

# Audio file

[118131-OntheBasisofSex.mp3](#)

## Transcript

Speaker 1

# Ten thousand men of power # Was victory today... # Anyone here?

Speaker 2

My name is Erwin Griswold. I am the dean of this place. Welcome to Harvard Law School. Take a moment to look around you. In this room, there are Rhodes and Fulbright Scholars, Phi Beta Kappa members, student body presidents, and a Harvard football team captain. Together, you will become lawyers. This is a privilege you share. It is also a responsibility you accept. Consider, what does it mean to be a Harvard man? A Harvard man is intelligent, of course, but he is also tenacious. He is a leader devoted to the rule of law. He is mindful of his country. loyal to tradition, and he is respectful and protective of our institutions.

Speaker 3

The net operating loss deductions of such a year shall be computed as of subsection A of this section applied to such tax...

Speaker 4

Which one makes me look more like a Harvard map?

Speaker 3

I'm thrilled to report that you look nothing like a Harvard man.

Speaker 4

Seriously, it's the Dean's dinner, Marty. You know how I am at these things. I need to make a good impression.

Speaker 3

And you will, Kitty, but you've got it wrong. It's not the dress, it's you.

Speaker 5

We touched it to the casserole.

Speaker 6

Come, sweetie.

Speaker 4

Come. There we go. I put onions in. They help, right?

Speaker 3

Definitely.

Speaker 4

I don't like either of these.

Speaker 7

Ladies and gentlemen, please join us in the dining room as dinner is served. And professors, please escort the ladies in.

Speaker 8

Mia.

Speaker 9

You said, Professor, you corrected our papers, and I said, Correcting them will take a lifetime. I'm nearly grading them.

Speaker 2

Esteemed colleagues, ladies, this is only the 6th year women have had the privilege to earn a Harvard Law degree. This little soiree is our way of saying welcome. My wife, Harriet, and I are very glad all nine of you have joined us. Let us go around the table, and each of you ladies report who you are, where you're from, and why you're occupying a place at Harvard that could have gone to a man. Yeah.

Speaker 9

Well, why don't you get us started, dear?

Speaker 7

I'm Henny Callahan. Father's a lawyer back in Minneapolis. He used to give me drafts of contracts to use for drawing paper, but at some point, I got more interested in reading them than drawing on them. In a few years, it's going to be Callahan and Callahan.

Speaker 2

That was fine. Next.

Speaker 5

Emily Hicks, hello, Connecticut. When I finished Mount Holyoke, my mother wanted me to get married. But I didn't want to do that. And I didn't want to be a teacher or a nurse. So when I...

Speaker 2

That's not a very good reason. Next.

Speaker 4

I'm Ruth Ginsburg from Brooklyn.

Speaker 2

And why are you here, Ms. Ginsberg.

Speaker 4

Mrs. Ginsberg, actually. My husband Marty is in the second year class. I'm at Harvard to learn more about his work so I can be a more patient and understanding wife. Come to dinner. Beans will be boiled, the chicken will be stewed, and you will be grilled. We came to Harvard to be lawyers. Why else?

Speaker 3

It's truly an asinine question.

Speaker 4

He's never going to take me seriously.

Speaker 3

No, that's not true. You're the smartest person here, and you're going to be the most prepared. So just stand up and say what you know. At a place like this, that's all that matters.

Speaker 4

In my experience, even small mistakes are glaring when you stick out.

Speaker 10

Well, then you're very lucky.

Speaker 3

Because you... are very short.

Speaker 4

Oh, yeah.

Speaker 3

Yeah.

Speaker 4

Well, why don't you come down here and say that to my face?

Speaker 1

Mrs. Ginsburg.

Speaker 11

I am Professor Brown. This is Introduction to Contracts. Hawkins versus McGee. State the case, please. Mr. Pruitt.

Speaker 12

Good morning. I'm Donald Pruitt. I'm really honored to be here.

Speaker 11

Hawkins v. McGee.

Speaker 12

Yeah, Hawkins versus McGee. It's a fascinating breach of contract case where... Or Charles Hawkins hurt his hand, and McGee had actually...

Speaker 11

And someone help him, please. Mr. Fitzpatrick.

Speaker 13

It was Charles' son who hurt his hand. Electrocutation burn.

Speaker 11

And on what point does the case turn, Mr. Fitzpatrick.

Speaker 13

McGee promised to fix the hand by performing a skin graft, but McGee wasn't very familiar with the procedure, and the results weren't quite what he planned.

Speaker 11

Question already, Mrs. Ginsberg.

Speaker 4

Correction, Professor Brown. McGee did not simply promise to fix George Hawkins' hand. He promised, quote, a 100% good hand.

Speaker 13

That's the same thing.

Speaker 11

Is it? What say you, Mrs. Ginsberg.

Speaker 4

It is not. Words matter. McGee grafted skin from Hawkins' chest. Not only did this fail to fix the scarring, he had chest hair growing on his palm.

Speaker 13

Proving that a hand with a burn is worth two with a bush.

Speaker 4

The court denied Hawkins damages.

Speaker 13

Hawkins did get damages. The court said he could...

Speaker 4

If I may finish. Hawkins was denied damages for pain and suffering. The New Hampshire Supreme Court ruled he was entitled to damages only based on the contract being fulfilled. So if Dr. McGee had set realistic expectations instead of making grand promises, Hawkins' award likely would have been less.

Speaker 11

That an answer, Mrs. Ginsberg, or a filibuster?

Speaker 1

Movie. Movie.

Speaker 5

Forwards. Second word.

Speaker 14

Seven.

Speaker 5

Seven.

Speaker 14

Uh-oh. Fourth word.

Speaker 8

Oh, hockey. Oh, gorilla. Monkey business. Eight.

Speaker 1

Monkey. Eight.

Speaker 8

Monkey on my back.

Speaker 1

Second word, seven. Seven.

Speaker 8

Seven rides her seven brothers.

Speaker 1

What does that have to do with monkeys? Oh, the seven-year itch. Ruthless Ruthie strikes again.

Speaker 6

Okay, next round's riding on you. Don't worry, he's very good.

Speaker 15

Thank God, because she actually broke up with someone for being bad at her age.

Speaker 14

You didn't really.

Speaker 4

It was a manifestation of his being an idiot.

Speaker 14

See.

Speaker 8

Don't worry, I'm comfortable being smarter than you.

Speaker 6

Oh, thank you. All right, everybody ready? Song. Black Buddy Paulia. Bill Haley. File Elvis. Three words. First word. Table. A glass. A book.

Speaker 8

Reading.

Speaker 16

Blue.

Speaker 6

Blueberry Hill. No, that's Fat Somino. Third word. Third word. Floor. Carpet. Dancing.

Speaker 1

Nice moves.

Speaker 8

Oh, blue sweet shoes.

Speaker 6

Come on, Marty, you're a lightweight. Marty.

Speaker 1

Marty, help.

Speaker 8

Is he all?

Speaker 6

Right? Help! I'm gonna get some help.

Speaker 5

Excuse me. Just a moment, please. Excuse me?

Speaker 4

Just a moment. I need to make a call. Yes.

Speaker 5

Can we have the results today? Excuse me?

Speaker 4

Doctor, you examined my husband. I'm wondering when you think he'll be able to leave.  
I need to call the sitter.

Speaker 17

What's the person's name?

Speaker 4

Morton Ginsberg.

Speaker 17

Right. Ginsberg. He's not going home today.

Speaker 8

Excuse me?

Speaker 17

We have more tests to run.

Speaker 4

What kind of tests?

Speaker 17

Various kinds. He's going to be with us a while.

Speaker 4

What tests? I need to see him.

Speaker 17

Go home, get some rest. We'll know more in a few days. Now, if you'll excuse me.

Speaker 5

How is he? Fine. Call any time, okay? Bye.

Speaker 18

You all right?

Speaker 4

Hi. At least you got a break from my cooking.

Speaker 19

Good afternoon. Hey, Doc.

Speaker 4

Talks a lot better.

Speaker 19

It's as we feared. Marty, you're young. We caught it early. We've pioneered a new treatment here. It entails numerous surgeries, each followed by a course of radiation. There's a chance you can go on to a healthy, happy life, as if none of this had happened.

Speaker 4

What kind of a chance? Dr. Ledbetter, we'd rather know what we're facing.

Speaker 19

The survival rate for testicular cancer has been about 5%.

Speaker 3

Thanks for the honesty. I think.

Speaker 19

I'll let you two talk. We're.

Speaker 5

Never giving up. Keep working.

Speaker 8

Keep studying.

Speaker 4

Jane, I have a father.

Speaker 5

You will be a lawyer.

Speaker 8

I am spending my life with you, Martin Ginsberg.

Speaker 20

Judicial consistency. The doctrine of stare decisis comes from English common law. Which also provides the first examples of circumstances where precedents may be overturned. Excuse me. Judges are bound. Excuse me. May I help you?

Speaker 8

I'm Martin Ginsburg's wife.

Speaker 4

I'll be attending his classes for him.

Speaker 20

In addition to your own.

Speaker 4

Yes, Professor Freund.

Speaker 20

Judges are bound by precedents, but they cannot ignore cultural change. A court ought not be affected by the weather of the day, but will be by the climate of the era.

Speaker 3

Wait, Say that last part again.

Speaker 4

A court ought not be affected by the weather of the day, but will be by the climate of the era.

Speaker 3

You sure he said that? Of course. Of course. The law is never finished. It is a work in progress. And ever will be. *Brown v. The Board of Education*, parentheses 1954. was the most revolutionary Supreme Court case in the last century. Representing Oliver Brown et al. Thurgood Marshall.

Speaker 4

I'm not listening.

Speaker 3

Educated the court.

Speaker 4

Come on, Jean.

Speaker 8

That's it.

Speaker 5

Come on, sweetie. Okay. .

Speaker 8

One, two, three, woo.

Speaker 5

One, two, three, woo! Should we give Daddy a rest? One.

Speaker 3

Day this little angel's going to slam a door in our face and tell us that we're ruining her life. You should have never taken the job.

Speaker 4

It's a great firm. New York is the center of the legal universe.

Speaker 3

You earned it. You earned it. I barely survived it. I still want to be away from you and Jane.

Speaker 4

You won't be. I won't allow it. I'll convince him.

Speaker 3

Say good luck, Mommy. See you later, Mommy.

Speaker 2

You want a Harvard Law degree, though you plan to finish your coursework at Columbia. You would do well, Mrs. Ginsberg, to remember how fortunate you are to be here.

Speaker 4

Dean Griswold, between the first and third year of law school, which is the more substantive, the more critical.

Speaker 2

The first, of course.

Speaker 4

Yet when someone transfers in as a second-year student, having taken those more important classes elsewhere, he's allowed a degree.

Speaker 2

That's irrelevant.

Speaker 4

I've been here two years. I'm first in my class.

Speaker 2

There is no reason your husband cannot provide for you while you and the child remain in Cambridge.

Speaker 4

Last year, John Sumner was allowed to finish his coursework at Baltimore. Three years ago, Roy Paxton...

Speaker 2

Very different cases.

Speaker 4

How are they different?

Speaker 2

Mrs. Ginsburg, you have no compelling need to transfer.

Speaker 4

Marty could relapse. Lee beat the odds. But the doctors say it could happen at any time. Dean Griswold, this is my family.

Speaker 2

Nonetheless, we each have our responsibilities, and mine is to protect the distinction of a Harvard law degree. I can't force you to stay, but I won't reward you for leaving either.

Speaker 18

Jesus, Mary, Joseph. Graduating top of your class, law review at Harvard. And Columbia. How didn't you know that was possible?

Speaker 4

Thank you, Mr. Green. I've worked hard.

Speaker 18

Well, you want some white shoe firm. Big money cases, complex legal maneuvers.

Speaker 4

No, I think Bibler and Green is the perfect fit. You handled the Mercer bankruptcy last year.

Speaker 18

Come on. How many have you been to? They all turned you down, right? How many?

Speaker 10

Ten.

Speaker 4

Twelve.

Speaker 18

A woman, a mother, and a Judah boot. I'm surprised that many let you through the door.

Speaker 4

One sent me to interview for the secretarial pool. Another told me I'd be too busy at bake sales to be effective. One partner closed his clients in the locker room at his club, so he said I'd be out of the loop. Last week, I was told women are too emotional to be lawyers. Then that same afternoon that a woman graduating top of her class must be a real ball-buster and wouldn't make a good colleague. I was asked when I'd have my next baby. Whether I keep Shabbat. One interviewer told me I had a sterling resume, but they hired a woman last year, and what in the world would they want with two of us?

Speaker 18

You must be livid.

Speaker 4

My mother taught me not to give way to emotions.

Speaker 18

\*\*\*\*\*. You're angry. Good. Use it. I have to say, Mrs. Ginsburg, I'm very impressed.

Speaker 4

Mr. Green, I want to be a lawyer. I want to represent clients before the court in pursuit of justice. You can see, I worked hard through school. I did everything I was supposed to, and I excelled. I swear, I'll do the same for you.

Speaker 18

The fact is that, you know, we're a close-knit firm, almost like family. And, uh... other wives, they get jealous.

Speaker 4

The prince would marry her, whose foot would fit the little slipper?

Speaker 3

Kicky.

Speaker 4

Where is he? Tried it on the... Where's everybody? Princess. Oh, hi. Hello, sweet pea. Come here.

Speaker 8

How was your day?

Speaker 3

I missed you. Did you have a nice day? Did you get the job? You got the job? That's wonderful.

Speaker 18

Oh.

Speaker 3

So they're going to give you a corner office, or are you still going to have to jump through some hoops?

Speaker 4

It's not at Bibbler and Green. I wasn't what they were looking for.

Speaker 3

It's okay. I told you one of those other firms would come back. Which one was it?

Speaker 4

Ride Ferguson left his professorship at Rutgers. Kicky. They haven't found another black man to replace him, so someone thought a woman would be the next best thing. Good news.

Speaker 3

You can't quit. There are more firms out there. This is the biggest city in the most litigious country in the history of the planet.

Speaker 4

You can still... Marty, I got a job. Just open the champagne.

Speaker 3

Okay.

Speaker 15

Okay.

Speaker 3

Then let's celebrate.

Speaker 4

Marriage is sick of.

Speaker 3

You know what I think I... I think this is good. I think it's better. You won't be beholden to any firm. You won't have a partner breathing down your neck. And also, a professor is free to represent any client she chooses.

Speaker 4

As long as they don't find a lawyer who's never actually practiced law.

Speaker 3

Well, all I have to say is, hooray for Mommy.

Speaker 16

Chief.

Speaker 3

Hooray for Mommy.

Speaker 4

Hooray for Mommy.

Speaker 1

Vietnam! Are we going to stand for that? No! Are we going to die in Vietnam? No! Hell no, we won't go! Hell no, we won't go! Hell no, we won't go.

Speaker 4

I'm Professor Ginsburg. This is Sex Discrimination and the Law. Some of my colleagues will tell you that sex discrimination doesn't exist. That I may as well be teaching the legal rights of gnomes and fairies. Let me see if they're right. Foite versus Florida. State the facts, please, Miss Valentin. Gwendolyn Hoyt was a housewife, and her husband

was this \*\*\*\*\*. Can you recall the specifics? He cheated on her, he choked her, he'd rip off her clothes and threatened to kill her. So in statutory terms, he was a real \*\*\*\*\*. On the night in question, Clarence told his wife that he'd met another woman, and he was leaving her. How did Hoyt respond, Miss Burton? She smashed in his skull with a baseball bat. Then called an ambulance while he was dying. A jury convicted Hoyt for second-degree murder. And that's where our story begins. A great civil rights lawyer took up Hoyt's appeal. Dorothy... Kenyon. And what grounds, Miss Romer?

Speaker 21

The Florida's juries violated the U.S. Constitution because there were only men on them. Kenyon said that if there were women on it, Hoyt may have been convicted of a lesser crime, like manslaughter.

Speaker 14

But that law makes sense, though. Women can't take care of their kids if they're on some sequestered jury. Excuse me? What? Men are the mammoth hunters.

Speaker 4

Wow. You're never getting laid again. What about women who don't have children?

Speaker 21

Or they're out of the house? Let the man stay home and take care of his children.

Speaker 14

Don't take it out on me. I'm not holding my fiance back. She's got two jobs.

Speaker 4

Which she can be fired from just for marrying you. The law allows it. There are laws that say women can't work overtime. And that a woman's social security benefits, unlike her husband's, don't provide for a family after death.

Speaker 21

What?

Speaker 4

Excuse me? That's \*\*\*\*\*. Ten years ago, Dorothy Kenyon asked a question. If the law differentiates on the basis of sex, then how will women and men ever become equals? And the Supreme Court answered, they won't. Voigt lost her appeal. The decision was unanimous. Discrimination on the basis of sex is legal.

Speaker 3

Here, stir that in.

Speaker 8

Daddy, that's not how you do it.

Speaker 3

Oh, really?

Speaker 8

If you put the herbs in too early, they lose all their punch.

Speaker 3

They're not supposed to pummel each other, Jane. They're supposed to compliment each other, and that is why it's called marrying the flavors. Hi! Daddy.

Speaker 1

Buddy.

Speaker 3

How was your day? Good. You had a good day at school? What'd you learn? Anything exciting?

Speaker 5

Not really.

Speaker 1

Hi.

Speaker 4

Jane. Hey, Mom.

Speaker 3

How's this year's class?

Speaker 4

Oh, these kids are so passionate. To them, it's about more than precedence and dissent. They...

Speaker 5

I want to forge a move-in.

Speaker 3

That's great.

Speaker 4

Those are delicious.

Speaker 3

Don't act so surprised.

Speaker 4

Jane, I got a call from your school today. Apparently, I misdated a note excusing you from classes last week. Not a big deal.

Speaker 3

Oh, well, problem solved then, right?

Speaker 4

You skipped school. It's the first week. Is this what this year is going to be like? And you lied. I never lied. Forging a note is lying, Jane. Smart enough to know that.

Speaker 8

Well, apparently I'm not, Mom.

Speaker 3

Don't forget we have that party tonight. Not you.

Speaker 4

Jane? I apologize, okay? I want to know where you were.

Speaker 8

Denise and I went to a rally to hear Gloria Steinem speak.

Speaker 4

What?

Speaker 8

Gloria Steinem. She's a writer. She just started her own magazine. She testified in the Senate.

Speaker 4

Yeah, I know who Gloria Steinem is.

Speaker 8

Mom, it's a rally, not a riot.

Speaker 4

Jane, these things can get out of hand.

Speaker 8

Okay, well, I'm 15 years old and you don't need to control every minute of my life.

Speaker 4

Yes, I do. That is my job and your job is to go to school and learn.

Speaker 8

Well, Gloria says we need to unlearn the status quo.

Speaker 4

So you're on a first name basis now?

Speaker 8

You know what, Mom? If you want to sit around with your students and talk about how \*\*\*\*\* it is to be a girl, don't pretend it's a movement, okay? It's not a movement if everyone's just sitting. That's a support group.

Speaker 3

Jane, that's enough.

Speaker 8

We should get going. Here, go make yourself pretty for Daddy's party.

Speaker 3

You know what? Go to your room.

Speaker 8

Fine.

Speaker 3

No, it's well known. Tax is the only genuinely funny area of the law.

Speaker 13

I think most of us just want careers that have a little more impact.

Speaker 3

You know young people in Sweden these days aren't getting married? Really? It's true. They're getting engaged. They're still living together, still having kids, raising a family, but they're not getting married. You know why?

Speaker 13

They can have sex without it.

Speaker 3

It's because of taxes. That's true. After the war, Sweden passed a law that said married couples will now file joint income tax returns. However, Unlike the United States, they weren't given any of the benefits from it. So married Swedes were finding themselves in the uncomfortable position of now being in a higher tax price. So they got divorced. Of course, they were still living together. So the Swedish government then passes a new law that says, all right, married couples who get divorced but continue to live together for tax purposes will be considered still married. So they did what anyone did. They add a second entrance to their home with a nice wall that goes right down the middle with doors for easy access. All right, fine, says the Swedish government, new law. Once married, now divorced couples living in a two-income household that is subdivided would, again, for tax purposes, be considered living together, and therefore... Therefore, still married. Now he's got it. And this went on for decades. All the while, a whole generation of Swedes simply skirted the issue by never getting married in the 1st place. Speaking of, have you all met my lovely wife?

Speaker 4

The moral of his story is that in their attempt to raise revenue, the Swedish government ruined all those young men's best hope and happiness.

Speaker 3

Exactly. Because how a government taxes its citizens is a direct declaration of a country's values. So tell me, what could have more impact than that?

Speaker 16

You'd be wise to listen, boys. I swear to Christ, Martin Ginsburg will be signing all of our checks someday. You're a smart girl, Ruthie. You married a star.

Speaker 3

Tom Mallard's barely evolved. He started walking upright last week.

Speaker 4

You always do that. What? You act like it doesn't matter. No.

Speaker 8

But all the little brush-offs, the dismissive pats on the head, it matters, Marty.

Speaker 3

Why? You know what you're doing is important, so who cares? Okay, fine. Next time my boss gives me a clumsy compliment, I'll challenge him to a duel. Does that make you happy?

Speaker 4

I wouldn't want to hurt your stellar reputation.

Speaker 3

Just tell me what you want.

Speaker 4

Nothing. I want nothing. I want you to go to work and wow your bosses and clients and be the youngest.

Speaker 8

Partner in the history of the firm.

Speaker 3

That's not fair.

Speaker 4

Then I want you to walk me home, Marty, so I can sit in my corner and write a lesson plan to inspire the next generation of students. Go forth and fight for equality.

Speaker 3

I don't understand why you're acting like that's such a bad thing. You're out there training the next generation of lawyers to change the world.

Speaker 8

Because that's what I wanted to do.

Speaker 3

Kiki.

Speaker 8

Kiki.

Speaker 3

Page 21.

Speaker 4

I don't read tax court cases.

Speaker 3

Read this one. The IRS denied a petitioner a tax deduction to hire a nurse to take care of an invalid mother.

Speaker 4

Sounds like a real page-turner.

Speaker 3

Ask me why.

Speaker 4

Marty, I have a lecture to write.

Speaker 3

Okay. It's because the petitioner is a man.

Speaker 4

Marty? Section 214 of the tax code assumes a caregiver has to be a woman. This is sex-based discrimination against a man.

Speaker 3

Poor guy.

Speaker 4

If a federal court ruled that this law is unconstitutional, then it could become the precedent others refer to and build on. Men and women, both. It... It could topple the whole damn system of discrimination. What?

Speaker 3

Nothing. I'm just thrilled that your newfound enthusiasm protects law. Marty.

Speaker 4

I'm Bordy. We need to take this case.

Speaker 1

Of course he ceases against Ami and Cambodia.

Speaker 6

I want to know where's the bill to defund it. Ma.

Speaker 4

Wolf is expecting me.

Speaker 22

He wants to get his hands on Nixon, or he hopes to be a Kong dude. Well, why? What's Stephen's? Five years in prison. Go. Oh, I'm an acorn short and round Lying on the dusty ground Everybody steps on me That is why I'm cracked, you see I'm a nut, I'm a nut, I'm a nut Come on. I'm a nut, I'm a nut, I'm a nut I'm a nut, I'm a nut, I'm a nut Well... I'm a nut, but that's no sin 'cause of Camp Shinawa, I fit right in. Ladies and gentlemen, three-time Camp Shinawa all-round camper, Ruth Kicky Bader. Oh, and for all of you who think this job is hard, I judge the 13 and unders with a color war trophy on the line. Back to work. Hey, Kicky, what do you say?

Speaker 4

Hi, Metal.

Speaker 22

Sorry about that. You said you had a case. This is not a case. This is the opening salvo on a 50-year war for a new class of civil rights.

Speaker 4

Yes, exactly.

Speaker 16

I can't do it.

Speaker 22

This is beyond my mandate. What?

Speaker 4

American Civil Liberties Union? Women's rights are civil rights.

Speaker 22

I'm still getting flack for defending drab card burners. And the right to protest actually exists. After you. Bills, I get a... How's Marty?

Speaker 4

He's fine.

Speaker 22

Still protecting the rich against the predations of the poor.

Speaker 4

If we're going to appeal, the court needs to agree there's a constitutional handle here.

Speaker 22

How did you even convince this guy to let you represent him?

Speaker 4

I'll take care of that. Alone.

Speaker 22

Are you kidding me?

Speaker 4

Alone, the judges may not give Marty and I the benefit of the doubt, but with your name alongside ours on the brief.

Speaker 22

Yeah.

Speaker 4

Mel, you must see the opportunity this case represents.

Speaker 22

You think the judges are going to be sympathetic just because they all have prostates? Men and women all eat at the same lunch counters, they drink at the same water fountains, they go to the same schools.

Speaker 4

Women can't attend Dartmouth.

Speaker 22

Men can't go to Smith.

Speaker 4

Women police officers can't patrol New York City streets. We have to get... We have to get credit cards in our husbands' names.

Speaker 22

You're not a minority. You're 51% of the population. That's been tried. Muller, Gussert, what's the other one? The one with the woman with the baseball bat.

Speaker 4

Gwendolyn Hoyt.

Speaker 22

Gwendolyn Hoyt, exactly.

Speaker 4

And morally, they were right.

Speaker 22

Yet they lost. Ruth, morality does not win the day. Look around you. Dorothy Kenyon could not get women equality by arguing a case with sex, murder, and prison time on the line. You and Marty think you're gonna do it with this guy and his taxes.

Speaker 5

Operator, I need a number.

Speaker 4

Denver, Colorado. Come on, you're going to miss your flight.

Speaker 8

Now you have to get James from school while I'm in Denver. Mom, I told you, Denise and I are starting our consciousness raising group. Take James with you. Will you be all right? Yeah. We'll survive somehow. Hey. Go \*\*\*\* \*\*.

Speaker 1

Need us running. Bye, Mom. Bye, Mom. Thank you.

Speaker 4

Mr. Martz.

Speaker 15

Mrs. Ginsberg. You're early.

Speaker 4

I can come back in 10 minutes, if you prefer.

Speaker 15

No, you, please. Might as well come in now and have your say. Shoes off, please. Just come on in. Excuse me. Are you done, Mom? Uh-huh. You want your pants?

Speaker 1

Do you want your crossword?

Speaker 15

Yeah, please. Mom, this is Mrs. Ginsburg. She's the New York lawyer I told you about.

Speaker 4

Mrs. Martz, hello. I thought she would be bigger.

Speaker 15

Bye. You can have a seat. Here you go. Do you want your magnifier? Yeah, please. Okay. All right. Want a drink?

Speaker 4

Uh-huh. I see you were a drum major. I was a twirler.

Speaker 15

It was 1,000 years ago.

Speaker 4

Mr. Moritz, about your case...

Speaker 15

I don't have a case. Four lawyers told me so. And that judge, Teachens, he basically called me a tax cheat.

Speaker 4

Are you?

Speaker 15

I never cheated at anything in my life.

Speaker 9

Tasmanian egg layer. Eight letters.

Speaker 15

Not now, Mom.

Speaker 4

Tell me in your own words, why did you hire a nurse?

Speaker 15

If you've never cared for an ailing parent...

Speaker 4

I have.

Speaker 15

Then you know, between the dressing and the bathing and the toilet, it's not a task for one person, especially if you have a day job. If it wasn't for Kleta, but... I'd have to put Mom in a hole.

Speaker 4

So you deducted Cletus' salary on your taxes?

Speaker 15

The judge said the tax code was clear. Caretaker's deduction was available to all women, but only to men who had wives who were incapacitated or dead or were divorced.

Speaker 4

And you've never been married.

Speaker 15

No.

Speaker 4

The men who wrote that law couldn't even fathom that a bachelor choosing to take care of a parent at home might exist. Tasmanian egg layer, second letter.

Speaker 15

L. Mom, I'll help you a little bit.

Speaker 4

How about Platypus?

Speaker 15

I'm a salesman, Mrs. Ginsburg. And I know when I'm being sold.

Speaker 4

With due respect, you have \$296 at issue. I'm not here for the money. We'd represent your appeal pro bono, if you'll let us.

Speaker 15

So, the judge was wrong.

Speaker 4

Mr. Moritz. The law is wrong. Thank you. I was hungry.

Speaker 15

If it's not for the money, why are you here?

Speaker 4

The 14th Amendment to the United States Constitution says all people must be treated equally under the law. Yet there are, I don't know how many laws, like the caregiver deduction that say, in effect, women stay home, men go to work, and that it should stay that way forever. I want to convince the federal courts that those laws are unconstitutional.

Speaker 15

How do you do that?

Speaker 4

One case at a time, starting with yours.

Speaker 15

So I'm a guinea pig.

Speaker 4

No, sir. You're the man marching out ahead of the band, leading the way. Just like that drum major you used to be.

Speaker 16

I've invested a lot of my own reputation building up your career. Now, you're on track to be the youngest partner in the history of the firm. And you want to risk that because I'm cockamamie case.

Speaker 3

Tom, I'm contractually obligated to ask to take outside work, and I'm asked to, but I...

Speaker 16

For God's sakes, you're traipsing into this. For what? So your wife can feel like a real lawyer.

Speaker 3

She is a real lawyer, Tom.

Speaker 16

If you want to support Ruth, tell her the truth.

Speaker 3

Which is.

Speaker 16

The case is unwinnable. Congress can write whatever taxes it wants. That's not open to constitutional attack.

Speaker 3

But maybe you just say that, because no one's been able to successfully do it before.

Speaker 16

I'm Marty. Fine. Try, but when you lose, and you embarrass our firm, just be ready for your career to come crashing back to Earth.

Speaker 3

Noted. Noted. And thank you, Tom.

Speaker 23

Thank you. Thank you.

Speaker 16

Yeah, yeah, yeah.

Speaker 4

Murder can never be condoned, least of all by a lawyer.

Speaker 8

It's called justice. Yeah, what's just to you may not be just to me or to someone else. You know what I'm talking about.

Speaker 23

Hello, family unit.

Speaker 8

And would it kill you to admit that maybe I actually did something right? This is an A paper. Yeah, of course it is.

Speaker 4

You're a beautiful writer. It just needs more work.

Speaker 3

Please tell me you aren't going 15 rounds over to Kill a Mockingbird.

Speaker 8

Daddy, can you please tell Mom that Atticus Finch can be your role model?

Speaker 4

He covers up Bob Yule's murder. He's a terrible lawyer.

Speaker 8

Why? Because you say so.

Speaker 4

No, not me. Cannon 1 of the American Bar Association's Model Code of Responsibility. What are you talking about? It's called legal ethics.

Speaker 8

Well, you'd do exactly the same thing if you actually had a heart.

Speaker 4

I don't know where she gets her stubbornness.

Speaker 3

Can't imagine. So how was your day? History discloses that woman has always been dependent upon man. Like children, she needs special care. This justifies a difference in legislation.

Speaker 4

Mollie v. Oregon, the law of the land. Or Bradwell v. Illinois. The destiny of woman is the benign offices of wife and mother. This is the law of the Creator. I'm writing this brief and citing the same cases with the exact same precedents as everyone before us. Marty, if this is what we go in with, we're gonna lose.

Speaker 3

Wait, wait, wait, wait, wait, wait, wait. I got it. I got it. At least she's not listening to the monkeys. I'm busy.

Speaker 1

Why do we never get an answer When we're knocking at the door?

Speaker 8

Because the truth is hard and strong I'm fine. I can be as tough as she is. She's a bully. And she needs everyone to know how smart she is.

Speaker 3

You want Mom to stop being smart?

Speaker 8

Manage to stop rubbing it in everyone's face all the time.

Speaker 15

Grandma Celia died when Mom was about your age.

Speaker 8

But up until her dying breath, they would read together, debate ideas together.

Speaker 18

And she taught your mom to question everything. She's not trying to bully you, Jane. She just doesn't want you to feel small.

Speaker 3

She wants to give you What her mom taught her. That's how she... shows her heart.

Speaker 4

Is she okay?

Speaker 3

She'll be fine.

Speaker 8

This is stupid. You're the one who said I'm supposed to be in school.

Speaker 4

If you're going to write about great miracle lawyers, you may as well meet one.

Speaker 9

You ladies look lost. spit it out.

Speaker 4

Miss Kenyon, we're here to see you. I tried to make an appointment.

Speaker 9

Well, here I am. I don't have all day.

Speaker 4

It's about Gwendolyn Hoyt.

Speaker 9

In that case, I have no interest in talking to either one of you.

Speaker 4

I'm-I'm arguing a case. Sex discrimination violates the equal protection principle.

Speaker 9

Equal protection was coined to grant equality to the \*\*\*\*\* a task at which it has dismally failed. What makes you think women would fare any better?

Speaker 4

Please, if we could just talk.

Speaker 9

You want to know how I blew it. Is that it? What I do differently? Why, you think you can change the country? You should look to her generation. They're taking to the streets, demanding change, like we did when we fought for the vote. Our mistake was thinking we'd won. We started asking, please, as if civil rights were sweets to be handed out by judges.

Speaker 4

Protests are important, but changing the culture means nothing if the law doesn't change. As a lawyer, you must believe that.

Speaker 9

Let me guess. You're a professor, aren't you? Ton of knowledge and no smarts.

Speaker 4

Mom, we should go.

Speaker 9

You want advice? Here it is. Tell your client she won't find equality in a courtroom.

Speaker 4

My client's name is Charles Moritz.

Speaker 9

That's cute.

Speaker 4

He hired a nurse to take care of his mother, but he was denied a caregiver deduction on his taxes.

Speaker 9

He's never been married. You found a bachelor taking care of his mother at home. Judges will be repulsed by him.

Speaker 4

Meaning anything is a start.

Speaker 9

What did you say your name was?

Speaker 4

Ruth Bader Ginsburg.

Speaker 9

Well, sorry, Professor Ginsburg. Maybe someday, but the country isn't ready. Change minds first, then change the law. If you'll excuse me, the mayor's decided to rename the neighborhood. So now a developer's kicking 30 families out of a building he abandoned 10 years ago. Soho, who ever heard of such a ridiculous thing?

Speaker 8

I know she's your personal hero and all, but she's kind of a \*\*\*\*\*. No, she's formidable.

Speaker 4

Dorothy Kenyon has been fighting for women's rights and civil rights and labor rights her entire career. She didn't always win, but she made damn sure she was taken seriously.

Speaker 8

She didn't help you. What are you going to do now? It's the right cause. It's the right client, but women have been losing the same argument for over a century.

Speaker 21

Well.

Speaker 8

Just because you lost 100 years before you started is no reason not to try to win. Jane, that was very wise. You know who said it first? Atticus Finch.

Speaker 1

Hey, looking good, ladies.

Speaker 4

Just ignore them.

Speaker 8

Hey, we'll keep you warm if you're getting wet. Oh, yeah, real nice! You kissed your mother with that mouth, \*\*\*\*\*! Mom, you can't let boys talk to you like that. Taxi! Mom, come on! You're getting stopped.

Speaker 5

Look at you, Jane.

Speaker 4

You're a liberated, fearless, young woman. Twenty years ago, you couldn't have been who you are today.

Speaker 8

Dorothy Kenyon's mom...

Speaker 4

The times have already changed.

Speaker 8

Yeah, yeah, we're coming.

Speaker 4

It's what Professor Froren said at Harvard. The court will not be affected by the weather of the day, but will be by the climate of the era.

Speaker 3

Okay, so we're not going back and re-fighting old cases.

Speaker 4

No, we're arguing that the precedent should no longer apply.

Speaker 3

Right, but Ruth Froren was talking about Brown v. the Board of Education. That's a once-in-a-generation case.

Speaker 4

Yeah, we're the next generation. Equal protection applies to all persons, a class in which men and women share full membership.

Speaker 21

A divorced man counts the same as a widower.

Speaker 14

You're saying that this guy could have married his nurse, got divorced the next day, and then he'd be eligible for the tax deduction? That's totally nuts.

Speaker 3

All right, our client is a man. We cannot lose sight of that because men are also harmed by the stereotype. That little boys are told they can't be nurses, they can't be teachers, they can't be secretaries.

Speaker 4

Or cook dinner for their families.

Speaker 3

Exactly. We're counting on you, too.

Speaker 4

Wholly irrational distinction between single sons and daughters.

Speaker 3

Any type of care may have an alien parent, even an unmarried man.

Speaker 8

Alterable biological trait of birth over which the...

Speaker 3

Principles of American democracy should apply to men and women.

Speaker 8

Arbitrary and unequal treatment prescribed by the constitution.

Speaker 3

The law shouldn't reward or penalize taxpayers for their sex.

Speaker 4

Section 214 draws a line solely on the basis of sex.

Speaker 5

Professor Ginsberg, I finished typing the brief.

Speaker 4

You're a Saint Millicent.

Speaker 5

May I make an observation? It's just... when I was typing it up, jumping out all over the brief was... well... sex. Sex, sex, sex, sex, sex, sex, sex, sex. It reeks of hormones and back seats and... I mean, you know how men are. Maybe you should try a less distracting word. Maybe... gender.

Speaker 4

You realize that means...

Speaker 5

That's no problem. I'm happy to type it again.

Speaker 4

Thanks.

Speaker 22

Guessing doesn't do us any good. I need to know how many people were turned away from the polls.

Speaker 16

Yeah, the affiliate still hasn't sent the list.

Speaker 22

Then call Brian Tanner and remind him that we're on the same team. Tell him if he doesn't start acting like I'm gonna fly to Wisconsin and personally whip his throat out myself.

Speaker 9

Melvin, didn't your mother ever teach you to clean your room?

Speaker 22

Miss Kenyon. Time for your annual dusting off already?

Speaker 9

In 1776, Abigail Adams wrote her husband a letter. As you write this new constitution, she said, Remember the ladies. You know what that \*\*\*\*\* went ahead and did?

Speaker 22

Well, I can guess. Idaho statesman. You need a hobby.

Speaker 9

These poor people. Sally and Cecil Reed. Divorced. Their son committed suicide. Both parents want to administer his estate. In Idaho, the law says, in this situation, males must be preferred to females. Why? 'Cause men are better at math. And the Idaho Supreme Court just said that is perfectly legal.

Speaker 22

Dorothy, I've got student protesters in jail in California. I've got schools in Mississippi that still refuse to desegregate.

Speaker 9

You're a sissy. The board threatened to can you because you stood up for draft dodgers. You've had your tail between your legs ever since.

Speaker 22

That is not... We don't have the resources to take this on.

Speaker 9

I've seen you stand up to the might of government with sling and stone for what you know to be right. And, kid, I loved you for it. They're not gonna fire you, Mel. The board's a bunch of tidal fools. They don't have the nerve to do it. I should know I'm one of them. John Adams forgot the ladies. And it's time the ACLU got back in the fight.

Speaker 22

Okay.

Speaker 9

Good. Now, here's where you start. It's a case headed to the Tenth Circuit. It's Professor Otto Rutgers. Smart cookie.

Speaker 22

Ruth.

Speaker 4

But nowhere does the Constitution say the federal government must treat people equally. What does the court say about that, Mrs. Parker.

Speaker 9

That the due process clause implies that equal protection applies to the federal government as well.

Speaker 4

Recite the case.

Speaker 22

Bolling v. Sharp. 347-US-497. Decided in conjunction with Brown v. Board of Education, 1954. Bolling desegregated all of Washington, D.C.'s public schools. Chief Justice Warren writing for the court. How about it, Teacher? I get an A? Well-placed, sending that newspaper and the brief to Kenyon.

Speaker 4

I thought she might have advice.

Speaker 22

Cut the \*\*\*\*. Don't ever do that to me again.

Speaker 4

What do you think of the brief?

Speaker 22

It's a compelling argument. Brilliantly reasoned. More women than ever are working men. Why not? Preschools, washing machines, cheap contraceptives.

Speaker 4

Yeah, times have changed.

Speaker 22

There's A glaring problem, though. In the unlikely event that you actually win this thing, what's the remedy? The court takes away the caregiver deduction for everybody, including working mothers, and you've done more harm than good.

Speaker 4

No. Do you remember Justice Harlan's opinion last June in Welsh v. United States.

Speaker 22

Right. Said laws could be extended. When doing so, it would be closer to the legislature's intent than overturning one of them.

Speaker 4

Yeah, we're adding one more section to the brief, urging the court to extend the law to include Charlie as well as everyone else.

Speaker 22

All right. The ACLU is prepared to put their name on your brief.

Speaker 4

We appreciate your support. Stop.

Speaker 22

I still say I'd rather be a woman in this country than a black man or a socialist or a religious minority.

Speaker 4

Now let's talk about you taking on Reed v. Reed.

Speaker 22

Oh, stop. No.

Speaker 4

Are all men in Idaho better at math?

Speaker 22

Ruth, I gave you one case. That's all you get.

Speaker 4

The Moritz argument works just as well for a female client. And Reed's State Supreme Court case, which means the U.S. Supreme Court must hear the appeal.

Speaker 22

I told you, I don't want another fifth-year battle.

Speaker 4

Call Sally Reed's lawyer mail.

Speaker 22

If I were you, I would worry about my own case. And I expect to see your remedy arguments before they go to the Tenth Circuit. And I want to be there when you practice your oral arguments. We're doing a moot court. No? It's non-negotiable.

Speaker 4

When?

Speaker 22

As soon as we get the government's response brief.

Speaker 24

Where did these people go to law school? You can't make a constitutional challenge to the tax laws, can you? And who's ever heard of gender discrimination?

Speaker 11

It's a stretch.

Speaker 24

These folks were running at hell with a bucket of water.

Speaker 11

Case laws filled with challenges that could not be made.

Speaker 15

Though they were.

Speaker 11

Putting Murphy on writing our response brief.

Speaker 24

With due respect, Mr. Brown...

Speaker 11

Not personal, Bozarth. But if we're not careful, this appeal could cast a... cloud of unconstitutionality over every federal law that differentiates between men and women.

I need someone more seasoned on this. Could you give me the Solicitor General, please?

Speaker 24

I pulled the file. I deserve the chance. Murphy's a weak sister. I know how to win this case, sir. Better than Murphy, better than anyone. You need me on this appeal.

Speaker 11

Mrs. Brown. I need to see him. Okay. Tell me.

Speaker 2

Gender equality is a civil right.

Speaker 11

When everyone's aggrieved and everyone's a victim. That's what the ACLU does, divide the country into smaller and smaller subgroups.

Speaker 2

Ginsburg, cancer, right? Mm-hmm. And the wife, very demanding.

Speaker 11

But smart.

Speaker 2

Ten years. Ten years I fought to enroll women at Harvard Law. The faculty, the university, even my wife warned me against it. Now, I'm Solicitor General. It comes back to haunt me.

Speaker 11

Erwin, we could settle. Martin Ginsburg was one of my best students, a practical young man. We can call him, tell him. We'll give the man his money and go our separate ways.

Speaker 2

No. We settle now. It's open season. Let's put this idea of gender discrimination to bed once and for all. They handed us a winnable case.

Speaker 11

And we'll win it.

Speaker 2

You think he's up to it?

Speaker 11

Well, I suppose he's a fine litigator. Tell him your idea.

Speaker 24

We list the laws. What laws? All of them. Every federal law that treats men and women differently. We show the court exactly what kind of can of worms these folks are trying to open.

Speaker 2

But son, the last anyone checked, the US code was 20,000 pages long.

Speaker 24

Who's going to read it? You? I can get it done, sir. I just need an introduction.

Speaker 11

To whom?

Speaker 24

The Secretary of Defense.

Speaker 11

These computers will find what we're looking for.

Speaker 24

Yes, sir, in just a few days.

Speaker 15

Without any human beings actually reading the laws.

Speaker 11

What a horrifying age.

Speaker 3

Miss Peter Ginsburg.

Speaker 11

Delivery from the Department of Justice.

Speaker 8

Oh. Can someone pass me Title 33?

Speaker 21

Get this. There's a law that we're not allowed to fly military cargo planes.

Speaker 4

It says here that we're not allowed to work in mines.

Speaker 8

Why would you want to? Well, it's not the point. We should be allowed.

Speaker 21

You really think you can change all those laws?

Speaker 3

Kicky.

Speaker 4

That's the plan.

Speaker 3

Curtain's up in 45 minutes. Might be a novel experience to get there before it starts for a change. Please tell me that you are dressed. Hi. What are you doing?

Speaker 4

Government's brief came. And look. Who else is on it?

Speaker 3

I knew Griswold was trying to get Brown over to the DOJ. Looks like that worked. How's it look?

Speaker 4

Check out Appendix E.

Speaker 8

It's every federal law that discriminates on the basis of sex. We're looking them all up. There must be hundreds.

Speaker 15

Good God.

Speaker 8

Thanks.

Speaker 11

Though you're convinced Doherty will see it our way.

Speaker 24

Based on reading all of his opinions, yes. And so will Holloway. But the final judge, Doyle. Well, he's going to be a tougher nut to crack.

Speaker 2

That's unacceptable.

Speaker 11

We need a unanimous decision out of the Tenth Circuit, James.

Speaker 2

We don't want so-called gender discrimination finding its way to the Supreme Court.

Speaker 24

Yes, sir, I understand that.

Speaker 8

What makes this judge so difficult?

Speaker 24

Well, ma'am, he's a civil rights crusader. Two years ago, he ordered Denver to start busing black students to white schools. There were protests, arson, demands for him to quit the bench. But even after someone threw a bomb at his house, Doyle wouldn't budge.

Speaker 2

In that case, he was enforcing law. The Ginsbergs are asking him to make law. We need to drive home the difference.

Speaker 11

Paint the judges a picture of the America that will exist if they rule the wrong way-- children running home from school to find no one's there. Mommy's at the office or on a factory floor.

Speaker 2

Man and woman vie for the same job. She can work for less. What is a man without a paycheck to take care of his family?

Speaker 11

What woman would want him?

Speaker 24

Wages would go down. Divorce rates would soar. The very fabric of our society would begin to unravel.

Speaker 11

Exactly. The other side wants this to be about the equal protection principle.

Speaker 2

The judges are deciding what kind of country, what kind of society. They want their children and grandchildren to grow up, and you make sure the court sees what's at stake is the American family. Whoa.

Speaker 8

Cool! Mom, can I be on the jury?

Speaker 4

No, there is no jury in federal appeals court. No witnesses, no evidence. Just you and the judges.

Speaker 5

Jerry.

Speaker 25

Hello.

Speaker 5

How are you?

Speaker 4

You remember Jane? Jane, my old professor, Gerald Gunther.

Speaker 8

Come on in.

Speaker 25

Look at you. All grown up. Hello, James. Hi.

Speaker 8

What do you think of our courtroom?

Speaker 25

Well, all that's missing is justice holding her scares. So... Who did Mel find to be the third judge?

Speaker 4

Pauli Murray.

Speaker 25

So he's not making it easy for you, huh?

Speaker 8

Who's Pauli Murray?

Speaker 25

Thurgood Marshall himself called Paulie's writings the Bible of the civilized movement.

Speaker 3

Jerry, I come bearing your gal. Ha.

Speaker 25

Counsel for the appellant, you may proceed... again.

Speaker 4

Your honors, and may it please the court, Section 214 of the tax code covers employed single women who care for their dependents, but excludes Charles Moritz, a bachelor, providing the same care.

Speaker 26

My wife. stays home to raise our children. Are you saying she's oppressed?

Speaker 4

No, judge, but as a man... No, stop, stop.

Speaker 22

Never make it about the judge.

Speaker 25

You don't think the judge knows he's a man?

Speaker 22

No, I don't want to put him on the defensive about it, though.

Speaker 26

In Brown, we put it out there without apology. This is wrong.

Speaker 22

Yeah, no offense, but Ruth doesn't exactly have Thurgood Marshall's...

Speaker 26

Balls.

Speaker 22

Gravitas.

Speaker 4

Should I, should I start again?

Speaker 22

Unless you think you won the case already.

Speaker 25

Whenever you hit him.

Speaker 4

Your Honors, may I please the court? Section 214 of the tax code covers employed single women who care for their dependents. It excludes Charles Mauritz, a bachelor, providing the same care. There is no rational basis.

Speaker 25

Why is it not rational? Men go out, women stay home. It's been the way of things for thousands of years.

Speaker 4

Historical justification was also used to legitimize the separation of the races. Now, classification...

Speaker 26

Are you saying race and gender are the same?

Speaker 4

Both are unalterable biological traits.

Speaker 26

This nation struggles to give blacks fair representation throughout society. And you're saying that if we decide in your client's favor, We're committing ourselves to moving towards half of our, I don't know, firemen being women. Half our nurses being men.

Speaker 4

But why shouldn't men be nurses? And if women want to fight fires...

Speaker 22

What about pilots?

Speaker 4

Yeah, again, if women choose to take on these rights... Judges? Why not? CEOs, generals.

Speaker 22

What about garbage men? You want to be a garbage man?

Speaker 4

And if men want to be teachers or raise children, percentages aren't the point. People should be able to pursue their passion.

Speaker 8

Wrong, you're screwing it up, Ruth.

Speaker 4

Have you read the appendix attached to their brief legal laws written by men? men who think we are privileged to be excused for men's obligations, but it is not a privilege. It is a cage, and these laws are the bars.

Speaker 22

So that's it? You're gonna take them all along at the same time.

Speaker 4

You asked the questions.

Speaker 22

Well, it doesn't mean you have to \*\*\*\*\* answer them, Ruth. You're making the government's case for them. Look, you either make this case about one man or you lose. Because to the judges, you're not talking about women in the abstract. You're talking about their wives at home, you know, baking briskets.

Speaker 8

You braise a brisket, you don't bake it.

Speaker 25

Perhaps that's enough, man. No.

Speaker 22

I don't think it is, Jerry. Look, when you were a kid, you were... You're pretty and you're smart as a wit, but you're coming across as this bitter, unlikable shrew that I don't even recognize. And if that's who shows up in Denver, you will blow it. And would it kill you to smile?

Speaker 4

That's your advice? Just ignore the judges and smile.

Speaker 22

Pate is the best I've ever tasted.

Speaker 3

You could evade should women be firefighters. With all due respect, Your Honor, I haven't considered it because my client isn't a firefighter. Or you can redirect. With respect, Judge, this case is not about firefighters. It's about taxpayers. And there's nothing inherently masculine about paying taxes. Crack a joke. Your Honor, anyone who's raised a child couldn't possibly be intimidated by a burning building. And then bring him back to your case.

Speaker 22

Marty, you should do the oral arguments.

Speaker 3

No, Ruth is the expert on gender law. At least half this case is tax.

Speaker 22

Look, the most important thing is that Charles Moritz wins.

Speaker 3

I said no, Mel. Drop it.

Speaker 26

They could split the time. Martin goes first, focuses the argument on tax, then Ruth steps in, talks about gender.

Speaker 5

Ollie, here you go.

Speaker 3

Thank you. There is no aspect of law at which Ruth Ginsburg can be bested. I don't know how things work at the ACLU, but if anyone at my firm couldn't see that, they would be fired.

Speaker 22

Objection noted, counselor. She's still arguing half. This is, listen, she's written a revolutionary argument, but brief writing is an academic's job, okay? Oral arguments require a lawyer who can command a judge's respect. A real appellate lawyer.

Speaker 18

What a team you're going to see.

Speaker 1

That's a good experience.

Speaker 22

I think that was a very productive exercise. I have to go to a fundraiser. Paulie, Jerry, you want to split a cab downtown? Yeah, sure.

Speaker 4

Good team.

Speaker 18

Good to see you, Jerry. Thank you for that.

Speaker 19

Great to see you.

Speaker 5

Bye.

Speaker 4

You have such a light touch. It... it's just effortless for you, isn't it?

Speaker 3

Mel was goading you. He was trying to make you feel overwhelmed.

Speaker 4

Of course he was. He's a relentless prick, but... It doesn't change the fact that I'm not ready.

Speaker 3

It's not your fault. You've never done this before?

Speaker 4

Well, is that what I'm supposed to tell Charlie when I blow it in court?

Speaker 5

Do you want theories in public taxation with you in Denver?

Speaker 4

Who needs a tax reference when you have Marty? Did you pack the, uh, the Kirk v. Commissioner brief? Yes.

Speaker 5

Rocker's Law, it's Mel Wolf for you. Just tell him I'm not here. I'm sorry, Mr... He says it's urgent.

Speaker 4

What was so important?

Speaker 22

I'm excited to work with you.

Speaker 16

Shh.

Speaker 22

I understand. She just walked in. And you two. Okay. Ruth Ginsburg, Alan Durr. How do you do? The Supreme Court just announced they're gonna hear Reed v. Reed on appeal from the Idaho Supreme Court.

Speaker 4

That's fantastic.

Speaker 13

Mrs. Reed is very excited for the opportunity.

Speaker 22

Alan and Sally Reed's lawyer.

Speaker 4

So is the ACLU going to help?

Speaker 22

You told me it was the right thing to do, right?

Speaker 13

Mel says that no one knows this area of the law better than you.

Speaker 22

You're our secret weapon, Ruth.

Speaker 4

So... you want me in the Supreme Court?

Speaker 22

I, uh... I told Alan you'd be eager to help him write his brief.

Speaker 4

Oh.

Speaker 22

Basically, take the Marin's brief and swap around the pronouns. Isn't that right?

Speaker 4

It's a little more involved than that.

Speaker 22

Joking. All right, we'll start right away. Alan, enjoy the city. You should catch a show while you're here.

Speaker 14

Oh, well, thank you. Yeah.

Speaker 22

Yeah. Oh, Kiki and I have some stuff to discuss.

Speaker 13

Yes, of course.

Speaker 6

I'll get out of your way. It was a pleasure meeting you, Ruth. Or Kiki.

Speaker 13

Mel.

Speaker 22

Oh, all right. Forget that.

Speaker 6

Mustn't forget that, yeah?

Speaker 22

What A schmuck.

Speaker 4

Let me argue Reed in court.

Speaker 22

Oh, give me a great.

Speaker 4

I have no less experienced than Alan Dure in federal court. You have zero experience. If you're going to use my argument...

Speaker 22

He's been Sally Reed's lawyer for three years. She trusts him. She wouldn't even let me argue the case. Now, listen to me for a second. We have something else to discuss.

Ernie Brown called this morning and later Reed going to the Supreme Court.

Government wants to settle the Marritz case for a dollar.

Speaker 4

Reed ups the profile of our case. They're getting nervous.

Speaker 22

I told them you'd be in D.C. on Monday to sign the paperwork.

Speaker 4

Why would you say that? Trolley won't want to settle.

Speaker 22

No, convince him.

Speaker 4

I will not.

Speaker 22

Nobody took anything away from you, Ruth. You weren't robbed in the middle of the night, all right? I was giving you this opportunity for the good of the cause.

Speaker 4

You gave this to me.

Speaker 22

In fact, I did. And get your emotions in check.

Speaker 4

You first.

Speaker 22

Alan is going to be arguing in the Supreme Court that times have changed. We can't afford the Tenth Circuit saying that they have it.

Speaker 4

Nothing would strengthen the argument more than the appeals court deciding for Charlie.

Speaker 22

Yes, that would be very nice. But here in the real world, with working lawyers.

Speaker 4

You think I can be persuasive?

Speaker 22

Oh, I've never been more certain about anything in my life, Ruth.

Speaker 4

You don't get to tell me when to quit.

Speaker 22

You couldn't even make it through moot court without embarrassing yourself. You will lose, Ruth. And when you do, you will set the woman's movement back 10 years more. We are dodging a bullet here. Are you the only one that can't see that? These are Alan's briefs from the previous appeals. Tie them into the framework of the Maritz brief. I'll review it when you're done. It's A Supreme Court brief. I can assign it to someone else if that's what you prefer. Oh, and Ruth, uh, the sooner you call Charlie, the better.

Speaker 4

I had this idea.

Speaker 3

What's that?

Speaker 4

Well, it doesn't matter now.

Speaker 3

Tell me.

Speaker 4

We could have taken Appendix E from the government's brief, that entire comprehensive list of laws that differentiates between the sexes and... and turn it into our own hit list. We could have started a special project at the ACLU to go after those laws one by one in the legislature, in the courts, until women and men were genuinely equal under the law. And I've been running around claiming things have changed. Daddy told me about the case.

Speaker 8

Why is Mel Wolf being such \* \*\*\*\*?

Speaker 4

He thinks I'm gonna lose.

Speaker 8

No way, Jose. Not in my experience.

Speaker 4

As Mr. Martz's lawyer, I'm... ethically bound to convey him the offer.

Speaker 8

So would you like help taking apart your life's work, or is that something you'd rather do by yourself?

Speaker 4

I... know that this case that... That I disrupted our lives and...

Speaker 8

Sorry, for what? For doing your job? And who's it for? It's not for me.

Speaker 15

And they'll say it, right? That I'm not a cheater, that the law's unfair.

Speaker 4

No, Charlie, the government won't say that on its own.

Speaker 15

But if they don't say it, how will I have one?

Speaker 4

You haven't. But you get the money.

Speaker 15

What about everyone else? When you came to see me, you said...

Speaker 4

Charlie, the settlement is only for you. No one else can benefit.

Speaker 15

But could we win?

Speaker 4

Well, we could, and... the impact would last generations. But the ACLU feels it's best if you take the offer.

Speaker 15

But you're my lawyer, Ruth. What do you think?

Speaker 11

Ruth.

Speaker 4

Professor Brown.

Speaker 11

Please, come in.

Speaker 4

Dean Griswold.

Speaker 2

Mrs. Ginsberg. I'm pleased you found a use for your Harvard education.

Speaker 4

Actually, what I'm doing now, I learned at Columbia.

Speaker 11

Ruth was always my most thoroughly prepared student. So much to prove. These days, the girls are as hopeless as the men. How's little Jane?

Speaker 4

Not so little. And we have another James.

Speaker 11

I'm sure they keep you busy.

Speaker 4

Yes. Both of us.

Speaker 2

Ernie, has your paperwork ready.

Speaker 4

My client was very excited about your offer.

Speaker 2

Good.

Speaker 11

Good.

Speaker 4

He did, however, have some conditions.

Speaker 11

Conditions? What kind of conditions?

Speaker 4

First of all, he'd like you to forgive 100% of the money. None of this one-dollar business.

Speaker 11

Yes, well, I'm sure we could manage to arrange that.

Speaker 4

And he'd like the government to concede that he did nothing wrong, and enter into the court record that Section 214 of the tax code discriminates on the basis of sex and is therefore unconstitutional.

Speaker 2

I can't agree to that. And you know it.

Speaker 11

Does Mel Wolf know about this? And we'll see you in court.

Speaker 4

Thank you, gentlemen. It was a pleasure.

Speaker 1

Your Honours, may it please the court.

Speaker 4

Your Honours, may it please the court? Your Honours, and may it... It's actually 214 of the time code. Your Honours, and may it please the court.

Speaker 3

You're ready for this. You've been ready for this your whole life. So go in there and let the judges see the Ruth Ginsburg I know.

Speaker 1

Professor Brown.

Speaker 8

Charlie.

Speaker 15

Good morning. You must be Jan.

Speaker 5

Nice to meet you, Mr. Morris.

Speaker 15

Mr. Ginsburg.

Speaker 22

No, Mel Wolf, ACLU.

Speaker 3

That's me. I'm Mr. Ginsburg. Nice to meet you, Charlie.

Speaker 1

Here we are.

Speaker 10

All rise. The United States Court of Appeals for the Tenth Circuit is now in session. Judges Doyle, Holloway, and Doherty presiding.

Speaker 23

Be seated.

Speaker 11

If you have a century of case law on your side, just do your job.

Speaker 23

The first case is docket number 71-1127, Charles Moritz v. Commissioner of Internal Revenue. Each side will have 30 minutes to present. When 2 minutes remain, the court clerk will rise to give warning. When your time is up, he will sit. Counsel for the appellant, Mr. Ginsburg, you may proceed.

Speaker 3

Good morning, Your Honors. And may it please the court, today we are going to demonstrate that Section 214 of the U.S. tax code unfairly discriminates against our client, Mr. Charles Moritz, because he is a man.

Speaker 23

Congress assumed that a caregiver is most likely a woman. Is that so unreasonable?

Speaker 3

If the law says all caregivers are entitled to a deduction, and if the writers in the back of their mind thought, well, this will only apply to women, then that would be an assumption. But they went farther than that, Judge. They explicitly list who qualifies as a caregiver.

Speaker 27

As is their prerogative.

Speaker 3

Yes, but Judge, I doubt that you would turn the same blind eye if it said only white caregivers.

Speaker 27

That's hardly the same thing.

Speaker 3

Respectfully, we disagree. I'm going to turn it over to my co-counsel who will discuss the constitutional question.

Speaker 10

You're telling us that race and gender are the same?

Speaker 3

My co-counsel...

Speaker 10

Yes, we'll get to her in a minute. But I'd appreciate an answer to my question. In order for a law to discriminate, it must distinguish between groups arbitrarily. Is that correct?

Speaker 3

My co-counsel will be...

Speaker 10

Mr. Ginsberg, I have asked you.

Speaker 3

It must be arbitrary. Yes. And in this case, we believe the law is. Mr. Moritz is a man who never married. That may make him less likely to have childcare responsibilities, but not parent care responsibilities. And had he been a woman...

Speaker 27

And to your mind, classifications of this kind must always be discriminatory.

Speaker 11

There's some help. He's asking him to make a broad categorical plan.

Speaker 3

He can't speak to always, Judge. I can only speak to this case and this man.

Speaker 27

Very well.

Speaker 3

Thank you.

Speaker 27

Then speak of him.

Speaker 3

Again, the only distinction between our client, Mr. Moritz, and any other caregiver, in Judge Doherty's words, is arbitrary. Thank you, and I cede the remainder of my time to my co-counsel.

Speaker 4

Your Honors.

Speaker 23

Whenever you're ready, Mrs. Ginsberg.

Speaker 4

Your Honors, and may it please the court. Section 214 denies Mr. Moritz a caregiver tax deduction available to similarly situated women.

Speaker 23

Yes, We've been through all that. Mrs. Ginsberg, you are aware that the government has three co-equal branches. Mrs. Ginsburg.

Speaker 4

Yes, of course, Your Honor.

Speaker 23

And that it is the Congress's role to write law.

Speaker 4

Your Honor, I understand how government works.

Speaker 22

Take it easy, Ruth.

Speaker 23

Well, sometimes law, even a good law, even a law that is legal under the Constitution, may not be good for every individual it affects.

Speaker 15

I have a question.

Speaker 27

If I understand correctly, you're concerned about men and women being pigeonholed into certain roles based on gender.

Speaker 4

Yes, that's correct. Because...

Speaker 27

Excuse me, that wasn't my question. It strikes me that the caregiver deduction does the opposite. It helps women be able to work outside the home. Isn't that a good thing?

Speaker 4

But the law assumes it must be the woman who is supposed to be at home in the 1st place.

Speaker 23

That is the case in every family I know.

Speaker 27

So it's the assumption that's the problem.

Speaker 10

Then when can a law differentiate on the basis of sex? Never.

Speaker 4

When the classification rationally relates to the law.

Speaker 23

Keeping women out of combat, for example.

Speaker 4

I'm not sure whether I agree with that example.

Speaker 10

Oh, so you think women belong on the front lines now, too?

Speaker 4

No, that's not what... Gender, like race, is a biological, unalterable trait. There is nothing that women are inherently better at than men, nor vice versa.

Speaker 23

Growing a beard.

Speaker 10

Lactation.

Speaker 4

No thinking person could possibly imagine that Charles Moritz's gender relates to his ability...

Speaker 27

Why can't we, Mrs. Ginsburg? In most households, aren't women the primary caregivers? Aren't men the breadwinners? Aren't they?

Speaker 4

In most households, yes, Your Honor.

Speaker 27

Doesn't that reality suggest that that's the natural order of things?

Speaker 4

Respectfully, Your Honors, I'd like to reserve the remainder of my time for rebuttal.

Speaker 15

That's your iPhone.

Speaker 10

How are we doing?

Speaker 1

It's okay.

Speaker 3

It's not over yet.

Speaker 23

Mr. Bozarth, for the appellee. You may proceed.

Speaker 15

Don't let them forgive me. This case is really vile.

Speaker 18

You'll be fine.

Speaker 10

Bozarth, the master of citations.

Speaker 24

That's my family calls me too, Judge. Your Honours, and may it please the court. Congress created this tax deduction to help caregivers go out and work. Caregivers. Folks that, if they weren't working, would stay home. Now, are we meant to believe that this man would have the skill, or even the caregiver's instinct, to do that?

Speaker 27

Why can't we believe that? Why does an unwed woman have that instinct, but not an unwed man, or a widower, for that matter?

Speaker 24

Respectfully, Judge Doyle, a widower doesn't choose to be a caregiver. It's thrust upon them. And as for women, it doesn't take the legal treaties to prove what 100,000 years of human history has made indelibly clear.

Speaker 27

And Congress can write the tax code to enforce this natural law.

Speaker 24

Congress can write whatever tax code it wants. All I'm saying, Judge, is that given the natural order of things, This man, Mr. Moritz, hasn't suffered as a result. But the country will suffer if the court doesn't fine for the appellee. Your Honors, I am certain there isn't a man among us who wouldn't try to ease his wife's burdens. So I don't see how we can judge negatively the members of Congress who would do the same. And I'm not alone in

that. There was a long and honorable tradition in the courts of upholding laws like this one. I, for one, would rather see my government err on the side of caring too much, of trying too hard to help the ladies of this country, rather than to be indifferent to their unique burdens. Now, maybe Mr. Moritz disagrees.

Speaker 17

Or maybe he just doesn't like paying taxes.

Speaker 24

Personally, I don't believe that. I believe that Charles Moritz is a victim. Not of his government, but of the lawyers. who've used his case to achieve their own ends. Radical social change. We rest our case and our briefs in argument and ask that the court uphold the tax court's decision. Thank you.

Speaker 23

Counsel for the appellant, you have 4 minutes for rebuttal. Counsel for the appellant.

Speaker 3

Counselor.

Speaker 4

Radical social change. When I was in law school, there was no women's bathroom. It's amazing to me now that we never complained. Not because we were timid, we were just astounded to be in law school at all. A 100 years ago, Myra Bradwell wanted to be a lawyer. She had fulfilled the requirements for the Illinois bar, but she wasn't allowed to practice because she was a woman. An injustice, she asks the Supreme Court to correct. Illinois was so confident of victory, they didn't even send a lawyer to argue their side. They were right. She lost. That was the first time someone went to court to challenge his or her prescribed gender role 100 years ago. Radical social change. 65 years ago, when women in Aragon wanted to work overtime and make more money as men could, the court looked to the precedent in Bradwell and said no. So then there were two precedents. Then 3, then 4, and on, and on, and you can draw a direct line from Myra Bradwell to Gwendolyn Hoyt told 10 years ago she was not entitled to a jury of her peers. That is the legacy the government asks you to uphold today. You are being urged to protect the culture and traditions and morality of an America that no longer exists. generation ago, my students would have been arrested for indecency for wearing the clothes that they do. Sixty-five years ago, it would have been unimaginable that my daughter would aspire to a career. And 100 years ago, I would not have the right to stand before you. There are 178 laws that differentiate on the basis of sex. Count them. The government did the favor of compiling them for you. And while you're at it, I urge you to read them. They're obstacles to our children's aspirations.

Speaker 27

You're asking us to overturn nearly a century of precedent.

Speaker 4

I'm asking you to set a new precedent. as courts have done before when the law is outdated.

Speaker 27

But in those cases, the courts had a clear constitutional handle. The word woman does not appear even once in the U.S. Constitution.

Speaker 4

Nor does the word freedom, Your Honor.

Speaker 23

Go on, Professor Ginsburg.

Speaker 4

The principal purpose of Section 214 is not to protect women, nor to discriminate against men. It is to provide caregivers the opportunity to work outside the home. Therefore, as the Supreme Court did in *Levy v. Louisiana*, this court should fix the law most in line with the legislative intent. Extend the deduction to never married men. Help all caregivers equally. Charles Moritz was well-raised to be the sort of man we should all hope our sons will become. Charlie deserves our admiration. Not only has he taken on the burden of caring for his very strong-willed mother when no one would expect it of him, but in doing so, he has surpassed the limitations the rest of us and our laws seek to force upon him. We're not asking you to change the country. That's already happened without any court's permission. We're asking you to protect the right of the country to change. Our sons and daughters are barred by law. from opportunities based on assumptions about their abilities. How will they ever disprove these assumptions if laws like Section 214 are allowed to stand? We all must take these laws on, one by one, for as long as it takes for their sakes. You have the power to set the precedent that will get us started. You can right this wrong. We rest our case on our briefs and argument and ask that you reverse the tax court's decision.

Speaker 16

KK! That was perfect. That was perfect.

Speaker 4

We don't even know who won.

Speaker 22

Doesn't matter. It was right.

Speaker 4

This is just the beginning.

Speaker 22

I'm gonna go glove.

Speaker 15

Martin, let's see a courtroom. Jane. Ruth, honey.

Speaker 4

Be in touch.

Speaker 8

You did it.

Speaker 4

We did it.

Speaker 8

Oh, and I say we celebrate and go pick up James.

Speaker 1

We'll get some pizza. We'll hear arguments next in number four, Reed against Reed.

Speaker 23

Next in '71, 1694, Frontiero against Blair. Weinberger against Weisniel. Kahn against Shell. Edwards against Healy and others.

Speaker 28

This is Gensberger. Mr. Chief Justice, and may it please the court, amicus views this case as kin to Reed v. Reed 404... Sex criterion stigmatizes when it is used to limit hours of work for women only. It assumes that all women are preoccupied with home and children. These distinctions have a common effect. They help keep woman in her place. A place inferior to that occupied by men. The law must stop using sex as a shorthand for function... The judgment enjoins enforcement of the statute insofar as it discriminates on the basis of sex. Laws of this quality help to keep women not on a pedestal, but in a cage. Sarah Grimke said, I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks.

Speaker 26

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Speaker 7

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