

FREE TO BE
RUTH BADER GINSBURG
THE STORY OF WOMEN AND LAW



Ruth Bader Ginsburg as a college senior in 1954.

1

ONE LAWYER'S BEGINNINGS

Nathan Bader was born in 1896 in a shtetl near Odessa in the Russian Empire, the kind of village immortalized in the work of Yiddish writer Sholem Aleichem and the musical *Fiddler on the Roof*. It was a place where life had continued unchanged for generations, where Jews—while sharing a village with Gentiles—largely governed themselves and lived separate lives. Nathan was nine years old when a violent series of pogroms broke out in the region, leaving thousands of Jews dead and many more homeless. That same year, the Baders decided there was no future for them in Imperial Russia.

Nathan's father left first, journeying to the United States to earn passage for the rest of the family. Four years later, the rest of the family joined him, becoming part of the great migration that brought one and a half million Jews from Eastern Europe to America.

They settled in New York's Lower East Side, a crowded and gritty district packed with tenement buildings, synagogues, libraries, shops, department stores, and grocery stores. Known as a "notorious slum,"¹ the capital of Jewish America, almost everything was Jewish-owned and Jewish-run—banks, shops, grocery stores, even the garment factories and department stores. By the time the Baders arrived, the district was packed with more than seven hundred people per acre, making it one of the most crowded neighborhoods in the world.

ONE LAWYER'S BEGINNINGS



*The original caption read: "How the 'other half' lives
in a crowded Hebrew district, Lower East Side, NY. 1907.*

The young man who would become father to one of the century's most brilliant legal minds had no formal education other than night school, where he learned English. Nathan, described as warm and likable, followed the time-honored path of Jewish immigrants and went into the garment business. He specialized as a furrier.

Unfortunately, Nathan didn't have a good head for business. Fortunately, he married Celia Amster, who did. Celia's roots were also Eastern European. Her parents immigrated to the United States from somewhere in the Austrian Empire, arriving in New York just four months before her birth in 1902, making her the first member of her family to be born in the United States. The fourth

of seven children, she was smart, driven, and a voracious reader, graduating at the age of fifteen with top grades from Washington Irving High School in Manhattan's Gramercy Park neighborhood. Because she was a girl, her grades meant little to her family, who pinned their hopes of higher education and social advancement on her oldest brother. All family members were expected to work to send the oldest boy to college, so when Celia went to work as a bookkeeper in the garment industry, part of her salary went toward her brother's college expenses.

Celia quit her job once she and Nathan were married. Nathan held the view, common at the time, that a working wife meant a man was unable to support his family. From inside the home, Celia was able to give Nathan the help he needed to keep his business profitable. She performed clerical and bookkeeping duties, helping to keep the business afloat even during the Great Depression, when very few people were buying furs.

Nathan and Celia Bader lived in a small, well-kept house on East Ninth in the Flatbush district of Brooklyn. Their first child, Marilyn, was born in 1927. Next, in 1933 when Marilyn was six, came Joan Ruth, nicknamed Kiki—pronounced Kicky—by her sister.

Kiki was a year old when Marilyn died of meningitis. Although Kiki was too young to remember Marilyn, her sister's death lent an ever-present air of sadness to their home. Marilyn's death left Kiki an only child, but her childhood was anything but lonely, surrounded as she was by a large, closely-knit extended family—lots of aunts, uncles, and cousins. Kiki particularly enjoyed the Passover Seder when she was still the youngest at the table and was thus the child who asked the traditional four questions.² Each summer, she attended the Jewish Camp Che-Na-Wah in the Adirondacks, a camp founded by her uncle Solomon—Celia's oldest brother, who she had helped send to college.

Among Kiki's early memories were weekly trips with her mother to the local library, which was housed over a Chinese restaurant. Kiki selected her books for the week. She enjoyed reading mysteries and Greek mythology. While at the time, Kiki didn't question the prescribed order for girls and boys, later she

credited the Nancy Drew series with planting the idea that a girl could be an adventurer who thought for herself, a doer who didn't fit the usual gender stereotypes of the 1930s and 1940s. She wanted to be either Nancy Drew or Amelia Earhart when she grew up.

Celia changed the order of her daughter's names from Joan Ruth to Ruth Joan when enrolling her in school. Celia saw several other Joans already signed up, so she enrolled Kiki as Ruth Joan Bader. Kiki attended Public School 238, grades K–8, a tall brick building with hardwood parquet floors and high windows located a mere block and a half from the Baders' home. The school was crowded, with more than a thousand students, and often as many as thirty children per class. Kiki wrote an editorial for the school newspaper entitled "Landmarks of Constitutional Freedom," tracing the foundations of American law from the Magna Carta to the present day.

Easygoing Nathan was the soft touch, the parent who would have spoiled Kiki had Celia allowed it. Celia was the parent with demanding standards, who went over Kiki's homework and made sure she practiced piano. Once, when Kiki brought home a less-than-perfect report card, Celia made clear her displeasure. That was the end of less-than-perfect report cards from Kiki.

The Jews in the Baders' neighborhood mixed freely with immigrants from Ireland and Italy. Kiki's best friend, Marilyn DeLutio, was the daughter of Sicilian immigrants, and Kiki was often in their home. Beyond the safe confines of the Baders' circle of family and friends, however, lurked the specter of anti-Semitism. Brooklyn during Kiki's childhood was a place where boys on the street had fistfights over whether the Jews had killed Jesus, and where many still believed that Jews needed the blood of Christian boys to make their matzos. Once in the 1930s Kiki was driving with her parents through Pennsylvania when she saw a sign in front of a hotel that said, "No dogs or Jews allowed"—the same sort of sign that appeared in Germany, instilling in American Jews the fear that the violent wave of anti-Semitism taking hold in Germany might find a footing in America as well. Much later, during the hearings in which Kiki—then, of course, Judge Ginsburg—was confirmed to the U.S. Supreme Court, Senator Kennedy asked her

about her sensitivity to racial issues. She explained that growing up Jewish during World War II sensitized her to the marginalization of groups.

Celia introduced both Kiki and her cousin Richard to art at the Brooklyn Academy of Music, buying subscriptions to the Saturday children's performances. When Kiki was eleven, one of her aunts took her to a condensed version of *La Gioconda*, a production designed to stimulate a child's appreciation of opera. The settings were bare, and sections were narrated so the entire opera could be performed in an hour, but the vocals were glorious, and Kiki fell in love with opera. Now she had a new fantasy—to be a great diva. She learned early, though, that she had no talent for singing. A grade school teacher told her she was a sparrow and not a robin, so when the others sang, she was to simply mouth the words. Later she said she sang in two places, her dreams and the shower.

Celia also brought Kiki to the Lower East Side to remind her of her roots, the neighborhood that remained as a step in time from the shtetls of Eastern Europe. By the time Kiki visited the Lower East Side as a child, the New York City Housing Authority had replaced the worst of the structures to relieve the slum conditions, but the district was noisy, crowded, and boisterous—and Kiki did not love it. Many years later, though, she teared up with nostalgia remembering the foods she ate at those delicatessens and shops, which she called the best in the Jewish tradition.

At the age of thirteen, Kiki graduated first in her class from Public School 238. She attended high school at James Madison High School, founded in 1925, a school with top academic standards, reflecting the ambitions of the community. The school was housed in an imposing red brick building on Bedford Avenue in the Madison section of Brooklyn. Most of Kiki's classmates, girls as well as boys, were college-bound. Today James Madison High boasts a large roster of distinguished graduates, including four Nobel Prize winners and three senators, one of whom was 2016 presidential candidate Bernie Sanders. Representative Charles E. Schumer, a James Madison alumnus, said the school did more for his education than college at Harvard.

During Kiki's first year of high school, just before her fourteenth

birthday, tragedy struck: Celia was diagnosed with cervical cancer. Celia underwent her first surgery during Kiki's first year of high school, and was in and out of the hospital for the next four years. Kiki understood that not much could be done to save Celia's life. Despite the daily pain of living with "the smell of death,"³ Kiki never let on to her classmates that her mother was dying.

Kiki was a baton twirler, a member of the Go-Getters pep club, and a cello player in the school orchestra. She ran for student government, but was beaten by one of her best friends. She was confirmed with honors from the East Midwood Jewish Center. At home, she often did her homework at Celia's bedside because it pleased Celia to see her studying.

Kiki was petite—just over five feet tall and very slender—with bobbed hair and blue eyes. Classmates described her as pretty and popular. Reserved, she didn't speak unless she had something of substance to say. She had a slow, deliberate way of talking, liberally sprinkling pauses into her conversation. Self-controlled by nature, she took Celia's advice that she should always be a lady, by which Celia meant rising above destructive and petty emotions. A lady, according to Celia, remained calm and was always modest. Kiki's tranquil exterior masked the inner strength and determination that allowed her to flit through high school in her pep club jacket, hiding the secret that her mother was dying.

Celia's illness was not the only thing Kiki hid from her classmates. Behind a pretty face and shy smile, she hid a sharp intelligence. To the outward eye, there wasn't much to give her away as a future law professor and Supreme Court justice, as she was more likely to be found wearing the Go-Getters black satin jacket and selling tickets to games than holed up in the library. Girls in the 1940s were supposed to be fun and popular—party girls—not bookish and smart. Kiki, always the perfectionist, was for all the world to see the perfect high school girl. For those looking closely, though, there were hints of a lawyer in the making. Her grades were almost perfect. She was editor of the school newspaper. She was admitted into Arista, the elite honor society. Outwardly fun, inwardly serious, she was a girl who smiled often, but rarely laughed.

"She was very modest," a classmate said later, "and didn't

appear to be super self-confident. She never thought she did well on tests, but of course, she always aced them.”⁴

Celia expected Kiki to go to college. In particular, Celia had her sights set on Cornell—the school her oldest brother had attended. Cornell, located on the southern shore of Cayuga Lake in central New York, was considered one of the best schools for girls, not only because Cornell accepted a fair number of girls, but also because it was thought to be a good place to find a man: The ratio was four men for each woman admitted. With its high academic standards, Cornell was not the place to find just *any* man, but one who was smart and capable, with a good career ahead of him. Celia didn’t just want Kiki to find a man—she also wanted Kiki to have a career and be independent. Of the jobs generally open to women—nursing, teaching, and secretarial work—it was evident to Celia that Kiki, with her love of history and civics, was best suited to being a high school history teacher.

Kiki was admitted to Cornell and awarded several scholarships, including Madison High’s English Scholarship and a New York State Scholarship. She graduated from high school ranked sixth in her class and was scheduled to speak at the graduation ceremony as part of the Round Table Forum of Honor.

The day before Kiki’s graduation ceremony, Celia died of cancer at the age of forty-seven—almost as if she’d held on until she knew her daughter was ready to venture forth into the world as a young adult. Kiki, in mourning, did not attend her high school graduation ceremony. Teachers brought her medals and awards to her home. Upon Celia’s death, her family discovered that she had been secretly saving money to pay for Kiki’s college education. She had saved \$8,000, a fantastic sum in 1950. Ever prudent, Celia never bought anything on credit. She had five separate bank accounts with no single account having more than \$2000.

Because of her scholarships, Kiki was able to return the money to her father, which he soon needed. Not long after Celia’s death, Nathan’s business went quickly downhill, a testament to the help Celia had been able to give him.

Kiki insisted that growing up she never had any sense of herself as what we might today call a feminist. However, when

ONE LAWYER'S BEGINNINGS

asked about certain topics, like her attitudes toward Judaism, her answers indicated a heightened awareness of the limitations placed on girls. For example, she talked about how only men could participate in the *minyan*, the quorum required for public prayers of mourning. One of the mornings the family was sitting *shiva* for Celia there were not enough men present to make up the *minyan*.⁵ So someone had to go searching for a man—despite the abundance of women in the house. Kiki felt particularly stung. She'd not only worked hard at her confirmation but also was one of the few to take it seriously. At camp, after being confirmed, she'd often been the “camp rabbi,” leading the others in prayer. Yet, her Jewish education meant nothing during one of the most important moments of her life—because she was a girl.

2

A TOP STUDENT AND A TOP GOLFER

In the fall of 1950, when Kiki was seventeen years old, she arrived at Cornell—a university known for top academics, demanding and knowledgeable professors, long, cold winters, and a strikingly beautiful natural landscape. Kiki was one of seven Jewish women in the freshman class. All seven were housed on the same floor in Clara Dixon Hall. They became friends and remained close all their lives. Later, Kiki suggested tongue in cheek that it could have been happenstance that the seven Jewish women in the class were housed together, or perhaps the Jewish women were grouped together in an effort to make them feel more comfortable. But she knew the real reason. They'd been segregated. Sororities and fraternities, too, were segregated. Some were for Jews. Most were for Christians, with no overlap permitted. She felt snubbed when non-Jewish friends she'd met during a summer waitressing job avoided her on campus and issued her no sorority invitations.

Kiki—still known to her friends by her childhood nickname—joined a Jewish sorority, AEPi, and majored in government. She took part-time clerical jobs to supplement her scholarships, and joined the Women's Self-Governance Association.

Later, when asked to talk about her time at Cornell, she often mentioned the different rules that applied to men and women at the university. Women were required to live in dormitories, whereas men were allowed to find independent housing in town.

Women had to sign in to the dormitory each night. They had to be back in the dormitory by 10:00 p.m. on weekdays, midnight on Fridays, and 1:00 a.m. on Saturday. If a woman wasn't back on time, she was locked out and had to find somewhere else to sleep that night. Kiki later admitted to having found herself locked out of the dormitory—but only once.

Even at Cornell, there was pressure on women to hide their intelligence, to make the men feel like they were smarter—even though, because of quotas and thus higher admission standards for women, the women were often stronger students. Kiki, still feeling that she needed to live up to the image of a fun sorority girl, found obscure libraries so others wouldn't know how much she studied.

Kiki met Martin David Ginsburg, known as Marty, during her first year at Cornell. Marty was eighteen, a year older than Kiki. He was a second-year student, and social chairman of the Jewish fraternity Tau Delta Phi. He came from a well-to-do Long Island family—his father was vice president of the Federated Department store chain, the corporation that now owns the Target stores, among others. One of the six other Jewish women on Kiki's floor, Irma Hilton, was dating a man who was friends with Marty. Irma and her boyfriend introduced Marty and Kiki, even though both were dating others. Kiki had a boyfriend from Camp Che-Na-Wah, who was then a law student at Columbia. Marty had a girlfriend at Smith. But, as Irma explained, the weeks between visits with an out-of-town boyfriend were long, and the nights in Ithaca were cold. Besides, Marty was the owner of a gray Chevrolet. Irma had the idea that if Kiki and Marty would get together, the four of them could go places in Marty's car.

Kiki described their first meeting as a blind date, but Marty later revealed that the date was only blind on Kiki's side. "I cheated," he said.⁶ The date was arranged after Marty told Irma's boyfriend that he thought Kiki was really cute.

Kiki and Marty were friends for a full year before their relationship turned romantic—enough time for them to get to know each other without the complications of courtship. "He would tell me everything on his mind," Kiki said. "Not a bad way

to start a relationship.”⁷ Marty was the first to fall in love. He came to see who Kiki was underneath, and he wooed her with promises that he respected her intelligence and admired her quiet intensity. Marty was the first boy she’d met who cared that she had a brain. Most men, she felt, actually preferred that a woman *didn’t* have much of a brain. She also came to realize that Marty was much smarter than her Columbia Law School boyfriend. She felt it was Marty’s deep confidence in himself borne of his own superior intelligence that prevented him from feeling intimidated by her. One of Marty’s friends said, “Ruth was a wonderful student and a beautiful young woman. Most of the men were in awe of her, but Marty was not.”⁸

On the surface, the two were as different as could be. Whereas Kiki was reserved and careful, Marty was gregarious and irreverent. Many years later, after decades of marriage, and after Kiki became Justice Ginsburg of the U.S. Supreme Court, she and Marty were at a social gathering consisting mostly of her former clerks when Marty, unbeknownst to her, taped a sign on her back that said, “Her Highness.”⁹ With Marty as her partner, Kiki didn’t have to live up to cultural expectations and be the fun-loving life of the party—Marty willingly took on that responsibility.

Once Kiki stopped hiding her intelligence it became evident to her peers that she was “scary smart.”¹⁰ She often sat cross-legged, reading, while the others played bridge or gossiped. She enjoyed Gilbert and Sullivan, sometimes playing selections on the piano. While later portraits showed her as serious and even dour, Irma Hilton said, “She was actually a lot of fun. It was just that she had her priorities straight: She never partied until her work was done.”¹¹

Marty, modest as well as irreverent, was always eager to shine the spotlight on Kiki. He joked that at Cornell, she was a top student while he was a top golfer. Indeed, he was a talented golfer and member of the college golf team. He started college as a pre-med student, but he dropped chemistry when he discovered that the labs interfered with his golfing schedule.

During Kiki’s second year of college, in keeping with her goal of becoming a high school history teacher, she did some student

teaching in a local high school. She discovered that high school teaching was just not her cup of tea. Meanwhile the nation was in the grip of Senator Joseph McCarthy's Red Scare. Cornell's Professor Marcus Singer was indicted before a grand jury in Washington, DC, when he refused to tell the House Un-American Activities Committee about his associates in a wartime communist study group. Professor Singer admitted his participation in the group, but invoked his Fifth Amendment right to silence when the committee demanded that he divulge the names of others who participated. He was arraigned on a contempt charge, and as a result Cornell University relieved him of his teaching duties while allowing him to remain in his job as a researcher.

Kiki became protégé and research assistant to Cornell professor of government Robert Cushman, who was supervising the university's Studies in Civil Liberties program funded by the Rockefeller Center. Professor Cushman impressed upon his students that McCarthy's committee was violating the constitutional rights of Americans and essentially conducting a widespread witch hunt, thereby estranging America from its most basic values.

Kiki first felt the desire to become a lawyer when she understood that the lawyers representing the accused in the McCarthy hearings—while of course working for profit—were also trying to repair the wounds in the society. She also tied her interest in law and justice to her Jewish education and heritage, noting that demand for justice runs through the entirety of Jewish tradition. Because she liked reading, thinking, and laying out arguments, it seemed to her that law was a better career match for her than teaching high school.

Meanwhile, she and Marty were growing together as soul mates. They felt equally enraged at McCarthy's attempts to ruin the career of a Cornell professor because he had been a member of a communist group as a student. They shared walks through the Arts Quad and drives past the lake. Kiki learned to play golf. She was a frequent guest at Marty's home on Long Island. Marty's mother, Evelyn, took a liking to Kiki, and took Kiki—who after all had recently lost her own mother—under her wing. One summer, Kiki worked as a clerk in one of Marty's father's department stores.



Cornell University Arts Quad.

It was there, on the streets of Long Island, that Kiki encountered for the first time a test she had trouble passing: Her driving test. She had to take the test five times before she passed.

Marty and Kiki decided they wanted to go into the same profession so they could understand each other's work and support each other. "The idea," Marty explained, "was to be in the same discipline so there would be something you could talk about, bounce ideas off of, know what each other was doing."¹² Business was out because the Harvard Business School didn't accept women and Marty wanted to go to Harvard. So they decided to become lawyers, even though Marty suspected Kiki had already made up her mind that this was what she wanted. Nathan was dismayed when he learned that his daughter wanted to go to law school. The legal profession was all but closed to women, so there didn't seem much sense in Kiki trying to become a lawyer. Teaching, to him, was a much more logical choice. Moreover, his own business had never recovered since Celia's death, and he knew he wouldn't be able to support her should she be unable to find a job.

Kiki believed that Celia had wanted her to be a high school history teacher simply because a possibility like law had never occurred to her. Kiki felt confident that if Celia were alive and saw such a possibility open to her daughter, she would have encouraged her. One of Kiki's cousins, Jane Gevirtz, later came across a letter Kiki had written in 1953 revealing self-doubts about her aptitude

for law, but explaining that she was determined to see if she could get into law school despite being told from all sides that it was “more appropriate for a woman to be a teacher.”¹³

Nathan felt better about the idea of law school after Kiki and Marty announced their engagement. Since she would have a man to support her, it didn't matter as much if she would be unable to work in her chosen profession.

Marty graduated and was accepted to Harvard Law School. Kiki, who was ready to shed her childhood nickname and become Ruth, still had one year left at Cornell. She came up with an idea: She would take her fourth year of college in the Cornell Law School, then join Marty at Harvard, where they'd both be second-year students. She proposed this idea to the dean at Harvard, who told her this would not work because she would get no credit at Harvard for courses taken at Cornell. Ruth had no desire to go through the first year of law school twice, so instead, after Marty left for his first year of Harvard—now driving a green Pontiac instead of his gray Chevrolet—Kiki spent her last year at Cornell taking art and music classes. Later she said it was the year she most enjoyed her studies.

Ruth graduated with high honors in government, with distinction in all subjects. She was elected to Phi Beta Kappa, and because she was the woman with the highest academic average, she graduated as class marshal. She was admitted to Harvard Law School and offered a generous scholarship.

She and Marty were married in Marty's parents' living room in Rockville Centre, New York, the same month she graduated from Cornell. The ceremony was performed by the rabbi from the synagogue Celia and Nathan had belonged to for years. The wedding was small, with only eighteen guests, a number representing the Hebrew symbol for life. Ruth and Marty would use the money saved by having a small wedding for a European honeymoon: a car trip through France, Italy, and Switzerland.

Ruth's soon-to-be mother-in-law gave her advice about how to have a happy marriage. Just before the ceremony, Evelyn sat her down and said, “Ruth, remember in every good marriage it helps

to be a little hard of hearing.”¹⁴ She then presented Ruth with a pair of earplugs. Ruth said that whereas she didn’t particularly need those earplugs in her marriage, they definitely came in handy later with law faculty colleagues.

3

AXIOMATIC TRUTHS ABOUT WOMEN

The female lawyers who came before proved the difficulty of defying cultural expectations. Indeed, the qualities in a successful lawyer—the ability to think rationally and analytically, the ability to engage in public speaking, possession of a certain toughness, and the ability to occupy a position of authority as an officer of the court—ran directly contrary to the common view that women were fragile, emotional, and hence unsuited for public life. The women who came before showed something else as well: those who had the gumption, the stamina, and the intelligence to work around barriers often found themselves in positions of much greater significance than if the barrier hadn't been there in the first place.

Myra Bradwell was born Myra Colby in 1831. As was typical of upper-class girls in the middle part of the nineteenth century, Myra attended the Elgin Female Seminary in Illinois, a finishing school intended to train girls for their future roles as wives and mothers and offer a broad education in literature and the arts. After finishing her education, Myra taught at the seminary for a year. While teaching, she met James Bradwell, who came from a family of poor English immigrants, and was financing his education by doing manual labor. Myra's family had no intention of allowing her to marry a manual laborer, so Myra and James eloped. Myra's brother pursued them with a shotgun, but was unable to stop them.



Myra Bradwell, February 12, 1831

They were married in Chicago on May 18, 1852.

Myra's inclination to rebel didn't stop with a runaway marriage. After James completed his education in 1855 and was admitted to the Illinois bar, Myra decided she wanted to work with him in his law practice. There were two ways to become a lawyer: Attend law school or study law under the supervision of a practicing lawyer. As a woman, Myra wasn't permitted to attend law school, so she studied with James. She was thirty-eight years old when she passed the Illinois bar exam with high honors and became the first woman in the United States to apply for a license to practice law. She submitted her application in the usual way, accompanied by a court certificate attesting to her good character and the results of her examination showing that she possessed the requisite qualifications.

The Illinois Supreme Court denied her request on the grounds that the laws that applied to her as a married woman would prevent her from practicing law. Under the law in Illinois, as derived from

common law, a woman had no legal existence apart from her husband:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and *cover*, she performs everything.¹⁵

A married woman could not own property in her own name, enter into contracts, sit on juries, vote, run for office, or even apply for credit without her husband's permission, limitations that—according to the Illinois Supreme Court—would interfere with Myra's ability to practice law. How, for example, could she freely enter legal agreements with her clients if she needed her husband's permission each time she wanted to enter a contract?

Myra challenged the decision. She admitted she was married, but insisted that she nonetheless had the right as an American citizen to practice law. The Illinois Supreme Court issued its final response, relying on the fallback position that the Illinois legislature did not intend women to practice law, so the court had no authority to grant a license to a woman. The court concluded that even if not forbidden to do so by law, it would deny her application because

God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws was regarded as an almost axiomatic truth.¹⁶

Myra brought her case to the U.S. Supreme Court. She invoked the newly ratified Fourteenth Amendment of the U.S. Constitution, which guaranteed all persons equal protection of the laws. Her argument was a simple one. The Fourteenth Amendment of the Constitution plainly decreed that no state may deny any *person* equal protection of the laws. She was a person. The Illinois law deprived her of equal protection by refusing to allow her to practice law

on the basis of her gender. Therefore, the Illinois law violated the Constitution and must be overturned.

She must have known she was on shaky ground. The Thirteenth, Fourteenth, and Fifteenth Amendments, known collectively as the Reconstruction Amendments, were ratified immediately after the Civil War to give the newly freed slaves the full rights of citizenship. Indeed, the U.S. Supreme Court ruled against her, holding that the Fourteenth Amendment didn't apply because the intent of the Reconstruction Amendments had nothing to do with whether women could practice law. Justice Bradley's concurring opinion echoed the sentiments of the Illinois Supreme Court by describing the different spheres and destinies of men and women:

Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The Constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.¹⁷

And Justice Bradley's oft-quoted conclusion:

The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.¹⁸

Even after being told by the U.S. Supreme Court that women were not included as persons under the Fourteenth Amendment, women refused to give up. One woman after another read the Constitution,

saw the word “person,” believed she should be included, and tried unsuccessfully to argue in court that even if the original framers hadn’t intended to include women, it was time for that to change.

In 1872, when Virginia Minor tried to register to vote in the upcoming presidential election, the St. Louis district registrar, Reese Happersett, refused to allow her to register because she was a woman. She wanted to sue, but she couldn’t without her husband’s permission. Her husband gave permission, so she sued on the grounds that the Fourteenth Amendment guaranteed equal protection of the laws to all persons, and she was a person; therefore, she should be allowed to vote. Her case went all the way to the U.S. Supreme Court.

The Court ruled against her, holding that while women were citizens and persons and as such owed allegiance to the United States, so were children, and nobody would expect a child to be given the right to vote.¹⁹

Meanwhile, Myra Bradwell—denied the right to practice law—established the *Chicago Legal News*, which became one of the most influential and widely read law journals in the Midwest. In a column called “Law Relating to Women,” she argued for legal and political equality for women. Her paper provided support for women trying to obtain law licenses in their own states. She became active in the woman’s suffrage movement, joining with other suffragists to form the American Woman Suffrage Association in Cleveland. That same year, Elizabeth Cady Stanton and Susan B. Anthony founded the national woman’s suffrage movement. In 1890 the two groups merged to become the National American Suffrage Association. That same year, the Illinois Supreme Court, acting on its own motion, granted Myra a license to practice law. She lived to see her efforts come to fruition when women were granted the right to vote in 1920 with the ratification of the Nineteenth Amendment.

Colonial men might have also believed that women were unfit for such professions as the practice of law, but when the country was undeveloped and sparsely populated, and when there weren’t enough men to do the work, it often happened that the most

capable person—and sometimes the *only* capable person—was a woman.

Margaret Brent, born in 1601, known to her contemporaries as “Mistress Margaret Brent, Spinster,” was America’s first woman lawyer—in a loose sense of the word, of course because there wasn’t yet a United States of America and what could be termed the legal profession was unregulated and unlicensed. Margaret was born in Gloucestershire, England, into a well-to-do Catholic family, members of the landed gentry. In 1638, at the age of thirty-seven, Margaret—an unmarried woman—came with two of her brothers and her sister, also unmarried, to the colony of Maryland in search of religious freedom. Margaret, it turned out, had a head for business. Because she was single, she was allowed to own property. She went into the tobacco business with a grant of land from the governor of Maryland, Leonard Calvert, and by hiring indentured servants. She became wealthy lending money to new immigrants. She often appeared in court to collect debts and manage her business affairs.

Governor Calvert came to trust her, and on his deathbed, appointed her as his executrix, which put her in the unusual position of managing state affairs and finances. After Governor Calvert’s death, his brother, Lord Baltimore, then residing in England, inherited Maryland and became governor. Margaret paid Governor Calvert’s debts, as he requested, and discovered that there wasn’t enough money to pay the soldiers he’d hired to protect the colony. The soldiers were angry and threatened mutiny if they weren’t paid. Margaret therefore went to the Provincial Court and asked that she be named the absent Lord Baltimore’s attorney. Her request was granted. She used her power as Lord Baltimore’s attorney to sell some of his cattle to get the money to pay the soldiers, thus preventing a rebellion. Lord Baltimore was furious when he learned what she’d done, but the Assembly—Maryland’s legislative governing body—came to her defense, assuring Lord Baltimore that she had preserved Maryland’s safety.

Emboldened, she went before the all-male Assembly and asked for the right to vote as a property owner and as Lord Baltimore’s attorney. The Assembly denied her request on the grounds that

she was a woman. So she and her sister moved to Virginia, where she acquired a large tract of land and lived until her death in 1671.

The American frontier, in folklore and legend, was a land of cowboys, wide-open spaces, and high-noon gunfights. While there was a measure of truth to the legends, there were also new opportunities for women because often there were not enough men able to do necessary work.

Susanna Wright, born in England in 1697, was a Quaker woman on the Pennsylvania frontier, and the most literate and educated of her neighbors. She therefore wrote wills, deeds, indentures, and other contracts. She served as an arbitrator in property disputes and joined Benjamin Franklin in speaking out against attacks on Native Americans.

In the nineteenth century, women found it easier to become lawyers in states closer to the frontier, where the establishment was a little less established, and professions less regulated. Arabella Mansfield, in Iowa in 1869, was the first American woman admitted to the bar. The Iowa code stated that the bar exam was limited to “any white male person,” but she was permitted in nonetheless. Back east, that same year, Lemma Barkaloo was denied admission to Columbia Law School in New York. The administrator said he would not be a part of “degrading” women to the practice of law. So she moved west to St. Louis, Missouri, and was admitted to law school at Washington University, where she became the nation’s first female law student. She quit law school after a year, passed the Missouri bar, and began practicing in 1870, just months before her death of typhoid fever at approximately the age of twenty-two. One obituary said she died of mental fatigue.

In 1869, thirty-nine-year-old Belva Ann Bennett Lockwood, a teacher and founder of one of the first woman’s suffrage groups, applied to three law schools—Columbia College, now George Washington University, Howard University, and Georgetown. She was denied on the grounds that her presence would distract the male students. In 1870 she drafted a bill that made it illegal to pay women less than men in civil service positions. In 1872, her bill was passed. In 1871, she was at last admitted to a law school as one of



Belva Ann Bennett Lockwood, circa 1870.

fifteen women entering the first-year class of National University School of Law, which is also now part of George Washington University. She finished her coursework, but none of the women were allowed to go through graduation or receive diplomas. She wrote to President Grant and eventually received her diploma, but she was the only woman in her class to do so. In 1906, she became the first woman to argue before the Supreme Court. She represented the Cherokee Nation in a lawsuit alleging that the U.S. government violated a treaty. She won, securing a judgment of \$5 million for the Cherokee Nation.

Jane Foster was a student at Cornell Law School from 1915 to 1918. She excelled at her studies, served as editor of the law review, and was elected to the Order of the Coif, an honor society for outstanding law school graduates. After graduation, no firm would hire her. With the help of one of her professors, she finally found work, not as a lawyer but as a legal assistant. She worked as a legal

assistant from 1918 until 1929, watching as one man after another advanced to partner. With strong recommendations from Cornell Law professors and her employer, she tried again to find work as a lawyer, but never succeeded. The Wall Street firm of White & Case wrote to the law school's dean, telling him that White & Case steadfastly refused to take women on their legal staff, and he was certain they would continue to adhere to that policy.

Unable to find work as a lawyer, Jane instead used her financial skills in the stock market. She purchased stock in companies such as the Computing-Tabulating-Recording Company, the company that was to become IBM. She amassed a fortune that allowed her to donate generously to the Cornell Law School. In the 1950s—while Ruth Bader Ginsburg was an undergraduate at Cornell—Jane returned to her hometown in Ohio and cared for her aging mother. She never practiced law.

Before 1920, there was perhaps an excuse for excluding women from the practice of law. Without a voice in making laws, how could women enforce or interpret them? But the passage of the Nineteenth Amendment, giving women the right to vote, did not open the courtroom or law school doors to women. A 1922 Barnard College graduate recalled,

At the time I was ready to enter law school, women were looked upon as people who should not be in law schools. I wanted very much to go to Columbia, but I couldn't get in. I went over to see Harlan Stone, Dean Stone, who was later Chief Justice of the United States, and asked him to open the law school to women. He said no. I asked why. He said, we don't because we don't and that was final.²⁰

One major firm in Houston prided itself on hiring women lawyers through the 1920s, but the women were given work as librarians or clerks, and were never given real legal work. The Depression made the situation worse. Women lawyers who interviewed or asked for work at firms were asked how they could possibly be considered when so many men with families to support

were out of work. Even though women had little chance of being hired as anything other than secretaries or librarians in law firms, women continued to go to law school, often excelling. A few lucky women did find legal work, but they never expected advancement. They certainly didn't expect to make partner. One major law firm, Sullivan & Cromwell, did in fact hire five women lawyers in the 1930s, but no woman made partner in the firm until 1982.

Women went to law school in greater numbers during World War II because wartime enrollment for men was down. During the war and man shortage in the country, many women were able to find work, not only in the legal field but in all fields that were typically dominated by men. But at the end of World War II, women were expected to return to the home and give the jobs to the returning veterans. In the 1950s, women were occasionally hired by the prestigious firms, but they were the exceptions, frequently hired as a token woman to show that the firm was progressive.

Some firms said they didn't want to hire women for fear that the women would get married, have children, and leave. Many simply believed that a woman's responsibility was in the home. Others were afraid women could not keep up the pace, or would have emotional outbursts, resulting in bad relationships with courts. One female graduate of Harvard Law School in the 1950s offered other women a warning: "Beware of firms specifically looking to hire a woman lawyer. They want you for work they cannot get any man to do."²¹

People often asked Ruth Bader Ginsburg why she went to law school. Those asking the question were perhaps expecting an idealistic response, like the famous answer given by Oliver Hill, one of the NAACP lawyers who helped bring about school desegregation. Oliver Hill said, "I went to law school so I could go out and fight segregation."²²

"I became a lawyer for personal, selfish reasons," Ruth said. "I thought I could do a lawyer's job better than any other. I have no talent in the arts but I do write fairly well and analyze problems clearly."²³

4

RUTHLESS RUTHIE

Harvard Law School would have to wait. Shortly after Ruth and Marty's wedding, Marty was called to duty in the reserves and sent to Fort Sill, Oklahoma, to serve as an artillery officer. He'd joined the Reserve Officers Training Corps (ROTC) program while an undergraduate at Cornell, thinking that if he was going to be drafted, it would be better to serve as an officer.

Fort Sill, Oklahoma, was nestled in the plains just south of the Wichita Mountains in Comanche County, in the southwest part of Oklahoma. The fort was built at the time of the Indian Wars. The adjacent town of Lawton had been founded fifty-three years earlier, when the Kiowa-Comanche-Apache Reservation—the last of the Indian lands in Oklahoma—was opened up by the federal government for settlement. The lands were offered by lottery, with sixty-five hundred homesteaders selected to receive plots. By the time the Ginsburgs arrived, the town had a population of about thirty-five thousand and boasted a newly built high school and hospital.

The first day Marty reported for duty, his training officer asked him how much artillery experience he had. "I will level with you," Marty said. "The first artillery piece I have seen in my life is the one I see through your window, on the back of that jeep."²⁴

"Son," his training officer replied, "that's an automatic fence post digger."²⁵ An inauspicious beginning to a military career if

ever there was one.

Marty and Ruth lived in the married officers' quarters. Later, Marty said the two years they spent in Fort Sill were a gift and a blessing: They were able to build their life and marriage far away from family and the pressures of school. Marty quipped that, compared to the pressures of law school and their later careers, his job in Oklahoma required him to focus approximately four hours each week, which gave him plenty of time to devote to his marriage.

It didn't take long for Marty to discover an area, in addition to driving a car, in which Ruth fell short of her usual standards of perfection: She was a terrible cook. In fact, her cooking became a running joke throughout their marriage. One memorable evening early in their marriage, she placed a lumpy mass of food on the table and her new husband—perhaps unwisely—asked, “What is it?” She replied, “It's tuna fish casserole.”²⁶ Later he said that the casserole was as close to inedible as a freshly prepared meal could be.

Ruth freely admitted that she had no interest in the kitchen. Eventually she mastered seven meals, all of which came from a cookbook called the *60-Minute Chef*, meaning that nothing in the book took longer than sixty minutes from the start of preparation to the table. She favored frozen vegetables and grilling meat after defrosting it. One of Ruth's cousins, Richard, evidently well aware of Ruth's talents—or in this case lack thereof—and apparently taking pity on Marty, had given the newlyweds as a gift the *Escofier Cookbook: A Guide to the Fine Art of Cookery*. The day after being presented with the memorable tuna casserole Marty opened the cookbook and began learning. The former chemistry major discovered his talent for cooking. “Hell,” he told a friend, “it's just like chemistry.”²⁷ Later he joked that he learned to cook as an act of self-defense.

Ruth's first job in Oklahoma was as a clerk-typist at the engineer supply office in Fort Sill. Next she took the civil service exam and scored well enough to land a high-level position with the Social Security Administration office in nearby Lawton. Ruth was not afraid to bend the rules where necessary in the interests

of justice. She disapproved of her boss's policy of refusing Native Americans applying for pensions because they didn't have birth certificates to prove their ages, even though they were clearly old enough. Native Americans born more than sixty years earlier were never issued birth certificates. In denying them pensions, Ruth felt her boss was abusing his powers. She quietly rebelled, approving the pensions of elderly Native Americans based on nothing more than fishing licenses.

In January, Ruth learned she was pregnant. She made the mistake of revealing this information at work. She'd been scheduled to travel to a training session, but her supervisor said that because of her pregnancy, she could not travel; therefore, she could not remain at her current level. She was demoted three pay levels. Another colleague, who was also pregnant, kept her pregnancy a secret as long as she could. The other woman was not demoted and traveled to the training seminar. This irked Ruth, but the idea of challenging the unequal treatment of women in court did not occur to her. That was the way things were, so she accepted it. Anger was not an emotion in which the carefully controlled Ruth indulged.

When the time came for the baby to be born, Marty and Ruth decided they preferred a hospital they were familiar with instead of the hospital provided by the army. Ruth, therefore, returned to New York to stay with Marty's parents and have her baby there. Jane Carol Ginsburg was born on Long Island on July 21, 1955.

Ruth always put beautiful music on the Victrola while feeding Jane because she wanted Jane to associate food with beautiful music. Marty read up on child development and learned that the first year of a baby's life was when a child's personality and deepest attachments were formed. He made the decision to spend a lot of time with his infant daughter—and he followed through—something not typical of a man in 1955. The pattern of their marriage was now set: Responsibilities would be shared equally without regard for traditional gender roles. At this time Ruth began formulating her dream for the world: "That a child should have two caring parents who share the joys and often the burdens," which, she insisted, required "a man who regards his wife as his

best friend, his equal, his true partner in life.”²⁸

The Ginsburgs became, in effect, a nineties family in the fifties.²⁹

Jane was one year old when Marty’s compulsory time in the army was over. Two more years were optional. Marty had no interest in remaining in the reserves.

Ruth had to reapply for admission to Harvard Law School. Once more, she was accepted. This time, though, Harvard withdrew her scholarship and instructed her to submit her father-in-law’s financial statement. She and Marty decided not to make a fuss over it. As Marty said with a laugh, “Nobody could see anything wrong with it, except us.”³⁰ Fortunately, Marty’s parents were supportive enough of Ruth’s desire to go to law school—and generous enough—that they were willing to pay her tuition at Harvard. In fact, her father-in-law said he would be *happy* to pay her tuition. He supported her emotionally as well as financially, telling her that going against gender expectations by becoming a lawyer while the mother of a small child would be difficult, but if she really wanted to do it, she should.

Later, in an interview with Philip Galene of the *New York Times*, Ruth said that she sympathized with Harvard’s decision not to offer scholarship funds to a person with family money, but she doubted a man would have been required to submit *his* father-in-law’s financial statement. “Or his *mother*-in-law’s statement,” interjected Gloria Steinem, who was participating in the conversation.³¹

So, in 1956, the Ginsburgs moved out of the married officers’ housing and headed to Cambridge, Massachusetts, where both Marty and Ruth enrolled at Harvard Law School, Marty entering his second year, Ruth beginning her first. They hired a grandmother-type nanny to stay with Jane during the days, and arranged their schedules so that one of them could be home each day at 4:00 p.m., when it was time for the nanny to leave.

There were nine women in Ruth’s entering class of about five hundred. Because the first woman had been admitted in 1950, women in Harvard Law School were still a genuine novelty. Dean Erwin Griswold hosted a dinner early in the term for all nine of

the women. After dinner, he brought the women into his living room and had each of them sit next to a distinguished professor who had been invited to be the woman's escort.

What the dean did next deeply rattled Ruth. He asked each woman to tell their escorts what they were doing in law school occupying a seat that could have been held by a man. Ruth was so shaken by the question that she knocked over an ashtray, which clattered to the floor. The answer she came up with was that her husband was in the second-year class and it was important for a wife to understand her husband's work. She didn't add that he had a similar reason for being there—so he could understand *her* work. One woman present had the nerve to respond to the question with a question of her own that she intended to be tongue-in-cheek: with almost five hundred Harvard men and nine women, she asked, "What better place to catch a man?"³²

Ruth didn't think the dean's question was intended to wound. She believed he was just trying to address the faculty who didn't believe women should be admitted and take the place from deserving men, so—as she understood the dean's motives—he wanted the women to tell their stories so they could be reported to doubting members of the faculty.

After her first day of classes, Ruth experienced a pang of self-doubt. In her class was Anthony Lewis, who later became a Pulitzer Prize-winning *New York Times* columnist and reporter. After Anthony Lewis performed brilliantly, she went home and told Marty, "If they're all that smart, I won't make it."³³ But it was soon clear that Ruth took to law school. After the large lecture classes of her undergraduate years, where she had mostly been a passive learner, she loved the Socratic method used in law classrooms, where professors asked questions instead of providing answers, and learning involved a constant dialogue. In her view, a person who had been educated in the Jewish traditions of Talmudic scholarship as she had was comfortable with the method of intellectual probing and answering questions with another question.

The nine women in the class were divided among four sections, which meant most of the women were in a lecture hall



Austin Hall, a classroom building of the Harvard Law School.

with only one other female classmate. This put a kind of pressure on the women because if a woman was called on, she worried that a wrong answer would reflect badly not only on her but on all women. So the women were always on their toes, always well prepared. Later, a law professor at Columbia remarked that he longed for the good old days when there were only a few women in his law classes because if things were going slowly and he wanted a crisp answer, he could always call on a woman. “Nowadays,” he remarked, “there’s no difference; the women are as unprepared as the men.”³⁴ Other sections in the Harvard Law School held “Ladies Day,” when only women were called on, while they were ignored the rest of the year, but Ruth and the other woman in her section were spared that ordeal.

Ruth’s favorite class was Civil Procedure, taught by Benjamin Kaplan, the grand master of the Socratic method, which he used to keep his students alert. If a student gave a poorly thought out answer, he would rephrase the answer for the benefit of the entire class. He stressed the purpose of procedure—to secure the just and speedy resolution of controversies. Ruth fell in love with the subject matter, so often considered dry, as she came to understand

that procedure was the vehicle for fairness and justice, with rules that must be carefully neutral “precisely because they apply equally to your friends and your enemies.”³⁵ The late 1950s, when Ruth was in law school, was the heyday of the legal-process movement, when scholars like Columbia’s Herbert Wechsler argued that neutrality and justice were achieved through procedure. Under this theory, judges and courts should never rule based on their own biases or preferences, but should dispassionately analyze the competing interests in a case and make judgments that were procedurally consistent.

Early on in the semester, Marty predicted—and even bragged—that his wife would make law review, an honor he hadn’t achieved. His classmates responded by questioning his judgment. No woman had yet made law review, and certainly nobody expected it of a tiny wisp of a woman like Ruth, who, according to one male classmate, didn’t look particularly impressive. She wasn’t likely to be taken for a scholar, at least according to the 1950s’ stereotyped views of scholars. She was so attractive that when a professor called on Mrs. Ginsburg there was “an audible and collective groan of male disappointment in the room.”³⁶

Along with the nine women, there was one African American student in Ruth’s first-year class. While it didn’t occur to Ruth that anything was particularly amiss in this lack of diversity—it was something everyone was accustomed to—she did wonder why the number of women had decreased rather than increased since 1950. She and a few of her female classmates posed this question to a member of the faculty, who assured them that, in selecting from the applicants, the law school gave weight to “anything strange, unusual, singular about an applicant. Using that criterion, a bull fiddler gained a plus, so did a woman.”³⁷ Eventually she concluded that the small number of women in law school in the 1950s was the result of “self-selection” since so few opportunities in law were available to them.³⁸

Being a woman at Harvard Law School in the late 1950s brought small annoyances. There were two classroom buildings with plenty of men’s restrooms, but there was only one women’s restroom, located in the basement of one of the classroom buildings. This

proved very inconvenient, to say the least. Women were always dashing back and forth between the buildings. Women were not admitted in the faculty club dining room. The old periodical room at Lamont Library was closed to women, a rule that caused Ruth trouble one evening when she needed an article. A man barred her way. She offered to stand outside the door if he would bring her the periodical she needed, but he refused, so she had to leave and return with a man who could get her the article she needed. Women were not permitted to live in the dormitory, a striking difference to Cornell, where women were required to live in the dorms. The difference, for Ruth, spoke to the arbitrariness of the rules.

Partway through Ruth's first semester of law school, the Ginsburg family was dealt a blow: Marty was diagnosed with a virulent form of testicular cancer. His chances of recovery were not good. Later Ruth said there were no known cases of survivors, but she and Marty never lost hope that he would recover. Treatment required two operations and weeks of radiation therapy, with the treatment to take place primarily during the second semester. As a result, Marty was able to attend classes for only two weeks of the second semester.

In a law school known for its cut-throat competitiveness, his classmates pulled together to help out. Ruth gathered together a group who she thought would take the best notes. They inserted carbon paper in their notebooks to make copies for Marty. One classmate even had his girlfriend type up the notes to make it easier for Marty to study. Ruth herself often typed up the notes for him as well. Classmates from his Corporate Reorganization seminar would visit Marty and discuss the finer points of corporate law. While Marty was undergoing radiation, he was awake only from midnight into the wee hours of the morning. During these hours, he rested on the couch and dictated to Ruth a paper on corporations. Ruth carried the burden of her own coursework, caring for Jane and Marty, and coordinating Marty's note takers. That was when she learned to work all through the night.

The school was less helpful than the students. Ruth went to the administration and asked a question: If her husband passed his exams, could he have his class rank and grades based on his work

during the other two years? The answer was no. Whatever grades he got while he was sick would factor into the average, but the school would include a note in his file that he was sick. Rules were rules, and that was it. Ruth went home and told Marty a white lie. She told him that all he had to do was pass, and his class standing would be based on his first and last years. As a result, Marty went into his exams at ease and relaxed. As it turned out, he earned the highest grades of his law school career. With customary modesty, he gave all the credit to his brilliant note takers. He also joked that the only reason he was a decent law student was because Harvard Law School didn't field a golf team.

By the end of the school year, it was clear Marty's operations had been a success. He would have a full recovery, and would be back in school full-time for his final year—but it would be five years before the doctors would be able to say for sure that the cancer had been eliminated. If there was any doubt that after finishing school Ruth would pursue a career of her own—or if she simply needed an excuse to follow her own career path—this settled the issue. They didn't know how long Marty would live, so Ruth must be prepared to support herself and Jane.

Unbelievably enough, given the pressures Ruth faced during her first year of law school, she finished her first semester with top grades. Based on her grade-point average, she finished her first year as one of the top ten students in a class of five hundred—and she became the first woman to make *Harvard Law Review*. She gave credit to Jane for her excellent grades. "I went home, played with Jane, had dinner, and then I was ready to go back to the books. It was the pause that refreshes."³⁹ She felt she was less apprehensive about her schoolwork than her classmates because she had something in her life that was more important than the law.

By Ruth's second year of law school, she and Marty established their routine: No matter how busy they were with work or studying, they would have dinner at home together. Occasionally, when the nanny was not available but Ruth needed to work in Gannet House, the building where the law review offices were housed, Ruth simply brought Jane with her, and Jane crawled around as Ruth worked. Each evening, after Jane went to sleep, both Marty

and Ruth studied late into the night.

The minor annoyances Ruth experienced as a result of gender continued into her second year. The law review held a banquet. She was allowed to invite her father-in-law and her father. She was not allowed to invite her mother-in-law, though, because the banquet was just for men—even though Ruth insisted that aside from her husband, her mother-in-law had been her greatest personal supporter. Ruth herself was the only woman allowed in. She was allowed to bring Marty, but the men on law review could not bring their wives.

Many of Ruth's classmates looked at her with awe. In the words of one classmate, "While the rest of us were sulking around in dirty khaki pants and frayed button-down Oxford shirts, missing classes and complaining about all the work we had, you set a standard too high for any of us to achieve: you never missed classes; you were always prepared; your Law Review work was always done; you were always beautifully groomed; and you had a happy husband and a lovely young daughter."⁴⁰

Other classmates were harsher in their opinions. One classmate revealed that Ruth was known as Ruthless Ruthie. Years later, another classmate, while presiding over a Rotarian induction ceremony, recalled that he and his friends had known Ruth "by her law school nickname, 'Bitch.'"⁴¹ After she was nominated to the U.S. Supreme Court, she received an apology from the classmate, in the form of a fax, assuring her that he and the Rotary Club would ban such sexist and scatological statements. Ruth read the fax, and, with her usual calm, responded with, "Better bitch than mouse."⁴²

As Marty approached graduation, he was offered a job with a top New York law firm, Weil, Gotshal, & Manges. The Ginsburgs had no intention of splitting up the family, so, in a search for alternatives, Ruth went to the dean, Erwin Griswold, with a proposition. "If I successfully complete my third year at Columbia Law School," she asked, "will I be able to earn a Harvard degree?"⁴³ He said absolutely not. She had her rebuttal argument ready: She pointed out that one student had transferred to Harvard Law after completing her first year at the University of Pennsylvania

Law School. She received a law degree having done only two years at Harvard—and the first year is generally considered the most important. In Ruth’s case, she would have done the most important year at Harvard. Shouldn’t she, then, receive a Harvard Law degree? The dean said no. More specifically, she had not made a case of “exigent personal circumstances” as to why she should be granted permission.⁴⁴

After Ruth achieved national prominence, Harvard deans tried repeatedly to give her a Harvard Law degree—but she always refused. One Harvard dean called her each year, pressing her to accept a Harvard degree. The careful and meticulous Ruth Bader Ginsburg, who always made sure the I’s were dotted and the T’s crossed and that every fact had been checked and double-checked, was not about to retroactively alter history. One time when Elena Kagan, then dean of the law school and now a Supreme Court justice herself, called Ruth—who was then Justice Ginsburg—and urged her to accept a Harvard Law degree, Marty, with his usual good humor, advised Ruth to hold out for an honorary degree. Once, in an exchange of letters through the campus newspaper with Marty, the spokesperson for Harvard even responded with humor, saying, “Just think what else she might have accomplished had she enjoyed the benefits of a Harvard degree.” Marty responded with: “It’s a nice thing to have a degree from the Harvard Law School. On the rare occasion I run across it, I treasure every Latin word.”⁴⁵

THE SPIRIT OF LIBERTY

Ruth signed up for summer job interviews with every firm that didn't bar women. When she interviewed with the New York law firm of Paul, Weiss, Rifkind, Wharton, & Garrison, it was obvious to her that the partner who interviewed her, Lloyd Garrison, wasn't much interested in what she had to say. After she'd barely said two sentences, he hired her on the spot. She soon learned the reason: The law firm had already decided they wanted a woman. Ruth was the Harvard woman with the highest grades, so they'd already decided to hire her. End of story. No need to waste time on an interview. The custom was for firms to make full-time job offers to its summer associates at the end of the summer. Ruth believed that her work that summer at the firm was up to their usual standards. She was surprised and disappointed when she was not offered a job. Later she found out that the firm had hired a full-time female associate, so she supposed they no longer needed her. The woman they hired, Pauli Murray, was a feminist who worked hard for women's rights. Later she and Pauli became friends.

When Ruth applied to transfer to Columbia Law School, Dean Warren of Columbia accepted her and welcomed her. Soon the word went around the Columbia Law campus that the smartest person on the East Coast was transferring in, so everyone could anticipate dropping down one rank.

In her new class at Columbia, Ruth was one of twelve women. Her classmates viewed her as serious and smart, a woman who did things with a minimum of fuss. “She was extraordinarily intelligent, but low-key and reserved,” said Marie Garibaldi, a Columbia classmate who went on to become a state Supreme Court justice. “She was thoughtful and deliberate in her responses to professors’ questions, but she was never arrogant about her intelligence.”⁴⁶ Others found her aloof and reserved. One classmate said, “Due to the demands on her time . . . I don’t think anyone became really close friends with Ruth.”⁴⁷ After all, with Marty working in a major Wall Street firm and eager to make partner, she was mostly responsible for the home and Jane, as well as her studies.

At Columbia, as at Harvard, Ruth pulled it off: Her first round of grades put her at the top of the class, and she was offered a place on Columbia’s law review, giving her the unusual distinction of having made law review at both Harvard and Columbia. She signed up for Herbert Wexler’s noontime seminar in federal courts and the federal system, considered one of the most difficult in the law school. She was the star student. Wexler had a habit of asking his students long, complicated questions. When it was Ruth’s turn to respond, she paused before answering, then gave an equally long, complicated answer. Then, after another pause, she would politely add factors Wexler had left out.

With graduation approaching and time to look for a job, Ruth signed up for interviews. Major law firms posted sign-up sheets for students who wanted to interview with their firm. Only two firms invited her to interview, Cadwalader, Wickerhsam, & Taft, and Casey, Lane, & Mittendorf. Her mother-in-law had given her a black interview suit, and when she wore it she felt she looked “very much like a young lawyer.”⁴⁸ She was disappointed when neither firm offered her a job. “In the fifties, traditional law firms were just beginning to turn around on hiring Jews,” Ruth explained later. “But to be a woman, a Jew and a mother to boot—that combination was a bit too much.”⁴⁹ She remarked that after being shunned by so many law firms, she looked in the mirror to see if she had two heads.

Some of the reasons given for refusing to hire women

seemed downright silly and even ironic to Ruth. For example, U.S. attorney's offices refused to hire women as prosecutors. The excuse was that women were too soft to be able to confront hardened criminals. But Legal Aid, the organization most often entrusted with defending the accused, was full of women even though the defense lawyer was positioned more closely to hardened criminals. Ruth concluded that the difference was that Legal Aid lawyers were paid paltry salaries compared to prosecutors. Other excuses were simply annoying. One that Ruth heard was, "We hired a woman at this firm once and she was dreadful."⁵⁰ Never mind plenty of male hires hadn't worked out, either. Others said they wanted to feel comfortable enough in the workplace so they could just kick off their shoes if they wanted—and they didn't feel they could do that with women around.

The most interesting and prestigious positions available to new law school graduates were judicial clerkships lasting a year or two—and they always went to the very top students. Professor Albert Sachs, then a Harvard Law professor and later dean of the law school, recommended Ruth as a clerk to Supreme Court Justice Felix Frankfurter. Justice Frankfurter had been the first Supreme Court justice to hire an African American law clerk, so both Professor Sachs and Ruth had high hopes that Justice Frankfurter would hire her. A legend, which has now been debunked, was that after Justice Frankfurter received the call from Professor Sachs recommending Ruth, he asked whether she wore skirts and then said, "I can't stand girls in pants." He may not have made the snarky comment, but he refused to hire Ruth. He admitted to being impressed with her academic credentials, but he said he wasn't prepared to break the tradition of hiring only men as clerks.

Columbia professor Gerald Gunther, who had been Ruth's professor in a course on federal courts and who played an active role in helping Columbia's top students secure judicial clerkships, took Ruth on as a special case. He called every judge on the second circuit, and the eastern and southern districts of New York. He recommended her to judges as "a brilliant student" who "demonstrated extraordinary intellectual capacities." He described her as "modest, thoughtful, penetrating, fair and open-minded."⁵¹

The answer? No. Even judges open to taking a chance on a woman were frightened of hiring the mother of a young child. What if the child was sick? How could Ruth work the long hours often expected of a clerk? What about Sundays and weekends? It would seem that Ruth's grades and academic performance would have alleviated these concerns. After all, if she managed to earn top grades in two top law schools as the mother of a toddler, why wouldn't she be able to perform the demanding duties of a clerk?

The judge Ruth most admired and most wished to clerk for was Learned Hand, an extraordinarily influential judge. Appointed to the Court of Appeals for the Second Circuit by Calvin Coolidge, he was known for his rulings in the field of civil liberties. Her mentors tried to get her a clerkship with Judge Hand, but he declined, saying that he had a foul mouth and so he didn't want a woman around because he didn't want to have to curb his swearing.

Professor Gunther finally got her a clerkship with Judge Palmieri of the U.S. District court for the Southern District of New York by means of a promise and a threat. A Columbia Law graduate then working in a Wall Street law firm promised that if Ruth didn't work out, he would step in and take over. The threat was this: Gunther told Judge Palmieri, "And if you don't give her a chance, Columbia will never again send you another law clerk."⁵² The combination of threat and promise did the trick. Judge Palmieri hired Ruth for a two-year clerkship.

Gunther knew Ruth would not fail—and she didn't. To prove herself, she worked harder than any other law clerk in the building, staying late whenever it was necessary, coming in to work on Saturdays, and bringing work home. Shortly after she began work, she was in the courtroom when two lawyers were arguing over the merits of a particular motion. After hearing arguments, Judge Palmieri was about to rule on the motion when Ruth passed him a note asking if he could delay ruling because she believed there was a Supreme Court case directly on point. Ruth turned out to be right. Both lawyers had overlooked the case, and the judge hadn't thought of it. Ruth had saved the Judge Palmieri from error. He was duly impressed.

While working with Judge Palmieri she learned the need



Learned Hand, circa 1910.

for flexibility, and the truth of one of Learned Hand's famous sayings—"spirit of liberty is the spirit which is not too sure that it is right."⁵³ At one point, she felt absolutely sure she knew the answer to a question: Does a federal district court have authority to transfer a case, although the transferee court lacked both subject matter and personal jurisdiction? She and Judge Palmieri discussed the question, and came to the same conclusion: The court was powerless to do anything but dismiss the case. The second circuit affirmed the dismissal on appeal. The case went to the Supreme Court. The Supreme Court reversed, saying that Ruth and her judge got it wrong. The Supreme Court explained that we have only one federal court system, so dismissal would not be appropriate because the litigants would have no other venue for their grievances. Many times over the coming years Ruth reflected on the Supreme Court's analysis, and she came to understand her error.

As it turned out, Learned Hand and Judge Palmieri lived near each other, so Palmieri often drove Judge Hand home from court, with Ruth riding in the back seat. Judge Hand would swear, sing indelicate songs, and say whatever popped into his head, however crude. "How can you carry on this way with me in the car, and yet

THE SPIRIT OF LIBERTY

you wouldn't consider me to be your law clerk?" Ruth asked once. "Young lady," Judge Hand responded. "I am not looking you in the face."⁵⁴

By the end of Ruth's two-year clerkship, Judge Palmieri was so impressed with her that the very next year, he hired another woman.

6

AN AMERICAN LAWYER IN SWEDEN

After a successful clerkship, and rave recommendations from Judge Palmieri, law firms were now willing to hire Ruth. She was about to accept a job with Marty's Manhattan firm when Professor Hans Smit contacted her and asked if she'd meet him for lunch at the Harvard Club. Smit held law degrees from both Amsterdam University and Columbia. He had recently joined the Columbia faculty to work on an international civil procedure project funded by the Carnegie Foundation to do basic research on foreign systems of procedure and propose improvements of U.S. rules on transnational litigation. One goal was to make U.S. rules more accommodating to lawyers abroad who wanted to find evidence in the states, or access American courts. The project had grants to study procedure in France, Italy, and Sweden. Finding scholars willing to travel to France and Italy wasn't hard. Sweden was another matter.

To meet Smit, she had to enter the Harvard Club through a red side door reserved for women. Not long into their conversation, he asked, "Ruth, how would you like to co-author a book about civil procedure in Sweden?"⁵⁵ An odd idea, she thought. In fact, in that moment, she couldn't quite recall where Sweden was on the map in relation to Norway.

But she'd always had a strong interest in civil procedure, and she liked the idea of traveling abroad and living on her own in Sweden. She'd never lived alone, having married young, going from the college dormitories to a home shared with her husband. The

deciding factor was that she liked the notion of being an author of a book. She was also impressed that Smit not only was willing to hire a woman to work on his project, but also offered to pay her the same salary that men were being paid by the major law firms at the time.

She accepted the job, and began work in September of 1961. “I was rather shy when I came on board,”⁵⁶ she said, but Hans Smit helped by taking on the role of mentor, encouraging her, and helping her feel at ease. Her first task was to become familiar with the language. Columbia provided a language tutor, a former dancer from the Swedish ballet who offered Ruth both excellent language instruction *and* ballet gossip. She retained enough Swedish all her life to be able to watch Ingmar Bergman movies without subtitles and to translate the Swedish code of civil procedure into English.

In late spring of 1962, she boarded a plane for Sweden, leaving Jane with Marty so she could finish out first grade. Ruth’s first stay in Sweden would last four months. In a few weeks, when Jane was out of school, Jane and Marty would join her. She did much of her work at the University of Lund, and produced works of impressive scholarship. *Civil Procedure in Sweden* offers a history of Swedish procedural law, the sources of Swedish procedural law, an outline of Swedish legal education, the structure of a Swedish lawsuit, and chapters on the expense of litigation and collection of judgments, concluding with a chapter on international cooperation. In 1969, the University of Lund awarded her an honorary law degree for her contributions to the book.

Lessons in comparative civil procedure were not Ruth’s main takeaways from her time abroad. In Sweden, for the first time, she felt the stirrings of what we’d now call feminism. The women’s movement came to Sweden early. Ruth was startled to see that a relatively large percentage of law students—between 20 percent and 25 percent—were women. She was also impressed by the fact that the University of Lund had an excellent daycare center for children of students and faculty, something just about unknown then in the United States. There were even female judges. Most startling of all, she went to a proceeding in Stockholm and saw that the presiding judge was eight months pregnant.



University of Lund, Main Building.

Inflation in Sweden meant that most families required two incomes. A Swedish writer, Eva Moberg, published a column in a Swedish daily paper, asking, “Why should women have two jobs and men only one?”⁵⁷ The idea was that the woman might have a job to help with living expenses, but she was still the one expected to shop for children’s shoes and have dinner on the table at seven o’clock. How fair was that? Moberg’s argument—that women would not achieve equality simply from entering the workforce, and men would have to enter what was traditionally considered the woman’s sphere before there would be equality—was one that Marty and Ruth had already worked out for themselves. The whole debate was still a few years away from reaching the United States. Ruth was fascinated by the responses from different women. Some women were queen bees—they could handle everything, thank you very much. Others felt it was time for men to do their share of the housework, a revolutionary idea in 1962.

While she was there, Swedish and American headlines exploded with the controversy of Sherri Finkbine and her abortion. The American actress known as Miss Sherri on the Phoenix, Arizona, version of a franchised children’s television show, *Romper Room*, found herself embroiled in controversy when she became pregnant with her fifth child while taking thalidomide, a drug that, if taken by a pregnant woman, caused a condition known as phocomelia, in which the limbs of the fetus do not form, resulting in severely



Sherri Finkbine arrives in Copenhagen on her way to Sweden. August 8, 1962.

deformed children. Finkbine's doctor strongly recommended that she obtain an abortion. She scheduled an abortion, despite legal barriers: Arizona permitted abortions only if the life of the mother was in danger. The district attorney immediately threatened to prosecute the institution and any hospital staff who participated in the procedure. When the hospital canceled the procedure, Sherri's doctor requested a court order to proceed with the abortion, but the order was denied.

International media coverage made Sherri Finkbine a major name. When she received death threats, the FBI had to step in to offer protection. Initially the Finkbines traveled to Japan, hoping to secure an abortion, but the Japanese would not issue a visa. The Finkbines then flew to Sweden with a stop in Copenhagen. To obtain an abortion in Sweden, Sherri had to initiate legal proceedings and appear before a panel that considered the social, medical, and spiritual consequences of an abortion. The panel

approved her abortion. By then she was at the end of her first trimester. The obstetrician who performed the abortion reported that the fetus had no legs, only one arm, and genitalia that were growing abnormally. As a result of the abortion, Sherri's husband was fired from his job as a high school teacher, and she was fired from her job as the host of *Romper Room*.

That was also the summer Ruth read Simone de Beauvoir's *The Second Sex*. She found the book "overwhelming, staggering."⁵⁸ All the new information she was taking in—the Finkbine scandal, Eva Moberg's article, and Beauvoir's eye-opening book—she simply absorbed and tucked away for later.

At the end of Ruth's first year on the project, she was promoted to associate director. She would return once more to Sweden the following summer accompanied by both Jane and Marty, who planned to take vacation time from his firm.

Just as her stay in Sweden showed Ruth new possibilities, coming home reminded her of the American Dream. In an interview she explained that after a prolonged stay in Sweden and becoming accustomed to people whose complexion was the same, she rode the New York subway and was struck by the amazing diversity in the United States. American diversity reminded her of the motto *E pluribus unum*, "Of many, one," an idea she preferred to the melting pot because Americans could keep their individual identities while being American.⁵⁹

Meanwhile, Marty had made partner at his firm of Weil, Gotshal, & Manges, where he discovered a love and aptitude for the tax code. He mastered the art of structuring a financial deal to minimize taxes. His father used to say about lawyers that they were "no" people—they would always say no, you can't do it, or it costs too much to comply with the law. Marty, optimistic by nature, enjoyed structuring financial deals for maximum tax benefit because it made him a "yes" person.

In 1963, at the conclusion of her work on the project, Ruth was again planning to work for Marty's firm when a Columbia professor, Walter Gellhorn—who was something of a one-person placement office for law school faculty positions—asked Ruth to come see him in his office. When she arrived, he asked, "Ruth, what

is your name doing on this Harvard list when you're a Columbia graduate?"⁶⁰ At first she had no idea what he was talking about. Then she remembered that Harvard had sent her a form with instructions to fill it out if she was interested in a career teaching law. She'd filled it out and sent it back, but thought no more of it because at that time, there were only fourteen women teaching law in the entire country.

In that moment in Walter's office, she jumped to the wrong conclusion. "Walter," she said, "is Columbia interested in *me*?"⁶¹ He said not Columbia, but Rutgers, the State University of New Jersey School of Law. Rutgers was looking to fill a vacancy left by their professor of civil procedure, Clarence Clyde Ferguson, who left to take the position of dean at Howard School of Law. Rutgers tried to replace him with another African American man, but having failed in that quest, they were looking for a woman. Rutgers, one of the few law schools willing to hire a woman, already had a female professor on the faculty, Eva Hanks.

Ruth always thought she'd like to teach law—but she thought she'd rather practice for a few years first. There were so few law teaching positions available to women, though, that she thought she better take one while she had the chance. So she interviewed with the hiring committee at Rutgers. Before she was offered the position, a member of the faculty asked Eva Hanks if she'd be upset if they hired another woman. Professor Hanks, evidently finding the question strange, asked, "Why would I mind?" The colleague said, "Because you will no longer be the only woman on the faculty."⁶² She just looked at him and assured him that it was quite all right.

When Willard Heckel, the dean at Rutgers, offered Ruth a faculty position, he warned her that because Rutgers was a state school with limited resources, she would have to take a cut in salary. She expected that—but when she heard the amount she was being offered, she was surprised. She asked about the salary of a male professor who had graduated law school the same year as her. The dean admitted they were paying him more. He said, "Ruth, he has a wife and two children to support, and Marty has a good paying job with a law firm."⁶³

7

A STEEL BUTTERFLY

At Rutgers, Ruth mostly taught constitutional law, civil procedure, and conflict of laws. Alex Brooks, the professor who headed the hiring committee, described her as “very quiet, almost withdrawn.”⁶⁴ Eva Hanks—who became a good friend, taking Ruth under her wing, and filling her in on the quirks of the faculty—had a different view. In Ruth, she saw someone with “an inner strength,” and “an inner light.”⁶⁵ Another colleague described her as a steel butterfly.

Students saw her as quiet, intense, and ultra-focused. She was not the sort of teacher to worry about entertaining her class. When students were inclined toward a knee-jerk reaction, she would present the opposing side as strongly as she could to force them to think more deeply and defend their views, but she didn’t pretend to be neutral when she wasn’t. Her students, for example, had no doubts about where she stood on the Bill of Rights and civil liberties.

At the end of Ruth’s first year of teaching, the students performed skits making fun of the faculty members. The actress playing Ruth read civil procedure while a male student approached from behind, unzipped her dress, and pulled it down to her ankles. Standing in a slip, “Professor Ginsburg” kept on lecturing, entirely oblivious to the fact that she was being undressed.

Gone now was the cheerful party-girl baton twirler of James Madison High. She read on the subway and prepared for classes while commuting on the PATH train. She wore her hair pulled

back in a no-nonsense pony tail tied with a scarf. Her clothing was muted and professional.

Ruth approached parenting with the same deliberate thoroughness she approached everything else. When Jane was eight years old, Ruth got tickets for the family to see Mozart's *Così Fan Tutte* at the Metropolitan Opera. To make sure Jane would enjoy the show, she played the record for months ahead of time, going through the libretto with Jane so that by the time she went to see the performance, she knew all the lines. In honor of the occasion, Ruth had a velvet jumper made for her, which she wore with a new pair of patent-leather shoes. "I wanted her to remember it as something special," Ruth said.⁶⁶ Most weekends, they visited exhibitions and children's shows in the city. When Jane went to sleep-away camp, Ruth wrote to her every day. "She just sort of has this way of being meticulous and attending to detail that in a way is quite daunting to even think about keeping up with," Jane said later.⁶⁷

Marty bragged to his law partners of the rare occasions he was able to make his wife chuckle. Jane, who decided that Mommy's sense of humor needed improvement, documented in a booklet the occasions when "Mommy Laughs." Ruth may have been serious, but she wasn't without emotion. She wept freely at the opera. Close friends said in private life she was warm, good-humored, and kind. A glass of wine could make her positively giddy. Among her pastimes were golfing, waterskiing, and reading mysteries.

Jane described the disciplining styles of her parents this way: "When I did something bad, which happened often, my dad would yell, but my mother would be real quiet and I'd know she was very disappointed in me."⁶⁸

Not long after Ruth joined the Rutgers Law faculty, she got to talking to other women teaching at the university and they decided to do something about the situation of unequal pay. Title VII of the Civil Rights Act of 1964 guaranteeing freedom from sex discrimination in hiring wasn't on the books yet—it didn't go into effect until the year after Ruth began teaching—but the Equal Pay Act of 1963 was in effect. When the female professors, led by Ruth, tried to learn what the university paid the men, the administration

said, “That’s secret information. All kinds of jealousies would result if we published them.”⁶⁹ So Ruth and the other woman on the faculty brought an equal pay case against the university and discovered that their suspicions had been correct. Ruth wasn’t alone—the women as a class were paid considerably less than their male counterparts. It took several years before the case was settled, with each female faculty member securing a substantial raise.

During her second year of teaching, in the spring semester of 1965, Ruth discovered she was pregnant again, a surprise and a miracle after Marty’s testicular cancer. Her employment with Rutgers was based on a contract that had to be renewed yearly. Remembering well what happened when she’d informed her employer at the Social Security office of her first pregnancy, she was genuinely afraid that if she told the dean she was pregnant, her contract would not be renewed. So she went rogue: She borrowed clothing from her mother-in-law and hid her pregnancy. The timing of her pregnancy—the semester ended just before the start of her third trimester—allowed her to hide her pregnancy from her faculty colleagues. As she put it, the baby was very cooperative. She didn’t reveal she was pregnant until she had her signed contract in hand for another year’s employment. After the last class that semester, she drove home from New Jersey to New York with three of her colleagues and announced that there would be one more in her family when she returned in the fall. James Steven Ginsburg was born September 8, 1965, shortly before the fall semester began.

Later Ruth disclosed that she felt “some discrimination” as a woman during her first few years at Rutgers.⁷⁰ While she didn’t elaborate when interviewed for the *New York Times*, one of her male colleagues, Alex Brooks, responded defensively. “I think what she didn’t recognize, or refused to recognize, was that everyone did welcome her, but she didn’t welcome everyone. She pretty much kept to herself. Efforts to include her were usually met with resistance.” Ruth, with her usual tact and reticence, didn’t respond or point out that her salary had been lower because she was a married woman whose husband had a good job, which, in her view at least, counted as discrimination.

Ruth's work habits from law school carried over to her time at Rutgers. During her first three years of teaching, she published seven articles, mostly on Swedish procedure, and saw her two books on Swedish civil procedure through the publication process. In 1966, she was named to the editorial board of the *American Journal of Comparative Law*. The following year, she was named to the European Law committee of the American Bar Association's section of International Law and Practice. She joined the Foreign Law Committee of the New York Bar, and was a member of the Citizen Union, an organization designed to promote good government in New York, and the Children's International Summer Villages, an organization for bringing together children from around the globe for a summer camp experience.

Because Marty was putting in the long hours necessary for making partner in a major law firm, and because Ruth's job as a professor was more flexible, she was still doing the lion's share of the work in maintaining the household.

In 1966 she was promoted to associate professor. Meanwhile, Marty was well on his way to becoming one of the top tax lawyers in New York City. His income allowed the family to live in a luxurious apartment at Sixty-Ninth Street and Lexington Avenue. Their home was large enough for both Ruth and Marty to have separate offices—a long way from her humble beginnings in Brooklyn. Their children attended the finest private schools. They had a beautiful piano. Sometimes during parties, Ruth would sit down and play.

When James was two, the daily routine of family life and work was upset by a family emergency that almost became a tragedy. One day, while James was home with the housekeeper, he got into a cabinet and tried to drink Drano. Fortunately the liquid got no farther than his lips and face, where it caused severe burning instead of the certain death that would have come from ingesting it. The housekeeper rushed him to the hospital. After several excruciating days, the doctors told his parents that he'd be fine, but he would need reconstructive surgery to repair the damaged tissue. The surgery was successful and the burn scars were almost entirely erased. Among the questions Ruth had to answer from

reporters was whether she felt guilty to be working while tragedy almost struck her son. It seemed to Ruth that the mistake had been failing to put the Drano out of James's reach, not committing the sin of being a working mother and being gone when the accident happened. She always commended the housekeeper for her exemplary response to the emergency.

In 1968, the number of women entering law schools increased dramatically because the draft laws were changed, eliminating the deferment for law students. Men who wanted to avoid Vietnam went into teaching instead, or became conscientious objectors, or headed for Canada, creating places for women. Even when the major law schools began admitting women in greater numbers it was accompanied by comments that irked Ruth. During the height of the Vietnam War, Harvard University's president said, "We shall be left with the blind, the lame, and the women."⁷¹

The women now entering the law schools were part of a new generation that came of age during the tumultuous 1960s. Unlike Ruth and her classmates, who rolled with the sexist punches and sought to defy gender stereotypes by quietly doing good work—the young women now, empowered by the social revolution of the 1960s, had the nerve to stand up and boo when professors made sexist comments. The entire decade had seen a new wave of feminist activism. Betty Friedan's *The Feminist Mystique* was widely read. The attitudes of this generation of feminists were captured by the protests of the Miss America pageant in 1968 and 1969, when angry women parodied what they saw as a degrading and oppressive tradition that reduced women to sexual objects.

Ruth, like many college professors in the 1960s, faced unique challenges in teaching a generation that was asserting itself as never before, relying on the First Amendment to engage in all kinds of expression. She taught a class once at Rutgers while a male student was outside her window thumbing his nose at her. She calmly continued with her class.

She approved when two female New York University law students got the idea to form a women's rights group. One of the women was Janice Goodman, a first-year law student who,

prior to entering law school, organized against discrimination in Mississippi with the Democratic Party. One day she was standing in a bookstore in a line next to a second-year student, Susan Deller Ross, and they got talking about scholarships and shared their irritation that a certain prestigious—and generous—scholarship was available only to male students. Ross said to Goodman, “Don’t you think we should do something about that?”⁷² They then created the Women’s Rights Committee, the first women’s group at any law school. When they circulated a petition to open the scholarship to women, opponents pointed out that allowing women to receive the scholarship would make certain traditional rituals impossible, such as the custom of scholarship winners throwing water balloons at each other while running naked through their residence. The women’s group then stunned the faculty by threatening to sue their own law school if the scholarship was not opened to women. Within days, New York University opened its scholarship to women.

The women of New York University Law School next asked for a course on women and the law, but they met with resistance and mockery. One professor suggested the school’s next step would be to teach the law of the bicycle. But the women persisted, and the university hired a part-time teacher to teach the course. Once the women of New York University Law School had their own course started, they took their program on the road. Rutgers School of Law, just a few stops away along the PATH train from Manhattan, was their next destination. Rutgers was the natural next stop because Rutgers had something that New York University—and indeed, most law schools—lacked: two women on the faculty.

When the students approached Ruth and asked her to offer a course at Rutgers on women and the law, she took up the task. To put together the course, she spent the better part of a month in the library, reading every federal case and article about gender equality published since the birth of the nation, a task easily done in a month because there were so few. Among the laws she found were that “The husband is the head of the family. He may choose any reasonable place or mode of living and his wife must conform thereto”—a law derived from Napoleon’s code.⁷³ Reading through

these cases, for the first time, she felt something like the stirring of real anger. “How have people been putting up with such arbitrary distinctions?” she wondered. “How have I been putting up with them?”⁷⁴ Nonetheless she said her awakening was a gradual process. It wasn’t as if one morning she saw a bright light.

8

SPECIAL TREATMENT

When Ruth went to the library to read everything she could find on women and the law, what she found was that the law reflected and reinforced traditional gender roles and stereotypes. Most statutes and court decisions she found rested on the belief that the natural place for a woman was as a nurturer in the home, while a man belonged in the work world.

She also understood that discriminatory laws were often justified and rationalized as necessary to protect women—but in fact they often protected men from female competition. For example, an Oregon law passed in 1903 prohibited women from working more than ten hours in a single day. Under this law, Curt Muller, a laundry owner, was charged with allowing Mrs. Gotcher to work more than ten hours and was fined \$10. Muller sued, arguing that the law violated Mrs. Gotcher's Fourteenth Amendment right to due process by preventing her from freely contracting with her employer. Louis Brandeis, who later became a Supreme Court justice, represented the state and defended the law on the grounds that women needed protection by virtue of their physical differences from men. The Supreme Court agreed with Brandeis, holding that the state could—and should—protect women with appropriate legislation. In the words of the court, women need special treatment because

That woman's physical structure and the performance of maternal functions place her at a disadvantage

in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity, continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical wellbeing of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.

. . . history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the schoolroom are opened and her opportunities for acquiring knowledge are great, yet, even with that and the consequent increase of capacity for business affairs, it is still true that, in the struggle for subsistence, she is not an equal competitor with her brother.⁷⁵

It seemed to Ruth that laws prohibiting women from working more than eight-hour days made sense when they were passed, back when sweatshop days were often twelve hours in length. But over the years, unions enacted protective changes, and the workweek for everyone was reduced to eight hours. An employer who wanted more hours would have to pay time-and-a-half or double time for additional hours. If an employer had two alternatives, a woman who could not work more than eight hours or a man who could, the employer would hire the man.

Laws also penalized married women who failed to take their husband's name, codifying the ancient notion that a woman had no

legal existence apart from her husband. A married woman in 1926 neglected to change her car registration to her husband's name after she was married. One day her car was struck by a train. The court, however, barred her from suing for damages because her car registration was not filed properly under her husband's name. The court, in fact, declared her a "nuisance on the highway" for not properly registering her car.⁷⁶

One satirist characterized the contemporary opinion of women in the law this way:

It is probably no mere chance that in our legal textbooks the problems relating to married women are usually considered immediately after the pages devoted to idiots and lunatics. . . . The view that there exists a class of beings, illogical, impulsive, careless, irresponsible, extravagant, prejudiced, and vain, free for the most part from those worthy and repellent excellences which distinguish the Reasonable Man, and devoted to the irrational arts of pleasure and attraction, is one which should be as welcome and as well accepted in our Courts as it is in our drawing-rooms and even in Parliament.⁷⁷

After World War II, two women challenged a Michigan law that denied bartender licenses to women unless the woman was the wife or daughter of the male owner of a liquor establishment. The women argued that the law violated the equal protection clause of the Fourteenth Amendment, claiming that the statute was "an unchivalrous desire of male bartenders to try to monopolize the calling."⁷⁸ The state of Michigan argued that a bartending woman could give rise to social and moral problems that the state would then have resolve or police. Michigan also argued that the law protected women from the sorts of hazards that might confront a woman bartender.

When deciding whether laws that discriminate between groups of people violate the equal protection clause, courts balance the government's need for the law against the liberty interest of the

citizens. The test that courts use is called the rational basis test: If there is a rational basis for making the distinction—if discriminating between groups of people is rationally related to a legitimate government interest—the courts uphold the law. Under this test, the Supreme Court concluded that the state’s desire to prevent women from entering an immoral or inappropriate profession provided a rational basis for the law. Felix Frankfurter—the justice who had refused to interview Ruth for a clerkship because she was a woman—wrote the opinion for the majority of the court, saying that even if women “now indulge in vices that men have long practiced,” lawmakers were allowed to make distinctions between men and women and were not required to bend its laws to reflect “sociological insights or shifting social standards.”⁷⁹

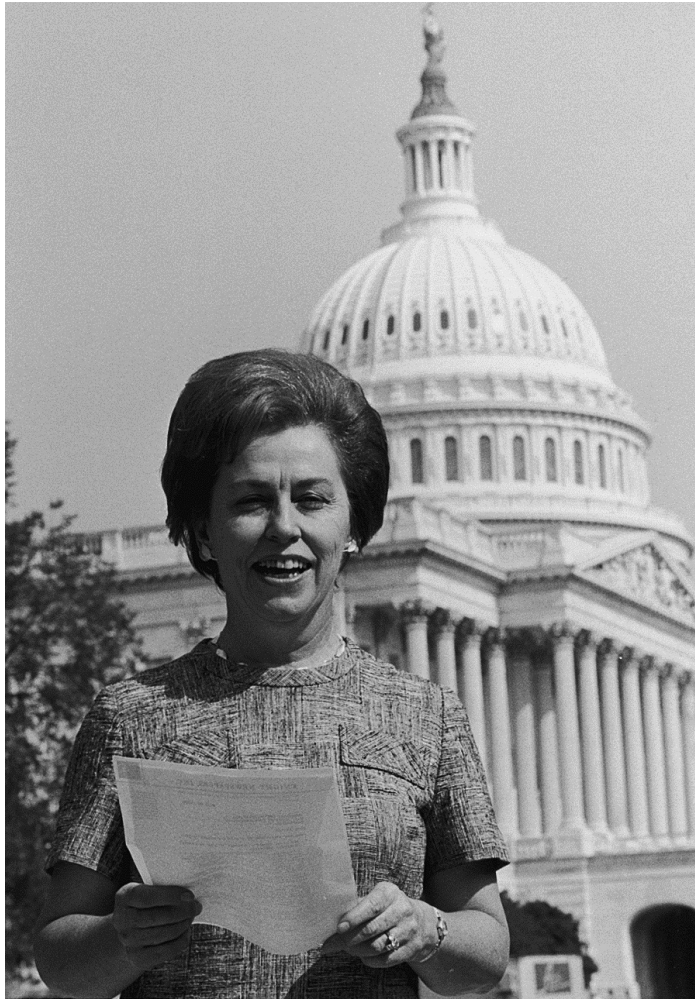
Women’s equality was helped along by the Equal Pay Act of 1963, which explicitly prohibited sex discrimination in pay, while allowing for such exceptions as merit systems, or systems rewarding production. The biggest boon, though, came when gender discrimination in employment was prohibited by the Civil Rights Act of 1964. Initially Title VII of the Civil Rights Act declared that

Title VII prohibits employment discrimination based on race, color, religion, and national origin.

While the bill was being debated on the house floor, Representative Howard W. Smith of Virginia, chairman of the Rules Committee, rose up and offered a one-word addition to Title VII, “sex,” resulting in,

Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin.

The suggestion that gender equality in employment should be added, which struck many people as ludicrous, prompted several hours of humorous debate, later known as Ladies Day at the House. When the bill came to a vote, it passed 168 to 133—with the word “sex” included.



Representative Martha Griffiths worked to pass the ERA.

It was long assumed that Representative Smith, who vehemently opposed the Civil Rights Act, inserted the word “sex” as a way of sinking the bill on the grounds that the very idea of giving equal employment status to women was just so absurd the bill would naturally be voted down. Recently scholars, however, have offered an alternate—and more likely—interpretation, arguing that Smith added the word upon pressure from an extremely well-organized group of women from the National Women’s Party, working in collaboration with Representative Martha Griffiths.⁸⁰

However it happened, there were now two important pieces of federal legislation forbidding gender discrimination in employment and wages. But there remained an overwhelming number of laws that, while not in conflict with the new legislation, nonetheless reinforced the idea that the woman should remain in the home

and the man should make all important decisions. Under the tax laws, for example, if a woman's earnings approached that of her husband's, the couple would retain more of their income if the couple lived together without marriage.⁸¹ A deduction for childcare was available for divorced parents, but a married couple could claim a childcare deduction only if the adjusted gross income of the couple was close to subsistence level.⁸²

Ruth found it particularly irksome that a property law textbook published in 1968 declared that, "after all, land, like woman, was meant to be possessed."⁸³

9

CATCHING FIRE

About the time Ruth was putting together her course on women and law, a woman named Nora Simon wrote to the ACLU complaining about her treatment by the army. She and her husband were both serving in the army, she as an army nurse. In 1969, they had a child. Soon after the birth of their child, their marriage ended in divorce, and they put the child up for adoption. Nora's husband was permitted to continue to serve in the army. Nora was banned from all military services because of her pregnancy. She was discharged despite the fact that her work in the army had been exemplary and in 1970, the height of the war in Vietnam, the army badly needed nurses. According to army regulations, her past pregnancy constituted a "nonwaivable moral and administrative disqualification" to reentry.⁸⁴ Absurdly enough, under the regulations, had the child died, Nora would have been eligible for reenlistment.

In her letter to the ACLU, Nora described the discrimination she faced, stressing that she wanted to be of assistance to her country, which she loved and respected. Her letter was shuffled around various ACLU offices, and at last made its way to the New Jersey branch of the ACLU, where a Rutgers law student, Diana Rigelman, one of the students who had urged Ruth to offer a course on women and law, happened to be employed that summer. She saw Nora Simon's letter, and immediately thought of Ruth. Diana, who had also been a student in Ruth's course on civil

procedure, viewed Ruth as precise, scholarly, and professional. She recommended Ruth to the head of the New Jersey branch of the ACLU as a lawyer who might be willing to take the case, and who might be viewed by the military as a female lawyer with clout.

In July of 1970, the executive director of the New Jersey ACLU, Stephen Nagler, called Ruth, introduced himself, described Nora's case, and asked if she'd be interested in taking it. Among the reasons he gave for asking Ruth was that she taught civil procedure, so she'd understand how courts operated. Ruth was pretty sure nobody else wanted the case because "sex discrimination was regarded as a woman's job."⁸⁵ Because such work wasn't considered serious, she knew if she spent her time on gender equality issues, she ran the risk of not being awarded tenure. She agreed to take the case partly because she wanted litigation experience. She also liked the idea of taking on women's issues under the umbrella of the ACLU, which handled all sorts of human rights and civil liberties issues. Speaking with the voice of the ACLU instead of an all-women's group meant men and women would be working side by side for women's equality.

Within two weeks, she sent a letter to the director for Equal Opportunity in the Armed Forces at the Pentagon, offering simple logic mixed with passionate concern:

Since Miss Simon is no longer married, and has effectively relinquished her parental right to the child to whom she give birth, it seems clear that her current situation meets the concern evidenced in the exception recognized by the Army: she has no child dependent upon her for care or support. Her legal status is in all respects that of a single woman without issue.⁸⁶

Meanwhile, other complaints from women were trickling into the ACLU, cases often referred to Ruth, including complaints from workers who felt it was unfair that they lost their jobs after becoming pregnant. Pregnant teachers were given what was known as a maternity leave, but the leave was without pay and without benefits, including health care, and without guarantee that

the teacher be able to return to her job. Pregnant teachers were essentially told, “We’ll call you back if we have a need for you.”⁸⁷ Ruth remarked that, after all, “children must be spared the thought that their teacher had swallowed a watermelon.”⁸⁸

Another complaint typical of those coming into the ACLU was from a woman who worked for Lipton Tea, a company that offered an excellent health care plan to employees. The woman was married, and her husband’s employer’s plan was inferior, so she wanted the Lipton Tea plan for herself, her husband, and her children, but was told that the family insurance coverage was available only for men. For Ruth, these new complaints represented a new “spirit in the land that said: Maybe the way things are isn’t right.”⁸⁹

While Ruth was waiting for a response from the Pentagon about Nora Simon’s case, she met up with Melvin Wulf, a former fellow camper from Camp Che-Na-Wah. Melvin, also a lawyer, was the national director of the ACLU. They’d never known each other well, but he followed her career because his sister Harriet kept in close touch with one of Ruth’s cousins. One day he was invited to speak at Rutgers Law School, so he took the opportunity to knock on her door and rekindle their friendship. They talked about Swedish civil procedure, and she told him about Nora Simon’s case. He wasn’t particularly impressed with the low-level cases she was handling with the ACLU. As Wulf later characterized their conversation, that was the day he began the process of “plucking Ruth Bader Ginsburg from obscurity.”⁹⁰

A month and a half passed without a response from the Pentagon, so while the Ginsburg family was on vacation in Hawaii, Ruth redrafted her letter to the Pentagon into a legal complaint, which she sent to several people, including the secretary of defense and the general counsel for the U.S. Army. In mid-October, she received a response from the Pentagon: Miss Simon was welcome to rejoin the army.

After such an easy victory, she was eager to try again, but now she wanted the right case, a case she could take all the way through the courts.

She and Marty were working at home in their separate offices at about nine in the evening. Marty was reading the tax advance sheets—pamphlets containing recently decided judicial decisions—when he came across a case then making its way through the courts. He perked up and walked into Ruth’s office.

“You’ve gotta read this,” he told her.⁹¹

“Marty,” she said wearily, “you know I don’t read tax cases.”

“You’ve gotta read *this*.”

He dropped the tax advance sheets on her desk, returned to his own office, and waited. He knew he’d just handed her the equal rights test case she was looking for—Charles Moritz’s tax case.

Charles Moritz was a single man who’d never married. He lived in Denver and worked as an editor for the western division of Lea and Febiger, a Philadelphia-based company. He maintained an office in his home, but his job required extensive travel around the eleven western states. For ten years, from 1958 to 1968, his elderly mother lived with him. By 1968, when his mother was eighty-nine, she was confined to a wheelchair, suffering from arthritis, lapse of memory, arteriosclerosis, impaired hearing, and other disabilities. She was unable to care for herself, but refused to enter a nursing home. To provide for her care, Charles hired a caretaker.

Had Charles been a woman or a divorced man, the tax code would have permitted him to deduct the expenses of caring for his mother. The deduction was known as the babysitter deduction. As a single man, the deduction was unavailable. The tax deduction, if granted, was worth only \$600, so the cost of a lawyer would have eaten up anything he might have been awarded by the court—assuming he won—so he represented himself in tax court. Given the wording of the statute, he had little chance of winning, but he brought his case anyway because it struck him as unreasonable and unfair. He wrote his own legal brief, which Ruth described as the “soul of simplicity.” He wrote, “If I had been a dutiful daughter, I would get this deduction for the care of my mother. I am a dutiful son, and I don’t get the deduction. That makes no sense.”⁹² The court informed Moritz that it had no choice but to enforce the code as written, so Charles Moritz was denied his deduction.

What made the case perfect was that Ruth wouldn’t have to

CATCHING FIRE

ask for much. The court needed only to repair an under-inclusive piece of legislation, changing a “good daughters” benefit to “good sons and good daughters.” It was not a case that would rock many boats, but it would make a point.

Ruth walked into Marty’s office, told him it was a great case, and suggested that they work on the case together. Marty could do the tax part of the case, and she could do the equal protection part. The next day, Marty called Charles Moritz at his home in Denver and told him that he and his wife wanted to handle his case—and they’d do it pro bono. When Charles realized that Marty claimed to be a tax partner in one of the snazziest law firms in Manhattan, and that his wife was a law professor, he thought it was a joke. Why on earth would a Manhattan lawyer and a law professor want to handle a case worth only \$600? Charles told Marty he didn’t appreciate getting crank calls.

To prove he wasn’t joking, Marty offered to send Charles a letter on his letterhead, explaining why he and his wife thought the case was important. In exchange for free legal representation, the Ginsburgs asked one thing from Charles: The only settlement he would accept would be a 100 percent concession, which Marty guaranteed he’d get, and that the settlement agreement must be entered in federal court. Not surprisingly, Moritz agreed to these terms.

For help with travel and other expenses, the Ginsburgs turned to the ACLU. Ruth wrote to Melvin Wulf, told him about the case, and asked for help with the expenses. Recalling one of their Gilbert and Sullivan productions at Camp Che-Na-Wah in which Mel had sung, “tight little, light little, trim little, slim little craft,” she told him that the Moritz case would be “as neat a craft as one could find to test sex-based discrimination against the Constitution.”⁹³ Wulf agreed that the ACLU would finance their litigation.

Ruth wrote a docketing statement for Moritz, summarizing the issues and law, and sent it to Melvin Wulf. He was impressed and wrote back:

Dear Ruth/Kiki:

Your proposed docketing statement meets the high

standards to be expected of one who was early exposed to the rigorous discipline of Che-Na-Wah.

Mel⁹⁴

When the government received the docketing statement, it offered to settle for much less than the full amount. In keeping with his agreement with the Ginsburgs, Moritz declined. With no settlement reached, the Ginsburgs left town for a two-day work vacation to draft their argument on behalf of Charles Moritz. Here Ruth laid out the equal rights argument that would become the blueprint of her future legal campaign on behalf of women's rights.

Because it was well settled that anyone who wanted to challenge a law as violating the equal protection clause of the Constitution had to show there was no rational basis for the law, Ruth made the argument. It was, indeed, hard to find a rational basis for a law that gave a dutiful daughter a deduction not but not a dutiful son. Nonetheless, she knew the problem with her argument: The rational basis test was so easy to meet that almost anything short of a serious miscarriage of justice would pass. In fact, as Ruth liked to say, in the hundred years since the ratification of the Fourteenth Amendment, the U.S. Supreme Court "had never met a gender classification that it didn't like."⁹⁵ The Court always found a way to rationalize a law that distinguished on the basis of gender, usually by relying on stereotyped views of men and women.

It occurred to Ruth that sex distinctions should not be put into the same category as innocuous distinctions, such as distinctions based on property value, or the size of a city's population. It seemed to Ruth that gender distinctions were *not* innocuous—they were invidious, the word used to describe race-based distinctions. She thought they should require more than a rational basis test.

So she took a bold step. She asked the Court to treat gender distinctions the way it treated racial distinctions. Laws that discriminated on the basis of race required stricter scrutiny, which meant courts must give a more in-depth analysis and uphold only those laws that satisfied a compelling government interest. Once the Supreme Court applied strict scrutiny to racial laws, it became

CATCHING FIRE

easy to strike them down as unconstitutional.

Ruth fully understood what she would be up against in trying to convince male judges that gender discrimination should be treated the same as racial discrimination. She'd seen how defensive men became if anyone suggested that their attitudes were harmful. They considered themselves good husbands and fathers, keeping their wives in clean, bright homes. What she saw as harmful gender discrimination they saw as treating women well by putting them on a pedestal. She wanted to teach the justices that the very notion of "sugar and spice and everything nice" limited the opportunities and aspirations of their daughters. One way to do that was to show how seemingly benign gender classifications harmed men as well as women.

At about this time, colleagues noticed a change in Ruth. No longer completely drawn into herself, she was gripped by something almost like passion. She was meeting people, talking freely to colleagues about the unfairness of gender discrimination. She still spoke with an aching precision, always appearing completely measured and controlled. But there was a marked difference in her manner, a new glow and purpose. "She sort of caught fire," one of her colleagues commented.⁹⁶