



A UNIQUELY DISTINGUISHED SERVICE

Martin D. Ginsburg

MY VERY OLD FRIEND DICK LOENGARD – we began law school together more than 50 years ago – called me to remind that at breakfast one ought not talk too long. With that excellent thought in mind, Dick proposed I speak this morning on “The Progress of Tax Simplification in my Lifetime.” It would have been a very short speech.

I am flattered and delighted to receive the Tax Section’s Distinguished Service Award. Every prior recipient has been richly deserving. This year’s selection committee, great numbers of you suspect, was drinking heavily at the selection lunch. Initially I thought so too.

A disproportionate part of my professional life has been devoted to protecting the deservedly rich from the predations of the poor and downtrodden, and it is not easy to see why that deserves a medal.

But it came to me that over a fairly long life I have performed one distinguished service. I propose to use my short time this morn-

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ing to recall the highlights and claim undue credit. And as this not-previously-public story involves my spouse and home and family life, I shall start there.

In the 1960s I practiced law, mainly tax law, in New York City, and Ruth began her law teaching career at Rutgers Law School in Newark. One of the courses she taught was Constitutional Law and toward the end of the decade she started looking into equal protection issues that might or might not be presented by statutes that differentiate on the basis of sex. A dismal academic undertaking because, back then, the United States Supreme Court had never invalidated any legislative classification that differentiated on the basis of sex.

Then as now, at home Ruth and I worked evenings in adjacent rooms. In my little room one evening in Fall 1970, I was reading Tax Court advance sheets and came upon a pro se litigant, one Charles E. Moritz, who on a stipulated record was denied a \$600 dependent care deduction under old § 214 even though, the Tax Court found, the operative facts fit the statute perfectly. Mr. Moritz was a traveling salesman for a book company, his 89-year-old dependent mother lived with him, and, in order to be gainfully employed, during the year he paid an unrelated individual at least \$600 to take care of old mother whenever Charles was at work.

There was just one small problem, and in the Tax Court it served to do him in. The statute awarded its up-to-\$600 deduction to a taxpayer who was a woman of any classification (divorced, widowed, or single), a married couple, a widowed man, or a divorced man. But not to a single man who had never been married.

Mr. Moritz was a single man who had never married. “Deductions are a matter of legislative grace,” the Tax Court quoted, and added that if the taxpayer is raising a constitutional objection, forget about it: everyone knows, the Tax Court confidently asserted, that the Internal Revenue Code is immune from constitutional attack.

I went next door, handed the advance sheets to my wife, and said, “Read this.” Ruth replied with a warm and friendly snarl, “I don’t read tax cases.” I said, “Read this one,” and returned to my room.

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No more than 5 minutes later – it was a short opinion – Ruth stepped into my room and, with the broadest smile you can imagine, said, “Let’s take it.” And we did.

Ruth and I took the *Moritz* appeal pro bono, of course, but since the taxpayer was not indigent we needed a pro bono organization. We thought of the American Civil Liberties Union. Mel Wulf, the ACLU’s then-legal director, naturally wished to review our proposed 10th Circuit brief – which in truth was 90% Ruth’s 10th Circuit brief – and when he did he was rightly bowled over. A few months later the ACLU had its first sex discrimination/equal protection case in the United States Supreme Court – as many of you will remember it was titled *Reed v. Reed*. Recalling *Moritz*, Mel asked Ruth if she would write the ACLU’s Supreme Court brief on behalf of Sally Reed. Ruth did and, reversing the decision below, the U.S. Supreme Court unanimously held for Sally.

Good for Sally Reed and good for Ruth, who decided thereafter to hold down two jobs, one as a tenured professor at Columbia Law School where she had moved from Rutgers, the other as head of the ACLU’s newly created Women’s Rights Project.

Now back to *Moritz*. The 10th Circuit found Mr. Moritz to have been the victim of an equal protection violation and reversed the Tax Court. The Government, amazingly, petitioned for certiorari on the asserted ground that the 10th Circuit’s decision cast a cloud of unconstitutionality over literally hundreds of federal statutes that, like Code § 214, contemplated differential treatment on the basis of sex. In those pre-personal computer days, there was no easy way for us to test the Government’s assertion but the Solicitor General (Erwin Griswold, whom many of you will recall) took care of that by attaching to his petition a list – generated by the Department of Defense’s mainframe computer – of those hundreds of suspect statutes. Cert. was denied in *Moritz*, and the computer list proved a gift beyond price. Over the balance of the decade, in Congress, the Supreme Court, and many lower courts, Ruth successfully urged the unconstitutionality of those statutes.

So Mr. Moritz’s case mattered a lot. First, it fueled Ruth’s early 1970s career shift from diligent academic to enormously skilled and

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successful appellate advocate – which in turn led to her next career on the higher side of the bench. Second, with Dean Griswold's help, *Moritz* furnished the litigation agenda Ruth actively pursued until she joined the D.C. Circuit in 1980.

All in all, great achievements from a tax case with an amount in controversy that totaled exactly \$296.70.

In bringing those Tax Court advance sheets to Ruth 36 years ago, I changed history. For the better. And, I shall claim, thereby rendered a uniquely distinguished service. I have decided to believe it is the service for which you have given me this great award. And even if you had something a little less cosmically significant in mind, I am immeasurably grateful to be so greatly honored by my peers.

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What caused the Court's understanding to dawn and grow? Judges do read the newspapers and are affected, not by the weather of the day, as distinguished Constitutional Law Professor Paul Freund once said, but by the climate of the era.

Ruth Bader Ginsburg