Interview with Ruth Bader Ginsburg
Conducted by Maeva Marcus
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[Begin Tape 4, Side 1]

MM: I do want to start this particular interview, since you now have the transcripts, and remind you that if you would like to add anything at any time to the topics that we talked about in previous interviews, you should feel free to tell me stories you forgot to tell me, mention people that you neglected to mention in the past and you would like to have in this interview. You can do that any time.

RBG: I'll keep that in mind.

MM: Okay. Good. Last time we were discussing the cases that you argued before the Supreme Court, you remember, in some detail, not so much about each case on its own, but your whole attitude toward appellate advocacy, and I just wanted to sort of go over in general -- I know that you argued six cases: *Frontiero v. Richardson, Kahn v. Shevin, Weisberger v. Wiesenfeld--*

RBG: Weinburger, Caspar Weinburger.

MM: Weinburger, Caspar Weinburger, right.

RBG: "Wise-en-feld," he pronounces it. He spells it "Wees-en-feld," but he pronounces it "Wise-en-feld."

MM: All right. *Edwards v. Healy, Califano v. Goldfarb*, and *Duren v. Missouri*. Looking back on those arguments, is there anything that you wish you had done differently?

RBG: I looked at the transcripts of most of them. I'm satisfied that I got out everything that I intended to get out in the course of the argument. I don't think that *Kahn v. Shevin* was a winnable case, because it came to the Court too soon. I went through a process, as many lawyers

do, working on that case. I first heard about it when I read what the Florida Supreme Court had ruled in *Law Week*. When the Supreme Court took the case, I thought, "This is big trouble. This is a case they cannot understand correctly at this point."

I called the lawyer in Florida and said: "I'm with the ACLU Women's Rights Project. Is there anything we can do to help you in this case?"

He replied: "I've taken this case as a Florida ACLU volunteer from the start." The ACLU had a practice that before any case was filed in the Supreme Court, the state affiliate would at least check with the national office. The ACLU affiliates were fiercely independent, but Supreme Court litigation was generally controlled by the national legal director. No one in the Florida chapter had ever consulted with anyone in the national office. If they had, we would have counseled: "This is not the right case to take up now." But the Supreme Court had already accepted the case, and there it was. The Florida lawyer was glad to have me take it over at that point, both to write the brief and to argue the case.

In the process of writing the brief, I decided, yes, it could be won. I was so persuaded that my arguments were right, but in the end I appreciated again what I sensed at the start — that *Kahn* came up too soon after *Frontiero*. There was too large a risk that the Court would regard that case, as they did, as pure favor for the woman, no discrimination, just a little boost. I don't think a different argument would have been successful in *Kahn v. Shevin*.

MM: Is that the case in which I think I read that Justice Douglas may have had some other reason for going the way that the Court did, being extra specially sympathetic to widows?

RBG: Yes, he was the child of a widow, and he recalled that life was very hard for his mother. It was also in a field where Douglas gave large deference to the states. It was a question of state taxation, of state property tax. The classification could be regarded as pure favor to women, and

the case involved an area of the law — taxation — where lines inevitably are arbitrary.

MM: Do you have any special memories of those appearances before the Court? Was there any one particular argument that stands out?

RBG: Justice Blackmun asked a question at the end of my argument in *Kahn v. Shevin.* His question gave me an opportunity to distinguish race discrimination from sex discrimination. You can see the question and the answer in the transcript. Justice Blackmun's question also gave me some minutes to talk after the red light flashed on. I remember that moment and thinking I had found no way to fit into my main argument the answer I gave. I was so glad Justice Blackmun asked me that question. He seldom asked questions from the bench, but on that occasion, he asked me a key question, and gave me an opportunity to say something I consider important.

MM: Do you have any memories of your opposing counsel in those cases?

RBG: Yes.

MM: You do?

RBG: I remember the opposing counsel in *Kahn v. Shevin*. He was a very bright, nice young man from the Florida Attorney General's office. The Justices had been rough on him the first day of his argument as appellee. His argument was carried over from an afternoon, and resumed the next morning. When argument hours ran out, the Court recessed. Lawyers in the uncompleted case would come back for the next session. After a noon recess, the lawyers would resume at 1:00 p.m., and if a case remained unfinished at 3:00 p.m., the argument resumed the next morning. I remember telling Florida's attorney on the way out following the afternoon argument that I thought he had done a terrific job, facing up to the difficult questions and the signs of impatience coming from the bench. I remember thinking he was a talented lawyer.

I remember the lawyer who argued for the government in both Wiesenfeld and Goldfarb.

His brother is to this day in the SG's [Solicitor General] office. His brother's name is Kent Jones, and his name is Keith Jones, and he was a fine advocate for the United States.

I don't remember who argued *Frontiero* for the government, and I don't remember who argued for Louisiana in *Healy v. Edwards*, but I remember thinking that that case, *Healy v. Edwards*, was not as well argued for the state as *Kahn v. Shevin* was. And in *Duren*, if I recall correctly, opposing counsel was a woman from the State Attorney General's office.

MM: Missouri?

RBG: Yes.

MM: Did counsel on the other side ever make you change an argument that you had planned?

RBG: No, but when I was on the downside, that is, when I was represented the respondent or the appellee, I always had my brief in draft before I received the brief I was answering. If you wait to get the petitioner's brief, there's a large temptation to write your brief as a series of "not so's," in a negative way: "No, this is not my case." It's better to lead from strength, to tell your story positively. So that's why I sought to have my main argument down before I got the other side's brief. Then you make certain adjustments. Many of those adjustments I put in footnotes because I didn't think there was enough in the opposing brief to damage the argument I had made. So I often answered points made in the other side's brief in footnotes. Remember, the Supreme Court is not the first round. The arguments had been rehearsed in at least one court or, more often, two courts before you got to the Supreme Court, so there were seldom any surprises.

MM: I know you argued cases below as well. Did a judge or justice ever introduce an element of the case that you were not prepared for?

RBG: If there were threshold barriers, procedural barriers, I generally knew they were there. So I don't recall not being prepared for something that was raised. I don't remember a judge ever

bringing up something that the other side or my moot court judges hadn't raised.

MM: Did you have a personal relationship with any of the parties in these cases?

RBG: I had, and still have, a very close relationship with Stephen Wiesenfeld.

MM: Really? Can you tell us about that?

RBG: That case started when Stephen Wiesenfeld was struggling to bring up his newborn son as a single parent. He wrote a letter to the local newspaper in Edison, New Jersey, where he lived. He described his situation. He said: "I've heard a lot of talk about women's lib[eration],so let me tell you about my life." He described what had happened. His wife, healthy to the moment she was taken to the hospital for childbirth, had an embolism, died instantly, but the baby was saved. Stephen vowed that he would take care of his child personally. There were no Social Security "mother's benefits" to aid him because he was a father, not a mother. So he told his story, and the tag line was: "Tell that to Gloria Steinem."

A woman who taught Spanish at Rutgers, her name was Phyllis Zatlin Boring — I think she has since dropped the last name — read Stephen Wiesenfeld's letter in the local paper. She called me and asked: "Is that right?" And I said: "Sounds like a denial of equal protection to me. You might suggest that he call the local ACLU." She did, and that's how the case began.

I met Stephen in person for the first time when I was on the train to Trenton to argue his case before the three-judge district court. He accompanied me to the argument. En route, we talked mostly about his babysitting problem. He called me from time to time, more often about babysitting arrangements than about the legal issues in his case, in which he was most interested. But immediately, what his life depended upon was having competent help for the hours he was not able to be at home.

We remain friends. Stephen said he wouldn't go back to work full time until his son Jason

was in school full time. And it happened just that way. Stephen, who lived in New Jersey then, moved to Florida, where he lives even now. His son Jason was bar mitzvahed when I was on the D.C. Circuit. A talented law clerk in Ab Mikva's chambers made a collage I gave Jason as a gift. It shows that 1975 New York Times article on the Supreme Court's decision and is lettered at the top: "Zedek, zedek . . .," Hebrew words from Deuteronomy, meaning "Justice, justice shall thou pursue . . . ." Stephen testified at my Senate confirmation hearings.

MM: Really? For the D.C. Circuit?

RBG: No.

MM: For the Supreme Court?

RBG: Right. Right. And Jason is today a second-year law student at Columbia Law School. (Jason will be married in September 1998, and I will officiate at the wedding.)

MM: Oh, how nice. What was his father? What was Stephen?

RBG: Stephen was, early on, a computer expert, and still works in computer programming.

MM: Well, that's really nice. Is he the only one that you have had a personal relationship with?

RBG: He's the only one with whom I have had an enduring close relationship. I had a personal relationship with many other clients, but no other quite like that.

MM: That's nice. I know last time when we talked about *Frontiero*, you told me that Justice Brennan had paid you the highest compliment by adopting some of your language, rationale, from your brief. Did that happen in any of the other cases that you argued?

RBG: Not to the same extent, but I could always trace some things, even in *Craig v. Boren,* a case in which I didn't write the brief for a party, I wrote a friend-of-the-court brief. Some of that brief shows up in Brennan's opinion.

MM: That's really nice. Well, I think the time has finally come where we can get you to the--

RBG: The D.C. Circuit?

MM: — the D.C. Circuit, which is the reason for these oral history interviews, unless you can think of some other digression. I think we've covered most everything that was important up to that point.

RBG: Good. Let's proceed to the D.C. Circuit.

MM: Well, I wanted to know when you first learned that you were being considered for the bench, or perhaps whether you sought the nomination.

RBG: One had to seek the nomination in Carter's time. For courts of appeals, he had set up panels, merit selection panels, and it was necessary for one who wanted to be considered to complete a rather burdensome application. I filed applications for the Second Circuit and for the D.C. Circuit. In both cases I was asked to apply. I was quite surprised to get a call from the D.C. nominating panel, from Joe Tidings, who headed the panel. He called and invited an application.

I immediately called Ed Walsh, who headed the Second Circuit's panel, and asked: "If I file an application with the D.C. Circuit panel, will it diminish my chances for the Second Circuit?" Ed said: "No, it can only help. Go ahead and do it, Ruth." To my surprise and disappointment, the sole reason the Second Circuit panel gave for not including me on their list was that my name already appeared on the list for the D.C. Circuit.

MM: You sort of answered one of my questions, which was, would you rather have been nominated to a different circuit?

RBG: At the time, probably yes, but in retrospect, it was one of life's great breaks for me that I served on the D.C. Circuit. It was an extraordinary court, both in terms of the personnel and the kinds of cases the court had.

MM: Was any person particularly influential in finally obtaining the nomination for you once you

had applied?

RBG: I can't say, because I hadn't sought the D.C. Circuit nomination. I filed the application and came for the interview. People on the panel that I then knew, not well, no doubt were supportive, two people in particular, Marna Tucker and Patricia King. Both have since become close friends. They were helpful in responding to questions other people on the panel asked, for example: "Wouldn't it be burdensome to commute from the District back to New York?" I asked in return: "What leads you to think I would live in New York if I got a D.C. Circuit appointment?" Even then - this was what, 1979?

MM: Well, '80 was —

RBG: 1980?

MM: I note Judge Leventhal, I believe, died Thanksgiving of '79.

RBG: Yes, but I was on the list months before his death.

MM: So you were on the list well before --

RBG: Yes. It was '79. Right. Joe Tidings said to me: "Ruth, you're on our list. You won't get the first two appointments under the judges' bill. Those will go to Pat Wald and Ab Mikva. But there will be more vacancies." He certainly didn't anticipate Judge Leventhal's death. He simply predicted: "There will be more vacancies, and eventually you will be on that court." I think it was in the spring of '79 that the D.C. panel listed me.

MM: I didn't realize that. I always thought you had been specifically nominated. Well, you obviously were for Judge Leventhal's seat, but I didn't hear that they --

RBG: No. They were going down the list.

MM: Just going down the list?

RBG: The two new seats were authorized, and Pat and Ab took those seats. The next vacancy

occurred when David Bazelon took senior status. Harry Edwards, who had been on the list together with me, got that seat. After that, there was the vacancy resulting from Judge Leventhal's death.

MM: Do you think being a woman had anything to do with getting on that list?

RBG: Definitely.

MM: Yes?

RBG: Carter was the first president in history to make an effort to look for talent where people hadn't looked before. Until his administration, the old-boys' network held sway. It was a pretty good network of top people in top law firms. But President Carter thought there was a lot of talent out there that wasn't being attended to, and so for both women and minorities he made a large difference. I put it this way: Carter changed the complexion of the U.S. courts, although he never had the opportunity to appoint a Supreme Court justice. He made our federal courts reflective of all the nation's talent. He looked for talent in places where people hadn't looked before. After his start, there could be no return to old ways. The appointment of minorities and women to the federal bench slowed somewhat in the Reagan-Bush years, but it certainly didn't stop. Both Presidents, both Republican Presidents, continued to look for and to appoint women and minorities. The Supreme Court is the stellar example. Reagan very much wanted to appoint the first woman to the Supreme Court, and he succeeded admirably.

So Carter changed the old-boys' network, the men's-club atmosphere of the federal courts, and he did it by telling the selection panels: "I want you to look for talent among all of the people of the United States," including law school faculties, public defenders offices, the public-interest bar. I never would have become a federal judge if it hadn't been for, first, the Women's Movement, then Carter's determination that the federal courts would be enriched if highly

qualified people of diverse backgrounds served on the bench.

MM: And did those selection panels go out of existence with the Carter presidency?

RBG: Yes. I don't know what system Reagan used, but he didn't use the merit selection panels.

MM: Has anyone used it again?

RBG: No.

MM: And do you think that that was a good system? Do you think it came up with --

RBG: It was better in some places than in others. In some places there were political aspects to it that were not so nice, but on the whole, I think it accomplished what Carter wanted it to accomplish.

MM: I remember reading a law review article about the appointment of Dick Phillips to the Fourth Circuit that was really very interesting. I guess the evidence isn't yet in as to the difference between the appointments made under that system and the appointments made subsequently to that system, but I'm sure political scientists will be examining that kind of thing in the future.

RBG: Let me interject that Carter had merit selection panels only for the courts of appeals.

MM: Right.

RBG: The district courts were tied in too closely with the senators. Those appointments had always been the senators' prerogative, so Carter encouraged senators to have similar committees of their own, and Senator Moynihan, for example, did. He had a committee of distinguished lawyers aid him in selecting candidates, selecting nominees for the district courts. I think he and D'Amato to this day rely on such committees.

MM: But probably not most of the other senators.

RBG: Probably not.

MM: Had becoming a judge been an ambition of yours?

RBG: Not early on. There just weren't any women one could look to as examples. When I graduated from law school, there was no woman on any federal appellate bench. There had been Florence Allen. She was appointed by President Roosevelt in 1934. She was already retired. Shirley Hufstedler, appointed by President Johnson in 1961, was not yet on the federal bench. So it wasn't a position to which you could aspire. Federal judging wasn't a woman's job until Carter. When Carter became President, there was only one woman at the court of appeals level, Shirley Hufstedler. She became the nation's first Secretary of Education. Carter appointed at least eleven women to courts of appeals and many more women to district courts.

Once it became a real prospect for me, I was very interested, but I never even thought about it as a possibility until Carter became President and made it his mission to enrich the judiciary by including people who were once left out.

MM: And when you did think about it, did you want especially to be an appellate judge rather than a trial judge?

RBG: Yes. I thought by temperament, I was not well equipped to be a trial judge. It takes a certain skill to do that. It's in some ways the most powerful job in the federal judicial hierarchy. A court of appeals judge has no power alone. She must carry at least one other mind to do anything that counts. A district judge is alone in the courtroom for the duration of the trial. We have a final judgment rule, which means that, for the most part, people can't take appeals until the whole case is done, until the district court has disassociated itself from the case. So the district judge sitting alone in the courtroom is like the lord of a fiefdom.

Appellate benches operate differently. It's a collegial process. Appellate judging, I think I may have said at an earlier point in this interview, was best appraised by Carl McGowan, a truly great judge and fine human. Carl said appellate judging and teaching law are more alike than any

other two ways of working in law. The routine of preparing, then having a public encounter — a class for a law teacher, the oral argument for an appellate judge — then returning to one's office for more reading, thinking, and writing. That routine of an appellate judge resembles the law teacher's routine of preparing for class, teaching the class, returning to one's office, preparing commentaries for law reviews. Preparation, reading, researching, a public session, and then more reading, reflection, and writing — that is the regimen for both law teacher and appellate judge. Appellate judging thus seems a life natural and entirely comfortable for me.

MM: Do you think, though, that private practice is good preparation, even for appellate judging? I know people say you need to do it to be a trial judge, I guess.

RBG: It is good preparation, as you suggested. It is, in my view, not indispensable. Some very good judges agree. I once asked Alvin Rubin — who was a fine Fifth Circuit judge and, before that, for many years a trial judge — did he think law firm experience was necessary to the making of a good advocate. His answer was no.

MM: You said a good advocate. Or even a good —

RBG: Or even — even a good —

MM: I meant a judge.

RBG: Oh, or a judge, yes. I think a collegial bench, a court of appeals bench, should represent a mix of experience. So in the collective you have someone who was in a law firm for many years, someone, say, in the D.C. Circuit who was in the legislature, someone who had a position in the executive branch. Our combined experiences makes the court a richer institution than it would be if we were all cut from the same mold.

MM: I think that's important, too. In the end, as you said, you were nominated to Judge Leventhal's seat because of his untimely death. Did you know Judge Leventhal?

RBG: Yes. I knew two people on the D.C. Circuit fairly well, Carl McGowan and Harold Leventhal. Both had strong ties to Columbia Law School. They were very loyal to that law school, and they visited any number of times to give a talk, to judge a moot court.

MM: And did you follow Judge Leventhal's opinions when he was on the court or because you didn't do much administrative law?

RBG: With awe I did.

MM: Right. Yes.

RBG: And I attended to his debate with Judge Bazelon in those years about the best way to instill some discipline, have some control over the administrative process.

MM: So I take it that you were honored to be taking his place on the court.

RBG: I don't like to think about it that way because I couldn't fill his shoes. I had my own strengths and weaknesses, but I was honored to be on a court that had been served by a Harold Leventhal, there's no question about that.

MM: We were very close to him. My husband was his first law clerk. I knew him in the very beginning. He was kind of my mentor in Washington, and helping me with my book on [unclear]. I was very fond of him, too.

Can you describe what the confirmation process was like for the D.C. Circuit position?

RBG: The Department of Justice told me it wasn't necessary for me to do anything once the President put my name before the Senate. I didn't follow that advice. I was told, by the people active in the Women's Political Caucus, particularly Susan Ness, and by Herman Schwartz, who was then working for Senator Metzenbaum, also by John Shattuck, then head of the ACLU's Washington office, that it would be a good idea for me to inform each member of the Judiciary Committee that if a senator wanted to meet with me, I would be glad to visit. And in fact I did

visit most of the senators on the committee. That was important because I had been billed as a flaming feminist. (I am, of course, a feminist, but too many people still don't understand what that term means.) Some of the people on the Committee had a different vision of me than the impression they gained after we spoke. Two people particularly, Susan Ness, then of the Political Caucus, and Judy Lichtman, who headed the Women's Legal Defense Fund, were my introducers. They came with me to meet members of the Judiciary Committee, those willing to see me. I think that made all the difference.

MM: Was there opposition to your appointment?

RBG: Not any real opposition. There was only one negative vote in the Committee, Senator Thurmond. Before the full Senate, I was confirmed by voice vote. Senator Thurmond didn't meet me. He did meet me in connection with my nomination to the Supreme Court. We got along just fine. And he told me a story, I don't remember the details, explaining how it came about that he didn't vote for me the first time.

Now, what did I —

MM: We were talking about opposition to your nomination.

RBG: An organization called United Families of America sent a woman to testify against my nomination. She entered the hearing room in the company of two tall men. She delivered her lines. Senator Metzenbaum chaired my hearing, and he was merciless with her. I spoke to her afterward. If I had another half hour's conversation with her, she might have testified for not against my confirmation. She was a woman who had many of the same experiences I had. I don't know whether that organization was real or was created or pressed into service for the purpose, but it produced the only witness against me.

What made me invulnerable — and this was terribly important. I should have mentioned it

at the very start. The American Bar Association had given me its highest rating. In those days they had an "exceptionally well qualified" rating. That made me invulnerable on the merits. The only thing opponents could do was to stall my nomination so we would get into the situation President Clinton is in right now. He can't get his nominees through because the Republicans are anticipating, perhaps, a victory in the election. That spring of 1980, Teddy Kennedy was the chairman of the Committee. He was running in the Democratic presidential primaries. He was often out of town. Thurmond's mission was to keep me from getting on the Committee's agenda. Once I got on the Committee's hearing agenda, the rest was rapid. But having the ABA's highest rating was the single most important thing, the most important credit I had.

Now, I attribute that rating to a woman in this town. An old-girls' network was in gear with Susan Ness and Judy Lichtman, and probably most vital, Brooksley Born. Brooksley was then a member of the ABA's Judiciary Committee. She later became its head. In 1980, she was the D.C. representative for the ABA Judiciary Committee. She conducted the interview with me for the ABA Committee and, I think, carried the brief for me into the room when the Committee gave me its "exceptionally well qualified" rating.

MM: That's very good. Did you prepare, or how did you prepare for these meetings or your confirmation hearing at the Senate?

RBG: I didn't prepare for the meetings, except to this extent. I read up on each of the senators so I would be able to say something nice about the state or something the senator had done. To be totally honest about my hearing itself, hearings for court of appeals nominees are not like hearings for Supreme Court nominees. The Committee must have been very busy in the spring of 1980. I was asked to submit questions that might be put to me during the hearing. [Laughter] So of course I was prepared with answers. [Laughter]

MM: You were prepared. That's a good system. My next question was going to be a little bit more complicated, about your feelings about the process and how it does compare or did compare to what you went through subsequently as a Supreme Court nominee. But I think I'd better change the tape.

RBG: Okay.

[Begin Tape 4, Side 2]

MM: Okay. Before I changed the tape, we were talking about the confirmation process, and I wanted to ask you how the process for your nomination for the court of appeals compared to the process when you were nominated to the Supreme Court.

RBG: For the court of appeals, once I was voted out by the Committee, the rest was *pro forma*; it was going through the motions. For the Supreme Court, there's been a large change since pre-television days. I can explain it this way. When President Clinton nominated me, the former Chief Justice, Chief Justice Burger, who had served on the D.C. Circuit, came to my chambers to congratulate me. Wasn't that a lovely thing for him to do. He said: "Ruth, let me tell you about my hearing in 1969. It lasted no more than an hour."

And I said: "Chief, one word explains the difference; the word is television." Senators like to be in touch with their constituencies. Hearings offer them free television time, so they can hardly pass up the opportunity to have a public show. Now, I think it's good to have a televised hearing for a Supreme Court nominee, but I also think the hearing could easily be compressed into one day. It does not have to go on for a week. I think it's good for the nominee to have the experience of responding to questions hour after hour. After all, for the rest of my life I will be

asking the questions. You will never forget, once you've had those lights trained on you and you've been sitting for hours in your chair below the interrogators answering questions, what it feels like to be on the receiving end of questions. Also, we are appointed to a life-tenured position. There is a tremendous amount of authority in what the Court does collectively. There ought to be some time when you are subject to the judgment of the people of the U.S. And also it gives the nominee a chance to think out her positions on things and try to be almost an advocate for what she believes about the sound development and administration of the law. So although I thought the process went on much too long, in retrospect I'm glad there was a process and that I had that opportunity to have conversations in public with the members of the Committee.

MM: What do you think about having a hearing for a court of appeals nomination? You said you were asked to write your own questions. So one would say, "Why bother?"

RBG: And it was not a hearing just for me. There were two court of appeals nominees and six district judge nominees on that same day. As I remember, there was no television for that hearing. It is mainly a ceremony, seldom a newsworthy event.

MM: I just wondered if you thought it served any useful purpose, the personal appearance. You know, in the old days, of course, there was not even a personal appearance. It has nothing to do with TV, but, as we know, the Senate decided on nominees without ever seeing the person face to face. Do you think it serves a healthy purpose to at least have you appear for a few minutes, meet the committee as a whole?

RBG: It may serve a purpose in affording opponents of the nominee an opportunity to speak. But for the nominee herself, I doubt its utility. Only two senators attended my hearing, Senator Metzenbaum, who chaired the hearing, and Senator Dole, who was the Republican presence. Yes, there should be a way people who have things to say about the nominee can be heard. But,

that doesn't necessarily have to take the form of a hearing. Still, if the hearing has any non-ceremonial purpose, I'd say it is to give people a chance to say why this person should not be appointed.

MM: Did Senator Dole ask you any questions?

RBG: No, but he did ask to have the record held open on me indefinitely because I was a "controversial candidate." I was surprised when told about that (I had left the hearing room before he made the request). We had gotten on fine when we met. Later, I was informed that Senator Dole had no design to hold up my nomination. He even commented, so my informant said: "Of course I'm going to vote for her. She's just like my wife."

MM: That was nice. Actually you live in the same place. Now, are you friends? I mean, do you see them?

RBG: We meet at the swimming pool occasionally, and at the elevator. Bob Dole offered me a ride to the Court during last winter's blizzard. He invited everyone in Watergate South a few years ago to a Christmas party held at his offices in the Senate. He's a very good neighbor.

MM: Was that first time you had met him, when you had your confirmation process?

RBG: Yes, when I was nominated to the D.C. Circuit, yes.

MM: Well, that's nice. Before we move any further on the court, I was curious to know what you thought about moving to the District of Columbia, because you said you applied to both circuits and at that time you probably would have preferred to stay in New York. What did you think about moving?

RBG: First I had misgivings. I had lived all my life in New York. It's a very lively town, and I thought there was no other place I could live as happily. After I spent six months living in D.C. and went back to New York for the first time, I felt assaulted by the noise, put off by the dirt, I

couldn't understand how I had coped with it all those years. By the third day on that return visit, I was as oblivious as I had been before.

What I found in D.C. was that life was less hectic, things were easier to manage. There wasn't the same variety in theater or music, but what there was was much more accessible. You didn't have to line up the moment Mostly Mozart was announced to get tickets, for example. At Kennedy Center concerts, generally you could get tickets, perhaps not the best in the house, but tickets the day before, for performances you wanted to attend. My son, who was fourteen when we moved here, became a super in the Washington Opera for Menotti's production of Cenerentola, , something he could not have done at the Met, where the list of would-be supers is so long. My daughter made an interesting observation. She said: "If you had moved to D.C. when you were in your twenties or thirties, you might not have liked it so much, but you moved in your middle forties, and then you were ready for a calmer life." There may be some truth in that.

MM: You moved at a good time, too, because the Kennedy Center was here. That made a big difference.

RBG: We live right next door to the Kennedy Center. What a joy that is for me. Marty and I don't argue about too many things, but one thing we constantly argue about is time. He likes to be early, doesn't mind being the first one there. I'm generally on time but barely, and don't mind being the last one. So with the Met and Lincoln Center across town, I finally got to the point of saying: "Take your own taxi. I will meet you there. I won't miss the curtain, but I can do without anxiety on the way." And here we are literally five minutes away from the curtain.

MM: That is very convenient. That's really nice. Well, I think you became a judge in July of 1980. Is that when you took your judicial oath?

RBG: In fact, in June 1980. I was sworn in in Skelly Wright's chambers. He was then Chief

Judge of the Circuit.

MM: And is there any kind of ceremony, I mean aside from the swearing-in? Did the court welcome you in any kind of way?

RBG: I didn't have a swearing-in ceremony because I had reservations about being sworn in twice. For the job, I now hold, I was sworn in three times (in the Chief Justice's chambers, at the White House, and in the Courtroom, in chronological order). At the D.C. circuit I was sworn in privately in Skelly Wright's chambers, so I could begin work immediately in mid-June. Then we had a welcoming ceremony at the court in September, after the summer, when people were back in town. I didn't take a second oath at that ceremony. I did have my commission read by a dear friend, then an Assistant Attorney General heading the Tax Division at Justice, M. Carr Ferguson. And Gerry Gunther, friend and great constitutional law scholar, make remarks. But we called the event a welcoming ceremony rather than an investiture.

MM: And that's for anyone who came on the bench?

RBG: No, I was the only one during my years at the D.C. Circuit who didn't take the oath twice. Others were sworn in in the Chief's chambers and later had a formal oath-taking.

MM: Do you think that when you take that oath, judges should give up their political views for which they were chosen when they were appointed?

RBG: I don't see how you give up what you are or what you believe. On many questions the difference between being a judge and being a legislator is apparent. What I would vote for in Congress is not necessarily what I will decide in a judgment for the Court. I understand the difference in those roles. But judges don't come to the bench — shouldn't come to the bench with an empty mind. There's a difference between a mind that is not closed and one that's empty. A judge's mind should not be closed. But, of course, we come to the bench at ages pretty close to

fifty. We have ideas formed through a lifetime of studying, learning, and observing. And we don't, we shouldn't, try to erase those ideas from our minds.

MM: Do you remember any case where the law led you to decide one way but your personal predilections were so strongly the other way that they would have led to the opposite decision or the opposite result?

RBG: That's true in every death penalty case in which I have participated.

MM: Really?

RBG: I'm part of a collegial court. I respect the precedent of this Court, and as long as I'm going to operate as a member of the Court, I have to accept that control. I can help qualify a precedent that's in need of reshaping, but I am not a royal queen. I don't have the prerogative to reject prior decisions of this court simply because I disagree with them. The fidelity all nine of us owe to the law, to the precedents of this Court, require us to decide things as judges that we would not decide if we were king and queen.

MM: When you got to the court of appeals, what was the atmosphere like there?

RBG: Stimulating. We had a truly wonderful man in Carl McGowan. I said many times that that D.C. Circuit had no king, but it did have a prince. Carl McGowan was that prince. He was so liked and respected that people who might otherwise have been what I call "prime dons" tended to behave in his presence. He was everything a good judge should be. He was my constant advisor on the court. He never tried to give me unsolicited advice, but he was always there when I needed a sage counselor.

I was surprised to learn that the people who might have been regarded as closest politically were not the closest socially. For example, David Bazelon and Skelly Wright were not close friends. Skelly Wright's best friend by far on the D.C. Circuit was Ed Tamm, who, in his

former career, had been second-in-command to J. Edgar Hoover.

MM: Right.

RBG: People's affinities for each other did not divide along party lines, and that somewhat surprised me. Republican appointee, George MacKinnon, was not a particularly close friend of Roger Robb or of Malcolm Wilkey, both Republican appointees. So there were no tight alliances based on party affiliation or which President made the nomination.

MM: But did you feel any special affinity with the Carter appointees? Of course, you were relatively new.

RBG: I knew Harry Edwards. We were both in the law teaching business. I knew and liked Harry from the first time we met. I was closer to Harry than to the other Carter appointees. David Bazelon was proud of Carter's appointments, and he regarded us all as his children in some way. He would take us along for lunch, one or two at a time, at the warehouse of the District's largest liquor distributor, a man well into his 90's, Milton . . . .

MM: With a K.

RBG: Kronheim. David Bazelon would call and say: "Ruth, we're going to Kronheim's for lunch today." He wouldn't say: "Would you like to go?" He'd just say: "We're going, and we'll pick up Bill Brennan on the way," or, "We will stop for Thurgood on the way."

MM: And by the time you got on the court, Judge Bazelon had taken senior status.

RBG: Yes, he had taken senior status leaving the vacancy that Harry Edwards filled, but he was still a participating member during my early years on the court.

MM: And did you have any feeling about how the court as an institution treated women appointees?

RBG: They were learning. Pat Wald was the first woman appointed to the D.C. Circuit. She

was appointed some nine months before I was. The first woman ever appointed to any district court was Burnita Shelton Matthews. She served on the District Court for the District of Columbia. She was appointed by Truman in '49, I think. When she took senior status, June Green was appointed. But there had been no women on the court of appeals, and the men were not accustomed to dealing with women as judging colleagues. That showed up in various ways, sometimes in a protective way.

I recall a day when Judge MacKinnon was presiding and I asked a question. The other judge sitting with us asked a question on the heels of mine and the lawyer proceeded to answer that second question. Judge MacKinnon admonished the lawyer: "Answer Mrs. Ginsburg's question. She asked you first, and you haven't answered her question." My reaction to that, although I said nothing in the courtroom, was: "I can fend for myself. I don't need this man to tell the lawyer he should answer my question."

Particularly remarkable was a time when Skelly Wright chaired a committee to choose a new chief staff counsel. Pat Wald and I completed the committee. The First Circuit had recommended their then-chief staff counsel, Judy Norris. She had done the job there very successfully for some years. She had two grade-school age children. Skelly, when we met to decide on the person to whom we would make the offer, said: "She is very good, but she has two children in grade school. Can we really count on her?"

Nonplussed by his question, I said: "Skelly, Pat has five children and I have two, and you're asking us that question?"

He said: "Ruth, you don't have any children."

I reminded him: "Skelly, you've met my daughter and son."

Well, he had pegged us. Pat was Wonder Woman. He knew about her. She had been

very prominent in public interest work in the D.C. area. She was Wonder Woman. And I was Ruth Ginsburg, lawyer, advocate, unencumbered by children. That was his vision, the vision of a judge known to be most "liberal."

Now and then I heard comments from my colleagues about women who argued before the court in a soft voice. A colleague might say: "I could hardly hear what she was saying." So every time a guy spoke softly, I made sure to bring that out: "I could hardly hear what *he* was saying." There was also a tendency to notice the clothes women arguing before the court wore. So I now and then commented: "Wasn't that a colorful tie?" or, "Do you think it was appropriate to wear a tie like that to court?" Learning experiences were needed for judges not accustomed to dealing with women as peers. They were accustomed to dealing with women as wives and daughters and secretaries. I regarded it as a challenge, and I think the level of understanding increased over time. The respect accorded women as judges and lawyers, it seemed to me, increased noticeably during my days on the D.C. Circuit.

MM: Did you see a difference when you got here? You were the second woman in the D.C. Circuit and the second woman here.

RBG: Yes. And the second woman at Rutgers. Sandra Day O'Connor had been here alone for twelve years when I was appointed. An amusing sign of the change. There was a priority renovation job ordered for our robing room to mark my appointment. The Court installed a women's bathroom equal in size to the men's. Before my appointment, there was only one bathroom, the men's bathroom. Sandra would have to return to her chambers if need be. The women's bathroom indicated that, yes, women are here to stay. The Court made an alteration anticipating a Court with at least as many women as men.

MM: Do you think that this Court had more difficulty dealing with women as colleagues? Do

you have any feeling about that? Of course, it changed over time dramatically, I guess.

RBG: I remember the card I was given for the *Frontiero* argument. It said: "Mrs. Ginsburg." Some of the students who came to the argument with me inquired: "Aren't you going to object to that? Don't you call yourself Ms.?"

I answered: "I'm not going to do one thing that might distract the Court from what I'm saying. If they want to list me as Mrs., just like the *New York Times*, so be it." Change would come, even for the *Times*, but it was best left for another day.

Comments were sometimes made that would not have been made at that time in a racial context. For example, at the very end of my argument in *Duren v. Missouri*, in 1979, then Justice Rehnquist said: "So you won't settle for Susan B. Anthony's face on the new dollar?" (A silver dollar then recently coined bore the great suffragist's image.) Things like that would not be said today.

Time was on the side of change. Several men on this Court had daughters. They were experiencing in their own lives the change in attitudes about what women should be doing.

MM: When you started out at the D.C. Circuit, did you have any training? Were there any programs for appellate judges?

RBG: The Federal Judicial Center was just starting up its programs. The Center ran them regularly for district judges but not routinely for Court of Appeals judges. There weren't as many new appeals court appointees. I just missed the class that Pat Wald, Ab Mikva, and Harry Edwards had attended. There wasn't another class for appellate judges until I was well into my third year on the D.C. Circuit.

MM: Really?

RBG: And by then I could have joined the faculty. I didn't need to go to attend the class. But I

did. The Center's programs for new judges run for a week; they are in part social and in part learning experiences. They give the new judge an opportunity to talk to other people doing the same job. The new judge gains an understanding that the problems he or she is encountering are seldom peculiar to that judge, that he or she has lots of company. I think the Federal Judicial Center programs, their judicial education programs, are very good, but for me the class too late to aid me as a starting-out judge.

MM: What did they teach you?

RBG: They brought you up to date with developments in various areas of substantive law. They dealt with procedure, and with ethical questions. Just this year I attended dinners at the Court for two district judge classes. The Center arranges a dinner at the Supreme Court at the end of the class week.) The sessions may be more important for district judges because, unlike court of appeals judges, when I spoke to the new judges they sit alone, some of them in remote parts. I sensed that the Center's class made them feel themselves part of a judicial corps of people who take their jobs very seriously and are devoted to serving the public and the country.

MM: Can you remember any of your experiences in that first year? You've told me you had no training, so you entered cold, so to speak. And obviously you had some experience as an advocate, but was it very different and difficult being a judge?

RBG: I recall the first large environmental control case on which I sat. It had something to do with lime scrubbers and dirty coal. It was familiar fare for the D.C. Circuit -- a rulemaking by an agency, the agency in the middle challenged on one side by the industrialists for making the rules too strict, and by the environmentalists on the other side for making them too lenient. There were umpteen challenges. I found the case intimidating. The other panelists were Roger Robb and Pat Wald. Pat wrote a book-size opinion in that case. It took me an enormous amount of time just to

understand what was going on. Of course, they're all not like that. The docket included many single-issue criminal cases one could read and decide without great mental strain.

I remember too my first *en banc*. Skelly Wright assigned to me responsibility for the full court's majority opinion. My decision was reversed by this Court, but Justice Stewart, who wrote the opinion for the Supreme Court, accepted a significant part of my reasoning. I wrote for the court in another memorable case on standing to sue for race discrimination, *Wright v. Regan*. Again, my decision was reversed by the Supreme Court, a fate not entirely unanticipated.

MM: I hope that we'll talk about that in greater depth as we go on. I was just sort of curious as to whether there were any strange experiences, being a new judge, when you come into court, if you do the wrong thing.

RBG: As I mentioned earlier, being an appellate judge is very much like being a law teacher, so I didn't have the great wrench that people like Ab Mikva, for example, had. He had been a legislator, a member of Congress for many years. He was accustomed to a daily routine of going to this meeting at this time, that meeting at that time, a lunch appointment in between, time off for the gym, constantly moving and doing. I had a sedentary job as a law teacher. There wasn't any large change in the routine of my life, not the kind of change there would be for someone who'd been in private practice, or in Congress, for example.

MM: Did you form a close personal relationship with any of your colleagues on the court of appeals?

RBG: I have a close personal relationship with Judge Edwards. My relationship with Judge Bazelon was different — he was more of a father figure. I traveled with Skelly Wright to England for a conference at a manor house outside London. We got to know each other better on that trip. I retain to this day a friendship with Malcolm Wilkey. In part, that friendship stemmed from

proximity. When my chambers were on the third floor of the D.C. Circuit Courthouse, Judge Wilkey's chambers were next to mine. And I liked his wife Emma very much. I visited them when Malcolm was our ambassador to Uruguay. Every time he comes to D.C., he at least calls me, and more often than not we see each other. Malcolm and I were on opposite sides of "political questions," but we liked each other.

Who else was on the D.C. Circuit? There wasn't a colleague I didn't like. Nino Scalia is an especially treasured friend. He can make even the most sober judge laugh. I enjoyed most of my colleagues, and there wasn't one I positively didn't like.

MM: There was no McReynolds [phonetic] on your courts? [Laughter]

RBG: No. Far from it.

MM: Did you have much interaction outside the courtroom in the D.C. Circuit?

RBG: Not as much as we do here.

MM: Really?

RBG: This is a much more social, much more collegial court than the D.C. Circuit. For one thing, the judges in the D.C. Circuit didn't eat lunch together. Here every day that we sit, every day that we confer, we have lunch together. For another thing, there weren't that many functions at which D.C. Circuit judges were expected to put in an appearance. Here, well, we all go en masse to the State of the Union. We go in twos and threes to other events. Justice Breyer and I went together to the Mandela joint session. (I went alone to the one for Rabin and Hussein.) Justice O'Connor and I have gone to innumerable Women's Bar Association and other events together. We have musicals at the Court, birthday parties, even wedding receptions. Justice Scalia and I have been supers together at the Washington Opera. Justice O'Connor and the Chief have been bit part players with me at the Shakespeare Theater.

So there's much more collegiality here than there was on the D.C. Circuit. Part of the scene was the absence of a place where the court of appeals judges had lunch together. There was a lunchroom, a judges' dining room in the building, but it was mainly used by the district judges. There might be a sudden silence when a court of appeals judge joined the district judges' table. They might have been discussing the dull, insensitive, intemperate, wrong-headed decision handed down by Panel XYZ that day. So there is a lot more collegiality here than there.

MM: I was also wondering whether you had much to do with the district judges, because you were all in the same courthouse there.

RBG: Yes, but largely on an individual basis. I so liked Joyce Green. We became good friends, not because she was a district judge and I was on the court of appeals. We were just in close proximity and liked each other. I didn't have a similarly close relationship with any other district judge. One facet of the work, in this Court we sit together, all nine of us, all the time. At the D.C. Circuit there was a constantly changing panel.

MM: As a court of appeals are there any occasions that as an institution you meet with the district court bench?

RBG: There's a Judicial Council. In the early days the Council included all of the judges of the court of appeals and only those judges. Later, some district court judges were included. Now it's more balanced. The Council has some court of appeals judges and some district judges. Council meetings were held perhaps twice a year, that's all, as distinguished from our conferences here, which take place most Fridays during the sitting season. In a sitting week we generally meet on Wednesday as well as Friday.

MM: And do you think the court of appeals having to sit in judgment on district court judgment made it difficult to have a personal relationship with those judges?

RBG: No. I don't think so. It didn't affect my relationship with Joyce Green. And I never felt, if a decision of mine were reversed by this Court, as not uncommonly happened, that the reversal reflected adversely on me. The cases this Court hears are inevitably cases where there's a division of opinion. There's rarely only one clearly right answer.

MM: By my count on that list, you served with twenty-two other judges, which is quite a bit more than you're doing at the moment here, and I wondered if there's anything you'd like to say about any of them. I don't want to know their legal opinions in a particular case, but maybe something about their style of judging or you remember some particular anecdotes about any of them that you'd like to tell us about.

RBG: I mentioned Carl McGowan above all others. If you read his opinions, you will understand why. He was a beautiful thinker, and there was never any question about how he reached the decision he did. You could agree with him or disagree with him, but he was totally clear and honest about his reasoning process. So I had extraordinary respect, admiration, and fondness for him.

I enjoyed Nino Scalia when he was on the D.C. Circuit. I enjoy him now because he is such good company. No matter how harsh his opinion criticizing your opinion may be, you can't be mad at him very long, because he's so charming, winning, and amusing.

MM: And he was the same way on the Court of Appeals?

RBG: He's always that way.

MM: Really?

RBG: I first met him when he was a law professor.

I might also speak of Judge Bork, who has an extraordinarily bright mind. He was my next-door neighbor at the D.C. Circuit Courthouse for a while. I liked Bob very much, and I

cared very much about his daughter Ellen. I try to stay in touch with her to this day. She and I had an experience in common. Her mother died when she was about the age I was when my mother died. What happened to Bob was tragic, it will deeply affect and wound him as long as he lives. There's something I don't mind saying for the record. I think more than anyone else, President Reagan is responsible for what happened to Bob Bork. When there was a Republican majority in the Senate, President Reagan nominated not Bob Bork, but Nino Scalia. Bob Bork was older, he'd been on the D.C. Circuit longer. If he had thought about how these two candidates would fare before the Senate, he would have appreciated that it would be very hard for anyone not to love Nino. He's just that charming. But Bob's personality is different. So the big chance for Bob Bork was when there was a Republican majority in the Senate. He wasn't nominated then. When he was nominated, he faced a Democratic majority.

MM: Well, I think this is a good time to stop. It's quite late, almost 7:30 in the evening. And so we can take this up again, and you think about anecdotes about your colleagues, any that you might want to.

RBG: That's next year, right?

[End of interview]