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Tricia Johnson:

It's Aspen Ideas to Go from the Aspen Institute. I'm Trisha Johnson. Today we're featuring a conversation with Supreme Court Associate Justice, Ruth Bader Ginsburg from our archives. She died Friday. Ginsburg served as the second woman on the nation's highest court and was a champion of justice and steadfast advocate for civil and human rights. Her musical love was opera, yet her late in life status as a powerful cultural icon to a younger generation is more akin to a rockstar than a diva.

Tricia Johnson:

In 2018, a law student dubbed her the notorious RBG and the moniker consumed the internet and popular culture. Her wit and playful sense of humor are on full display in this conversation.

Ruth Bader Ginsburg:

And sad for me, I am a monotone. So I sing in only two places, one is the shower and the other is my dreams.

Tricia Johnson:

Aspen Ideas to Go brings you compelling conversations from the Aspen Institute. Today's show features Ginsburg speaking to the Aspen Wye Fellows in 2017 about her book, My Own Words.

Tricia Johnson:

My Own Words is a collection of Ginsburg's writing and speeches. In it, she touches on her relationships with Justices Sandra Day O'Connor and Antonin Scalia. She shares what it's like to work with then newly appointed Justice, Neil Gorsuch. Ginsburg was a lifelong advocate of women's rights. She was the ACL use first director of the women's rights project in 1972. In 2017, she said the policies surrounding abortion disproportionately impact low income women.

Ruth Bader Ginsburg:

There is no woman of means in the United States who will not be able to get a safe abortion if she wants one. All of the restrictions that we see in States like Texas operate only against poor women.

Tricia Johnson:

On the court, she says her experiences as a woman give her a unique perspective her male colleagues don't share. Here's her conversation with Elliot Gerson. He's an executive vice president at the Aspen Institute. They spoke at the institute's campus along the Y River in Maryland. Here's Gerson.

Elliot Gerson:

Our guests was born in Brooklyn, actually in a working class multiethnic neighborhood and she was educated in the New York public schools. And of course she became the second woman on the Supreme Court of the United States. Before she became a judge on the United States Court of Appeals in Washington, actually upon the death of a Judge I had been clerking for, she had an enormously distinguished career as a professor and as a brilliant litigator, especially in the area of women's rights. She argued six of the most significant cases involving sex discrimination before the court winning all, but one of those cases, and she has been very aptly called the Thurgood Marshall of the women's movement.

Elliot Gerson:

She was nominated to the Supreme Court by Bill Clinton as you heard in 1993 to fill the seat of Justice Byron White. And what I thought I'd do is simply read a brief excerpt from what Bill Clinton said in the Rose Garden on that day to introduce Ruth Bader Ginsburg to the United States.

Elliot Gerson:

"Quite simply what's in her record speaks volumes about what is in her heart. Throughout her life, she has repeatedly stood for the individual, the person less well off, the outsider in society and has given those people greater hope by telling them that they have a place in our legal system by giving them a sense that the constitution and the laws protect all the American people, not simply the powerful."

Elliot Gerson:

She, of course, now, as I could tell by your applause is a bit of a rock star, though she might prefer being called an opera star. There, of course, is the comic opera of Scalia-Ginsburg, which she just told me before is going to be performed at Glimmerglass this summer. She is of course, the notorious RBG inspired by the notorious BIG, a fellow Brooklyn rapper. We have now RBG mugs, RBG T-Shirts, I understand there's an RBG tattoo, maybe one of you has it. And then, perhaps, I mean, incredibly exciting I think is that Natalie Portman is about to play her in a movie. And the movie would be coming a little sooner than otherwise, but Justice Ginsburg just told me it was delayed a bit because Natalie Portman was pregnant. So obviously she's not playing Justice Ginsburg when she was pregnant.

Elliot Gerson:

But I think most exciting to me is I read that there is a three and four year old class in a Dallas Hebrew school that named the class fish, Ruth Bader Ginsburg. So I don't know what else is possible, all of that.

Elliot Gerson:

All right. Let me just ask, would you have preferred to be an opera star?

Ruth Bader Ginsburg:

If I had any talent God could give me, I would be a great diva. But, sad for me, I am a monotone. So I think in only two places, one is the shower and the other is my dreams. But I had the fantastic good fortune to be cast in an opera, I've been in Supers a couple of times. But the daughter of the regiment put on by the Washington National Opera this fall has a speaking part. So I was the Duchess of Krakenthorp opening night. There's only one problem about that. It was the Saturday following the election and I wrote my own lines and they were all about valorous women. So I had to...

Elliot Gerson:

Well, I was there and it was very special. One could seriously have asked you as a young woman, if you aspire to be an opera singer, but no sensible person, when you were a young woman would have probably asked you if you could aspire to be a judge to say nothing of a justice of the Supreme Court. And when you just think of in your lifetime, how women and the law, how radically different circumstances are, it's now possible to ask the young woman in the front row, would you like to be a justice of the Supreme Court?

Elliot Gerson:

And your book, the book by the way is absolutely wonderful. It's a fascinating combination of writings, speeches, dissents, even on eighth grade editorial that she wrote which shows what was to follow. So it's a great read and it's a wonderful introduction to how the Supreme Court works. But a good part of the book talks about just what it was like as a young woman in law school and looking to a career in the law. Just tell us a little bit about that and how much things have changed.

Ruth Bader Ginsburg:

We could start with my entering class at Harvard Law School, I attended from '56 to '58 and then transferred to Columbia for my last year. There were nine women in a class of over 500, and they divided us into four sections. So there were two women in my section.

Ruth Bader Ginsburg:

There was some inconveniences at the time. Law school in those days had two teaching buildings. One was Langdell and the other was Austin. And only one of them had a women's bathroom. These were pre Title VII days, so employers were upfront about not wanting to hire women.

Ruth Bader Ginsburg:

When I transferred to Columbia, a very outstanding law professor, Jerry Gunther was in charge of clerkships. And although my grades were very good, he didn't get a positive response from any of the judges in the Eastern District, which is Brooklyn or the Southern District, New York. So he approached one judge, judge Palmieri, and said, "I'd like you to take a chance on Ruth Ginsburg." Judge Palmieri's answer was, "Well, I've had a woman clerk. But, Ruth Ginsburg has a four year old daughter, and I can't take a risk on having a mother as a law clerk," So then there was a carrot and professor Gunther said, "Give her a chance. And if she doesn't work out, there's a young man in her class, who's at a downtown firm and he will come in and take over." That was the carrot. And there was a stick. The stick was, "If you don't give her a chance, I will never recommend another Columbia student."

Ruth Bader Ginsburg:

Getting the first job was hard for women of my vintage. But once you got the first job, you did it at least as well as the men. And so the next step was not as hard. Sandra Day O'connor graduated from law school a few years before I did with very good grades and no one wanted to hire her as a lawyer. So she volunteered to work free for a County attorney and said, "I'll work free for four months, and after that, you decide if I'm worth putting on the payroll." Which of course she was.

Ruth Bader Ginsburg:

But life is strange. You may think that something not good has happened, like not being able to get a job. And it turns out to be remarkably lucky. So Sandra said, "Where would the two of us be if there had been no discrimination?" Well, today we'd be retired partners from a large corporate...

Elliot Gerson:

I don't think that means we should be celebrating discrimination.

Ruth Bader Ginsburg:

The other story about Harvard, Dean Griswold, who was a very fine Dean and later very fine solicitor general, but he was not noted for his sense of humor. He had a dinner for the women in the first year class and he invited a faculty member to be our escort. So mine was professor Herbert Wechsler, who was visiting Harvard from Columbia. Dinner was not distinguished, and there was no wine because Griswold didn't drink. And then after dinner, we went to his living room, chairs were arranged in a semicircle and he asked each of us to tell him what we were doing at the Harvard Law School occupying a seat that could be held by a man.

Ruth Bader Ginsburg:

Now, some people thought that was offensive, but Dean Griswold had been instrumental in getting the Harvard Law School to admit women, '50/51 was the first year that women were admitted. And he said, he asked us that question because he wanted to be armed with stories about what the women were going to do with their Harvard degree. There were still doubting Thomases on the faculty. So he wanted them to know that the women would be good lawyers. I didn't know this until many, many years later, that that was his purpose in asking the questions.

Tricia Johnson:

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Tricia Johnson:

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Elliot Gerson:

Let me stay on the subject of women's rights for a minute, because that was such an important part of your career and it's been an important part of your jurisprudence in the Supreme Court. You spent many years devoted to the passage of the equal rights amendment and it came close, but it didn't pass.

Ruth Bader Ginsburg:

It missed three states, by three states.

Elliot Gerson:

By three States. Do you think that that would make any difference today? Do you think that's still a good idea?

Ruth Bader Ginsburg:

Yes. I think it's a fine idea. Not that we haven't come almost as far as we would with the ERA, by the court's interpretation of the 14th amendment. But still, if you are trying to decide cases the way the framers would have decided them, if you asked anyone who was in Congress at the time, the 14th amendment was sent to the state, does this mean that women will be citizens of equal stature to men? The answer would be of course not. Many states still didn't have married women's property acts. So women who married couldn't sue or be sued in their own name and couldn't contract in their own name, couldn't hold property in their own name. The 14th amendment wasn't meant to change any of that. But the equality principle, which by the way, is not in the original constitution. The equal protection clause shows up in the 14th amendment, which is a restriction on what states can do.

Ruth Bader Ginsburg:

At the time was at Brown V Board decision, one of the cases that was combined in that litigation was from DC challenging the segregated public schools in our nation's capital. Well, DC is not a state and it is governed by federal law. So what was the Supreme Court going to do? It was basing the Kansas case and the others on the 14th amendment, on the equal clause. Well, the court incorporated an equality principle into the due process clause of the fifth amendment, which governs. But I suppose the best reason is if you look at any constitution that has been written since 1950, you will find in it a statement that men and women are equal before the law.

Ruth Bader Ginsburg:

I have three granddaughters. I would like to be able to take out my pocket constitution and say that the equal citizenship stature of men and women is a fundamental tenet of our society, like free speech. The women's equal right to do whatever her talent and hard work enable her to do. I'd like that to be in constitution for that reason.

Elliot Gerson:

Let me ask another question relating to women's rights. You spent much time focused on the importance of reproductive rights for women. You've also written that the law is something like a pendulum. Are you concerned that maybe in some respects the pendulum could be actually swinging backwards, when you think, for example of the restrictions on women's ability for example, to access abortions in many states now where it's almost impossible in many states. They have to travel, they can't afford to. Are you concerned about possibly the law actually moving backwards in some of the things that you've fought so hard for?

Ruth Bader Ginsburg:

Yes, but not for women like me or most of you. Not because I'm well past childbearing age, but because of truth be told, there is no women of means in the United States who will not be able to get a safe abortion if she wants on. All of the restrictions that we see in states like Texas operate only against poor women.

Ruth Bader Ginsburg:

In the Texas case we had a couple of years ago, it was obvious the clinic in Dallas would stay in Houston. But the people who were far from the big cities and couldn't afford to take a day off from work, restrictive abortion laws operate against poor women. And that's the sad story. We will never go back to the way it was before Roe V. Wade, because there are a number of states... At the time of Roe V. Wade, there were forced stage that provided abortion in the first trimester. No questions asked. Alaska, Hawaii, New York, California. Those States will not go back to the way it was. So it is a sad reality that any attempt to restrict abortion is going to affect only the poorest segment of the population.

Elliot Gerson:

And now there're even suggestions that perhaps Medicaid funding for even contraception could be restricted. Could you imagine that theoretically, as an equal protection problem, if contraception itself was precluded under Medicaid?

Ruth Bader Ginsburg:

Yes, I always thought that Roe V. Wade was put under the wrong heading. It should not have been due process. It should have been equal protection. The woman's right to choose for herself to determine her life's course, her own destiny.

Elliot Gerson:

In this book, you favorably quote, Judge Rubin I think it was, for saying why it is important for women to be judges, that they bring differences in biology, cultural impact and experience. Do you believe that women judge differently from men?

Ruth Bader Ginsburg:

The answer to that Justice O'Connor gave and that I've given many times comes from a judge on the Minnesota Supreme Court, Jean Coin. She said at the end of the day, a wise old man and a wise old woman will reach the same judgment. And that is so. But we also bring to the table experience that the men don't have because we've grown up female. I can't point to any case where I can say that I voted in some way and a man wouldn't vote the same way, but we do have something to contribute in...

Ruth Bader Ginsburg:

I'll give you one example. Some years ago, the court had a case of a 13 year old girl in the eighth grade who was suspected of having contraband. Well, it turned out what she had was two Advil pills, but she was hauled off to the restroom and strip searched. Her mother was outraged and began a suit against the school district for humiliating her child in that way. But when the argument was made at the court, some of my colleagues made light of it. Talked about the boys in the gym, the eighth grade boys who not at all embarrassed by undressing in front of each other. And I said, "A 13 year old girl is not like a 13

year old boy." And they began to think, and think about their own daughters. And suddenly they were no more fun and games.

Elliot Gerson:

You've said many times. I think that the ideal number of women to sit on the U.S Supreme court is nine.

Ruth Bader Ginsburg:

The question was-

Elliot Gerson:

Is that still your view?

Ruth Bader Ginsburg:

The question was when will there be enough? Well, there'll be enough when there are no more seats. We're doing pretty well now as one third of the court. Not as well as Canada. They have four members are women, including their Chief justice, but certainly the change has been enormous.

Ruth Bader Ginsburg:

When I went to law school, there was only one woman who had ever been on a federal court of appeals. And that was Florence Allen from Ohio. She retired before I graduated from law school, and then they were none again until president Johnson appointed Shirley Huffstetler to the Ninth Circuit. And then president Carter made her the first ever secretary of education. There were none again.

Ruth Bader Ginsburg:

The person who deserves tremendous credit for changing that situation is Jimmy Carter. He had only four years in office, no vacancy on the Supreme Court, but he literally changed the complexion of the US judiciary. He looked around and he said, "They all look like me," but that's not how the people of the great United States look. So he was determined to appoint women in numbers, members of minority groups in numbers, not just says one at a time curiosity. He appointed over 25 women to the trial bench, to federal district courts, and 11 to Courts of Appeals. And I was one of the lucky 11, but I never thought about the possibility of a judicial [inaudible 00:26:22] until Carter became president.

Elliot Gerson:

Much has been written, including an opera about your relationship with justice Scalia. I think it's just remarkable to many people, how you could have such a close relationship with a man whose views on so many things that you both were so passionate about were so divergent, whether it's campaign finance, employment discrimination, affirmative action, access to abortions and contraception, second amendment, death penalty. Yet you were very close to him. Can you help us understand how that happened? And maybe even more importantly, is there a lesson there from the collegiality you had with him that could perhaps be applied to our awful state of politics today, where people who have those divergent views seem to live on different planets, and just sort of spit venom at each other as opposed to actually be friends, comrades and associates.

Elliot Gerson:

So first the question, how is it that you and justice Scalia were so close? And then secondly, is there a broader lesson for that?

Ruth Bader Ginsburg:

We were close on the DC circuit. We used to spend new years together. I say, number one reason why I loved Justice Scalia so is he made me laugh. He's a very funny fellow. Beyond that, we share a love of opera. We were Supers together at the Washington national opera twice, and we both care about family, although Scalia and I disagreed on some very important issues. He would sometimes call me, he didn't send a memo to the rest of the court, but said, "Ruth, you made a grammatical error." Or I would tell him this opinion is so overheated, you'd be more persuasive if you toned it down. He never listened to that.

Ruth Bader Ginsburg:

Or another one, the one case where we strongly disagreed was the Virginia Military Institute case.

Elliot Gerson:

A great sexual discrimination case.

Ruth Bader Ginsburg:

Yea. But it's interesting the change in the time, the title of that case was United States against Virginia. So it was the United States telling the state of Virginia, you cannot give an opportunity to one gender and not to the other. Well, it was coming about this time of year. I had circulated my opinion for the court and Justice Scalia came to my chambers and threw down a sheaf of paper and said, "Ruth, this is my penultimate draft of the dissent in the VMI case. It's not quite ready to be circulated to the court, but I want to give you as much time as I can to answer it." So I started to read this on the plane to Albany when I was going to the second circuit judicial conference. It absolutely ruined my weekend. But then I was glad to have the extra days to answer him.

Elliot Gerson:

Are there lessons, I mean, just the fact that you could be so collegial, could be applied to say Congress, where the very idea of being that close to someone on the other side is seemingly now so alien?

Ruth Bader Ginsburg:

That's now. It hasn't always been that way. I was tremendously lucky to be nominated for my good job in 1993. The vote was 96 to three-

Elliot Gerson:

And it was unanimous in the committee.

Ruth Bader Ginsburg:

Yes. And for Scalia, who was certainly a known quantity when he was nominated for the Supreme Court, he'd written a lot. He had been a judge for some years on the DC Circuit. There were no negative votes. At the hearing, my biggest supporter was not Joe Biden who was the chair of the judiciary committee then, although he was certainly good to me, it was Orrin Hatch.

Elliot Gerson:

So what has happened? I mean, you just look at the experience with Merrick Garland, and then you look at the vote for Neil Gorsuch, and, as you said, it was 96 to three for you. I mean, for justice Gorsuch, they had to execute the nuclear option. Judge Garland never even got a hearing on purely partisan grounds. So what has happened? How bad is that in terms of suggesting that the Supreme court is just another political branch and what, if anything, can we do about it?

Ruth Bader Ginsburg:

There will be someday people from both sides, Republicans and Democrats who really care about our nation. No, there was a group that got together on the nomination of judges for a while, and the Senate used to be known as a gentleman's club. We don't set a good model for the world.

Elliot Gerson:

No, certainly not.

Ruth Bader Ginsburg:

This Scalia-Ginsburg comic over is very much about collegiality. So Scalia is locked in a dark room, being punished for excessive dissenting. And I enter the same through glass ceiling to help him go through the trials that he needs to go through, to get out of the dark room. And then they carried a leftover from Don Giovanni, the commendatory said, "Why do you want to help him? He's your enemy?" I sing, "He's not my enemy. He's my friend." And then we have a wonderful duet that is titled we are different, we are one. One in a reverence for the constitution and how deeply we care about the institution we serve.

Elliot Gerson:

You became quite famous for your dissents. There's been a long period of time where you're the most senior for more liberal members of the court. There was a time I think about 10 or 11 years ago when Linda Greenhouse of The New York Times wrote an article on the front page of The New York Times where she said that, that term will be remembered as when you found your voice. And I think it was probably either the Ledbetter case or maybe the VMI case. But, explain, and a bench dissent is when a Justice Supreme Court actually reads from the dissent when the court is announcing its decision.

Ruth Bader Ginsburg:

A summary.

Elliot Gerson:

From some of it. When you do that, who is your audience? Obviously the majority already disagreed with you. Are you speaking to the future? Are you speaking to Congress? Are you assuming that like the great dissents of Justices Holmes and Brandeis that the day will come when your dissent will be the law of the land? What leads you to want to read a dissent like that?

Ruth Bader Ginsburg:

I will announce a dissent from the bench if I think that the court, none only got it wrong, but egregiously wrong. And sometimes those dissents are addressed to Congress as was true in the Lilly Ledbetter case. The bottom line of my dissent in that case was the ball is now in Congress's court to correct the error

into which the court has fallen. And in very short order, Congress with overwhelming majorities, amended Title VII, so that it said with unmistakable clarity, what I thought it meant all along.

Ruth Bader Ginsburg:

It reminded me of an earlier incident when the Supreme court in the '70s said discrimination on the basis of pregnancy is not discrimination on the basis of sex. Again, there was a coalition and by a large majority, Congress passed the pregnancy discrimination act, which is the soul of simplicity. It's simply says this, "discrimination on the basis of pregnancy, is discrimination on the basis of sex." And in Lilly Ledbetter's case, well, every woman of a certain age knows what she experienced. That she was in area manager at a Goodreach tire plant. She, when she was hired was the only woman area manager. One day, when she'd been working there over a dozen years, someone put a slip of paper in her mailbox. It had a series of numbers. The numbers were the salaries of all of the area managers, and Lilly could see that the young man she had recently trained was earning more money than she was.

Ruth Bader Ginsburg:

So she said, "Enough, I'm going to Sue." She got a substantial jury verdict. And then when her case came to the court, they said she sued too late. Title VII says, "You must complain within 180 days of the discriminatory incident." Lilly Ledbetter is way out of time. She waited years to Sue.

Ruth Bader Ginsburg:

My theory was that, every time she got a paycheck, the paycheck incorporated the discrimination so she could sue 180 days from any paycheck. I also pointed out that what would have happened had Lilly Ledbetter sued early on? No doubt the defense would have been, that has nothing to do with Lilly being a woman. She just doesn't do the job as well. But then she works there year after year and she gets good performance ratings. That defense is no longer available. You can't say she doesn't do the job as well as the men when they rated her as high or higher than the men. So now she has a winning case, but the court said she waited too long.

Ruth Bader Ginsburg:

So that kind of dissent, if the court is interpreting a statute like Title VII< then Congress can fix it. But when the court is making a ruling on a constitutional matter, Congress can't fix it only an amendment to the constitution and we have a constitution that's powerfully hard to amend, or the court has to change its mind. But there has been a tradition in the United States of dissents becoming the law of the land.

Ruth Bader Ginsburg:

The worst decision this Supreme court ever made, it was in the Dred Scott Case. There was a fine dissent by Justice Curtis in that case. Or the first justice, John Marshall Harlan, who dissented in the so-called civil rights cases in 1886. And in Plessy against Ferguson. Or, you mentioned Holmes and Brandeis around the time of World War One. Those free speeches cases today are all the law of the land.

Ruth Bader Ginsburg:

So, you're writing for a future age and your hope is that with time, the court will see it the way you do.

Elliot Gerson:

A few years ago, Justice Ginsburg, you caused a bit of controversy when you suggested that the US constitution might not be the ideal model for newly emerging democracies. And you pointed to South Africa's constitution and some others, I think. Could you tell us a little bit about what you meant?

Ruth Bader Ginsburg:

Our constitution was written in 1787. It's a remarkable document, but it was skimpy about rights. And the reason was that many of the framers of the constitution thought in the natural rights mode. There was resistance to having a Bill of rights because the fear was, if we write down the rights, then we'll be limiting them. People have rights by virtue of being human, and it doesn't have to be written down in the constitution. That was the thinking then. And that's why the original constitution doesn't have a free speech protection, a freedom of religion protection. But for today's world, the reason I cited the South African constitution is they put all the basic human rights up front. That's sort of a one. And then the next article is about the structure of the government.

Ruth Bader Ginsburg:

So the perception is the government exists to implement and preserve the rights that are guaranteed in the beginning.

Tricia Johnson:

You're listening to Aspen Ideas to Go. I'm Trisha Johnson. Today's featured guests are Supreme Court Justice, Ruth Bader Ginsburg and Elliot Gerson. He's executive vice president of policy and public programs at the Aspen Institute. Find Aspen Ideas to Go on iTunes, Google play NPR One and SiriusXM's insight channel, that's Channel 121. When you subscribe to our show on iTunes, please leave us a review. Now back to the rest of the conversation featuring justice Ginsburg and Elliot Gerson. Here's Gerson.

Elliot Gerson:

Can you tell us anything yet about what it's like to work with Justice Gorsuch?

Ruth Bader Ginsburg:

He's the number one, extraordinarily diligent. He was confirmed and one week later he was on the bench to hear arguments in 13 cases. And somehow he was well prepared in all of them. I had the pleasant experience of being with Justice Gorsuch the two years ago in London, when we had an exchange with judges from the UK, and we had divided up the group to various topics. I was in a group with Justice Gorsuch and he wielded the laboring or in the paper that we presented on access to justice. So he will be a very good colleague.

Ruth Bader Ginsburg:

I imagine that when you compare how I vote and he votes, it will be just the same as it was when you compared me to Justice Scalia.

Elliot Gerson:

When justice Stevens retired at age 90 I think, you became the oldest justice of the court and said he was your new model. And that you would continue quote, as long as I can do the job full steam. And we all see full steam. We just wonder where... I've read that you work out in the gym in the Supreme Court,

you watch news I hear while on an elliptical. I understand you can do more pushups than I think I can. And I wonder what other secrets you might share with us about this incredible stamina that we all hope has no limits to it.

Ruth Bader Ginsburg:

It won't be a secret for long because my personal trainer who has been with me since 1999 has been commissioned to write a book about my exercise routine.

Elliot Gerson:

That's got to be a best seller.

Ruth Bader Ginsburg:

Now, it wasn't when you were clerking at the court, it wasn't there, but they turned the nurses' station, part of it into a gym.

Elliot Gerson:

I remember the highest court on the land, the basketball court.

Ruth Bader Ginsburg:

This is a small gym, but it has everything that I need. We meet twice a week at 7:00. The reason 7:00 is because that's when the news hour is.

Ruth Bader Ginsburg:

I started with my personal trainer and in 1999, because that was the year that I had colorectal cancer and I had a massive surgery, chemotherapy, jelly radiation for six weeks. When I was finished with all that, my husband said, "You look like a survivor of a concentration camp. You've got to do something to build yourself up." And so that's when I started training. Now, my train is also used by Justice Kagan and Justice Brier.

Elliot Gerson:

Well, we look forward to the book. So again, I could keep going, but do we have people ready with questions?

Speaker 5:

I guess my question is twofold. I don't understand very much about the Supreme Court, but I'm most curious. As a justice, do you lobby one another? And that's the first question. And the second question is, have you ever, successfully, or did you ever successfully lobby Justice Scalia, and did he ever successfully lobby you?

Ruth Bader Ginsburg:

I wouldn't describe it as lobbying, because there's absolutely no horse trading going on at the court. It never happens that you walk into a colleague's chambers and say, "If you vote for me in this case of what we do in that case." That just never happens. But we are constantly trying to persuade each other, first at the conference... When the court sits, it'll sit Monday, Tuesday, Wednesday, meet Wednesday

afternoon to discuss Monday's cases, Friday morning to discuss Tuesday and Wednesday cases. We go around the table, each of us has his or her say. Then, if we go on too long, the chief or one of the justices will say enough, it will all come out in the writing. And then when the writings comes in and you're circulating an opinion, if your heart is divided and you're on this dissent side, you're always hoping your dissent will be so persuasive that you will pick up the votes necessary to make it a majority.

Ruth Bader Ginsburg:

It seldom happens, but I'll give you one wonderful illustration. Some years ago, I was assigned by Justice Stevens to write a dissent just for the two of us. In the fullness of time, that decision was announced, six to three, but the two had swelled to six because people, when they read the dissent, thought about it and decided that I had it right. So it's important to listen to your colleagues. And I do that even when there are four of us united in dissent.

Ruth Bader Ginsburg:

There was one case I can remember that we spent three hours getting together on how the decision would unfold so there would be one dissent and not four. So it wouldn't be a repeat of Bush V Gore, where there was no time. We took the case Saturday, briefs filed Sunday, oral argument Monday, decision out Tuesday. So each of us had written a dissent. If we had had more time, it would have been one dissent and not four.

Speaker 6:

My question is what was your hardest debate?

Ruth Bader Ginsburg:

What was my hardest debate? The hardest cases for me and not necessarily the most complicated in dealing with, are death penalty cases. Those are the cases that I find most trying to be part of. To be the last step between life and death. I like to say a lot that there has been a precipitous decline in the implementation of the death penalty in the United States. So the last year there were only about six states. Many more have death penalty on the books but they don't use it. Six States, and even within those states, there are variations from County to County. So it may be that it will end by attrition.

Speaker 7:

Hi, First, I just want to thank you for the profound impact you've had on the rights for women. So grateful. The question I have, and I'm a scientist, I'm not a lawyer. And I hear a lot about the shifting of the balance of the court and the political will to change the balance of the court. I'm not sure what that actually means, and if I should be nervous about some of the protections that we've had over the years. So I'm just wondering what your thoughts are. And do you have any concerns about this shifting the balance of the court with new judges potentially going on the court in the next few years?

Ruth Bader Ginsburg:

Presidents have been disappointed in some of their choices. Maybe Earl Warren is the most outstanding example. He was a tough prosecutor, Republican governor of California. He became the Chief Justice and the court did some brave things, not just in ending apartheid in America, but in the criminal justice system. Justice Brennan was a Republican. He was a member of the Supreme Court of New Jersey and he was thought to be a good middle of the road type. In my tenure on the court, Justice John Paul

Stevens and David Souter, both Republicans, Steven's appointed by president Ford and Souter was appointed by Bush-

Elliot Gerson:

President Bush. First Bush.

Ruth Bader Ginsburg:

And I guess if you would rank the court who were the most liberal justices, they would turn out to be Stevens and Souter, and I think two of my old Chief Justice Rehnquist. In the '70s when I was arguing cases, I could count on him to be in dissent.

Ruth Bader Ginsburg:

The chief had criticized the Miranda decisions, the Miranda warnings that you have to give someone who was arrested. He criticized it many times. Then we had a case where the question was should Miranda be overruled? And the chief wrote an opinion saying, "No, it has become part of the culture, that the police have to tell you have a right to remain silent. If you speak, whatever you say can be used against you. You have a right to have a lawyer. And if you can't pay for one, the state will provide one." Those, the chief said have become part of our culture and it's working.

Ruth Bader Ginsburg:

Or. a huge surprise to me. He was on my side in the VMI case. The most startling was the Family Medical and Leave Act. That was attacked as a beyond the powers of Congress that Family Medical Leave Act was written with a woman worker in mind. What would she need to be able to function successfully? She needed time to take off to care for a sick child, a sick spouse, an elderly parent. If she herself became sick. Chief justice Rehnquist wrote the opinion, upholding the Family and Medical Leave Act. And when I brought it home to my husband, he said, "Ruth, did you write that opinion?"

Ruth Bader Ginsburg:

So, as he lived in learned.

Elliot Gerson:

Got a question over here, I think.

Speaker 8:

I'm from Queenstown, Maryland. And I did a very brief and unsuccessful stint in politics which got me thinking about the citizens united decision. I have never been able to understand it and would very much appreciate your observations on how the court came to that conclusion and what it really means. Thank you.

Ruth Bader Ginsburg:

I can't tell you other... Well, I can just say read the wonderful dissent. It is and it keeps getting worse. But that's a decision that I don't think has long term staying power.

Elliot Gerson:

I want to ask a different kind of question then if someone else is going to come up. In thinking about the various talks we've had an Aspen context and one person who spoke shortly after her famous article came out, was Ann Marie Slaughter about balance and women can't have it all. And I know when you were beginning your career, the notion of work life balance, wasn't even in the lexicon. But, you've had an extraordinary career by all accounts. You had an extraordinary marriage, you have been a successful and devoted mother. How did you think about that issue? And do you have any advice and haven't you had at all?

Ruth Bader Ginsburg:

Yes, but not all at the same time. In a good marriage, you accommodate to each other. So there were times, for example, when my husband, he was determined to become a partner in his law firm in five years. And during that time, I would say I did the lions share of the childcare, even the cooking. But my husband-

Elliot Gerson:

I understand he was a great cook.

Ruth Bader Ginsburg:

Yes. And my daughter, when she turned 15, noticed the enormous difference between daddy's cooking and mommy's. And decided that mommy should be phased out of the kitchen altogether. I've been living in D C now for more than 30 years, I have not cooked a meal because my daughter having phased me out of the kitchen comes once a month. However my husband of course fed me very well, but since he died, she comes once a month, spends a whole day cooking, fills the freezer with enough till she can come back the next time.

Ruth Bader Ginsburg:

When I was appointed to the DC Circuit, I was sometimes asked, "Isn't it hard to commute from New York to DC? And, I'd say, "What makes you think that I'm commuting? We're living in DC." So Marty who was then teaching at Columbia Law School transferred to Georgetown Law School. Over my long life I have had it all. As I said, not all at one time. I was amused by one of the things that... I'd happened to read [inaudible 00:58:02] book, but I did read the article in the Atlantic and he talks about when she was working very hard at the state department and had one son who was difficult. And then when she went back to Princeton and the son's behavior notably improved.

Ruth Bader Ginsburg:

I have a wonderful son, but when he was in school, he was what I call lively, but his teachers called hyperactive. It takes time. My favorite story in that regard is he was going to a private school and I get called to please come down to the school to talk to the headmaster or the room teacher or the school psychologist about my son's latest escapade. One day being particularly weary, I said to the school, "This child has two parents. Please alternate calls, and it's his father's turn.

Ruth Bader Ginsburg:

So Marty went out to the school and heard about what our so James had done. After that, the calls came barely once a term. They say, we're much more reluctant to call a man away from his work than a woman.

Elliot Gerson:

Ladies and gentlemen, I would like to thank you all for being here and most of all, to thank Justice Ginsburg for giving us so much time.

Tricia Johnson:

Justice Ruth Bader Ginsburg served for 27 years on the Supreme Court and was known for her powerful dissenting opinions. She died Friday at the age of 87. Elliot Gerson is an Executive Vice President of the Aspen Institute that was himself a Supreme Court clerk for Justice Potter Stewart. Their conversation was part of a Wye Fellows event at the Aspen Institute in the spring of 2017.

Tricia Johnson:

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