

**Transcription of the Clinical Legal Education Oral History Interview with  
Associate Justice Ruth Bader Ginsburg  
August 17, 2007**

**OGILVY:** This is a clinical legal education oral history project interview with Associate Justice Ruth Bader Ginsburg. We're in Washington, D.C. The interviewer is Sandy Ogilvy. Justice Ginsburg, thank you so much for spending a few minutes with me this afternoon.

**OGILVY:** What was your first exposure to clinical legal education?

**JUSTICE GINSBURG:** It certainly was not at law school. I attended Harvard Law School for my first two years, and the closest thing that they had was a legal aid clinic, run by students with the assistance of a lawyer from Boston. No faculty member was involved. And it was pretty much the same at Columbia, where I finished law school.

So my first exposure was at Rutgers, where a very great lady named Annamay Sheppard was teaching an urban clinic. Hers was the first clinic at Rutgers, if I remember. And then Frank Askin, together with Arthur Kinoy, taught a constitutional litigation clinic.

**OGILVY:** Did you take either of those courses when you were at school?

**JUSTICE GINSBURG:** No, certainly not in law school. And I was on the faculty for a few years before those operations started. It was sometime in the middle '60s that the Urban Clinic began.

**OGILVY:** And you didn't take advantage of the Legal Aid Bureau at Harvard?

**JUSTICE GINSBURG:** Legal Aid was an honorary. My husband was on the Legal Aid Bureau. I was on the Law Review, and there was not much time for anything else other than the Law Review and my then-two-year-old daughter.

**OGILVY:** Oh, yes, that's right.

So let's talk then about – you went to Rutgers in what year to teach?

**JUSTICE GINSBURG:** In 1963.

**OGILVY:** 1963. And what were the clinics there at that time? Were Frank Askin I guess and Arthur Kinoy there?

**JUSTICE GINSBURG:** Well, Frank Askin had not started the clinic yet. In fact, Frank was a student at Rutgers. He was in the very first Civil Procedure class I ever taught. So it was about five or six years later when Arthur Kinoy came to Rutgers, and Frank joined him in starting a Constitutional Litigation Clinic, which centered on the cases that Arthur was doing at the moment.

**OGILVY:** And then at some point you got involved with the ACLU? Is that how you started working with students?

**JUSTICE GINSBURG:** Yes, first with the New Jersey affiliate. The affiliate began to get complaints of a kind that were unfamiliar – women complaining that they were forced onto so-called maternity leave as soon as their pregnancy began to show. They thought that was unfair discrimination – that kind of case. Or women who worked at blue-collar jobs and wanted to get health insurance for their families; women in those days could get protection only for themselves. They couldn't cover their families. Women began to complain about that kind of arbitrary discrimination. I was at Rutgers teaching Civil Procedure. The then head of the New Jersey affiliate thought it was

logical to turn to me to handle those cases. So there was pressure from the ACLU affiliate and from my students who wanted to have a course on women and the law. This is in the late '60s.

**OGILVY:** And so you actually started the seminar?

**JUSTICE GINSBURG:** Yes.

**OGILVY:** And what was it called?

**JUSTICE GINSBURG:** I don't remember the precise name, but it centered on cases in which I was involved. The students were working with me in a kind of associate capacity. Students were taking a course in women and the law, and some of those students enrolled in the clinic, and those students were working with me on whatever cases I was handling at the time.

**OGILVY:** Okay, I'd like to talk a little bit about the nature of your involvement with the students and the students' involvement in those cases as well. How large would the seminar have been? How many students in the seminar would it have been?

**JUSTICE GINSBURG:** At Rutgers it could not have been more than 10.

**OGILVY:** Okay. And of that number, how many students would have been working on the cases?

**JUSTICE GINSBURG:** All of them. That was the object of being in the clinic, that they would get to work with me on the cases I was handling.

**OGILVY:** And how did you organize the work with them?

**JUSTICE GINSBURG:** They were comparable to associates in a law firm. They worked on what I did. They drafted documents which I then generally rewrote, but then explained to them why what they had done, although a valiant effort, was not what

we would want to present to a court. I think it was a very good learning experience, and that pattern developed even more in my years at Columbia.

**OGILVY:** Did you have both men and women in the clinic?

**JUSTICE GINSBURG:** Yes. Mainly women, but a few brave men.

**OGILVY:** Was there one case from Rutgers that stands out that the students worked on that you could describe?

**JUSTICE GINSBURG:** One of the students worked with me on the brief in *Reed v. Reed* – that was the turning point gender discrimination case in the Supreme Court – and her job was to get up an appendix of laws across the states that made arbitrary distinctions on the basis of sex. We had some rather serious ones, like the husband, as head and master of the family, the one who decides where the family will live, and the wife is obliged to follow, to such things as California made it a misdemeanor to use foul language in the presence of women and children. So she worked on that.

I had a team of law students put together for that brief – some of them were NYU students, and my students from Rutgers, and one from Yale.

**OGILVY:** And did you meet outside the classroom to work together?

**JUSTICE GINSBURG:** Yes, yes. We worked very closely on this effort.

**OGILVY:** How many hours do you think the students would have devoted over the course of a semester?

**JUSTICE GINSBURG:** It's hard for me to say, because it depended on the stage of the litigation, so it would vary. But that same operation I took to Columbia. One of the cases that started – I think it started while I was still at Rutgers – was the *Wiesenfeld* case, the case of the young man whose wife died in childbirth. We did most

of the work on that at Columbia, but I think it originated when I was – just about the time I was leaving Rutgers to go to Columbia.

**OGILVY:** That was decided in 1975, so –

**JUSTICE GINSBURG:** Yes.

**OGILVY:** And that case you took from the beginning, at the District Court level?

**JUSTICE GINSBURG:** Yes, from the District Court to the Supreme Court.

**OGILVY:** In doing my research for this interview, I noted that someone had said that a student named Sandra Grayson (sp) had worked during a lot of the work in the District Court.

**JUSTICE GINSBURG:** I had a few student aides. There was another one who worked with me in the District Court. Her name escapes me at the moment.

**OGILVY:** It's a long time ago.

How much lead did you give the students to work these cases?

**JUSTICE GINSBURG:** The time we had was dictated by the court's calendar. We had in that case several motions to dismiss it. That was the government's first effort to get rid of the case. They raised all kinds of procedural hurdles. And so we wouldn't – the first time I appeared in court in that case was to argue against the government's motion to dismiss. And the students came to appreciate the tremendous importance of procedure. For them it was the big constitutional question, denial of equal protection. In the meantime we had to grapple with standing, justiciability, and whatever procedural obstacle could be dreamed of the government raised in that case.

**OGILVY:** I can imagine that they also would come to appreciate the development of facts.

**JUSTICE GINSBURG:** Yes, but in our case the facts were very strong. In fact, one student went along to take the deposition of Stephen Wiesenfeld, and also accompanied him to the Social Security office when he claimed the benefits that he knew would be denied. But we wanted to have a witness to what transpired at the Social Security office, so one of the students had that role.

**OGILVY:** Do you recall how that case came to you?

**JUSTICE GINSBURG:** Yes, very well. There was a woman teaching in the Spanish department at Rutgers in New Brunswick – her name was Phyllis Zatlin Boring – and she was active in an organization called the Women’s Equity Action League. The women on the Rutgers campus – although the law school was in Newark, we knew the women in New Brunswick. We were all together in an effort to make things better. There was a class action against Rutgers, a straight equal pay case which was settled amicably after some years, and all of the women got a very large raise. So the women had a network. Phyllis Boring lived in the vicinity of Edison, New Jersey. She read a letter to the editor in her local newspaper and it was to this effect: “I’m tired of hearing about women’s lib. Let me tell you my situation” – and he described his wife’s death in childbirth, his determination to care personally for the child, his going to the Social Security office and applying for what was called child-in-care benefits, and being told that that benefit is available only to a widow, not to a widower. He described that in the letter, and the tagline was, “Tell that to Gloria Steinem.” So Phyllis called me and said, “That’s not right, is it? Isn’t there something in the Constitution about that?” And I said,

“Suggest to Stephen Wiesenfeld that he call the New Jersey affiliate of the ACLU,” which he did, and that’s how the case began.

**OGILVY:** That’s a great story.

In addition to the students, were you also working with cooperating attorneys, other attorneys in this? Or was it primarily you and the students?

**JUSTICE GINSBURG:** Once the ACLU Women’s Rights Project was started, and that was in early 1972, I was working on cases headed to the Supreme Court with Mel Wulf, who was the then legal director of the ACLU. And there were other women involved, originally Brenda Feigen Fasteau was at the ACLU. When she left Kathleen Peratis came in. Kathleen and I worked together on so many things, and we had a wonderful working relationship.

**OGILVY:** I think I read someplace that in the Wiesenfeld case that Jane [Z.] Lifset -

**JUSTICE GINSBURG:** Yes, she was a Rutgers student, yes, and she had an important part in that case.

**OGILVY:** Did you have an overall strategy in mind? At what point did you have an overall strategy in mind?

**JUSTICE GINSBURG:** Well, from the very beginning when I got into this business, when we took the *Reed* case. *Reed* came to the attention of the national office of the ACLU, because one of the then general counsels – there were three general counsels – a firm lawyer named Marvin Karparkin, read about *Reed* in *Law Week*. He saw what the Idaho Supreme Court had done, which was to uphold a law as constitutional that read: “As between persons equally entitled to administer a decedent’s estate, males

must be preferred to females.” And he said, “That’s going to be the case that turns the Supreme Court around on the equal protection issue.” He was right. Coming upon *Reed* was something that happened almost by chance. Well, once we had that front-runner, the question was how to build on it. And we did have a definite strategy. It was to take cases that were clear winners, cases that had very affecting situations, real people – Wiesenfeld’s is a classic example of that – and so to make it easy for the justices. And in a number of cases, like Stephen’s, we had male plaintiffs. The notion was that women’s rights is not something that just women should do. The issue really was the equal stature of men and women before the law, and it was my strong belief that unless men got involved this wasn’t going anyplace fast; that the people who wanted to retard things would like nothing better than to have this an all-female operation. So the idea was to take cases that had very strong facts and that the courts would want to decide in our favor, and to use male plaintiffs as well as female plaintiffs. Some people have accused me of using only male plaintiffs. That certainly is not the case. But what we were trying to show was that arbitrary differentials based on sex hurt everybody – men, women, and children. And so that was the strategy, to build case by case.

Now, we were in that regard copying Thurgood Marshall and the NAACP, Inc. Fund. He had several building blocks in place before he got to *Brown v. Board*. But there was one large difference: Thurgood Marshall was able to control the litigation because there was nobody else doing it. The sex discrimination business was too diffuse. Some people were taking cases – Title VII cases, for example – just for the money. And there were others who didn’t have the sense of timing that we did. So there were cases that got to the Supreme Court out of order. But that was our strategy. And we, at the

ACLU Women's Rights Project, we were involved in a kind of a three-pronged effort, because nobody gets very far just by arguing cases in court. You have to have first of all people, lots of people, out there wanting to see this change. And then when you could you tried to get legislative change. I mean, one part of the effort on which the students worked quite hard was to go through the entire U.S. Code – the Department of Defense was nice enough to have a computer printout that was a tremendous boon to us, so we could see every provision that differentiated on the basis of sex. For some of them it was just a matter of nomenclature, and for some of them there was really no serious issue. So there was an omnibus bill in which Congress amended many provisions to make them gender neutral. So it was first public opinion, then legislation, and then what you couldn't get the legislature to change you brought to court. So it was that effort. We had a year-long seminar just devoted to the legislative side of it, to analyzing all of these provisions that differentiated on the basis of sex, and making recommendations for change. This was done formally as a report for the U.S. Civil Rights Commission.

**OGILVY:** And students were involved in all of that?

**JUSTICE GINSBURG:** Yes.

**OGILVY:** The other strategy that I think I read about is speaking to women's groups and to others to raise consciousness, I guess, about their rights. Was that part of what you were doing as well?

**JUSTICE GINSBURG:** My main speaking involved the Equal Rights Amendment. We were making – there was a major effort to help that along. Unfortunately, it failed and the strong interest was never revived. People asked me: “Why are you such a strong advocate of the Equal Rights Amendment when your

litigation under the Fourteenth Amendment, the Equal Protection Clause, is getting the courts to about the same place?” And my answer to that was simple, because I have a – well, my current answer remains the same: I have three granddaughters. I would like them to be able to look in the Constitution of the United States and say, “Look, it says men and women are persons of equal stature before the law.” Every modern constitution has such a statement, but we still are missing one. So in a way you could say it’s cosmetic. But it’s really more than that. It’s a statement that this is a fundamental principle that our society holds dear.

**OGILVY:** As you were developing your strategy, were you conscious of Thurgood Marshall and Charles Hamilton Houston and their approach?

**JUSTICE GINSBURG:** Oh, very much. Very much. I was a tremendous admirer of what they did. True, there were marked differences. No one could litigate, no one had the funds to litigate, apart from the NAACP. The other was we were never – our lives were never in jeopardy because of what we were doing, so that was a significant difference between Thurgood Marshall’s experience – he sometimes literally had to flee from the town before the lynch mob came.

**OGILVY:** Right, right. Was it part of the strategy from the beginning to get the Court to regard classifications based on sex with strict scrutiny?

**JUSTICE GINSBURG:** Yes, that was an effort in every case. We gave the Court fallback positions, including the one they eventually adopted, a middle-tier review. We got the idea of so-called “intermediate review” from two voting rights cases – opinions that Chief Justice Burger had authored, as I recall. But we gave them – I think the *Reed* case just had the two. We asked for strict scrutiny, but said this is so unfair it

even fails the rational basis test. And the next brief – I think in *Frontiero*, was the first time we introduced the idea of heightened scrutiny. Then we began to call it heightened scrutiny without putting a tier label on it. We had a wonderful prompt from Justice Stewart who used the expression “exceedingly persuasive justification.” So then we used that phrase.

**OGILVY:** There was one case, the *Craig v. Boren* case, I wanted to get you to talk a little bit about, because I read somewhere that you were very conscious that you didn’t want to take cases that were trivial. And this was a 3.2 beer case, and I wondered how that fit into your strategy.

**JUSTICE GINSBURG:** We certainly didn’t initiate that case. It was initiated by a fraternity at Oklahoma State University, because the Oklahoma law – well, Oklahoma was a dry state, but they allowed the sale of “near” beer, weak beer, 3.2 beer. The girls could buy that beer at age 18; the boys not until 21. So the thirsty boys in this fraternity began the lawsuit, and an Oklahoma lawyer represented them pro bono. They had – this went on for some time. They had a starting plaintiff – and 18-year-old boys have a way of turning 21 eventually – but they had an endless supply of substitutes. And they also had as co-plaintiff, what turned out to be very important, the woman who owned a convenience store called the Honk-N-Holler. She had an economic stake in this, because her business would increase if she could sell the beer to the boys as well as the girls. They were the plaintiffs. I didn’t get involved until the case was I think in the 10th Circuit. And then I worked very closely with the Oklahoma lawyer. In fact, I argued a case the same day as *Craig v. Boren*. I sat next to him during his argument. If memory serves, my argument was the next case after *Craig*. I think it was the Louisiana jury case.

But I never understood why Justice Brennan picked *Craig v. Boren* to announce an elevated standard of review. Anyway, he did. We said, well, as far as showing the stereotype this case is very good because it's almost like the children's rhyme: "What are little girls made of . . . sugar and spice and everything nice, and little boys, snails" – and something – "nails and puppy dog tails." The state's response to the challenge was that boys drive more, drink more, and commit more alcohol-related offenses. And we said, yes, that's what this stereotype is all about. Some women drink and some boys never touch the stuff, so you can't make that kind of generalization.

**OGILVY:** How did this play out with the students that you were working with?

**JUSTICE GINSBURG:** Oh, the ACLU's amicus brief in *Craig* was such fun to write. We tried to illustrate various stereotypes of ethnic groups, both the Irish – that was one group – and their drinking habits and Native Americans. There were laws restricting access to alcohol by Native Americans in a number of states. Those groups were thought to be unable to handle alcohol very well. On the other hand, Jews and Italians were safe around alcohol, because for them it was part of family life; you're not drinking solo, you're drinking in the company of your loved ones. So we had a section on stereotypes about different groups and their relationship to alcohol.

**OGILVY:** Did you have physical space for your clinic, or was it just your office essentially?

**JUSTICE GINSBURG:** At Columbia, yes, it was my office, but we had next door a fax machine – and, oh, what else did we have? We shared the fax machine with Mike Meltsner and Phil Schrag, who were running a very successful clinic at Columbia at the time. There were two very successful operations at Columbia: First, the George

Cooper/Harriet Rabb Employment Discrimination Clinic; then Phil Schrag and Mike Meltsner clinic.

**OGILVY:** Did the five of you talk pedagogically?

**JUSTICE GINSBURG:** Well, we had – particularly with Harriet, because there was a large overlap between what she was doing and what I was doing – in fact, we worked cooperatively on some cases.

**OGILVY:** And the way that you learned to work with the students came from what? What were the models that you -

**JUSTICE GINSBURG:** There was - at the time there was a Constitutional Litigation Seminar at Columbia, and that would take a case that was before the Supreme Court, and they'd do a simulated, a mock, argument. My students were working with me at the time we were challenging laws that restricted women service on juries, that gave women automatic exemptions. So one of the cases used in the simulation was the restriction on jury service by women. My students were working on the real case – another one we started in the District Court and went all the way up. We had a contest between the simulated team and my team, and my students were ever so much better – not because they were brighter but because they were working on an actual case and they had the enthusiasm and the stimulation that brings.

**OGILVY:** In the actual context of things, the consequences certainly could be different, couldn't they?

**JUSTICE GINSBURG:** Yes, and developing the case with real plaintiffs, and we had a very interesting collection of plaintiffs in the Louisiana jury case. But these were all – well, for example, we had as one plaintiff a woman who was bringing a tort

suit. Her complaint? She bought what she thought was a hair-straightening preparation, and it ended up removing her hair. And her notion was that women on the jury might put a higher value on a baldness, a woman's baldness, than an all-male jury.

**OGILVY:** This was a Louisiana case.

**JUSTICE GINSBURG:** Yes.

**OGILVY:** Kind of more difficult to do long-distance lawyering with students?

**JUSTICE GINSBURG:** I had a very good local partner in that effort, George Strickler from New Orleans. But we did go down for the argument before the three-judge district court. He handled the pretrial matters, sometimes with memos from my students.

**OGILVY:** The students that you had, did you follow them after they graduated at all to see what kind of work they did?

**JUSTICE GINSBURG:** A number of them. One in particular, Lynn Schafran – we are very close to this very day – she runs something called the Judicial Education Project, which does films and other educational materials to make judges aware of gender bias in the courts, to make them aware of unconscious discrimination that may be happening in courts.

**OGILVY:** When I interviewed Harriet Rabb, she said that she and George [Cooper] had had this idea that they were going to – because Title VII was so new, they knew they had to create a cadre of lawyers to go out and litigate these cases, because there weren't lawyers to do it. Did you have that sense as you were working with students that you were creating a cadre of new lawyers?

**JUSTICE GINSBURG:** Of lawyers who would be devoted to human rights lifelong, but not, as in the case of Title VII, expecting the students to specialize in that

area, because when you're arguing due process and equal protection, that's not something you can make a living on. It's very heady for any lawyer that has such a case. Title VII, on the other hand, has a provision for counsel fees. So the notion of becoming a specialist in Title VII had some economic payoff. But I think my students, most of them, as a result of that experience, were committed to working for human rights.

**OGILVY:** I want to return just briefly to the Wiesenfeld case again. I read somewhere that one student, Mary Elizabeth Freeman (sp) -

**JUSTICE GINSBURG:** Yes, that's whose name I was trying to remember.

**OGILVY:** - helped with the brief, the Supreme Court brief.

**JUSTICE GINSBURG:** Yes.

**OGILVY:** - but was acknowledged in the brief and sat at counsel table.

**JUSTICE GINSBURG:** Yes. I did that routinely. To my sorrow, the Court no longer permits crediting assistants who are not members of the bar. But in every case I noted the students who worked on the case. I think M.E. – the name Mary Elizabeth used – sat next to me during the Wiesenfeld argument. And she came – in a few D.C. District Court cases she came with me to the arguments.

**OGILVY:** That must have been a marvelous experience for her.

How did you see the pedagogy that you were employing in your clinical role as opposed to your Civil Procedure class?

**JUSTICE GINSBURG:** It was Civil Procedure in practice. As I mentioned before, students came to see the tremendous importance of procedure and how important – well, how vital it was for you to be able to both fend off procedural impediments raised

by the other side - which in our cases was almost always a governmental unit - and to use procedure to your advantage.

**OGILVY:** Is there anything else about that time that you recall that you think history should record?

**JUSTICE GINSBURG:** There was an enthusiasm among the students in the '70s. They wanted to do something to make things better, and that's why the clinical operations were flourishing at the time at Columbia. I was so fortunate to be part of that tremendous wave of enthusiasm born in part by the war in Vietnam and in part by the black civil rights movement. There was a spirit among the students that frankly I don't see today.

**OGILVY:** Yeah, I think you're right - unfortunately.

END