is the age of marriage without parental consent? The Oklahoma Legislature, in its wisdom, adopted that age differential for buying 3.2
0:40:10	beer. Oklahoma's rationale--boys drive more, drink more, and commit more alcohol-related offenses. Yes, that's true in general, that's the stereotype. But there are some women who are not the best drivers. In any event, Craig v. Boren became the case for the elevated standard for judging gender-based classifications.
0:40:42	We've had a reunion of the cast from Craig v. Boren. The case was started

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by a fraternity in Stillwater, Oklahoma. They had an endless supply of 18-year-olds. The case dragged on rather long in the lower courts. But every time the plaintiff turned 21, they substituted

0:41:07 plaintiff with a new 18-year old.

After the Supreme Court granted review, Craig, the latest 18-year old, turned 21. The lawyer handling the case for the fraternity moved to substitute another plaintiff, but

0:41:31 the Supreme Court said no. That made the case ride on the standing of Carolyn Whitener, who owned a convenience store called The Honk and Holler where the thirsty boys would come but couldn't buy the beer until they were 21. So it was to her economic advantage that the age should be pushed back to 18 for boys as well as girls.

0:42:00 The opposing party was my favorite defendant, Senator Boren, who was then governor of Oklahoma.

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Timecode	Quote
0:42:22	DEAN MORRISON: With the possible exception of Craig against Boren, the other cases, the ones that you argued, the early ones, do seem each to have presented a very compelling
0:42:36	personal story. JUSTICE GINSBURG: Yes. DEAN MORRISON: How much at the time were you thinking that the Justices would need to be really driven by their reaction to the personal story as opposed to the argument from constitutional principle itself?
0:42:55	JUSTICE GINSBURG: That was very much the case in Reed, in Frontiero, in Wiesenfeld. But once it became possible to move the courts in the right direction, no single organization had control. It wasn't like the NAACP in the old days when Thurgood Marshall was in charge. If he wouldn't take your case, too bad. By that time the gender discrimination litigation was

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dispersed. And so some

0:43:27 cases came to the Court in the wrong order, some should not have been brought at all. But at least the first set of cases told a compelling story. In the jury cases, the first was from Louisiana, Taylor

0:43:47 against Louisiana.³⁵ It was not your ideal case because Taylor had been convicted of raping a woman -- in the presence of her young son. But every defendants in Louisiana were raising the objection that

0:44:05 they didn't have a chance to get a jury of their peers because women weren't put on the jury rolls. The case that finally settled the issue, Duren against Missouri,³⁶ was the last case I argued here. It was argued in the fall of 1978. Missouri had changed from an opt-in system: that is, women were not on the list but could add their names, to women were

³⁵ [Taylor v. Louisiana, 419 U.S. 522 \(1975\).](#)

³⁶ [Duren v. Missouri, 439 U.S. 357 \(1979\).](#)

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Timecode	Quote
0:44:35	on the list, but didn't have to serve if they didn't want to. The jury clerk, in Kansas City would send out notices, if you are a woman you're not required to serve, if you don't want to serve, check off here.
0:44:48	And if the woman didn't return the card it was assumed she didn't want to serve. So they had very few women on the jury rolls. And that's the case -in which the Supreme Court said, "Enough". Women have to be on the list just as men.
0:45:14	DEAN MORRISON: And then it was just a short time from then that, when you argued the last case at the Supreme Court, to when you took the bench yourself on the D.C. Circuit. What's the story of the process behind President Carter's nominating you for that seat? JUSTICE GINSBURG: When schoolchildren come to the Supreme Court as they do, I meet with them at least once a week. A favorite

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question is, did you always want to
be

0:45:36 a Supreme Court Justice. And I think
back to the ancient days when I
started law school, when women were
less than 3% of the legal profession.
There had been only

0:45:51 one woman ever on the Federal
Appellate bench. She was Florence
Allen.³⁷ Roosevelt³⁸ appointed her in
1934. In 1959 she retired. And then
there were none until 1968 when
President Johnson³⁹ appointed Shirley
Hufstedler.⁴⁰

So a woman didn't aspire to be a
judge. It was not

0:46:28 a realistic aspiration. And then, to
his enormous credit when Jimmy

³⁷ Florence Ellinwood Allen (1884-1966) was the first woman in the United States to be appointed to a (1) court of last resort (Ohio Supreme Court), and (2) federal appeals court (U.S. Court of Appeals for the Sixth Circuit). Allen graduated from New York University School of Law in 1913.

³⁸ Franklin D. Roosevelt, 32nd President of the United States.

³⁹ Lyndon B. Johnson, 36th President of the United States.

⁴⁰ Shirley Hufstedler (1925-2016) was appointed by President Lyndon B. Johnson to the U.S. Court of Appeals for the Ninth Circuit in 1968. In 1979 she was appointed by President Jimmy Carter as the first U.S. Secretary of Education.

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Carter⁴¹ became President, he looked at the Federal bench, and perceived that they all look like him. That is, they were all white men of a certain age. He was determined to change that pattern by appointing members of minority groups and women in numbers, not as one-at-a-time curiosities. So

0:47:05 he appointed, oh, about 25 women to District Courts and 11 to Courts of Appeals. I was one of those lucky 11. Until Carter made appointing women to the bench in numbers his mission, I never thought of a career as a judge.

0:47:24

DEAN MORRISON: Once President Carter did announce appointing women and minorities in numbers to the federal bench, did you think immediately of the D.C. Circuit as the court in which you might land or was the Second Circuit --

⁴¹ James Earl ("Jimmy") Carter Jr., 39th President of the United States.

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[Crosstalk]

JUSTICE GINSBURG:

0:47:40 It was another of those turns in life that look unfavorable when they happen, but turn out to be a good thing. We lived in New York. I thought of the Second Circuit as the natural place for me to go. Someone had called me from D.C. and asked if I would interview with the D.C. Circuit Commission. Carter had set up commissions for the appeals court in every circuit. So I was interviewed by the D.C. Commission and didn't give it

0:48:20 another thought. The Second Circuit list came out and Herb Wechsler,⁴² who was my teacher and by then my colleague came to tell me, Ruth, your name is not on the Second Circuit list. The reason given, the Second

⁴² Herbert Wechsler (1909-2000), a Columbia Law School professor who specialized in constitutional and criminal law as well as federal courts. Wechsler drafted the modern penal code and served as the Director of the American Law Institute

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Circuit Commission was not going to put anyone on its list who was on the list of another commission. And I was on the D.C.

0:48:46

Circuit Commission list. The Chair of that commission, the D.C.

Commission, said you're not going to get one of the extra judgeships that have been added by the Judges Bill.

Those are going to Abner Mikva⁴³ and

Patricia Wald.⁴⁴ But there will be

vacancies on that court and you are

on our list. Then Harold Leventhal⁴⁵

0:49:17

died and I was the nominee to fill that vacancy.

DEAN MORRISON: So you moved to Washington.

JUSTICE GINSBURG: Yes. Marty by

0:49:29

then had left Weil, Gotshal⁴⁶ where he was chief of the tax department. He

⁴³ Abner J. Mikva (1926-2016), a Congressman and a federal appeals court judge. He was appointed Chief Judge of the U.S. Court of Appeals for the D.C. Circuit by President Bill Clinton.

⁴⁴ Patricia M. Wald, the first woman appointed to the U.S. Court of Appeals for the D.C. Circuit. She was appointed by President Jimmy Carter in 1979.

⁴⁵ Harold Leventhal (1915-1979), a federal appeals court judge. He was appointed to the U.S. Court of Appeals for the D.C. Circuit by President Lyndon B. Johnson.

⁴⁶ Weil Gotshal & Manges LLP.

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was teaching at Columbia. And many people asked me, when I was new on the D.C. Circuit, how do you manage the commute from D.C. to New York. I would respond, what makes you think I'm living in New York. Marty transferred to Georgetown. He also had an affiliation

0:50:00

with the Fried, Frank law firm.

In the early days, too, when I went to a social gathering and someone introduced the new Judge Ginsburg, the hand as often as not would go out to Marty --

DEAN MORRISON: [Interposing]

[Chuckling]

JUSTICE GINSBURG: -- and he

0:50:20

would explain, "She's Judge Ginsburg.

I'm still hopeful."

DEAN MORRISON: [Laughing]. How

would you describe the D.C. Circuit

0:50:33

in those days?

JUSTICE GINSBURG: An interesting

place to be. The court didn't divide on party lines the way one might

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expect. Skelly Wright⁴⁷ was then the Circuit's Chief Judge. He was a heroic figure in his birthplace, New Orleans. He'd been on the District Court there checking efforts to block desegregation. His best friend on the D.C. Circuit was Ed Tamm⁴⁸ who had been second in command to

0:51:01 J. Edgar Hoover at the FBI. There was no special fondness between David Bazelon⁴⁹ and the other quote "liberal" judges. But there was someone who was my model of what a good judge should be and that was Carl McGowan.⁵⁰ We didn't have a king on our court, we did have a prince, and he was Carl McGowan. A judge as wise as he was kind.

0:51:36 On the right side, there was George

⁴⁷ J. Skelly Wright (1911-1988), from Louisiana, Chief Judge on the U.S. Court of Appeals for the D.C. Circuit. He is credited with playing an important role in de-segregation.

⁴⁸ Edward J. Tamm (1906-1985), an FBI official who served as assistant to FBI Director J. Edgar Hoover. Tamm was later a federal judge appointed by President Lyndon B. Johnson to the U.S. Court of Appeals for the D.C. Circuit.

⁴⁹ David L. Bazelon (1909-1993) served as Chief Judge of the U.S. Court of Appeals for the D.C. Circuit from 1962-1978.

⁵⁰ Carl E. McGowan (1911-1987) was appointed to the U.S. Court of Appeals for the D.C. Circuit in 1963 by President John F. Kennedy.

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MacKinnon,⁵¹ father of Kitty

MacKinnon, and he had no great

fondness for Malcolm Wilkey.⁵² So

personal friendships

0:51:51 didn't divide along party lines.

Today the D.C. Circuit is, I'd say, a

much more collegial place than it was

in the past thanks to the efforts of

Harry Edwards⁵³ when he was the

Circuit's Chief Judge. I worried

very much about being on the D.C.

Circuit

0:52:22 because administrative law was the
subject I liked least in law school.

I was reading advance sheets some

months before I was appointed and

wondered how am I going to deal with

this dense stuff. But it turned out

that mix on the D.C. Circuit was much

better preparation for what I do now

⁵¹ George Mackinnon (1906-1995) was appointed to the U.S. Court of Appeals for the D.C. Circuit in 1969 by President Richard Nixon.

⁵² Malcolm R. Wilkey (1918-2009) was appointed to the U.S. Court of Appeals for the D.C. Circuit in 1970 by President Richard Nixon. He later served as U.S. Ambassador to Uruguay.

⁵³ Harry T. Edwards was appointed to the U.S. Court of Appeals for the D.C. Circuit in 1980 by President Jimmy Carter and served as Chief Judge from 1991-2001. He took senior status in 2005. Judge Edwards is also a Professor at NYU School of Law.

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0:52:47 than the Second Circuit would have been. The Second Circuit is the premier commercial court. The D.C. Circuit, 70% of the cases had the government on one side or another

0:52:59 -- the government or [a] federal agency. Many cases came to us directly from the agencies rather than from the District Court.

DEAN MORRISON: So this turned out to be good preparation for your current job.

JUSTICE GINSBURG: Yes, I think so.

0:53:14 Three of us from the D.C. Circuit became Supreme Court Justices, first, Justice Scalia,⁵⁴ then Justice Thomas,⁵⁵ I was the third. Our current chief, Chief Justice Roberts,⁵⁶ was on the D.C. Circuit before his appointment to the Supreme

⁵⁴ Hon. Antonin Scalia, an Associate Justice of the U.S. Supreme Court appointed in 1986 by President Ronald Reagan. Justice Scalia was known for his originalist interpretation of the constitution and active questioning from the bench. His sudden death in 2016 left a divided court during a highly contested Presidential campaign year.

⁵⁵ Hon. Clarence Thomas is an Associate Justice of the U.S. Supreme Court appointed by President George W. Bush.

⁵⁶ Hon. John G. Roberts, Jr. is the Chief Justice of the U.S. appointed in 2005 by President George W. Bush.

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Court.

DEAN MORRISON: So you were nominated
to the Supreme Court in 1993.

JUSTICE GINSBURG: Yes.

0:53:44 DEAN MORRISON: What was your
reaction?

JUSTICE GINSBURG: President
Clinton⁵⁷ took some time to --

DEAN MORRISON: [Interposing]
0:53:54 [Chuckling]

JUSTICE GINSBURG: -- decide who he
would nominate. He called me, I
think it was a Sunday evening, pretty
close to midnight. When he told me
that the next day he would introduce
me as his nominee, I was on cloud
nine. To say I was elated doesn't
begin to describe how I felt. But
then he said, we'd

0:54:32 like you to make some remarks at the
Rose Garden announcement. So I had
to come down from cloud nine, sit at
my desk and write those remarks. It

⁵⁷ William ("Bill") Jefferson Clinton, 42nd President of the
United States.

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turned out just fine, because it was
the only thing I wrote that didn't
have to go through White House
handlers, there was no
0:54:52 time --
DEAN MORRISON: [Interposing] No
time.
JUSTICE GINSBURG: I came to the
White House. The President looked at
0:54:56 my remarks about two minutes before
we -- we went on. Jane was at the
time in Australia. She suggested
mentioning Hillary⁵⁸ coming to
Clara's⁵⁹ nursery school. So I showed
the photograph of Hillary Clinton
with my then 3-year old granddaughter
in front of her, the two of them
singing the toothbrush song.
DEAN MORRISON: [Chuckling]
0:55:28 JUSTICE GINSBURG: The photograph
was on the front page of the *New York*

⁵⁸ Hillary Rodham Clinton, wife of President Bill Clinton. After serving as First Lady, she became senator from New York and then U.S. Secretary of State during the first and early second terms of the Obama administration. She was the first female nominee for President of one of the two major U.S. political parties.

⁵⁹ Clara Spera, Justice Ginsburg's eldest granddaughter.

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Post during Clinton's campaign for the presidency. Jane also

recommended a reference to her high school yearbook. Jane's entry--

Ambition: to see her mother

0:55:56 appointed to the Supreme Court.

Comment: If necessary, Jane will appoint her. I told the President

DEAN MORRISON: [Interposing]

0:56:07 [Chuckling]

JUSTICE GINSBURG: how glad Jane was that he was making the appointment.

DEAN MORRISON: Excellent.

Excellent. What do you remember most about the confirmation hearings that followed?

JUSTICE GINSBURG: The confirmation hearings, first it was a minor miracle that they happened when they did. I

0:56:24 was nominated June 14th, Congress was going to recess in the beginning of August. Any senator could have put a hold on me, carrying me over until the fall. No one did.-

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DEAN MORRISON: [Interposing] Did you think that would happen?

JUSTICE GINSBURG: Not after my best friend on the Judiciary

0:56:46 Committee told me he was in my corner. That was Orrin Hatch.⁶⁰

0:56:49 What was great about those hearings was the bipartisan spirit that prevailed. The people from the White House were very worried about my ACLU connection. And they asked questions like "you were on the ACLU board in the year so and so, they passed such and such a resolution.

0:57:14 How did you vote? What did you think of it?" And I said, "Forget it. Nothing you can say is going to lead me to do anything but praise the ACLU". There wasn't a single question about my ACLU connection. Not one. The questions I was asked, they were designed to give the

0:57:36 Senator an opportunity to show how wise, how caring he or she was. Oh

⁶⁰ Orrin G. Hatch, the senior Republican senator from Utah.

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they had added two women to the Committee, Dianne Feinstein⁶¹ and Carol Moseley Braun.⁶² The

0:57:50 Committee didn't perform so well when Justice Thomas was nominated and no women served on it. Most of the questions I was asked were softballs. It was an endurance contest in the sense that I went from 9:00 in the morning until 4:00 or 5:00, whenever, sometimes even later when they broke

0:58:19 for the day. But it was a friendly conversation. There was no adversary tone to it at all. As I have said many times, I so wish we could get back to the way it was for me and for Justice Breyer⁶³ when the Committee was operating with a bipartisan spirit. Nowadays, it's a plague on both their houses. Think of my now Chief,

⁶¹ Dianne Feinstein, the senior Democratic senator from the State of California.

⁶² Carol Moseley Braun was a Democratic senator from the State of Illinois from 1993-1999. She was the first African-American woman elected to the Senate.

⁶³ Hon. Stephen G. Breyer, Associate Justice of the U.S. Supreme Court nominated by President Bill Clinton in 1994.

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0:58:55 who had a number of negative votes.

He should have had none. Think of
Sonia Sotomayor⁶⁴ and Elena Kagan,⁶⁵
they also had many negative votes.
On the merits they should
0:59:07 have had none. If we could get back
to the way it was, what would it take
to get our Congress to operate that
way? I think it would take great
diplomats on both sides to realize
how badly we are served by this
inability to do anything government.
DEAN MORRISON: What do you recall
once you were confirmed; what do
0:59:44 you recall about the first day of
oral argument at the Court?
JUSTICE GINSBURG: I had been on the
D.C. Circuit for 13 years so I was
accustomed to being an appellate
judge and I asked a number of
questions. I don't think my Chief
was pleased. [chuckling] The new

⁶⁴ Hon. Sonia Sotomayor, Associate Justice of the U.S. Supreme Court nominated by President Barack Obama in 2009.

⁶⁵ Hon. Elena Kagan, Associate Justice of the U.S. Supreme Court nominated by President Barack Obama in 2010.

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Justice was supposed to be quiet and listen.

1:00:11 I came to have enormous affection for my Chief. But I was dismayed by my first assignment. Legend is that the new Justice gets a unanimous, single issue case.

1:00:27 Instead, Chief Justice Rehnquist assigned me a miserable ERISA⁶⁶ case, in which the court divided six to three. I went to Justice O'Connor⁶⁷ to complain. She knew the old Chief very well because they had gone to Stanford together and they were practicing in Phoenix, Arizona at the same time. I

1:00:56 said Sandra he wasn't supposed to do that. She replied, Ruth, you just do it. Just do it. And get your draft out before he makes the next set of assignments, otherwise you'll risk

⁶⁶ [The Employee Retirement Income Security Act of 1974 \(ERISA\), Pub. L. No. 93-406, 88 Stat. 829](#), is a federal law that sets minimum standards for voluntarily established pension and health plans in private industry.

⁶⁷ Hon. Sandra Day O'Connor, a retired Associate Justice of the U.S. Supreme Court appointed in 1981 by President Ronald Reagan. She was the first woman appointed to the U.S. Supreme Court.

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getting another doggy case. That's the way Sandra was. Whatever happened, whatever came her way, she just did it. I wrote an opinion in that ERISA case and my next assignment was a lot better.

1:01:27

DEAN MORRISON: [Laughing]. I bet you got that one out fast.

JUSTICE GINSBURG: Yes [Laughing]. I did. As fast as I could. It was not

1:01:36

easy. I told you the vote was six to three, Sandra was one of the three dissenters. She passed a note to me when I announced the summary of the opinion from the bench. It said, "Ruth, this your first opinion of the Court, it's a fine one, I anticipate dozens more." I was so happy to get that note. I sent similar notes at the announcement of the first opinions of Justices Breyer, Sotomayor, and Kagan.

1:02:10

DEAN MORRISON: Was the Court overall as active in its questions as a collective body then when you first

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joined it as it has been in recent years?

JUSTICE GINSBURG: I would say yes.

My second year, both Justice Scalia and Justice Breyer were very active questioners. I think the current Court is the most active of any in asking questions. My two newest colleagues, Sotomayor and

1:02:48

Kagan, are not shrinking violets.

They participate actively in the colloquy at oral argument. And in fact this year, there was a rivalry of sorts between Scalia and Sotomayor over who could ask the most questions at argument. This year Sotomayor was way out in front.

DEAN MORRISON: As you look across the many years you've been

1:03:14

on the Court now, are there particular cases that stand out as most memorable for you and if so, why?

JUSTICE GINSBURG: Oh, some that came out right and some that didn't. Most

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disappointing was *Citizens United*.⁶⁸

On a par with that, Shelby County,
which cut ⁶⁹

the heart out of the Voting Rights
Act of 1965.⁷⁰ But sometimes a
dissent leads to a positive outcome.

1:03:54

Lilly Ledbetter's case⁷¹ is an. The
court divided five to four. Lilly
was an area manager in a Goodyear
tire plant, on the job since the
70's. She was one of the first women
to hold such a position. She never
complained about her pay until one
day, someone put a slip in her
mailbox with a series of numbers.
The

1:04:30

numbers were the pay area managers
received. Lilly's pay placed at the
very bottom. She was getting less

⁶⁸ [*Citizens United v. Federal Election Commission*, 558 U.S. 310\(2010\).](#)

⁶⁹ [*Shelby County v. Holder*, 570 U.S. 2\(2013\).](#) After *Shelby*, various states that previously had been required to seek "preclearance" under the Voting Rights Act made changes to their voting laws, many of which face legal challenges as of the date of this interview.

⁷⁰ The Voting Rights Act of 1965, as amended, 52 U.S.C. §10101, is a federal law that protects against race-based voting discrimination.

⁷¹ Lilly Ledbetter was the plaintiff in [*Ledbetter v. Goodyear Rubber and Tire Company*, 550 U.S. 618 \(2007\).](#)

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than the person she had trained to do the job. Enough, she decided. She brought a Title VII⁷² suit against Goodyear. She gained a favorable jury verdict. But the Supreme Court said she sued too late. Title VII requires: one to complain to the EEOC⁷³ within 180 days of the discriminatory incident. Lilly had been discriminated against since the 1970's, so she sued much too late, the Court held. In the dissent I explained that women who are the first to do what up to then has been a man's job don't want to rock the boat. They don't want to be seen as complainers, as troublemakers. And besides, she didn't even know what the salary figures were. The employer doesn't give those out. If she had complained earlier on, what would

1:04:56

1:05:15

1:05:49

⁷² [Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq \(1964\).](#)

⁷³ Equal Employment Opportunity Commission (EEOC), a federal agency that enforces federal anti-discrimination employment laws.

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have happened? The answer

undoubtedly would have been, her pay rate had nothing to do with Lilly being a woman, she just didn't do the job as well as the men. Well now years and years have gone by, they've given her good performance ratings. So they no longer can claim in defense that she didn't do the job well enough.

1:06:14

My answer to the "she sued too late" argument was one that applied under the Fair Labor Standards Act and the Equal Pay Act.

1:06:34

Every paycheck renewed the discrimination. Every paycheck reflected the differential that started way back in the 70's. So she has 180 days to complain from each paycheck. The tagline of my dissenting opinion was "The ball is now in Congress's court to correct the error into which my colleagues have fallen." Inside of two years, the Lilly

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1:07:04 Ledbetter Fair Pay Act⁷⁴ was enacted.

It was the first bill signed by President Obama when he took office. Congress can cure an error in statutory interpretation. Not so when the meaning of a constitutional provision is at issue. Either a later court must see the light or change must come through constitutional amendment. Our Constitution is powerfully hard to amend.

1:07:29 DEAN MORRISON: Even in statutory cases, it's true as you say, Congress can respond to a decision of this Court and change the statutory ground as it were, as your

1:07:41 dissent urged Congress to do in Ledbetter. But it doesn't respond that way very often. Did you think that Congress was likely to move?
-- It was a powerful dissent.

JUSTICE GINSBURG: Lilly Ledbetter's

⁷⁴ [The Lilly Ledbetter Fair Pay Act of 2009](#) (Pub.L. 111-2, "S. 181") is a federal law that amended the Civil Rights Act of 1964 to allow the statute of limitations governing pay discrimination claims under Title VII to restart with each paycheck.

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	case came up after passage of
1:07:55	a Civil Rights Restoration Act ⁷⁵ in which Congress fixed a number of restrictive decisions the Court had written interpreting Title VII. So there was precedent for Congress to
1:08:16	react to the Court's, stingy interpretation of -- of Title VII. A similar development occurred
1:08:31	in the late 70's, when Congress passed the Pregnancy Discrimination Act. ⁷⁶ This Court had said discrimination on the basis of pregnancy is not discrimination on the basis of sex.
	DEAN MORRISON: <i>Geduldig</i> , ⁷⁷ I think, yeah, yeah.
	JUSTICE GINSBURG: First <i>Geduldig v. Aiello</i> and second,
1:08:59	the Title VII decision in <i>General</i>

⁷⁵ The Civil Rights Restoration Act of 1987 (Pub.L. 100-259).

⁷⁶ [The Pregnancy Discrimination Act](#) is a federal statute enacted in 1978 to amend Title VII of the Civil Rights Act of 1964 to include a prohibition of sex discrimination based on pregnancy. The Pregnancy Discrimination Act was passed by Congress in response to the Supreme Court decisions in *Geduldig v. Aiello* and *General Electric v. Gilbert*, both cited below.

⁷⁷ [Geduldig v. Aiello, 417 U.S. 484 \(1974\)](#).

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Electric against Gilbert.⁷⁸

DEAN MORRISON: Right.

JUSTICE GINSBURG: The notion that discrimination on the basis of pregnancy is not discrimination on the basis of sex, every woman knew that was wrong. A coalition formed to pass the Pregnancy

1:09:22 Discrimination Act, law that said, simply, discrimination on the basis of pregnancy is discrimination -- on the basis of sex.

DEAN MORRISON: Most memorable cases where you were pleased with the outcome?

JUSTICE GINSBURG: The Virginia Military Institute case⁷⁹ is high on that list.

DEAN MORRISON: Yes.

1:09:46 JUSTICE GINSBURG: VMI is an institute in Virginia that provides a special kind of education offered to men only. And that military

⁷⁸ [*General Electric Company v. Gilbert*, 429 U.S. 125 \(1976\)](#).

⁷⁹ [*United States v. Virginia*, 518 U.S. 515 \(1996\)](#).

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Timecode	Quote
1:10:19	education would not be my cup of tea, many men wouldn't want to enroll. But there were qualified women who wanted that education, especially when one recognizes that only 15% of VMI graduates end up with long careers in the military. Most VMI graduates go into business and commerce. The school had a great "Old Boy's Network." Graduates were aided on their way by alums. The decision came down with
1:10:38	only one dissent. I admit that Justice Thomas was recused because his son was attending VMI. So Justice Scalia was the lone dissenter. The Chief, although he didn't sign on to my opinion, did subscribe to the judgment. And that marked my perception of a change in our Chief,
1:11:04	who later wrote a great decision upholding the Family Medical and

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 Leave Act⁸⁰.

DEAN MORRISON: Hibbs⁸¹.

JUSTICE GINSBURG: I was more than
 delighted when he joined the judgment
 in the VMI case. That decision
 1:11:27 came out with only one dissent.

DEAN MORRISON: Justice Ginsburg,
 thank you very much for speaking with
 us today. It's been a real pleasure
 to talk with you.

JUSTICE GINSBURG: It's been a
 pleasure for me, too, Trevor.

Dean Morrison: Thank you.

1:11:36 [END RECORDING]

⁸⁰ [The Family and Medical Leave Act of 1993, 29 U.S.C. 2601](#), is a federal law that entitles employees to take leave for certain medical and family-care circumstances.

⁸¹ [Nevada Department of Human Resources v. Hibbs, 538 US 721 \(2003\)](#).