Senator HATCH. But if Senator Kennedy needs it, he can surely have it.

Senator KENNEDY. Thank you very much, Mr. Chairman.

I would like to just review with you, Judge Ginsburg, if I might, what I think has been an extraordinary period of Supreme Court history, and that is the progress that has been made on gender discrimination, which your involvement, your position as an advocate, as an educator, as a spokesperson, I think, has really been absolutely remarkable.

I think probably for our colleagues, maybe they have a full understanding and awareness in this committee, maybe they do in the Senate, but certainly I think it is something that it is important for the American people to know. I think you made some reference to it in response to the earlier questions by Chairman Biden.

But virtually up until 1971, the courts upheld every kind of gender discrimination. I was here in 1964 when we passed title VII of the Civil Rights Act to try to move us toward eliminating discrimination on the basis of gender. And still we found up until 1971—and we will come back to that—every kind of gender discrimination, from outright prohibitions on the entry of women into many professions to more subtle gender classifications that did just as much harm by perpetuating stereotypes about women and their role in society.

In 1873, the Supreme Court upheld a State law prohibiting women from entering the legal profession. In 1948, the Court upheld a State law prohibiting a woman from serving as a bartender unless her husband or father owned the bar. In 1961, the Court unanimously held that it was not a violation of equal protection or due process to limit jury service by women to only those women who volunteer for jury duty, while substantially all men were required to serve.

Even after the 1964 act, even more outrageous policies discriminating against women existed in the private workplace. In *Phillips* v. *Martin-Marietta*, the company absolutely barred women with preschool-aged children from applying for work. Even a man with sole custody of and responsibility for young children could apply, but the lower courts did not perceive this policy as discriminating against women. The Supreme Court ultimately reversed the lower courts, and I note that you have written that during the argument of the case before the Supreme Court, members of the High Court made light of the notion that they themselves might have to hire "lady lawyers" as law clerks. I know that you encountered the same discrimination as a young law school graduate.

So you had the perpetuation of gender discrimination in a long line of Supreme Court decisions. You had some action by the Congress. You still had rampant gender discrimination in the private sector. These kinds of barriers to equal opportunity only began to fall in the 1970's as a result of the litigation effort that you led. Your painstaking work led the Burger Court to take strides forward that would have been hard to imagine even a decade earlier.

I was interested when you referred to this in our conversations prior to the confirmation hearing in our wonderful visit that we had in our Senate offices, where I inquired about your own back-

ground. I want to pick up on some of the themes that I found so moving in your excellent statement in the Rose Garden about your mother and your own past.

I was just wondering what it was in your own experience that really led you to take this path, to devote so much of your career to breaking down the legal barriers to the advancement of the women in our society.

Judge GINSBURG. It came on me incrementally, one might say. There were many indignities one accepted as just part of the scenery, just the way it was. For example, when I was at Harvard Law School, I was on the Law Review and I was sent to check a periodical in Lamont Library in the old periodical room. When I got there, it was quite late at night, and I wanted to make sure I got home by midnight. My daughter, the professor, was then 14 months old—no, that was my second year, so she was a few months over 2 years old. And I wanted to look up the citation, report back, and return home.

There was a man at the door, and he said, "You can't come in." "Well, why can't I come in?" "Because you're a female." "But the library at Harvard is open to women," I protested, "Widener is open to women." This one room in Lamont, however, remained a symbol of the way things were. It was closed to women. There was nothing I could do to open the door guarded by a university employee who said, "You can't enter that room."

The Harvard Law Review had a banquet. I was allowed to invite my spouse, and I was also allowed to invite my father or father-in-law. But I wanted to invite my wonderful mother-in-law, who has been, next to my husband, my biggest booster, the greatest supporter imaginable. But I couldn't invite her because the Law Review dinner was just for men. The couple of women who were on Law Review—there were two of us—were allowed to come, but not the wives of the men on the Review and no mothers, only fathers.

Experiences like that and the trouble I had getting a job when I finished law school, all——

Senator KENNEDY. Maybe you would mention the difference between Cornell and Harvard in terms of where your dormitory was.

Judge GINSBURG. Yes. That was amusing.

Cornell, in the days I was there, had a 4-to-1 ratio. It had four men for every woman. The reason they gave for having that quota in the Arts and Science college—it was indeed a restrictive quota system—was that the girls had to live on campus, the boys could live in town. The men could find apartments and live in town, but the girls needed to be sheltered, to have curfews and check-ins. And there were only a certain number of dormitory spaces.

Then I enroll in the Harvard Law School, and there is a fine complex of dormitories, but all the rooms are reserved for men. No places in Holmes Hall for the girls. The girls had to find their own places in town.

So it was just the reverse. Harvard's scheme compared to Cornell's showed how irrational it all was.

Senator KENNEDY. You also had an incident involving an eating room at the faculty club.

Judge GINSBURG. Oh, yes. That was many years later in 1971. I visited Harvard Law School to teach a course on women and the law. It was the first such course Harvard offered. The faculty club, the Harvard Faculty Club, up until that 1971 fall term, had the dining room and the ladies' dining room. If you were a lady, until that term, you didn't have a choice. You went to the ladies' dining room.

I asked to be seated in the dining room and the hostess said to me, "Well, dear, you are allowed to dine in the Dining Room, but wouldn't you really feel more comfortable in the Ladies' Dining Room?"

The CHAIRMAN. What did you say, Judge?

Judge GINSBURG. I can tell you what I did. I had my meal in the dining room. The way the world was just a generation or two ago is something that, as I said before, today young people can hardly grasp.

One of my favorite stories concerned a case, a men's rights case, an early title VII case called *Diaz* v. *Pan American World Airways* (1971). The plaintiff was a man who wanted to be a cabin attendant, but that particular airline hired only women. You may remember the days of "I'm Cheryl, fly me." The *Diaz* case was part of that era.

I was having lunch with some law school colleagues at the U.N. dining room where we met to discuss a proposed commercial law treaty. And one of the men said to me, "I understand what you are doing, Ruth, and it is great you are all for equality, and we are, too. But some of this is getting beyond reason. You know about that case of a guy who wants to be a stewardess? Isn't that silly?"

The waitress serving our table came to my aid. She said, "Pardon me, but I couldn't help overhearing your conversation. I just came back to the United States on Alitalia, and on that plane there was the most adorable steward." The men turned to me, and one said, "Ruth, do women look at men that way?" And I said, "You're darn right we do." [Laughter.]

Senator KENNEDY. Well——[Laughter.]

Senator HATCH. You asked for it, Senator.

Senator KENNEDY. As we were proceeding along, I think in our visit in the office you also reviewed, and I think the record has brought out your experiences after graduation, the difficulties you had, with one of the most extraordinary academic records, both at Columbia and Harvard and in getting employment, and then your visit and travels overseas, and then back and eventually on the Rutgers Law School faculty.

Can you tell us just a little bit about when you started working, as I understand it, with the ACLU on gender discrimination cases while you were teaching there in the late 1960's? What was the first case you took to the Court, and can you tell us a little bit about it?

Judge GINSBURG. The first series of cases I handled were not big Federal cases. Many States had moved ahead of the Congress. The 1964 title VII legislation trailed a number of States that had already enacted State human rights laws, States that in some instances included sex along with race, national origin, and religion as a proscribed basis for discrimination.

I got into the sex equality advocacy business through two doors: one was opened by my students who, in the late 1960's and early 1970's, encouraged the faculty to offer a course in this area; the other was opened by complaints that began to trickle into the New Jersey affiliate of the ACLU. I will describe a typical one: A school teacher becomes pregnant, and is told she must leave work—in the third month or the fourth, or as the pregnancy begins to show. She is put on what was euphemistically called maternity leave, which meant no pay, no benefits, no health benefits. "We will call you back if we have a need for you." That was about the size of it.

Many of the women in that situation were schoolteachers. Some were in other fields.

I recall another typical case, one involving the Lipton Tea Co. The complainant's employer had a fine health plan. Her husband's employer didn't have an equally fine plan. So she wanted to sign up with her employer to get the more advantageous plan for herself, her spouse, and her children. And she was told, "Women can get health coverage under our plan only for themselves. We have family coverage only for male workers." That was another category of case.

Senator KENNEDY. So you had *Reed* v. *Reed* in 1971, which is the case that was referred to earlier, the Idaho case involving a law that required that males must be preferred to females in handling the decedent's estate. That was the first occasion on which, as I understand, the Court held a gender-based classification inconsistent with the equal protections of the laws. *Frontiero* (1973) has just been referenced earlier, and in that case, as I understand it, the wives were presumed to be dependent on the husbands, and you had to show—the husband had to prove he was dependent on the wife. Therefore, as I understand it, this was where Justice Brennan's opinion recognized this as an example of gender stereotyping. The law assumes that wives would be financially dependent on the spouses, but husbands would not. And he noted that traditionally such discrimination was rationalized by an attitude of romantic paternalism, which in practical effect put women not on a pedestal but in a cage.

As was mentioned earlier, in the *Frontiero* case, Justice Brennan's opinion applied the strict scrutiny test. You mentioned earlier the different tests which are applied in terms of economic regulation, race, and gender discrimination. He supported or applied a strict scrutiny test, which gathered four votes in favor at that point. But it would still take additional cases before the Supreme Court would raise, as I understand, the level of scrutiny.

The *Weinberger* v. *Wiesenfeld*, 1975, is a particularly moving case. I know that you remember it well, and I know that you have maintained an interest in the individuals involved. I wonder if you would just share with us briefly the history of cases involving gender discrimination.

Judge GINSBURG. Yes, I think you will hear from Stephen Wiesenfeld later. I would like to go back even before *Reed* (1971) so that it can be understood what the state of precedent was like, what led Justice Brennan to say the pedestal has sometimes been a cage.

The case is *Hoyt* v. *Florida;* it yielded a 1961 decision from the liberal Warren Court. You recited it correctly. The question was whether women would be required to serve on juries just as men are required to serve, or whether, as Florida had it, women could serve if they wanted to, but would not summoned for jury duty. Women who wanted to serve would have to come to the clerk's office to sign up. Not surprisingly, very few did. This was the case.

A woman, Gwendolyn Hoyt, had a philandering husband who had humiliated her to the breaking point regularly. We didn't use names like "battered women" in those days. We just said, "She does not have a happy marriage." One day, enraged by the humiliation to which she was exposed, Gwendolyn Hoyt turned to the corner of the room and spied her young son's baseball bat. It was a broken baseball bat. She took the bat and brought it down on her husband's head, ending both the fight and husband, and starting the prosecution for murder.

Hoyt argued that having women on the jury—or at least in the pool from which the jury would be picked, improving the chances she would have women in that jury room—would yield better comprehension of her state of mind, her utter frustration, and might lead to her conviction of something less than murder.

The Court in 1961 responded to her plea—she was indeed convicted of murder by the all-male jury. Hoyt complained that the jury pool was not drawn from a fair cross-section of the community because women were left out. The Court said Florida's scheme was pure favor to women. They had the best of both worlds. They could serve if they wanted to. They had only to sign up in the clerk's office. They didn't have to serve if they didn't want to, so what was the complaint about? Women were treated better than men. Apparently, little thought was given to Gwendolyn Hoyt and the murder charge affirmed in her case.

Now, let's proceed from 1961 to—I think the *Wiesenfeld* case began in 1973.

Senator KENNEDY. It ended in 1975, the citation I have.

Judge GINSBURG. A young man, Stephen Weisenfeld, had a tragic experience. His wife Paula died in childbirth. She had had an entirely healthy pregnancy, and he was told that he had a healthy baby boy but his wife had died. He determined that day to be a caregiving parent to his child, Jason Weisenfeld.

Stephen Weisenfeld went to the local Social Security office and asked about the benefits he thought a sole surviving parent could get. He was informed that the benefit he sought was called a mother's benefit, and that he didn't qualify.

So as I recall, he wrote a letter to the editor of his local newspaper. The letter began, "I have heard a lot about women's lib. Let me tell you my story." He told about his wife having been a wage earner, having paid the same Social Security tax that a man would pay, about her death and how he didn't qualify as a caregiving parent because he was a male.

He ended the letter with the line, "Tell that to Gloria Steinem." He was tired of hearing about "women's lib." His case was the perfect example of how gender-based discrimination hurts everyone.

The discrimination started with his wife, who worked as a man did, who paid Social Security tax as any wage earner does, but

whose Government said, in effect, we don't protect your family the way we protect the family of a male wage earner.

And then there was Stephen Wiesenfeld himself, who wanted to care for his child, but was informed there were no benefits for him to do that, because he was a father, not a mother. Also there was Jason, the son of Paula and Stephen, who would not have the opportunity to have the care of his sole surviving parent, for the sole reason that it was his mother, not his father, who had died.

The case resulted in a unanimous judgment in Stephen Wiesenfeld's favor. Every Justice voted to strike down the gender-based classification. The majority said it discriminated against the woman as wage earner. Others said it discriminated against the man as parent. And one said it discriminated against the baby.

That case, more than any other, I believe, shows the irrationality of gender-based classification.

Senator KENNEDY. And you stayed in touch with the family, as I understand, is that correct?

Judge GINSBURG. Yes, and I am pleased to say that Jason, who I don't think was yet 3 at the time of the Supreme Court victory, is now in his last year in college, and his father tells me he's going to apply to law school.

Senator KENNEDY. Well, these cases are very important and significant on the legal issues and certainly equally important in terms of the human implications, and, obviously, your role in this was absolutely essential.

I want to just move along through these cases, starting in 1971 and continuing through 1975, and then finally the *Craig* v. *Boren* case, which held that gender-based distinctions by Government are invalid, unless shown to be "substantially related to an important government interest." So we have the striking down of gender-based discrimination and putting in place a heightened standard of review by the Supreme Court. That obviously has been an extraordinary achievement and accomplishment in striking down the barriers of discrimination in our society, and I think it is important for us to understand it.

You have obviously had a wealth of experience with the gender discrimination, both firsthand experience and through cases you have handled, and I would like to just move into the questions about what this has meant to you in terms of sensitizing you to other issues of discrimination—how it affects your own thinking as a judge, but also your own sensitivity to other forms of discrimination suffered by many others in our society.

I think you are very much aware of the continued kinds of discrimination, even gender discrimination and wage discrimination that exists in our society, and unequal remedies which are available for people, remedies which differ on the basis of gender. So those are matters that we are going to be addressing certainly in the Congress, but they do continue.

On the issue of civil rights, Congress and the President took up the challenge in the 1960's with the landmark civil rights bills. In the earlier period of time in the 19th century, Congress passing powerful laws, and they were effectively gutted by the Supreme Court. Then in the first 60 years of this century leadership in fighting discrimination basically fell to the Supreme Court. Congress

and the President took up the challenges in the 1960's and important progress was made.

Then we have seen action that was necessary in the Civil Rights Act of 1991, a bipartisan bill, to deal with the series of decisions by the Supreme Court in the 1980's that many of us believed have weakened the protections available to victims of employment discrimination.

I had intended to go through a number of the items on the civil rights issues which I think are important, and we will have a chance to review those in a second round. Maybe others will get to those issues. In *Shaw* v. *Library of Congress,* you showed sensitivity on the issue of attorneys fees, and then the Supreme Court treated that issue differently, and in the 1991 Civil Rights Act Congress overruled that decision.

Then there were other decisions such as *Spann* v. *Colonial Village*, on the Fair Housing Act, to challenge the use of all-white models in advertising for rental housing. You wrote an opinion holding that organizations dedicated to ensuring fair housing opportunity had standing to bring that suit, because they suffered real injury, when African-Americans were steered away from apartment complexes that used only white models in advertising.

As someone who is a sponsor of that Fair Housing Act, along with others on this committee, I was struck by the appreciation that you showed in your opinion for the need for private enforcement actions against this kind in discrimination.

Then in *Wright* v. *Regan,* you ruled that the parents of African-American school children had standing to challenge the fact that the Internal Revenue Service had allowed private schools that banned blacks to have tax-exempt status. The Court overturned you on the issue of standing, but eventually on the substance of the issue, in the *Bob Jones* case, certainly it supported the basic and fundamental principle that the IRS could deny tax-exempt status.

Perhaps in just the couple of minutes I have left—you take what time that you need, but I will not be able to inquire further of you—if you could go back perhaps to the experience that you had with regard to gender discrimination, I think some of these cases that I mentioned at least for me demonstrate a sensitivity on the issues of race discrimination.

You also wrote an opinion in *Walker* v. *Jones* applying the civil rights laws to Members of Congress, which was a welcome decision as well.

Perhaps you could tell us in your own words, in whatever way you care to, about how your experience on gender discrimination has sensitized you on the issues of discrimination generally, on the issues of civil rights, and other forms of discrimination which we face in our society. What may we expect of you?

Judge GINSBURG. 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 Senator Specter's State, 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 the time of World War II.

Then there was the tremendous debt the women's movement owed to the civil rights movement of the sixties, in the development of legal theories. There is also some crossover.

You mentioned the case of *Ida Phillips* v. *Martin-Marietta,* the 1971 Supreme Court decision, the first title VII sex discrimination case to come before the Court. That case was brought by the NAACP, Inc. Fund, although Ida Phillips was a white woman. The employer said we won't hire or retain women with preschool-age children. Although Ida Phillips was white, the NAACP, Inc. Fund appreciated what a devastating effect a rule like that would have on black women who were seeking to gain or retain employment.

People who have known discrimination are bound to be sympathetic to discrimination encountered by others, because they understand how it feels to be exposed to disadvantageous treatment for reasons that have nothing to do with one's ability, or the contributions one can make to society.

Senator KENNEDY. I thank you. My time is up, but I want to thank Judge Ginsburg for revealing not only the brilliance of her mind, but I think the quality of her soul and heart, as well.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge, this would be an appropriate time to take a break, if you would like, or we can continue for one more Senator and then take a break. Do you have a preference?

Judge GINSBURG. Then we will have——

The CHAIRMAN. In other words, we need to take a break now or in 30 minutes.

Judge GINSBURG. Why don't we go another 30 minutes and then take a break, if that is satisfactory.

The CHAIRMAN. That is fine.

Mr. Chairman.

Senator THURMOND. Thank you very much. Thank you, Mr. Chairman.

Judge Ginsburg, several educators in South Carolina have requested I propound four questions to you, and in preparing these questions or any others I may propound during the hearings, if you feel they are inappropriate to answer, will you speak out and say so.

The first is, many parents feel that public school education is lacking. What are your views on the constitutionality of some form of voucher system, so that working and middle-class parents can receive more choice in selecting the best education available for their children?

Judge GINSBURG. Senator Thurmond, aid to schools is a question that comes up again and again before the Supreme Court. This is the very kind of question that I ruled out.

Senator THURMOND. Would you prefer not to answer?

Judge GINSBURG. Yes.

Senator THURMOND. Well, you feel free to express yourself on any of these.

Next is, based upon your understanding of the U.S. Constitution, do communities, cities, counties, and States have sufficient flexibility to experiment with and provide for diverse educational environments aided by public funding and geared to the particular needs of individual students of their particular area of jurisdiction?