

Transcript: A conversation with Justice Ruth Bader Ginsburg

On Monday, February 12, 2018, National Constitution Center President and CEO Jeffrey Rosen spoke at length with U.S. Supreme Court Justice Ruth Bader Ginsburg at the National Constitution Center. In a wide-ranging conversation before a live audience, Ginsburg offered a supportive critique of the #MeToo movement, confessed her affection for millennials, discussed the Supreme Court cases she'd like to see overturned, and told some personal stories about the progress women's rights have made—while reminding the audience of just how recently gender discrimination in American law seemed not only normal but entrenched. What follows is a condensed and edited version of their conversation.

Jeffrey Rosen: What are your thoughts on the #MeToo movement and will it prove lasting progress for women's equality?

Ruth Bader Ginsburg: It was a question I was asked this afternoon at the University of Pennsylvania Law School. What I wanted to convey there was that sexual harassment of women has gone on forever, but it didn't get headlines until a woman named Catherine MacKinnon wrote a book called "Sexual Harassment of Working Women," and that was the start of litigation under Title VII [of the Civil Rights Act]. A few cases came to the Supreme Court and they all came out right. But still, women were hesitant.

I think one of the principal reasons for it was because they feared that they would not be believed. The number of women who have come forward as a result of the #MeToo movement has been astonishing. My hope is not just that it is here to stay, but that it is as effective for the woman who works as a maid in a hotel as it is for Hollywood stars. [applause]

Rosen: Many women are wondering, will this prove a lasting advance for women or like previous discussions of sexual harassment in the 90's will this advance pass?

Ginsburg: I think it will have staying power because people, and not only women, men as well as women, realize how wrong the behavior was and how it subordinated women. So we shall see, but my prediction is that it is here to stay.

Rosen: Why is it happening now? Is there something about what millennials are doing that has caused the #MeToo movement or is it something else?

Ginsburg: I think we can compare it to the gay-rights movement when people stepped up and said "this is who I am and I am proud of it." They came out in numbers instead of hiding, disguising. That movement developed very rapidly, and I think we are seeing the same thing with sexual harassment.

Rosen: Did you see this one coming?

Ginsburg: No, no. And why did it happen just when it did? I've heard from women who told stories about Harvey Weinstein many years ago. And then the *Times* decided to do a big story on it. I think it was the press finally taking notice of something they knew long before that propelled it to the place it now holds in the public arena.

Rosen: What is your advice to all women, young women and to all women, about how to sustain the momentum of the movement and to make its changes lasting?

Ginsburg: I have heard from lawyers that women have come forward with stories about things that happened many years ago, and even though the statute of limitations is long past, these cases are being settled. One interesting thing is whether it will be an end to the confidentiality pledge. Women who complained and brought suit were offered settlements in which they would agree that they would never disclose what they had complained about. I suspect we will not see those agreements anymore.

Rosen: What are the legal changes necessary to make these reforms permanent?

Ginsburg: We have the legal reforms—we have had them for a long time. Title VII. It was argued early on that sexual harassment has nothing to do with gender discrimination. Everyone knows boys will be boys, and that was that. There are state and federal laws. The laws are there and the laws are in place, it takes people to step forward and use them.

Rosen: At Sundance, you told your own #MeToo story about an encounter at Cornell long ago. Tell the audience about that.

Ginsburg: I was in a chemistry class at Cornell. I was not very adept in the laboratory, so a teaching assistant decided to help me out so much that he offered to give me a practice exam the day before the actual exam. When I went into the room and looked at the exam paper, I found that it was the practice exam. Then I knew immediately what this instructor expected as a payoff. So, instead of being shy, I confronted him and said, how dare you do this? That is one of many, many stories that every woman of my vintage knows.

Rosen: What would you advise women to say in similar situation? Should they be similarly strong?

Ginsburg: Yes. Say this is bad behavior. You should not engage in it and I will not submit to it. But I think it is easier today because there are numbers to support the woman who says so. We no longer hear as often as we did in the past, she's making it up.

Rosen: What is your advice to men in this new regime where people are trying to behave well and figure out what the new norms are?

Ginsburg: Just think how you would like the women in your family to be treated, particularly your daughters. And when you see men behaving in ways they should not, you should tell them this is improper behavior.

Rosen: There is a debate both among women and among men about what sort of behavior should be sanctionable, and one group is saying that it's wrong to lump together violent behavior like Harvey Weinstein with less dramatic forms of sexual misconduct and others say that all misconduct is wrong and should be sanctioned.

Ginsburg: Well, there are degrees of conduct, yes. But any time a woman is put in a position where she is inferior, subordinate, there should be—she should complain, she should not be afraid.

Rosen: What about due process for the accused?

Ginsburg: Well, that must not be ignored and it goes beyond sexual harassment. The person who is accused has a right to defend herself or himself, and we certainly should not lose sight of that. Recognizing that these are complaints that should be heard. There's been criticism of some college codes of conduct for not giving the accused person a fair opportunity to be heard, and that's one of the basic tenants of our system, as you know, everyone deserves a fair hearing.

Rosen: Are some of those criticisms of the college codes valid?

Ginsburg: Do I think they are? Yes.

Rosen: I think people are hungry for your thoughts about how to balance the values of due process against the need for increased gender equality.

Ginsburg: It's not one or the other. It's both. We have a system of justice where people who are accused get due process, so it's just applying to this field what we have applied generally.

Rosen: Some women also fear backlash. They worry that women may have less opportunity for mentorship at work because guys are afraid of interacting with them. Is this valid or not?

Ginsburg: Well, let me ask you—as a man—do you think that you will be hesitant to encourage women because of the #MeToo movement?

Rosen: On the contrary, I have felt, like many men, sensitized to the plight of women by hearing these stories and it seems like an entirely salutary thing.

Ginsburg: Yes

Rosen: You said just this afternoon, that the courts are the least important part of social change. First comes political activism and public education and then legislation and then the courts. So looking forward 10 or 20 years, how does the momentum of the #MeToo movement get reflected in legislation and in judicial decisions?

Ginsburg: As I said, I think the law is there and there are people now who will use it in increasing numbers. But I said before, rights have to start with people who want them, and then the court is a reactive institution. There was a fine federal judge on the Fifth Circuit, Judge Goldberg, who once said “the courts don't make the conflagrations but they do their best to put them out.”

Rosen: Is there any area for progress in the law and might your dissents in sexual harassment cases be vindicated?

Ginsburg: There are two kinds of dissents in the statutory case. Your aim is to get the legislature to correct the error into which the court has fallen. Lilly Ledbetter's case was a sterling example of that. Lilly was an area manager in a Goodyear tire plant. She was when she started working there in 1978 the only woman doing that job. One day a co-worker put in her mailbox a slip of paper with a series of numbers, and Lilly recognized immediately what that was, it was the pay that all the area managers were receiving, and Lilly recognized immediately that she was being paid less than any of the men, indeed less than the person she had trained to do the job. So she scoured up her courage and brought a Title VII suit—discrimination suit against Goodyear, and she did win a substantial verdict. It was a jury trial. When the case got to the Supreme Court, they dismissed it on the grounds that she sued too late.

The law—Title VII—requires that you complain within 180 days of the discriminatory incident. Well, Lilly had let the system go on for two decades and didn't complain. But of course, if she had, first how could she? She didn't have the salary for years, but assuming that she did and she complained at the first indication that she was paid less, the defense is clear, the defense would have been, oh, it had nothing to do with Lilly being a woman, she just doesn't do the job as well. But then, when she's done the job year after year and gets good performance ratings, that defense is no longer available and she has a winnable case. But the Court said she sued too late. There was a simple basis for saying she was on time. Every paycheck that she received reflected the differential, so she could sue within 180 days of any paycheck. The reaction to Lilly's case—oh, by the way, I ended the dissent by saying the ball is now in Congress's court to correct the error the Court has made, and in very short order, the Lilly Ledbetter Fair Pay Act was passed, overwhelmingly on both sides of the aisle and it was the first piece of legislation that President Obama signed when he took office. You can write a dissent like that because Congress can fix it.

If it's a constitutional case, Congress can't fix it. The change would have to come about either through constitutional amendment, and our Constitution is powerfully hard to amend, Congress lets it out and it takes 3/4 of the states to ratify. I know from

experience with the Equal Rights Amendment how hard it is to amend the Constitution so the next best thing is for— not next best thing, it is the better thing, is for the [Supreme] Court to correct the mistake it has made, and we've had a long tradition of dissents becoming the law of the land. One example, the free speech dissents of Justices Holmes and Brandeis, and you Jeff know a lot about those. Another example is the dreadful *Dred Scott* decision. There were two dissenters who recognized that was wrong. There was the first Justice John Marshall Holland who dissented in the so-called civil rights cases, and then some 13 years later in *Plessy v. Ferguson*. I think it's good when we look back to see that there were people who thought the Court judgment was wrong and wrote the judgment that was—it starts out as a dissent and then in the next generation becomes the opinion of the court.

Rosen: Which of your powerful dissents do you most hope to become a majority?

Ginsburg: Well, I would like to see *Shelby County* undone. That was a case involving the Voting Rights Act of 1965. The way the law works is this—if a state or a city or a county has had a history of blocking African-Americans from voting, any change in voting legislation would have to be pre-cleared either by the Civil Rights Division of the Department of Justice or by a three judge court sitting in the District of Columbia.

The [majority's] position was, that was 1965, it's many years later, some states that discriminated may not be discriminating anymore. So then Congress has to come up with a new formula. Well what member of Congress is going to stand up and say "my district is still discriminating." And I thought my colleagues were not as restrained as they should be because they should have respected the overwhelming vote in the Congress to renew the Voting Rights Act. That's one decision.

Rosen: How about two or three more?

Ginsburg: Well, one of them is the so-called, what did they call it, partial-birth abortion. This is a medical procedure that is no one's first choice but it may be the only option for a woman, and when the Court refused to recognize that a ban on such a procedure just overlooked that some women had no other choice, so that's a decision I would like to see overruled. If you go back in time two decisions from the 70s, the Supreme Court held that Medicaid coverage was not available for any abortion – therapeutic or nontherapeutic. Which left us with the situation in our country where any woman of means, any woman who can afford to go to a neighboring state, will have access to abortion. The people who won't are poor people who can't travel, who can't take off days from work. And that's a sorry situation. People ask me, oh, what would happen if *Roe v. Wade* were overruled? And my answer is for affluent women it won't make any difference.

There will be a number of states that simply won't return to the way it once was. At a time of *Roe v. Wade* decision there were four states, New York among them, that provided abortion in the first trimester with no questions asked. Those states and others will not go back to the way it was, so the situation that we have, I think, is most unfortunate, that the

people who are disadvantaged are the most voiceless people, and poor women. So that decision and other restrictive abortion decisions, I would like to see overruled.

Rosen: The *Carhart* dissent where was one where you set out a woman's access to abortion as central to equal citizenship.

Ginsburg: Central to a woman's right—her ability to control her own destiny.

Rosen: How should that right be applied more broadly and what are its implications if the Supreme Court were to take it seriously?

Ginsburg: It would mean that women would have access to something that should be part of healthcare like any other condition.

Rosen: One of your great hopes is for men and women to take equal responsibility for childcare. Why is that so central for women's equality and are we doing better now than we were 10 or 20 years ago?

Ginsburg: We are doing a lot better. When I was in my last year of law school, I was attending Columbia Law School, my daughter was between three and four. There was only one nursery school in that entire area. They would take a child from 9-to 12 or 2 to 5. By the time my daughter was a mother herself, and teaching at Columbia Law School, there were over two dozen full day daycare facilities in that area. A few of my law clerks have taken parental leave, male law clerks. It's more common than it once was.

My very first year on the Court, I was served by a law clerk who had been with me on the D.C. Circuit, and his application was tremendously attractive to me. Why? Because he wrote that he was studying law at night at Georgetown and the reason was, that his wife, an economist, had a good job at the World Bank. That and one other thing. He submitted as his writing sample his first year of law school writing exercise, and it was the theory of contract as illustrated in Wagner's "Ring Cycle."

I asked the Chief Justice [William Rehnquist], this is way back, in 1993 and 1994, if he could have access to West Law and Lexus at home. And [Rehnquist] said no, the law clerks were expected to stay however long it was necessary on the premises. The next year, after that, all of the law clerks had access to West Law and Lexus at home.

Rosen: You said in 1986, in your piece, "Some Thoughts on the 1980s Debate over Special versus Equal Treatment Feminism," the following: "I claim my principle affirmative action plan would have three legs. First it would promote equal educational opportunity, effective job training for women. Second, my plan would give men encouragement and incentives to share more evenly with women the joys, responsibilities, worries, upsets, and sometimes tedium of raising children from infancy to adulthood, and third, the plan would make quality daycare available from infancy on." How far have we come in achieving those goals?

Ginsburg: We have come a considerable distance. What I just described as one nursery school in an area to now, I mean, the changes I've seen in my lifetime has been enormous. Of course, we haven't reached nirvana, but the progress that we've made, makes me hopeful for the future. By the way, I said that my affirmative action plan would be for men as teachers in kindergarten and grade schools. I think that that would be wonderful for children, if they could see men in caring roles just as they see women.

Rosen: There was a piece just yesterday in *The New York Times* about how kids who saw toys that defied gender stereotypes were more likely to think that girls should play with trucks and boys with dolls. Is it important to break down stereotypes?

Ginsburg: Yes. Yes. *Ms.* magazine had a record of songs for children, and one of them was "William Has a Doll." The recording is called "Free to Be You and Me," it was done by Marlo Thomas.

Rosen: What is your message to the next generation of feminists? What are the goals that remain to be achieved?

Ginsburg: It's the unconscious bias—it's powerfully hard to get a handle on. Unconscious bias, well, my favorite illustration is the symphony orchestra. When I was growing up, you never saw a woman in a symphony orchestra except perhaps the harpist. Howard Taubman, who was a well-known music critic for the *New York Times*, swore that he could tell the difference, blindfolded, whether it was a woman playing the piano or a man, or the violin. So someone had the bright idea putting him to the test. Blindfolded him, and what happened? He was all mixed up. He identified a pianist as a man when it was a woman, and he was good enough to admit that unconscious bias was operating. So someone got the even brighter idea to put up a curtain between the people who are auditioning and the judges. And that simple device almost overnight led to women showing up in symphony orchestras in numbers.

Now, I wish we could have a drop curtain in every field of endeavor. But one example of the unconscious bias that still exists was a Title VII suit brought in the late 70s, and the plaintiffs were women who had not succeeded in getting middle management jobs at AT&T. They did very, very well on all the standard criteria, but they flunked disproportionately at the last stage, and what was that last stage? It was what was called a "total person test." "The total person test" was an executive interviewing the candidate for promotion. And why were women dropping out disproportionately? It was because of a certain discomfort that the executive had in dealing with someone who is different. If he's interviewing a man, well, he sort of knows this person is just like me and he's comfortable. But if it's a woman, or a member of a minority group, he feels uncomfortable. This person is a stranger to him and that shows up in how he rates the candidate.

Rosen: So the solution to unconscious bias is to bring men and women together?

Ginsburg: Well the more women—this is something that Justice [Sandra Day] O'Connor often said, that women of our age should get out there and make a good show, and that will encourage other women, and the more women that are out there doing things the better off all of us will be. [applause]

Rosen: It's a time of such anxiety, the political system is so polarized, men and women are figuring out how to interact with each other. What is your advice about how civil interactions are possible? And do I want to share the advice that you gave to Lauren and me and that you've given to so many couples you have married. Explain what the lesson is because it's profound and very wise.

Ginsburg: If you're referring to my mother-in-law's advice on my wedding day.

Rosen: Yes.

Ginsburg: I was married in my husband's home, and just before the ceremony, my mother-in-law took me aside and said, "I'd like to tell you the secret of a happy marriage." I'll be glad to know what it is. She said "dear, in every good marriage, it helps sometimes to be it a little deaf."

And that is advice I have applied not only in 56 years of marriage, but to this day, in my current workplace. [laughter] And if an unkind word is said, you just tune out.

Rosen: It's a profound lesson about never reacting in anger, in always maintaining your equanimity, and if others lose their temper, not losing yours.

Ginsburg: Well, emotions like anger, remorse, and jealousy are not productive. They will not accomplish anything, so you must keep them under control. In the days when I was a flaming feminist litigator, I never said to judges who asked improper questions, "you sexist pig." [laughter]

I'll tell you one such incident. So I was arguing a case in Trenton, New Jersey before a three-judge federal district court and one said, well, women are doing fine these days, opportunities are equal for them everywhere. And I said, your honor, flight training isn't available to women—oh he said, even in the military to have equal opportunity, and I answered him with flight training is not available. His response to me was, "Oh, don't tell me that, women have been in the air forever, I know from experience with my own wife and daughter." So what is my comeback? "I've met some men don't have their feet planted firmly on the ground." You don't see that anymore, but in the 70's when judges knew it was improper to make racist jokes, women were still fair game.

Rosen: It must have been extraordinary the things you saw and heard back then, and yet you have always kept your cool.

Ginsburg:

Yes, because I wanted to win my case. [laughter]

Ginsburg: My old Chief, who I came to love, Chief Justice Chief Rehnquist, especially after he wrote the decision upholding the Family Medical Leave Act, but my very last argument in the Supreme Court was in the fall of 1978, it was a case about putting women on juries. Young people today are astonished when they are told it was not all that long ago when women were either not put on the jury roll—they could opt in if they wanted to, but they were not called otherwise—or they were on the roll but a woman, any woman was exempt.

So I divided that argument with the public defender from Kansas City, Missouri. I had 15 minutes, and I was about to sit down, confident that I had gotten out everything I wanted to convey. And, then Justice Rehnquist commented, “so, Mrs. Ginsburg, you won't settle for Susan B. Anthony's face on the new dollar.” Then Burger said something, Chief Justice Burger, said something polite, and that was that. In the cab going back to Union Station, “I thought, ugh, why wasn't I quick enough to think of some perfect answer, which would have been no, your honor, tokens won't do.” [laughter] [applause]

It was not so long ago that most of the social clubs in this city, New York, in Washington DC, were men only—were men only. So whenever I was asked to speak at those clubs, I said I'm not going to speak at a place that wouldn't welcome me as a member. Some very distinguished groups. The American Law Institute, for example. When the council met in New York they had dinners at the Century Association, and I wrote an explanation of why they should not be meeting there. Most people agreed with me. Some people didn't because they switched to the Harvard Club where the food was not comparable. [laughter]

My first encounter with that was when my husband was working for a law firm in New York, and they had a holiday party at a club that did not admit women. The women associates let it be known that that was improper. They weren't listened to. So the next year, none of the women associates showed up at the holiday party. And the year after that, the holiday party was held at a place that welcomed women as well as men.

Rosen: It's extraordinary to think of how different things were from a world where women couldn't go to holiday parties or join clubs to today. Does it seem like extraordinary progress, or is it inadequate? What is your assessment of the progress we have made since then?

Ginsburg: The progress has been enormous, and that is what makes me hopeful for the future. The signs are all around us. I think in the elections in the Fall of 2018, there will be more women running for office than ever before on every level, local, state, federal. When I was nominated for the good job I now have, I think the Senate was conscious that there were no women on the Judiciary Committee, so they added two for my nomination, and they have never gone back to an all-male committee since then.

Rosen: Is it a good thing that women are galvanized to run for office? What would you tell those who are hesitating in trying to decide whether to run?

Ginsburg: I think the women today have a lot more support than they once did of groups campaigning for them. Well, think even of our court, [Justice] Sandra Day O'Connor was appointed in 1981 and there had never been a woman before. When I was appointed to the D.C. Circuit by Jimmy Carter —Jimmy Carter was a man who changed, literally changed, the complexion of the U.S. Judiciary. He wasn't a lawyer himself—he looked around at the federal judiciary and he said, "they all look just like me, just like me. They are all white men. But that is not how the great United States looks. And I want my judges to be drawn from all of the people, not just some of them."

So he made an effort to appoint minority group members and women, not as one at a time curiosities, but in numbers. He appointed, I think, over 25 women to the federal trial court and federal district courts. He appointed 11 to courts of appeals, and I was one of the lucky 11. So when people ask, did you always want to be a judge? I smile and say when I graduated from law school, there were no women on the federal appellate bench. There had been Florence Allen who was appointed in 1934 by President [Franklin] Roosevelt, and she retired in 1959, and so then there were none. There were none until Shirley Hufstедler was appointed by President [Lyndon] Johnson to the Court of Appeals for the Ninth Circuit. Carter made Shirley Hufstедler the first ever secretary of education, so then there were none again. And then Jimmy Carter became president and set a pattern that no president has departed from.

President Reagan, not to be outdone, was determined to appoint the first woman to the Supreme Court. He made a nationwide search and came up with a splendid candidate, Sandra Day O'Connor. When I was a new justice, invariably in an oral argument session one lawyer or another would call me Justice O'Connor. [laughter]

They knew there was a woman on the Supreme Court, so a woman's voice meant that I should be Justice O'Connor. Nowadays there are three of us, 1/3 of the bench, and because of my seniority I sit close to the middle. Justice [Sonia] Sotomayor is on one end, Justice [Elena] Kagan on the other, and anyone who has watched arguments at the court knows that my female colleagues are not shrinking violets, they very active in the colloquy that goes on in argument. When Justice [Antonin] Scalia was with us I think he and Justice Sotomayor had a contest of who could ask the most questions. [laughter]

Rosen: You were interested in that survey that found that the women justices were interrupted more. What is your considered judgment of that?

Ginsburg: I think my colleagues would notice that and perhaps be more careful. But we all—we do interrupt each other as the former law clerks here know, and one of the most amusing incidents of that, there was an oral argument and Justice O'Connor, who often asked the first question, and I thought she was done so I asked a question, and she said, "just a minute,

I'm not finished." I apologized to her at lunch. She said, "Ruth, don't give it another thought. The guys do it to each other all the time." [laughter]

The next day in *USA Today* is a headline: "Rude Ruth Interrupts Sandra." And I was asked to comment, so I said what Sandra had said at lunch, the men interrupt each other regularly, and you haven't noticed that. That reporter, to his credit, watched through the court through the next two sittings and said, you know, you're right, I just never noticed it when it was two men. Then an academic whose specialty was language wrote an op-ed piece in *The Washington Post* to explain how this happened, how I interrupted Sandra, and she said, well Ruth, Justice Ginsburg, is a Jew who grew up in New York City, and those people talk fast. Justice O'Connor is a girl of the Golden West, laid-back, speaks slowly.

People who knew the two of us recognized immediately that Sandra got out two words to my every one, but it is a wonderful example of the stereotype.

Rosen: You have a very different style on the bench and in conversation. On the bench you are right in there, but in conversation all your friends know it is in the pauses we have to wait because you are about to say something very special.

Ginsburg: [long pause]
[laughter] [laughter]

Yes, my law clerks know that, too. [laughter]

Well, I try to think before I speak. [laughter] It is something that my husband learned as a law teacher. He was concerned that the men were volunteering much more often than the women, and one of his colleagues gave him advice. She said don't ever call on the first hand that is raised, that will invariably be a man. Wait five, six seconds and you will see women's hands go up, because women were thinking before they spoke. [laughter]

Rosen: Why is it good for men—as you said recently, there should be nine women on the Supreme Court.

Ginsburg: No, I didn't say there should be. The question was when will there be enough, so there'll be enough when there are nine. [laughter] [applause]

For most of our history, except the times the court was less than nine, and the one time there were 10, they were, until Justice O'Connor, all men. And nobody thought anything was unusual about that.

Rosen: But you weren't joking. And would it be good for men and women to have nine women?

Ginsburg: We've had state supreme courts with all women. I think Minnesota did for a while. We've had many states that had a majority women. Our neighbor to the north, Canada, has a woman as their chief justice, and four women. So we are catching up.

Rosen: And why is a good? Is it because, as you say so powerfully, generalizations about the way men and women are can't guide you in particular cases and therefore it shouldn't matter whether there are nine women or five women?

Ginsburg: There is a life experience that women have that brings something to the table. I think a collegial body is much better off to have diverse people of different backgrounds and experience, that can make our discussions more informed.

In one case where it was evident was [when there was] a 13-year-old girl who was suspected of having the wrong kind of pills in school, and she was taken to the girl's restroom and she was strip-searched. The pills she had in her purse, I think there was one Advil and one aspirin, after she was strip-searched and no contraband found, she was put in a chair in front of the principal's office and her mother was called to take her home.

Her mother was, let's say, beside herself that her daughter had been humiliated in that way, so she brought a suit under our anti-discrimination laws of 1983. At the oral argument, the oral argument took a light tone. One of my colleagues said the boys undress in front of each other in the locker room and there is nothing embarrassing about that. And my response was that a 13-year-old girl is not like a 13-year-old boy in that regard. It's a difficult stage in her growing up, and there were suddenly no more jokes.

I guess my colleagues were thinking of their wives and daughters. But that kind of insight I have because I have grown up female. So it's not that women decide cases differently than men—they don't. There's a woman that was on the supreme court of Minnesota, Jeanne Coyne, who said at the end of the day, a wise old man and a wise old woman, will reach the same judgment, but nevertheless she said, we bring something to the table that was absent when the judiciary was all-male.

Rosen: Can men become more enlightened?

Ginsburg: Well, I think you can answer that for yourself. [laughter]

Rosen: You are wiser than I am. It is a very important question.

Ginsburg: You can see what happened in the 70's. Up until then the Supreme Court never saw a gender-based classification that it didn't like or that it didn't think was constitutional. One of my favorite cases from the not so good old days is *Goesart v. Cleary*. A woman owned a tavern and her daughter was her bartender. The state of Michigan passed a law that said women could not tend bar unless they were married to or the daughter of a male tavern owner. Well, that meant that these two women would be put out of business. The Supreme Court made

light of that case, starting out with talking about Chaucer's old alewife, and somehow instead of saying yes, women are perfectly capable of tending bar, said, well, women need to be protected. Bars are sometimes unpleasant, things go on.

To their great credit, the Michigan alcoholic beverages authority, when the Supreme Court said the law was ok, decided they were not going to enforce the law. So the Goesarts were able to keep their tavern. In fact, when I went to law school, that case—Goesaert against Cleary—was described in an abbreviated paragraph as one example of the Supreme Court letting go of its stranglehold on social and economic legislation. They said the justification for this was it is for health and safety legislation to protect women from the rowdy drunks. The Supreme Court justices never thought that the ban didn't apply to the barmaids, the women who took the drinks to the table and were much more in danger of the rowdy drunks than the woman standing behind the bar. That's where we were not so long ago.

When Gwendolyn Hoyt, a woman from Hillsborough County, Florida, had a bitter dispute with her philandering, abusive husband and was humiliated to the breaking point, so she took—she saw her young son's baseball bat in the corner of the room—took it and with all her might, hit her husband over the head and he fell against the stone floor. End of the altercation, beginning of the murder prosecution. There were no women on her jury. Her thought was that if women were there, not necessarily what should be acquitted, but she might be convicted of the lesser crime of manslaughter, and not murder. But she was convicted of murder by an all-male jury.

The argument in the Supreme Court was she doesn't have the opportunity for a jury drawn from a cross-section of the population because half the population is left out. The Supreme Court said in 1961 that law is simply reflecting women's place at the center of home and family life. In the next decade, in three cases in a row, the court made it clear that women had to be called just as the men. That jury duty is an obligation that citizens have, as well as rights, and if you exempt women, you are saying, they are expendable—we don't need them to be part of the administration of the justice system. So, the changes I have seen in my long life have been just enormous.

Rosen: You said this afternoon at this wonderful symposium at Penn Law School where the students asked such great questions, you said that you are optimistic about the future because you had hope for the millennials.

Ginsburg: Yes.

Rosen: Which was wonderful to hear. And I want to know, and I know the audience does too, what is your advice to those millennials about how they can best advance the cause of justice?

Ginsburg: Not alone, but in alliance with like-minded people. I was impressed and heartened by the Women's March in D.C., which has now been repeated in many places all over the country. Young people should appreciate the values on which our nation is based and how precious they

are, and if they don't become part of the crowd that seeks to uphold them, you know it was something Learned Hand said – if the spirit of liberty dies in the hearts of the people, there is no court capable of restoring it. But I can see the spirit of my grandchildren and their friends, and I have faith in this generation just coming into adulthood.

Rosen: Thank you, Justice Ginsburg, for all you have done to advance the cause of liberty and equality, and to defend the constitution of the United States, thank you so much. [applause]

Ginsburg: Thank you. Thank you. [applause]

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