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## Aryeh Neier: Reflections on Ruth Bader Ginsburg’s Leadership of the ACLU Women’s Rights Project

**In this interview, Aryeh Neier, former Executive Director of the ACLU, Founding Director of Human Rights Watch, and current President of the Soros Foundations and the Open Society Institute, reflects on his hiring of Ruth Bader Ginsburg to direct the Women’s Rights Project and her tenure at the ACLU.**

### *How did you come to know Ruth Bader Ginsburg?*

I became the director of the ACLU in October of 1970, and I set about launching a series of specialized projects. One of the issues I particularly wanted to deal with was the question of women’s rights. I began asking around who was well qualified to lead a project of that sort, and I was told that there was this outstanding lawyer who was at Rutgers Law School who had brought some cases on behalf of the New Jersey ACLU. And so I arranged to meet Ruth Bader Ginsburg to talk to her about the project, and I was very impressed by her when I met her. At that moment, however, she was undergoing a transition. The women’s rights issue had been discovered around that time, and a number of other law schools were suddenly interested in hiring her. Ginsburg was interested in moving to Columbia Law School, in part because of its location. She did not want to give up a potential post at Columbia, so I talked to her about the possibility of working part-time at Columbia and part-time at the ACLU directing the Women’s Rights Project. We were able to work out an arrangement where she divided her time between Columbia and the ACLU.

### *What impressed you most about Ruth Bader Ginsburg during her time at the ACLU?*

There never was another circumstance in my tenure at the ACLU

when there was as clearly planned a litigation strategy as Ginsburg implemented in the women’s rights field. To my knowledge the only litigation strategy that anyone ever implemented that was as clearly developed was what Thurgood Marshall did at the NAACP Legal Defense Fund with respect to school desegregation. That is, what Marshall did was to build precedent upon precedent, not going too far in any one case but gradually leading the Supreme Court to a series of decisions that then resulted in *Brown*. And Ginsburg did that for the ACLU in the women’s right field. In some respects that was more difficult to do in the women’s rights field than in the school desegregation field for this reason: school desegregation by its nature involves massive cases and an immense amount of information has to be produced at trial in a school desegregation case. Therefore it wasn’t just any attorney who could go in to court with a school desegregation case. On the other hand, in the women’s rights field it was much more difficult because there were all these attorneys who were discovering the field and were eager to bring cases. Therefore managing an orderly progression of cases was infinitely more difficult because you had to deal with the other people who were bringing these cases and persuade them why they should conform to your strategy.

Effectively what Ginsburg was trying to do was to get the equivalent of the Equal Rights Amendment, which was being debated at that point in the state legislatures, through litigation. After the ERA had been adopted by Congress but fallen short of the number of states required for ratification, she tried to persuade the Supreme Court to adopt a standard of review in sex discrimination cases that was as strict as the standard applied in race discrimination cases. The case in which she came closest was *Craig v. Boren*, where the Court adopted a mid-level test - more than a rational relationship but less than a compelling state interest. It was her very careful process of inching the Court along that was the best planned legal strategy I saw in my tenure at the ACLU.

The other thing about Ginsburg was that it was a sheer pleasure to read her briefs. They were simply superb pieces of legal

- > Aryeh Neier brought Ruth Bader Ginsburg to the ACLU to launch the Women's Rights Project.



argumentation. Ginsburg is a very spare person, and her briefs reflected her personality. The briefs were tough in their language, and you couldn't slip a knife between the arguments. They were so tightly reasoned.

***When you think back to the accomplishments of WRP in the 1970s what was the biggest success would you say?***

The biggest success was Ginsburg's litigation campaign—how it transformed the law dealing with women's rights. I think it was one of the masterpieces of American "cause litigation." It wasn't one case, it was the cumulative effect from her planning of all the cases she dealt with.

***I know she sometimes used male plaintiffs in the cases—did you have conversations with her about those decisions?***

Absolutely, and she was very clear about that. One of them for instance, *Frontiero v. Richardson*, involved the husband of a woman in the Air Force denied the same housing benefits that were available to the female spouses of men in the Air Force. Another one, *Weinberger v. Wiesenfeld*, involved the Social Security benefits that were available to a male survivor after his wife died. Ginsburg was intent on showing that it was discrimination per se that was the issue and the particular victim could be male or female. It was very much Ginsburg's point of view that men took part in the upbringing of children and giving care to others. The sexual stereotypes that said otherwise had to be challenged, and using males who were in the dependent spouse category was an appropriate way to demonstrate that the sexual stereotypes of the era were not valid.

***What were your thoughts when she was appointed to the D.C. Circuit Court of Appeals?***

I was delighted by that. I thought she would be a very good judge. I would have liked her to continue to be associated with the ACLU, but frankly, having her on the bench was better. It was not

surprising to me that she would be appointed.

***And what about when she was appointed to the Supreme Court?***

In a way that was a little bit more surprising because by that stage there had already been efforts to demonize the ACLU and I thought that that would be a factor with respect to confirmation. But I knew she would make a terrific Justice.

***Do you have any closing comments?***

Well, I admired her during her time at the ACLU, and if anything, in retrospect, I admire her even more now. She accomplished just an extraordinary amount in her service at the ACLU. One simply could not have asked for more. ■