

fore, every modern human rights document has a statement that men and women are equal before the law. Our Constitution doesn't. I would like to see, for the sake of my daughter and my granddaughter and all the daughters who come after, that statement as part of our fundamental instrument of Government.

Senator SPECTER. Thank you very much, Judge Ginsburg. I will work with you to try to get the Equal Rights Amendment passed. Thank you, Mr. Chairman.

The CHAIRMAN. Judge, the last thing you need is a lawyer, or me, as your lawyer. But another way of saying what you said, as I have read all that you have written, I think about everything you have written, that if there were an Equal Rights Amendment, it clearly would have ended the debate as to what the 14th amendment meant. There would be no need to discuss it.

It is not incompatible with the 14th amendment to extend to women, as persons, the same rights as men. It would have ended the debate from the—I was going to say right, but that would not be correct—it would end the debate from those who suggest it didn't extend to women. There would be no argumentation left that they would have even for purposes of political discussion, let alone outcomes of cases in Federal courts or in the court system. Is that accurate?

Judge GINSBURG. That is exactly right, Mr. Chairman, and, on the legislature's part, it would have been a good way of keeping cases out of court, cases that should never have had to become Federal cases.

The CHAIRMAN. The last point I will make—and I thank the Senator from Pennsylvania for not only mentioning the violence against women legislation, which I drafted and have been fighting to get passed for 3 years now, and also being so incredibly helpful with me in that effort—I want to make it clear that the purpose of that—and I am going to ask you some questions about it when my turn comes—is to break down the barriers that continue to exist in the unequal application of the law.

A case in point: Police officers need not have someone swear out a warrant to arrest two people in a fight. If two men are standing on a corner in a fist fight, the police officer is going to arrest them both, regardless if either one swears out a complaint. In the vast majority of cases where a woman is bleeding from an orifice and a man is standing over her and the police are called, they turn to the woman and say do you wish to swear out a warrant. And when she stands there at 110 pounds, looking at a 230-pound man, knowing that if she says yes, once he gets out on bail he may beat the living hell out of her again, they demand of her before they arrest, to swear out a warrant. They don't do that with men.

There are a lot of things that aren't law, but practice. The Violence Against Women Act is intended to level the playing field. It is not intended in a paternalistic way to protect our women. That is not the purpose of it.

I will get back to that. I just didn't want to let that go in terms of being compared to other attempts in the past by all-male legislative bodies to protect women.

Judge GINSBURG. You know the historic origin of the current absence of genuine protection. She, according to the common law, was under his wing and cover.

The CHAIRMAN. That's exactly right.

Judge GINSBURG. The law assumed that he took good care of her. He was allowed to beat her, but only mildly.

The CHAIRMAN. That's right. It was pointed out to me, Judge, as you well know, in the first hearing I had years ago on this issue. One of the witnesses looked at me and said, Senator, do you know where the phrase rule-of-thumb comes from? And I admit I did not know. She said let me tell you. She said under our English jurisprudential system, in the common law the woman was property—I knew that—and a chattel—I understood that. And she said, but at one point in the development of the common law, we reached a point where there were too many complaints about men beating their wives to death and/or crippling them, and so they thought they had to do something. So the rule adopted by the English courts was you could beat your wife with a rod, as long as it was no bigger than the circumference of your thumb. That is real progress.

I want to point out one other thing: Senator Moseley-Braun, you keep wondering why I flew to Chicago and helped unpack your apartment and move in, and to plead with you to come on this committee. Can you imagine what the Judge would have said, if both of you were not on this committee?

So I am working hard substantively to change it, but also so I don't get unfairly tarred.

Senator MOSELEY-BRAUN. Mr. Chairman, I must say that you once again showed stunning brilliance and insight in making that invitation at the time. I have been delighted to serve on this committee.

The CHAIRMAN. Well, I am glad you are, Senator. And I want to point out, I promised the Senator—excuse me for this digression, I will yield to my friend from Alabama—I promised the Senator, if you come on the committee along with Senator Feinstein, there won't be controversial nominees. The first 29 or so were controversial. But I have kept my promise, we finally have one. OK.

Senator HEFLIN.

Senator HEFLIN. Thank you, Mr. Chairman.

First, let me say that we are all delighted to see Senator Specter back. He looked a little peaked and I can understand why, but his questioning and his comments were erudite, scholarly and incisive, as they always have been. He is pretty much his old self, except he is wearing a cap and we understand why he is having to wear a cap. But let me warn you that if he comes back on his second round of questions, you had better be fearful if he is wearing a football helmet. [Laughter.]

I am going to try to get into some issues and things that you have not been asked about. I think we have gone over a great number of things, and I have tried to follow the line of questioning and will attempt to go into some areas that have not been inquired about.

You wrote an amazing dissent in the case of "In Re: Sealed Case" which dealt with the independent counsel law. When it went to the