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Ruth Bader Ginsburg: The First Jewish Woman on the United States Supreme Court

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ESSAY

RUTH BADER GINSBURG: THE FIRST JEWISH WOMAN ON THE UNITED STATES SUPREME COURT*

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> *I am . . . a first-generation American on my father's side, barely second generation on my mother's. Neither of my parents had the means to attend college, but both taught me to love learning, to care about people, and to work hard for whatever I wanted or believed in. Their parents had the foresight to leave the old country, when Jewish ancestry and faith meant exposure to pogroms and denigration of one's human worth.*[1]

Ruth Bader Ginsburg is the first Jewish woman (and only the second woman) appointed to the United States Supreme Court. Although not a religiously observant Jew, she is clearly very conscious of her Jewish roots, as evidenced by the statement quoted above, and by her reply to Senator Edward Kennedy at the confirmation hearings. When he suggested that her personal experience and pioneering work with gender discrimination would also sensitize her to racial discrimination, she said:

> Senator Kennedy, I am alert to discrimination. I grew up during World War II in a Jewish family. I have memories as a child, even before the war, of being in a car with my parents and passing a place in [Pennsylvania], a resort with a sign out in front that read: "No dogs or Jews allowed." Signs of that kind existed in this country during my childhood. One couldn't help but be sensitive to discrimination, living as a Jew in America at

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[1] *Nomination of Ruth Ginsburg, to be Associate Justice of the Supreme Court of the United States: Hearings Before the Senate Comm. on the Judiciary*, 103d Cong. 49 (1994) (statement of Ruth Bader Ginsburg) [hereinafter *Hearings*].

the time of World War II.[2]

Prior to her appointment to the Court she was a member of the American Jewish Committee, the National Commission on Law and Social Action of the American Jewish Congress, and served on the Board of the American Branch of the International Association of Jewish Lawyers and Jurists.

I first heard about Ruth Ginsburg in my third year at Columbia Law School, when Professor Gerald Gunther invited me to his office to discuss the possibility of a judicial clerkship. Professor Gunther told me that, based on my record, he would recommend me to Justice Felix Frankfurter of the United States Supreme Court, but added that when Ruth Ginsburg was recommended to Justice Frankfurter two years earlier, Justice Frankfurter had replied that he would not be the one to break the tradition of male clerks only.[3]

I met Ruth Ginsburg about a year later, as I was starting and she was completing a clerkship with Judge Edmund L. Palmieri of the United States District Court for the Southern District of New York, one of the few federal judges who hired female law clerks at that time. Her ability and tact became evident very quickly. It was

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2 *Id.* at 49-50.

3 Professor Gunther nevertheless offered to write to Justice Frankfurter on my behalf, but I told him that I saw no point in his doing so.

There is a sequel to the story, however. When I interviewed with Judge Bazelon of the D.C. Circuit Court of Appeals, with whom Professor Gunther arranged an interview for me, he asked why I was not interviewing with a Justice of the Supreme Court and I related what Professor Gunther had told me. Judge Bazelon said that Justice Frankfurter was a good friend of his and asked whether I would like to meet Justice Frankfurter. I, of course, replied that I would. Judge Bazelon called Justice Frankfurter's chambers, but Justice Frankfurter had already left for lunch, and Bazelon suggested that I return in an hour. I did, and Bazelon again called Frankfurter, but he had not returned from lunch. Bazelon suggested that I return in another hour. I did so, but Frankfurter was still not in his office. This continued for several hours. When Bazelon finally reached Frankfurter at about 4:00 p.m., Frankfurter told him that since he had already taken a very long lunch he could not meet me that day, but if I was staying overnight, he would meet me the following morning. Judge Bazelon inquired whether I was staying overnight. I had come to Washington from New York by car with several classmates who were interviewing with other judges and did not have enough money for a hotel and train fare back to New York. I asked my colleagues, but between us we still did not have enough money. This was before the advent of credit cards, and I felt that I could not ask Judge Bazelon, whom I had just met, to lend me the money, so I told him I was not staying overnight. I have since been told that Judge Bazelon was such a gracious man that had I told him of my predicament, he would not only have lent me the money for train fare, but would have invited me to spend the night at his home. While it is unlikely that Justice Frankfurter would have changed his mind on appointing a woman—there was a slight possibility—but, quite apart from that, I have always regretted that I missed the opportunity to meet Justice Frankfurter.

motion day and Judge Palmieri was about to rule on a motion that had just been argued. Ruth sent him a note, asking whether he could reserve decision because she thought there was a United States Supreme Court case on point. She was, of course, right. There was a Supreme Court decision that was dispositive and that, amazingly, neither lawyer had mentioned.

Years later, I learned from Professor Gunther that even though Judge Palmieri was impressed by Ruth Ginsburg's record, he was very reluctant to appoint her as his clerk, and did so only after a great deal of urging by Gunther, who knew him personally, and after receiving a male student's written promise that if the appointment of Ginsburg did not work out he would leave his law firm job to take over the clerkship. That, of course, was not necessary. Palmieri was delighted[4] with her work and they remained lifelong friends.

Ruth Bader Ginsburg was born on March 15, 1933 in Brooklyn, New York, the child of Jewish immigrants. Her father came to the United States from Russia when he was thirteen. Her maternal grandparents came to the United States from a small town near Cracow, Poland, arriving just four months before her mother's birth. Neither of her parents had the financial means to go to college. Her father worked as a furrier and later in a men's clothing store.

One of Ruth's earliest memories was of going to the public library with her mother; these trips imbued her with a desire to read and a love of learning. She also remembers her mother shopping for bargains to save money for her college education. Although her mother did not work outside the home, she impressed upon Ruth the need to be independent and to develop her own ideas to the fullest.[5] It was her mother who most influenced her life. "I think of her often when I am in challenging situations that compel a top performance."[6] She wore her mother's pin and earrings when arguing cases before the Supreme Court because, she thought, her mother would have liked that. Her mother, she said in her acceptance speech in the Rose Garden, was "the bravest and strongest person I have known, who was taken from me much too soon. I pray that I may be all that she would have been had she lived in an age when women could aspire and achieve and

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4 Judge Palmieri was so pleased with Ruth Ginsburg as his clerk that he appointed another woman clerk—the author of this Essay—to follow her.

5 *See* ELINOR PORTER SWIGER, WOMEN LAWYERS AT WORK 55 (1978).

6 *Id.*

daughters are cherished as much as sons."[7]

Ruth attended P.S. 238 and Madison High School in Brooklyn, New York. She edited the high school newspaper, *The Highway Herald*, wrote articles on the Magna Carta and on the Bill of Rights. She was also an active member and treasurer of the "Go-Getters," a pep club for the sports teams, wore its black satin jacket, sold tickets to football games and other functions, and chipped her tooth twirling a baton when Madison played Lincoln High School.[8] Her high school years were marred, however, by her mother's struggle with cancer. In June, 1950, one day before Ruth's high school graduation, at which she was to speak, her mother died.

Upon graduation from high school, Ruth received various awards and a New York State scholarship. She entered Cornell University, which provided additional financial assistance. Ruth also worked part-time at clerical jobs to earn extra money.[9] At Cornell, she majored in Government and credits Professor Robert E. Cushman, with whom she studied and for whom she worked as a research assistant, with arousing her interest in a career in law.[10] It was, she said,

> the heyday of McCarthyism [and Cushman defended] our deep-seated national values—freedom of thought, speech and press. . . . The McCarthy era was a time when courageous lawyers were using their legal training in support of the right to think and speak freely. That a lawyer could do something that was personally satisfying and at the same time work to preserve the values that have made this country great was an exciting prospect for me.[11]

She credits another professor at Cornell, Vladimir Nabokov, with influencing her reading habits and writing style. "He loved words . . . the sound of words. . . . Even when I write an opinion, I will often read a sentence aloud and [ask] 'Can I say this in fewer words—can I write it so the meaning will come across with greater clarity?'"[12]

Ruth graduated from Cornell with high honors in Govern-

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[7] *The Supreme Court: Transcript of President's Announcement and Judge Ginsburg's Remarks*, N.Y. TIMES, June 15, 1993, at A1 [hereinafter *Transcript*].

[8] *See* ELEANOR AYER, RUTH BADER GINSBURG: FIRE AND STEEL ON THE SUPREME COURT 16 (1994).

[9] *See* SWIGER, *supra* note 5, at 56.

[10] *See* LYNN GILBERT & GAYLEN MOORE, PARTICULAR PASSIONS 156 (1981).

[11] *Id.*

[12] AYER, *supra* note 8, at 21 (internal quotations omitted) (quoting Jeanette Friedman, *Ruth Bader Ginsburg: A Rare Interview*, LIFESTYLES, Mar. 1994, at 12).

ment and distinction in all subjects and was elected to Phi Beta Kappa.[13] In her freshman year at Cornell, she met Martin David Ginsburg, whom she married in June 1954, shortly after her graduation. Martin, who had been a year ahead of her at Cornell, had just completed his first year at Harvard Law School when they married. Although she, too, was accepted by Harvard Law School, they moved to Fort Sill, Oklahoma, where Martin was sent by the Army.

Ruth took a job with the Social Security office in Lawton, Oklahoma. When she disclosed that she was pregnant, her superior decided that she could not travel to a training session required for the position for which she had qualified and gave her a lower position at less pay. On July 21, 1955, she gave birth to a daughter, Jane, now a professor of law at Columbia Law School and a leading authority on copyright and trademark law.

The following year, Ruth started Harvard Law School. There were only nine women in a class of 500. At a dinner he hosted for the women students, Dean Erwin Griswold asked each to explain how she justified taking a place in the class that would otherwise have gone to a man. A room in the Lamont Library was closed to women, making it impossible for Ruth to get a periodical she needed to do a cite-checking assignment for the *Law Review*. Professors sometimes called on women students "for comic relief."[14] Even though she was married, had a small child, and took notes for her husband's classes as well as her own while he was seriously ill, she succeeded in getting elected to and carrying on her work for the *Harvard Law Review*.

In 1958 Martin graduated from Harvard Law School and accepted a position with a prominent New York law firm. Ruth transferred to Columbia Law School, where she was also invited to join the *Columbia Law Review* and tied for first in the class.[15] Based on her outstanding record, Professor—later Dean—Albert Sacks of Harvard Law School recommended her as a law clerk to Justice Frankfurter, but he was not willing to take a woman. In-

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13 *See* PUBLIC AFFAIRS OFFICE, U.S. SUPREME COURT, RUTH BADER GINSBURG, BIOGRAPHICAL DATA (1993); Ruth Bader Ginsburg, Biographical Data Sheet (1993) (on file with Public Affairs Office, U.S. Supreme Court).

14 GILBERT & MOORE, *supra* note 10, at 158.

15 Harvard Law School refused to give her a degree, as is routinely done nowadays for a student who transfers after the second year. However, Columbia Law School gave her a degree, even though she had only studied at Columbia her last year. Years later, when she had become prominent, Harvard offered to give her a degree, on condition that she give up her Columbia degree. She declined to do so.

deed, notwithstanding her impressive credentials, she had great difficulty getting any job. "Not a single law firm in the entire city of New York," she said, offered her a position.[16] As Ruth explained in a recent interview: "In the fifties, the traditional law firms were just beginning to turn around on hiring Jews . . . . But to be a woman, a Jew, and a mother to boot, that combination was a bit much."[17] Finally, through the efforts of Professor Gerald Gunther, she was hired as a law clerk by Judge Edmund L. Palmieri.

Following her clerkship with Palmieri, Ruth did have law firm offers, but decided to join the Columbia Project on International Civil Procedure. The purpose of the Project, financed by the Carnegie Foundation, was to do basic research on foreign systems of civil procedure and to study and propose improvements of U.S. rules on transnational litigation. Professor Hans Smit, originally from Holland, with law degrees both from Amsterdam University and Columbia, joined the Columbia Law School faculty to direct the Project. Truly egalitarian, he not only appointed women to work on the Project,[18] but also paid them and the men the same salary that men were being paid at the major law firms. Ruth learned Swedish and worked in Sweden with a judge on a book on Swedish Civil Procedure, for which she was later awarded an honorary doctorate by the University of Lund.

When she completed work on the Project and indicated her interest in pursuing an academic career, Professor Hans Smit urged her appointment to the Columbia Law School faculty, but to no avail. On the recommendation of Professor Walter Gellhorn, a member of the Columbia faculty and, at the time, the President of the American Association of Law Schools, Ruth accepted a position at Rutgers, one of the few law schools willing to accept women on its faculty at that time. She served on the Rutgers faculty from 1963 to 1972.

While at Rutgers, Ruth became pregnant with her second child. Afraid that if the pregnancy were discovered she might lose her position, she concealed it by wearing loose-fitting clothes borrowed from her mother-in-law. The Ginsburgs' second child, a son, whom they named James, was born in September 1965, shortly before the fall semester began.

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16 Margaret Carlson Washington, *The Law According to Ruth*, TIME, June 28, 1993, at 38.

17 GILBERT & MOORE, *supra* note 10, at 158.

18 Ruth Ginsburg and the author of this Essay.

It was at Rutgers that Ruth first became involved in women's rights. In the late sixties, sex discrimination complaints began "trickling" into the New Jersey affiliate of the American Civil Liberties Union ("ACLU"). They were referred to her, Ginsburg said, "because, well, sex discrimination was regarded as a woman's job."[19] Her students prodded her "to take an active part in the effort to eliminate senseless gender lines in the law"[20] and she was inspired to do so by the women referred to her by the ACLU. In 1971 the Supreme Court decided *Reed v. Reed*,[21] unanimously overturning a state law that gave men preference over women for appointments as administrators of decedents' estates. Although Ginsburg did not argue the case, she was the principal author of the brief. Following the *Reed* victory, the ACLU voted to establish a Women's Rights Project, and Ginsburg became its co-director. Columbia finally offered her a position, and in 1972 she became the first tenured woman on the Columbia Law School faculty.

Ruth Ginsburg divided her time between Columbia and the Women's Rights Project. From the numerous sex discrimination cases brought to the Project, she carefully selected those that raised issues she considered "ripe for change through litigation."[22] These were mainly employment-related cases that, in her words, "lent themselves to the strategy of sequential presentations leading to incremental advances."[23]

The Supreme Court had interpreted the Equal Protection Clause of the Fourteenth Amendment to require strict scrutiny of laws that draw a distinction based on race.[24] Ginsburg argued that laws that draw a distinction based on gender should also be subjected to strict scrutiny. The problem, as she explained at her confirmation hearings, was that while "race discrimination was imme-

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19 GILBERT & MOORE, *supra* note 10, at 153.

20 *Id.*

21 404 U.S. 71 (1971).

22 Ruth B. Cowan, *Women's Rights Through Litigation: An Examination of the American Civil Liberties Union Women's Rights Project, 1971-1976*, 8 COLUM. HUM. RTS. L. REV. 373, 392 (1976).

23 *Id.* at 393.

24 In determining whether a statute violates the Equal Protection Clause of the Fourteenth Amendment, the Supreme Court has applied three tests: 1) the "rational basis" test, i.e., whether there is a rational basis for the law; 2) "intermediate scrutiny," whether the law is "substantially related" to the achievement of an "important government purpose"; and 3) "strict scrutiny," applied to race, which is considered a "suspect" classification.

diately perceived as evil, as odious, as wrong, as intolerable,"[25] laws discriminating against women were often justified as protecting women. She, therefore, chose cases that would show that using gender as a basis for different treatment was harmful not only to women but also to men.

The *Wiesenfeld*[26] case was perfect for that, "a gem of a case."[27] Wiesenfeld's wife had died in childbirth and he wanted to care personally for their infant son, but was denied social security benefits. The Social Security Act provided survivor's benefits to women with children, but not to men with children, even though men and women paid social security taxes at the same rate.[28] Ginsburg argued that while this statute appeared to protect women, its effect was to deny women workers and their families the protection provided to male workers. A unanimous Supreme Court held the regulation unconstitutional. The Court did so, however, without holding that gender-based distinctions were, like race-based distinctions, "suspect" and subject to "strict scrutiny."

Between 1972 and 1978, Ginsburg argued six gender discrimination cases before the Supreme Court and won five.[29] However, the test for gender discrimination adopted by the Court was intermediate scrutiny[30]—whether the law was substantially related to the achievement of an important government purpose.[31] A majority of the Court has never held gender a suspect classification subject to strict scrutiny.

The closest the Court has ever come to holding gender a suspect classification subject to strict scrutiny was in *Frontiero v. Richardson*.[32] In that case four Justices agreed that sex-based classifications, like race-based classifications, are suspect and subject to strict scrutiny.[33] Three other Justices agreed that the statute was unconstitutional, but thought it unnecessary and inadvisable to decide whether sex was a suspect classification in view of the fact

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25 *Hearings*, *supra* note 1, at 122.

26 Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).

27 Cowan, *supra* note 22, at 396.

28 *See id.* at 396-97.

29 The case she lost, *Kahn v. Shevin*, 416 U.S. 351 (1974), was not one she selected, but one she learned about when it was already before the Court. "*Kahn*," she said, "should never have come up that year." *Id.* at 391.

30 *See* GERALD E. GUNTHER, CONSTITUTIONAL LAW 605 (12th ed. 1991).

31 *See, e.g.*, Craig v. Boren, 429 U.S. 190, 197 (1976) ("To withstand constitutional challenge . . . classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.").

32 411 U.S. 677 (1973).

33 The four Justices were Brennan, Douglas, White, and Marshall.

that the Equal Rights Amendment was then pending and, if adopted, would resolve the question.[34]

In 1996, the Supreme Court decided another gender discrimination case, *United States v. Virginia*.[35] Ginsburg wrote the opinion for the Court, holding that the exclusion of women from the Virginia Military Institute violated the Equal Protection Clause of the Fourteenth Amendment. Those "who seek to defend gender-based government action," she wrote, quoting from an earlier decision, "must demonstrate an 'exceedingly persuasive justification' for that action."[36]

> The burden of justification is demanding and it rests entirely on the State. The State must show "at least that the [challenged] classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'"
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> . . . .
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> "Inherent differences" between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity. . . . [S]uch classifications may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women.[37]

It is a powerful and eloquent opinion. Although it makes the test for gender-based equal protection more demanding, moving it closer to strict scrutiny, it still does not adopt the suspect class-strict scrutiny test applied to racial discrimination, to gender discrimination.[38]

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34 The other three Justices were Powell, Blackmun, and Burger.

35 116 S. Ct. 2264 (1996).

36 *Id.* at 2274 (quoting J.E.B. v. Alabama, 511 U.S. 127, 136 (1994)).

37 *Id.* at 2275-76 (citations omitted).

38 It has been suggested that the distinction between "rational basis," "intermediate scrutiny," and "strict scrutiny" have been deliberately blurred by recent Court decisions. Thus, Professor Sunstein stated:

> It should be clear by this point that the 1995 Term has modified traditional equal protection doctrine. *Romer v. Evans* suggests that rationality review will not always result in validation; its form of rationality review is far more like the intermediate variety. *Virginia* suggests that intermediate scrutiny no longer applies in cases involving gender discrimination, and it moves closer to a strict scrutiny standard. Finally, last year's decision in *Adarand Constructors, Inc. v. Pena*, holds that strict scrutiny is not "fatal in fact" and in that way treats strict scrutiny as if it were similar to intermediate scrutiny. The hard edges of the tripartite division have thus softened, and there has been at least a modest convergence away from tiers and toward general balancing of relevant interests.

Cass R. Sunstein, *Foreword: Leaving Things Undecided*, 110 HARV. L. REV. 4, 77 (1996). He does not believe, however, that the three-tiered system has been superseded. He con-

Ruth Ginsburg was on the Columbia Law School faculty from 1972 to 1980. During that period she directed the ACLU Women's Project; taught courses and seminars in civil procedure, conflict of laws, constitutional law, and sex discrimination; wrote a number of articles; and prepared the first casebook on gender based discrimination.

In the late 1970s President Jimmy Carter announced that he intended to make merit-based appointments to the federal judiciary and to increase the number of women. Ruth Ginsburg applied and was considered for an appointment to the Court of Appeals for the Second Circuit. Surprisingly, the screening committee for that circuit did not include Ruth Ginsburg in the list of those recommended.[39] Ruth had also applied to the Court of Appeals for the District of Columbia Circuit, a court that hears some of the most interesting federal cases, and was later appointed to that court. She served on the D.C. Circuit from 1980 to 1993.

Two of the cases on which she sat while on the D.C. Circuit are of particular Jewish interest: *Goldman v. Secretary of Defense*[40] and *United States v. Pollard*.[41] One concerned a Jewish captain in the U.S. Air Force who insisted on the right to wear a yarmulke (head covering) in the military, the other concerned a Jewish man who had been charged with passing classified information to Israel, pled guilty, and later sought to withdraw his plea.

In *Goldman*, Simcha Goldman, an orthodox Jew and captain in the U.S. Air Force, had been ordered to stop wearing his yarmulke. He argued that the order violated the Free Exercise Clause of the First Amendment. A federal district court agreed with Goldman, but a three judge panel of the D.C. Circuit Court of Appeals upheld the order. Goldman sought a rehearing by the entire court. A majority of the court denied the rehearing but three judges, including Ginsburg, dissented. Judge Ginsburg wrote in her dissent:

> The plaintiff in this case, S. Simcha Goldman, has long served his country as an Air Force officer with honor and devotion. A military commander has now declared intolerable the yarmulke Dr. Goldman has worn without incident throughout

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cludes that these cases "retain the basic structure of 'tiers' with modest modifications, allowing rationality review occasional 'bite,' modestly strenthening scrutiny of sex discrimination, and recognizing that affirmative action poses special questions." *Id.* at 78.

39 The list included Amalya Kearse, a highly qualified black woman, who was in fact appointed.

40 739 F.2d 657 (D.C. Cir. 1984).

41 959 F.2d 1011 (D.C. Cir. 1992).

> his several years of military service. At the least, the declaration suggests "callous indifference" to Dr. Goldman's religious faith, and it runs counter to "the best of our traditions" to "accommodate[ ] the public service to the . . . spiritual needs [of our people]."[42]

In *Pollard*, Jonathan Pollard, an Intelligence Research Specialist with the U.S. Navy, was charged with passing classified information to agents of the Israeli government. Pursuant to a plea agreement, he pled guilty to one count of conspiracy to deliver national defense information to a foreign government.[43] In exchange for Pollard's guilty plea, the Government promised to bring to the sentencing court's attention the extent of his cooperation, to represent that the information he provided was of considerable value to the government, and to recommend "a substantial period of incarceration"[44] (but, arguably, not a life sentence, the maximum sentence possible). Although the U.S. Attorney acknowledged Pollard's cooperation at the sentencing hearing, the Government also submitted a memorandum by the then-Secretary of Defense, Caspar Weinberger, in which he referred to "the magnitude of the treason committed" by Pollard, a crime with which Pollard had never even been charged and which carries the death penalty. The memorandum also urged that the "punishment [imposed] 'should reflect . . . the perfidy of his actions.'"[45] Pollard was sentenced to life imprisonment. This was the highest sentence anyone had ever

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42 *Goldman*, 739 F.2d at 659 (Ginsburg, J., dissenting) (quoting Zorach v. Clauson, 343 U.S. 306 (1952)). The Supreme Court ruled five-to-four that prohibiting the wearing of a yarmulke did not violate the Constitution. *See* Goldman v. Weinberger, 475 U.S. 503 (1986). Following that decision, Congress enacted legislation permitting the wearing of a yarmulke in the U.S. armed forces. *See* 10 U.S.C. § 774 (1994) ("[A] member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed forces.").

43 A plea agreement is an agreement between the defendant and the prosecutor pursuant to which the defendant gives up most of his constitutional rights, including the right to a trial, to a jury, not to incriminate himself, to cross-examine witnesses, and pleads guilty, generally, in exchange for a promise or the expectation of decreased punishment. Although the Supreme Court had long held that the use of threats or promises to obtain a confession violates fundamental principles of constitutional law, making confessions so obtained inadmissible, and it was generally believed that a guilty plea obtained in exchange for a promise was similarly inadmissible. In 1971, in *Santobello v. New York*, 404 U.S. 257 (1971), the Supreme Court sustained plea bargaining. The Court was insistent, however, that the promise by the prosecutor must be kept to the smallest iota. For a discussion of the Court's decisions on plea bargaining, see Malvina Halberstam, *Towards Neutral Principles in the Administration of Criminal Justice: A Critique of Supreme Court Decisions Sanctioning the Plea Bargaining Process*, 5 CRIM. L. REV. 425 (1983).

44 *Pollard*, 959 F.2d at 1017.

45 *Id.* at 1024. Secretary Weinberger also submitted a secret memorandum to the court, the contents of which have still not been disclosed.

been given for passing information in peacetime to an ally and substantially harsher than the sentences imposed on some of those convicted of passing secret information to the Soviet Union during the height of the Cold War.

Pollard sought post conviction relief which would have permitted him to withdraw the guilty plea and to go to trial on the charges, on the ground, inter alia, that the Government failed to keep its part of the agreement. The sentencing judge denied the motion and the appeal came before a three judge panel of the D.C. Circuit, composed of Judges Silberman, Williams, and Ginsburg. Judge Silberman, while conceding that Pollard's claim "might well justify relief on direct appeal," concluded that it did not satisfy the stringent legal criteria for reversal of the district court's findings in a collateral proceeding, that "claims of government breaches of the plea agreement" were brought "far too late" to enable Pollard to prevail.[46] Judge Williams, on the other hand, found that "the government's breach of the plea agreement was a fundamental miscarriage of justice requiring relief. . . ."[47] Although Ginsburg did not write an opinion in the case, she voted with Silberman to affirm the denial of Pollard's motion.

On June 14, 1993, President Clinton nominated Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court.[48] Some women's groups opposed her nomination because she had spoken and written critically of the Court's rationale in *Roe v. Wade*,[49] the Supreme Court decision which upheld the constitutional right to abortion. However, most women's groups and numerous scholars and academics strongly supported the nomination. President Clinton said he nominated her for three reasons:

> First, in her years on the bench, she has genuinely distinguished herself as one of our nation's best judges, progressive in outlook, wise in judgment, balanced and fair in her opinions.
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> Second, over the course of a lifetime in her pioneering work on behalf of the women of this country, she has compiled a truly historic record of achievement in the finest traditions of American law and citizenship.
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> And, finally, I believe that in the years ahead, she will be able to be a force for consensus-building on the Supreme Court, just as she has been on the Court of Appeals, so that our judges

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46 *Id.* at 1029-30.

47 *Id.* at 1032.

48 *See Transcript*, *supra* note 7.

49 410 U.S. 113 (1973).

> can become an instrument of our common unity in the expression of their fidelity to the Constitution.[50]

Ginsburg explained her reason for wanting to be on the Court in these words:

> It is an opportunity beyond any other for one of my training to serve society. The controversies that come to the Supreme Court, as the last judicial resort, touch and concern the health and well-being of our Nation and its people. They affect the preservation of liberty to ourselves and our posterity. Serving on this Court is the highest honor, the most awesome trust, that can be placed in a judge. It means working at my craft—working with and for the law—as a way to keep our society both ordered and free.[51]

She was confirmed as an Associate Justice of the Supreme Court on August 3, 1993.

Ruth Ginsburg has experienced both great adversity and great good fortune in her life. Her only sister died when she was very young. Her mother became ill with cancer just as Ruth was starting high school and died the day before her graduation. During his third year at Harvard, her husband was in a car accident and later was diagnosed with a rare form of cancer that few had ever survived, for which he underwent massive surgery and radical radiation while in law school.

She has also had great good fortune. First, in her remarkable intellect, which manifested itself at every stage of her life. Second, but perhaps equally important in making it possible for her to reach the pinnacle of her profession, a husband and family who have been wonderfully supportive in every way, as she often notes. At a time when few women went to law school—as noted earlier, Dean Erwin Griswold of Harvard asked each of the nine women in the class of 500 to justify her taking the place of a man in law school—her husband, encouraged her to go. She and her husband have always shared household duties. "A supportive husband who is willing to share duties and responsibilities is a must," she says, "for any woman who hopes to combine marriage and a career."[52] But his support was not limited to relieving her of domestic chores. At Harvard, he assured his friends that she would make *Law Review* and later he was the one who organized support for her appointments to the D.C. Circuit and to the Supreme Court. In her

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50 *Transcript*, *supra* note 7, at A1.

51 *Hearings*, *supra* note 7.

52 AYER, *supra* note 8, at 28.

own words, he has been her "best friend and biggest booster."[53]

Her parents-in-law have also been extremely supportive. In her speech accepting the nomination, she described her mother-in-law as "the most supportive parent a person could have."[54] And it may well be because of her father-in-law that she persevered in her plans to go to law school. When she considered giving up law school because she had become pregnant, her father-in-law told her that if she "really wanted to be a lawyer, having a baby wouldn't stand in [her] way."[55] It clearly did not. The extent of her family's belief in and support for her is perhaps best symbolized by an entry in her daughter's high school yearbook. Under "ambition", it stated, "to see mother appointed to the Supreme Court."[56]

It was a combination of extraordinary abilities, the values instilled by her parents, tireless devotion to her work, the support of her husband, and, as Ginsburg herself states, good luck, that brought her to the highest position to which a lawyer can aspire. Although she is the first Jewish woman on the Court, she follows such outstanding Jewish jurists as Brandeis, Cardozo, and Frankfurter, and will no doubt continue their tradition of greatness.

In an address after her appointment to the Supreme Court she said:

> I am a judge born, raised, and proud of being a Jew. The demand for justice runs through the entirety of the Jewish tradition. I hope, in my years on the bench of the Supreme Court of the United States, I will have the strength and the courage to remain constant in the service of that demand.[57]

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53 *Transcript, supra* note 7.

54 *Id.*

55 GILBERT & MOORE, *supra* note 10, at 157.

56 *Transcript, supra* note 7. "If necessary," it continued, "Jane will appoint her." *Id.*

57 Justice Ginsburg, Address to the Annual Meeting of the American Jewish Committee (May 1995), *reprinted in* American Jewish Committee, *What Being Jewish Means to Me*, N.Y. TIMES, Jan. 14, 1996, at E13 (advertisement).