

『雇用差別と闘うアメリカの女性たち－最高裁を動かした10の物語』

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本書の本文内の注を各章ごとに掲載しています。

注番号は本書の原書 *Because of Sex: One Law, Ten Cases, and Fifty Years That Changed American Women's Lives at Work*, by Gillian Thomas, 2016 の各章の注に対応しています。

たとえば、プロローグの本文中の* 1 は、下記プロローグの注1

1. Todd Purdum, *An Idea Whose Time Has Come: Two Presidents, Two Parties, and the Battle for the Civil Rights Act of 1964* (New York: Henry Holt & Co., 2014), 195.

に対応しています。

<注>

プロローグ

1. Todd Purdum, *An Idea Whose Time Has Come: Two Presidents, Two Parties, and the Battle for the Civil Rights Act of 1964* (New York: Henry Holt & Co., 2014), 195.
2. Caroline Bird, *Born Female* (New York: Pocket Books, 1968), 5.
3. Ibid., 4. See also Gail Collins, *When Everything Changed* (New York: Little, Brown & Co., 2009), 76.
4. Bird, *Born Female*, 4.
5. Clay Risen, "The Accidental Feminist," *Slate*, February 7, 2014, http://www.slate.com/articles/news_and_politics/jurisprudence/2014/02/the_50th_anniversary_of_title_vii_of_the_civil_rights_act_and_the_southern.html.
6. Quoted in Sheryl James, "Civil Rights, Women's Rights," *Law Quadrangle* (Fall 2014), <http://quadrangle.law.umich.edu/features/civil-rights-womens-rights/>.
7. Ibid.
8. Ibid.
9. Bird, *Born Female*, 5.
10. Louis Menand, "The Sex Amendment," *The New Yorker*, July 21, 2014, <http://www.newyorker.com/magazine/2014/07/21/sex-amendment>.
11. Clay Risen, *The Bill of the Century: The Epic Battle for the Civil Rights Act* (New York: Bloomsbury Press, 2014), 160; Purdum, *An Idea Whose Time Has Come*, 196–197; Collins, *When Everything Changed*, 76–77, 78–79; Risen, *The Accidental Feminist*.
12. Risen, *The Bill of the Century*, 161; Menand, "The Sex Amendment."

13. Because it was a “teller vote” and not a roll call vote, a precise accounting of who voted for and against wasn’t possible. But Martha Griffiths was one of the “tellers” and reported on the breakdown of the yeas and nays. See Jo Freeman, “How ‘Sex’ Got into Title VII: Persistent Opportunism as a Maker of Public Policy,” *Women, Law and Public Policy*, 2004, <http://www.jofreeman.com/lawandpolicy/titlevii.htm>.
14. Risen, *The Bill of the Century*, 160; Purdum, *An Idea Whose Time Has Come*, 198.
15. 42 U.S.C. § 2000e-2(a).
16. See, e.g., Cary Franklin, “Inventing the ‘Traditional Concept’ of Sex Discrimination,” *Harvard Law Review* 125 (April 2012): 1307; Freeman, “How ‘Sex’ Got into Title VII”; Carl M. Brauer, “Women Activists, Southern Conservatives, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act,” *Journal of Southern History* 49, Issue 1 (February 1983): 37; Michael Evan Gold, “A Tale of Two Amendments: The Reasons Congress Added Sex to Title VII and Their Implication for Comparable Worth,” *Duquesne Law Review* 19 (1981): 453.
17. U.S. Department of Labor, Women’s Bureau, *1965 Handbook on Women Workers*, Bulletin 290 (Washington, DC: 1965), 2, https://fraser.stlouisfed.org/docs/publications/women/b0290_dolwb_1965.pdf.
18. Pauli Murray and Mary O. Eastwood, “Jane Crow and the Law: Sex Discrimination and Title VII,” *George Washington Law Review* 34 (1965): 232.
19. U.S. Department of Labor, Women’s Bureau, “Latest Annual Data,” 2013, <http://www.dol.gov/wb/stats/recentfacts.htm>.
20. Catalyst, “Women Leaving and Re-entering the Workforce,” March 28, 2013, http://www.catalyst.org/knowledge/women-leaving-and-re-entering-workforce#footnote_ref1_pks1j3w.
21. Stephanie Coontz, *A Strange Stirring: The Feminine Mystique and American Women at the Dawn of the 1960s* (New York: Basic Books, 2011), 14. Today nearly a quarter of federal judges are women. Dina Refki, Abigya Eshete, and Selena Hajiani, “Women in Federal and State-Level Judgeships,” A Report by the Center for Women in Government and Civil Society/Rockefeller College of Public Affairs and Policy at University of Albany (2012), http://www.albany.edu/womeningov/publications/summer2012_judgeships.pdf.
22. Menand, “The Sex Amendment”; Risen, “The Accidental Feminist.”
23. Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy 1960–1972* (New York: Oxford University Press, 1990), 223.
24. John Herbers, “For Instance, Can She Pitch for Mets?” *The New York Times*, August 20, 1965.
25. Ibid.
26. “Shaping Employment Discrimination Law,” U.S. Equal Employment Opportunity Commission, *EEOC History: 35th Anniversary: 1965–2000*, <http://www.eeoc.gov/eeoc/history/35th/1965-71/shaping.html>.
27. Caroline Frederickson, *Under the Bus: How Working Women Are Being Run Over* (New York: Free Press, 2015), 40.
28. See, e.g., Shelley J. Correll, Stephen Benard, and In Paik, “Getting a Job: Is There a Motherhood Penalty?” *American Journal of Sociology* 112, No. 5 (March 2007).
29. American Association of University Women, *The Simple Truth About the Gender Wage Gap*, Fall 2015 edition, 11 (Fig. 4), <http://www.aauw.org/files/2015/09/The-Simple-Truth-Fall-2015.pdf>.

30. Catalyst, "Statistical Overview of Women in the Workplace: Women at the Top," Mar. 3, 2014, <http://www.catalyst.org/knowledge/statistical-overview-women-workplace>.

31. Kathleen Peratis, "Severe and Pervasive," in Amy Richards and Cynthia Greenberg, eds., *I Still Believe Anita Hill* (New York: The Feminist Press, 2011), 157.

第1章 女性と子どもは最後に

Unless otherwise indicated, direct quotes, biographical and historical details, and mental impressions come from the following sources: Interview with Reese Marshall in Jacksonville, Florida on April 21, 2015; interview with Ida Phillips's children—Peggy Brandt, Vera Tharp, and Al McAlister—in Jacksonville, Florida on April 21, 2015; interview with Bill Robinson in Washington, DC, on April 6, 2015.

1. September 6, 1966, letter from Ida Phillips to President Lyndon Johnson, "It Happened Here: Phillips v. Martin Marietta" (2010) (on display at George C. Young United States Courthouse, Orlando, FL).

2. Richard Burnett, "Missiles Spark Half-Century of High-Tech," *The Orlando Sentinel*, September 24, 2006, http://articles.orlandosentinel.com/2006-09-24/news/MARTIN24_1_1_martin-central-florida-orlando.

3. Ibid.

4. September 6, 1966 letter from Phillips to Johnson, "It Happened Here."

5. Serena Mayeri, *Reasoning from Race: Feminism, Law, and the Civil Rights Revolution* (Cambridge, MA: Harvard University Press, 2011), 51.

6. Judith Michaelson, "The Justices Saw It Her Way," *The New York Post*, January 30, 1971.

7. Quoted in *ibid.*

8. September 6, 1966, letter from Phillips to Johnson, "It Happened Here."

9. Quoted in Michaelson, "The Justices Saw It Her Way."

10. Ibid.

11. Appendix at 9a-10a, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).

12. Michaelson, "The Justices Saw It Her Way."

13. Appendix at 11a-12a, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).

14. Quoted in Michaelson, "The Justices Saw It Her Way."

15. Ibid.

16. Ibid.

17. 347 U.S. 483 (1954).

18. Gail Collins, *When Everything Changed: The Amazing Journey of American Women from 1960 to the Present* (New York: Little, Brown & Co., 2009), 86.

19. *Phillips v. Martin Marietta Corp.*, No. 67-290-ORL-Civil, 1968 U.S. Dist. LEXIS 8595 (M.D. Fla. July 9, 1968).

20. *Ibid.* at *2.

21. Allison Herren Lee, William W. Shakely, and J. Robert Brown Jr., "Judge Warren L. Jones and the Supreme Court of Dixie," *Louisiana Law Review* 59 (1998): 209 & n.4.

22. 29 C.F.R. § 1604.1(a)(1)(i) (1965).
23. *Ibid.* § 1604.1(a)(1)(ii).
24. *Ibid.* § 1604.3(a).
25. *Phillips v. Martin Marietta Corp.*, 411 F.2d 1, 4 (5th Cir. 1969).
26. *Ibid.*
27. Appendix, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
28. *Phillips v. Martin Marietta Corp.*, 416 F.2d 1257 (5th Cir. 1969). One of the judges in the majority, G. Harold Carswell, may have come to regret his decision. Feminists bitterly contested his later—unsuccessful—nomination to the Supreme Court because of his vote against *Ida Phillips*. Testifying against him before the Senate Judiciary Committee, NOW founder Betty Friedan dubbed him “unusually blind in the matter of sex prejudice.” Betty Friedan, *It Changed My Life* (New York: Random House, 1976), 170.
29. *Phillips*, 416 F.2d at 1259 (Brown, J., dissenting).
30. *Ibid.* at 1260.
31. *Ibid.*
32. 372 U.S. 335 (1963).
33. Anthony Lewis, *Gideon's Trumpet* (New York: Random House, 1964), 25.
34. Timothy S. Bishop, Jeffrey W. Sarles, and Stephen J. Kane, “Tips on Petitioning for *Certiorari* in the U.S. Supreme Court,” *The Circuit Rider*, June 2007, https://www.mayerbrown.com/files/Publication/34891e80-a15d-4b25-84a2-d3c8573d23da/Presentation/PublicationAttachment/5f64270f-6be0-4cec-8cc8-10e6bed6988b/ART_CIRCUITRIDER_JUN07.PDF, 28.
35. *Ibid.*
36. Petition for *Certiorari* at 7–8, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
37. *Phillips*, 1968 U.S. Dist. LEXIS 8595 at *2.
38. Petition for *Certiorari* at 6, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
39. *Ibid.* at 7.
40. *Ibid.* at 11.
41. *Ibid.* at 10–11.
42. *Ibid.* at 10.
43. Michaelson, “The Justices Saw It Her Way.”
44. Quoted in *ibid.*
45. Quoted in Elizabeth Heddericg, “Florida Woman's Discrimination Case May Open Up Jobs,” *The St. Petersburg Times*, May 4, 1970.
46. Brief of the American Civil Liberties Union, *Amicus Curiae* at 14, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
47. *Ibid.*
48. *Ibid.*

49. See, e.g., Bart Landry, *Black Working Wives: Pioneers of the American Family Revolution* (Oakland: University of California Press, 2002).
50. Brief Amicus Curiae for National Organization for Women at 8–9, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
51. *Ibid.* at 9.
52. Brief of the American Civil Liberties Union, Amicus Curiae at 8, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
53. Collins, *When Everything Changed*, 20.
54. American Airlines advertisement, *DC Magazine*, Vol. 1, Issue 1, June 12, 1965, 2.
55. Amicus Curiae Brief of Air Line Stewards and Stewardesses Association in Support of Petitioner at 3–4, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 73).
56. Timothy R. Johnson, Paul J. Wahlbeck, and James F. Spriggs, “The Influence of Oral Arguments on the U.S. Supreme Court,” *American Political Science Review* 100, No. 1 (February 2006), 99, 101 (internal citations omitted) (emphasis in original), <http://home.gwu.edu/~wahlbeck/articles/Johnson-Wahlbeck-Spriggs%202006%20APSR.pdf>.
57. 401 U.S. 424 (1971).
58. Michaelson, “The Justices Saw It Her Way.”
59. Quoted in *ibid.*
60. Oral Argument at 15; 7:16; 8:15; 9:24; 10:27; 10:50; 9:40, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (No. 37), available at http://www.oyez.org/cases/1970-1979/1970/1970_73.
61. *Ibid.* at 11:30.
62. *Ibid.* at 11:40.
63. *Ibid.* at 21:25; 25:38; 26:14.
64. *Ibid.* at 5:26; 5:50.
65. *Ibid.* at 23:41.
66. *Ibid.* at 34:18; 34:35.
67. *Ibid.* at 46:22.
68. *Ibid.* at 49:44; 48:06; 48:52; 49:30.
69. *Ibid.* at 74:50; 75:25; 75:39; 75:46.
70. Quoted in Mayeri, *Reasoning from Race*, 53.
71. Oral Argument at 76:42, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (No. 37), available at http://www.oyez.org/cases/1970-1979/1970/1970_73.
72. August 11, 2015, email message from Reese Marshall to author.
73. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 497–498 (1971) (per curiam).
74. *Ibid.* at 544.
75. *Ibid.* at 498.
76. *Ibid.* at 545 (Marshall, J., concurring).

77. Ibid. at 545–546.
78. Bob Woodward and Scott Armstrong, *The Brethren* (New York: Simon & Schuster, 1979), 123.
79. Ibid.
80. Quoted in Mayeri, *Reasoning from Race*, 53–54.
81. Michaelson, “The Justices Saw It Her Way.”
82. Quoted in *ibid.*
83. United Press International, “Woman Rightist Plans Spending,” *The St. Petersburg Times*, July 30, 1971.
84. Quoted in *ibid.*
85. Quoted in Michaelson, “The Justices Saw It Her Way.”
86. Ibid.

第2章 刑務所の壁を突き破れ

Unless otherwise indicated, direct quotes, biographical and historical details, and mental impressions come from the following sources: Interview with John Carroll in Birmingham, Alabama on August 8, 2014; interview with Pamela Horowitz in Washington, DC, on September 29, 2014; interview with Joe Levin in Montgomery, Alabama, on August 7, 2014; interview with Brenda Mieth in Amissville, Virginia, on September 26, 2014 and by phone with the author on November 26, 2014; and interview with Kim Rawlinson in Montgomery, Alabama, on August 6, 2014, and by phone with the author on October 21, 2014.

1. Associated Press, “E .C. Dothard, State Trooper, 58,” December 17, 1989, <http://www.nytimes.com/1989/12/17/obituaries/e-c-dothard-state-trooper-58.html>. According to a colleague, Dothard was “still barking out orders while on the ground after being shot.” Ibid.
2. Dothan Area Convention & Visitors Bureau website, dothanalcvb.com.
3. Bureau of Labor Statistics, “Labor Force Statistics from the Current Population Survey: A Databook,” Bulletin 2096 (September 1982): 657.
4. Carl Nink, “Women Professionals in Corrections: A Growing Asset,” MTC Institute (August 2008), available at <https://www.mtcinstitute.com/sites/default/files/WomenProfessionalsInCorrections-Aug08.pdf>, 3.
5. “Unhired Women Sue Alabama on Minimum Sizes for Officers,” *The New York Times*, December 10, 1975, <http://timesmachine.nytimes.com/timesmachine/1975/12/10/80101361.html?pageNumber=50>.
6. Jerome J. Suich, “Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII,” *Southern California Law Review* 47 (1974): 586–587.
7. Ibid. at 585, 587 n.9.
8. Jo Freeman, “The Revolution for Women in Law and Public Policy,” in Jo Freeman, ed., *Women: A Feminist Perspective*, 5th ed. (Mountain View, CA: Mayfield, 1995), 356–404.
9. See, e.g., Bart Landry, *Black Working Wives* (Oakland: University of California Press, 2002).
10. *Bradwell v. State*, 83 U.S. 130, 141–142 (1872).

11. *Muller v. Oregon*, 208 U.S. 412, 421 (1907).
12. *Goesaert v. Cleary*, 335 U.S. 464 (1948).
13. *Ibid.* at 466. While the law's official rationale was that women needed a male authority figure's protection from lascivious, alcohol-fueled bar patrons, some scholars say the less chivalrous reality was that the male-dominated bartenders' union had lobbied hard for the law in order to keep those lucrative jobs for themselves. Amy Holtman French, "Mixing It Up: Michigan Barmaids Fight for Civil Rights," *Michigan Historical Review* 40, No. 1 (Spring 2009): 27–48.
14. See, e.g., Nink, *Women Professionals in Corrections*; James B. Jacobs, "The Sexual Integration of the Prison's Guard Force: A Few Comments on 'Dothard v. Rawlinson,'" *Toledo Law Review* 10 (Winter 1979): 389; Suich, "Height Standards in Police Employment and the Question of Sex Discrimination."
15. Equal Employment Opportunity Act of 1972, Public Law 92-261 (86 Stat. 103).
16. *Jordan v. Wright*, 417 F. Supp. 42 (M.D. Ala. 1976).
17. 401 U.S. 424 (1971).
18. *Ibid.* at 428.
19. *Ibid.* at 432.
20. *Ibid.* at 431.
21. *Ibid.* at 431, 432.
22. *Ibid.* at 431–432.
23. *Ibid.* at 430.
24. *Officers for Justice v. Civil Service Comm'n*, 395 F. Supp. 378 (N.D. Cal. 1975). The court also found the five-foot-six-inch height minimum to have an illegal disparate impact against Latinos and Asian Americans. Both are groups in which both men and women tend to be shorter than white or black men.
25. *Ibid.*
26. The remainder of the state's correctional facilities were work camps or work-release centers, plus the state's one juvenile detention center and one women's prison.
27. *James v. Wallace*, 406 F. Supp. 318 (M.D. Ala. 1976).
28. *McCray v. Sullivan*, 399 F. Supp. 271 (S.D. Ala. 1975).
29. *Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972).
30. *James*, 406 F. Supp. at 323–324.
31. *Ibid.* at 324.
32. *Ibid.* at 325. Judge Johnson further observed, "Guards rarely enter the cell blocks and dormitories, especially at night when their presence is most needed. The extremely high inmate-to-staff ratio makes personal interaction between the two virtually impossible because staff members must spend all their time attempting to maintain control or to protect themselves." But the guards also were to blame for these heightened tensions, said the court; they were virtually all white—whereas the inmates were mostly African American—and a "number of witnesses testified that staff members address black inmates with racial slurs, further straining already tense relations." Indeed, among the comprehensive remedies imposed by Judge Johnson were mandates that the Board of Corrections not only hire enough guards and

adequately train them but also ensure that the guards better reflect the "racial and cultural" makeup of the inmate population. James, 406 F. Supp. at 325, 335.

To say that Alabama resisted implementing these directives is an understatement. Governor Wallace scoffed that the court wanted to create a "hotel atmosphere" in the state's prisons. "U.S. Relinquishes Alabama Prisons," *The New York Times*, January 15, 1989, <http://www.nytimes.com/1989/01/15/us/us-relinquishes-alabama-prisons.html>. Three years later, the court found the state to be in contempt of its orders and placed the prison system in receivership. *Newman v. Alabama*, 466 F. Supp. 628 (M.D. Ala. 1979). It wasn't until 1989 that the state finally was released from the court's oversight. "U.S. Relinquishes Alabama Prisons."

In early 2014, however, a Justice Department investigation found constitutional violations at Alabama's women's prison stemming from pervasive sexual abuse and harassment of inmates by prison guards. Eric Tucker, "Justice Department Reports on Abuse of Female Inmates, Questions Alabama's Work," *The Washington Post*, October 5, 2014, http://www.washingtonpost.com/politics/justice-department-reports-on-abuse-of-female-inmates-questions-alabamas-work/2014/10/05/c260adde-4caa-11e4-8c24-487e92bc997b_story.html. Federal intervention also recently was sought to address overcrowding and rampant abuse throughout the rest of the system. Kala Kachmar, "Justice Department Asked to Investigate State Prisons," *Montgomery Advertiser*, November 11, 2014, <http://www.montgomeryadvertiser.com/story/news/local/alabama/2014/11/11/justice-department-asked-investigate-state-prisons/18891299/>.

33. *Phillips v. Martin Marietta*, 400 U.S. 542, 545 (1971) (Marshall, J., concurring).

34. *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969).

35. *Weeks v. Southern Bell Tel. & Tel. Co.*, 408 F.2d 228 (5th Cir. 1969).

36. *Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971).

37. *Rosenfeld v. Southern Pacific Co.*, 444 F.2d 1219 (9th Cir. 1971).

38. *Mieth v. Dothard*, 418 F. Supp. 1169, 1173 (M.D. Ala. 1976).

39. *Ibid.* at 1182.

40. Brief in Opposition by Respondent at 53, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (No. 76-422).

41. Brief of Petitioners at 6, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (No. 76-422).

42. *Ibid.*, 7.

43. *Dothard v. Rawlinson*, 433 U.S. 321, 335 n.22 (1977).

44. Brief of Petitioners at 11, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (No. 76-422).

45. Brief in Opposition by Respondent at 53-54, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (No. 76-422).

46. See, e.g., Jacobs, "The Sexual Integration of the Prison's Guard Force."

47. Peter B. Bloch and Deborah Anderson, "Policewomen on Patrol: Final Report" (Washington, DC: Police Foundation, May 1974), <http://files.eric.ed.gov/fulltext/ED102369.pdf>.

48. *Ibid.* at 2.

49. *Ibid.* at 61.

50. *Ibid.* at 3. Notably, although both men and women had to meet a minimum height of five foot seven, the report noted

that “the taller an officer was, the more likely he or she was to be rated poorly on performance.” Ibid. at 60.

51. Thomas W. White and Peter B. Bloch, “Police Officer Height and Selected Aspects of Performance” (Washington, DC: Police Foundation, International Association of Chiefs of Police, and Urban Institute, October 1975), <http://www.policefoundation.org/wp-content/uploads/2015/08/206509288-White-T-W-Bloch-P-B-Police-Officer-Height-And-Selected-Aspects-Of-Performance.pdf>.

52. Ibid.

53. Mieth, 418 F. Supp. at 1184.

54. Less reticent was Governor George Wallace, with whom Mieth and her husband had stumbled into an unlikely social acquaintance. A few days after the lawsuit was filed, she was startled to answer the phone and find the governor on the line. He was livid. “Dammit, you’ve sued me! Why would you do that?” It took a few moments for Mieth to digest that a lawsuit against the Alabama Department of Public Safety was, however indirectly, a lawsuit against Wallace. Red-faced at her naivete, she apologized—and then reiterated her desire for a state trooper job. Wallace simply told her that he understood that she was doing what she needed to do, and the conversation ended there.

55. Quoted in Clare Cushman, ed., *Supreme Court Decisions and Women’s Rights: Milestones to Equality* (Washington, DC: CQ Press, 2001), 26.

56. 347 U.S. 483 (1954).

57. It was Judge Brown who, seven years earlier, had bitterly dissented from the Fifth Circuit’s refusal to reconsider its dismissal of Ida Phillips’s sex discrimination case against Martin Marietta.

58. *Armstrong v. Board of Education*, 323 F.2d 333, 353 n.1 (5th Cir. 1963). See also Jack Bass, “The ‘Fifth Circuit Four’: How Four Federal Judges Brought the Rule of Reason to the South,” *The Nation*, May 3, 2004, <https://www.thenation.com/article/fifth-circuit-four>.

59. 142 F. Supp. 707 (M.D. Ala. 1956), *aff’d*, 352 U.S. 950 (1956).

60. Quoted in Robert D. McFadden, “Frank M. Johnson Jr., Judge Whose Rulings Helped Desegregate the South, Dies at 80,” *The New York Times*, July 24, 1999, <http://www.nytimes.com/1999/07/24/us/frank-m-johnson-jr-judge-whose-rulings-helped-desegregate-the-south-dies-at-80.html>

61. Quoted in *ibid.*

62. Mieth, 418 F. Supp. at 1182.

63. *Ibid.* at 1181.

64. *Ibid.* at 1179.

65. *Ibid.* at 1183.

66. *Ibid.* at 1180.

67. Serena Mayeri, *Reasoning from Race* (Cambridge, MA: Harvard University Press, 2011), 132.

68. Mayeri details the bumpy aftermath of *Mieth v. Dothard* for women hoping to become Alabama state troopers. Nearly two years later, no women had been hired. John Carroll and the Southern Poverty Law Center petitioned the court to suspend the veterans’ preferences, but the motion was denied. *Ibid.*, 132–133.

69. “Patrolling Alabama’s Highways,” *Ebony*, December 1979, 55.

70. 411 U.S. 677 (1973).
71. *Ibid.* at 684.
72. *Reed v. Reed*, 404 U.S. 71 (1971).
73. See, e.g., *Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World* (New York: HarperCollins, 2015), 71-73; Fred Strebeigh, *Equal: Women Reshape American Law* (New York: W. W. Norton, 2009), 50-52. Letters between the lawyers of the ACLU WRP and the SPLC make clear that the former believed Levin had "reneged" on a promise to give Ginsburg and her staff control of the case. See, e.g., Hirshman, *Sisters in Law*, 71; Strebeigh, *Equal*, 51. Levin concedes that he had a change of heart as to who would handle the briefing, but as to the oral argument, his memory is that Ginsburg's taking the lead had only been raised as a possibility, not expressly agreed. In any event, Levin felt that relative peace was achieved in time for the argument, noting that he and Ginsburg, along with her late husband, Martin, had dinner in Washington the night before the argument.
74. Brief Amicus Curiae of American Civil Liberties Union, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (No. 76-422).
75. Linda Greenhouse, *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey* (New York: Henry Holt & Co., 2005), 106.
76. *Ibid.*
77. Joan Biskupic, "Enforcing the Sartorial Code," *The Washington Post*, December 6, 1999, <http://www.washingtonpost.com/wp-srv/WPcap/1999-12/06/008r-120699-idx.html>.
78. *Ibid.*
79. Oral Argument at 2:56, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (No. 76-422), available at http://www.oyez.org/cases/1970-1979/1976/1976_76_422.
80. *Ibid.* at 17:31; 18:48; 18:57; 20:53.
81. *Ibid.* at 33:21; 33:28.
82. *Ibid.* at 35:24, 35:39; 35:50; 38:14.
83. *Ibid.* at 45:18; 50:23; 49:03.
84. *Dothard v. Rawlinson*, 433 U.S. 321, 331 (1977).
85. *Ibid.* at 330.
86. *Ibid.* at 332.
87. *Ibid.* at 335-36.
88. *Ibid.* at 341 (Marshall, J., concurring in part and dissenting in part).
89. *Ibid.* at 342.
90. *Ibid.* at 345.
91. *Ibid.* at 346.
92. *Dothard*, 433 U.S. at 335.
93. February 6, 2015, e-mail from Bob Horton, Alabama Department of Corrections, Public Information Officer, to author.

第3章 (より)長生きして幸せに

Unless otherwise indicated, direct quotes, biographical and historical details, and mental impressions come from the following sources: Phone interview with Robert Dohrmann on July 24, 2014; interview with Bob Dohrmann in Los Angeles on February 13, 2015.

1. Kenneth A. Kochanek, M.A., Elizabeth Arias, Ph.D., & Robert N. Anderson, Ph.D., "How Did Cause of Death Contribute to Racial Differences in Life Expectancy in the United States in 2010?," NCHS Issue Brief, No. 125, July 2013, Centers for Disease Control and Prevention, <http://www.cdc.gov/nchs/data/databriefs/db125.htm>. Race-based mortality tables were long used by the life insurance industry but abandoned by the late 1960s due to a combination of forces, including "[p]ressure from civil rights organizations, a transformation in scientific and societal views about race after World War II, post-war marketplace changes, the development of standardized race-merged tables by professional actuarial organizations, private party litigation, and late twentieth century investigations by state insurance departments." Mary L. Heen, "Nondiscrimination in Insurance: The Next Chapter," *Georgia Law Review* 49 (Fall 2014): 12.
2. Appendix at 45, *Manhart v. City of Los Angeles Dep't of Water & Power*, 435 U.S. 702 (1977) (No. 76-8610).
3. "In Memory," DWP Retirees Newsletter, Vol. 14, No. 5, Nov./Dec. 1995, case files of Schwartz, Steinsapir, Dohrmann & Sommers.
4. Dec. 17, 1968 letter from Alice Muller to Board of Administration, Water and Power Employees Retirement Plan, case files of Schwartz, Steinsapir, Dohrmann & Sommers: "In Memory," DWP Retirees Newsletter.
5. Appendix at 45, *Manhart v. City of Los Angeles Dep't of Water & Power*, 435 U.S. 702 (1977) (No. 76-8610).
6. May 3, 1973 letter from Alice Muller to Ruth Blanco, case files of Schwartz, Steinsapir, Dohrmann & Sommers.
7. Appendix at 44, *Manhart v. City of Los Angeles Dep't of Water & Power*, 435 U.S. 702 (1977) (No. 76-8610).
8. *Ibid.*
9. Undated note from Alice Muller, case files of Schwartz, Steinsapir, Dohrmann & Sommers.
10. Appendix at 17, *Manhart v. City of Los Angeles Dep't of Water & Power*, 435 U.S. 702 (1977) (No. 76-8610).
11. November 30, 1972, letter from Margaret D. Davis to Secretary to the Retirement Board, DWP Board of Commissioners, case files of Schwartz, Steinsapir, Dohrmann & Sommers.
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13. Appendix at 1314, *Manhart v. City of Los Angeles Dep't. of Water & Power*, 435 U.S. 702 (1977) (No. 76-8610).
14. Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy* (New York: Oxford University Press, 1990), 229.
15. See, e.g., Caroline Bird, *Born Female: The High Cost of Keeping Women Down* (New York: Pocket Books, 1969), 64–65. The same assumption—that all men were primary breadwinners and all women did not work outside the home and were dependent on their husbands—was reflected in Social Security rules that paid lower survivorship benefits to men than to women; indeed, widowers were subject to onerous eligibility standards, whereas widows received benefits automatically. These requirements was invalidated in the 1970s by the Supreme Court, in a pair of cases litigated by then Columbia Law School professor and now Supreme Court Justice Ruth Bader Ginsburg. *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

16. 29 C.F.R. § 1604.9(f) (1972).
17. Robert Reinhold, "Opening New Freeway, Los Angeles Ends Era," *The New York Times*, October 14, 1993, <http://www.nytimes.com/1993/10/14/us/opening-newfreeway-los-angeles-ends-era.html?pagewanted=print>.
18. *Ibid.*
19. Editorial, "Sex-Segregated Actuarial Tables Discriminate," *The Las Vegas Sun*, June 16, 1974.
20. EEOC Decision No. 74-118 at 3-4 (1974).
21. *Manhart v. City of Los Angeles Dep't of Water & Power*, 387 F. Supp. 980, 982 (C.D. Cal. 1975).
22. 110 Congressional Record 13663-64 (June 12, 1964), quoted in Defendant's Memorandum in Opposition to Motion for Preliminary Injunction, *Manhart v. City of Los Angeles Dep't of Water & Power*, 387 F. Supp. 980 (C.D. Cal. 1975).
23. *Manhart*, 387 F. Supp. at 980, 983.
24. *Ibid.* at 983-984.
25. *Ibid.* at 984.
26. *Ibid.*
27. Flyer dated June 23, 1975, case files of Schwartz, Steinsapir, Dohrmann & Sommers.
28. *Manhart v. City of Los Angeles Dep't of Water & Power*, 553 F.2d 581, 590-591 (9th Cir. 1976).
29. *Ibid.* at 588.
30. *Ibid.* at 592.
31. Quoted in Robert Rawitch, "Appeals Court Backs Women on Pensions," *The Los Angeles Times*, December 1, 1976.
32. 429 U.S. 125 (1976).
33. "DWP to Fight Ruling on Employee Pensions," *The Los Angeles Times*, December 9, 1976.
34. Brief Amici Curiae of American Civil Liberties Union and American Association of University Professors, *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1977) (No. 76-1810).
35. Brief for the United States and the Equal Employment Opportunity Commission as Amici Curiae, *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1977) (No. 76-1810).
36. Brief for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and American Federation of Labor and Congress of Industrial Organizations as Amici Curiae, *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1977) (No. 76-1810).
37. Brief for the Association for Women in Mathematics and the Women's Equity Action League as Amici Curiae at 7-8, *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1977) (No. 76-1810).
38. *Ibid.*, 9.
39. Brief Amici Curiae of American Civil Liberties Union and American Association of University Professors at 7-8, *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1977) (No. 76-1810).
40. Brief of American Nurses' Association, as Amicus Curiae, in Support of Respondents, *City of Los Angeles Dep't of*

Water & Power v. Manhart, 435 U.S. 702 (1977) (No. 76-1810).

41. Brief of Teachers Insurance and Annuity Association of America and College Retirement Equities Fund, as Amici Curiae, in Support of Petitioners, City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1977) (No. 76-1810).

42. Brief Amicus Curiae of American Council of Life Insurance on Behalf of Petitioners at 3, City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1977) (No. 76-1810) (emphasis in original).

43. Brief of the State of Oregon as Amicus Curiae, in Support of Defendants-Petitioners; Brief of the City of New York as Amicus Curiae; and Brief for the New York State Teachers' Retirement System as Amicus Curiae, City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1977) (No. 76-1810).

44. Oral Argument at 7:10; 11:35; 1:57; 18:48, City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1977) (No. 76-1810), available at http://www.oyez.org/cases/1970-1979/1977/1977_76_1810.

45. Ibid. at 5:05; 7:13; 9:38; 2:10.

46. Ibid. at 27:49; 42:54; 43:00; 37:54.

47. Ibid. at 35:30; 36:35; 37:10; 37:20; 37:25.

48. Ibid. at 41:40.

49. Ibid. at 61:46.

50. City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 711 (1977).

51. Ibid. at 709.

52. Ibid. at 711.

53. Ibid. at 714.

54. Ibid. at 717-718.

55. Ibid. at 726, 728 (Burger, C. J., dissenting).

56. Mary L. Heen, "Sex Discrimination in Pensions and Retirement Annuity Plans after Arizona Governing Committee v. Norris: Recognizing and Remediating Employer Non-Compliance," *Women's Rights Law Reporter* 8 (Summer 1985): 156, n.5, <http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1260&context=law-faculty-publications>.

57. 463 U.S. 1073 (1983).

58. Ibid. at 1081.

59. Mary L. Heen, "Nondiscrimination in Insurance: The Next Chapter," *Georgia Law Review*: 49 (Fall 2014): 49, <http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2049&context=law-faculty-publications>.

60. Ibid., 50, 54.

第4章 敵対的な環境

Unless otherwise indicated, direct quotes, biographical and historical details, and mental impressions come from the following sources: Interview with Patricia Barry in Los Angeles, California, on February 16, 2015; phone interview with Judith Ludwic on June 23, 2015; phone interview with John Marshall Meisburg on June 23, 2015.

1. Quoted in Fred Strebeigh, *Equal: Women Reshape American Law* (New York: W. W. Norton & Co., 2009), 213.

2. Ibid., 213.
3. Mary Battiata, "Mechelle Vinson's Long Road to Court," *The Washington Post*, August 12, 1986, <http://www.washingtonpost.com/archive/lifestyle/1986/08/12/mechelle-vinsons-long-road-to-court/b5fa7c5b-c0cf-412b-b40f-a3811e042884/>.
4. Quoted in *ibid.*
5. *Ibid.*
6. Quoted in Kathy Hacker, "A Bank-Sex Case Becomes Cause Celebre," *The Philadelphia Inquirer*, June 1, 1986, http://articles.philly.com/1986-06-01/living/26042804_1_teller-case-caps.
7. Quoted in Battiata, "Mechelle Vinson's Long Road to Court."
8. Joint Appendix at 14, *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986) (No. 84-1979).
9. *Vinson v. Taylor*, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 *3-*4 (D.D.C. Feb. 26, 1980); Hacker, "A Bank-Sex Case Becomes Cause Celebre."
10. *Vinson*, 1980 U.S. Dist. LEXIS 10676 at *4. In the court opinions in Mechelle Vinson's case, a distinction is drawn between the dozen or so occasions when Taylor "raped" Vinson and the rest of the occasions when they had intercourse that Vinson did not want but submitted to out of fear. Given Vinson's asserted lack of consent to any sex with Taylor, this is a distinction without a difference, and all intercourse will be described here as rape.
11. Quoted in Mary Battiata, "Mechelle Vinson's Tangled Trials," *The Washington Post*, August 11, 1986, <http://www.washingtonpost.com/archive/lifestyle/1986/08/11/mechelle-vinsons-tangled-trials/40688848-d73c-4856-8a41-cff3e74277ba/>.
12. Hacker, "A Bank-Sex Case Becomes Cause Celebre."
13. Philip Hager, "Supreme Court to Rule on Sexual Harassment at Work," *The Los Angeles Times*, June 8, 1986, http://articles.latimes.com/1986-06-08/news/mn-9645_1_supreme-court-ruling.
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15. Strebeigh, *Equal*, 218-225.
16. *Ibid.*, 225, 223.
17. Quoted in Enid Nemy, "Women Begin to Speak Out Against Sexual Harassment at Work," *The New York Times*, August 19, 1975.
18. *Ibid.* See also Strebeigh, *Equal*, 232-233; Carrie N. Baker, "He Said, She Said: Popular Representations of Sexual Harassment and Second-Wave Feminism," in Sherrie A. Inness, ed., *Disco Divas: Women and Popular Culture in the 1970s* (Philadelphia: University of Pennsylvania Press, 2003), 42-43.
19. R hoda Koenig, "An Ardent Plea for Sexual Harassment," *Harper's*, February 1, 1976, 90.
20. Mary Bralove, "A Cold Shoulder: Career Women Decry Sexual Harassment by Bosses and Clients," *The Wall Street Journal*, January 29, 1976.
21. Baker, "He Said, She Said," 43.
22. *Ibid.*, 49.
23. Augustus B. Cochran III, *Sexual Harassment and the Law: The Mechelle Vinson Story* (Lawrence: University of Kansas

Press, 2004), 47.

24. Baker, "He Said, She Said," 49.

25. *Barnes v. Train*, No. 1828-73, 1974 U.S. Dist. LEXIS 7212 at *3 (D.D.C. Aug. 9, 1974), rev'd sub nom, *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977).

26. *Corne v. Bausch & Lomb, Inc.*, 390 F. Supp. 161, 163 (D. Ariz. 1975), rev'd, 562 F.2d 55 (1977).

27. *Miller v. Bank of America*, 418 F. Supp. 233, 236 (N.D. Cal. 1976), rev'd, 600 F.2d 211 (9th Cir. 1979).

28. *Tomkins v. Public Service Electric & Gas Co.*, 422 F. Supp. 553, 556 (D.N.J. 1976), rev'd, 568 F.2d 1044 (3d Cir. 1977).

29. Fred Strebeigh provides a thorough account of how the activism of Lin Farley, Susan Meyer, and Karen Sauvigne on behalf of Carmita Wood dovetailed with the genesis of MacKinnon's book, which she began as an independent research project while a student at Yale Law School. Strebeigh, *Equal*, 225-234.

30. Catharine MacKinnon, *Sexual Harassment of Working Women* (New Haven, CT: Yale University Press, 1979), 89-90.

31. *Ibid.*, 60, 63-74, 75-77.

32. *Williams v. Saxbe*, 413 F. Supp. 654, 658 (D.D.C. 1976), rev'd in part, vacated in part sub nom, *Williams v. Bell*, 587 F.2d 1240 (D.C. Cir. 1978).

33. See, e.g., *Garber v. Saxon Bus. Prods., Inc.*, 552 F.2d 1032 (4th Cir. 1977); *Heelan v. Johns-Manville Corp.*, 451 F. Supp. 1382 (D. Colo. 1978); *Munford v. James T. Barnes & Co.*, 441 F. Supp. 459 (E.D. Mich. 1977).

34. In reversing *Barnes*, one of the three judges on the D.C. Circuit panel agreed that Paulette Barnes had been illegally harassed, but disagreed with the majority's ruling that an employer was absolutely liable for its supervisors' harassment. That judge was George MacKinnon—Catharine MacKinnon's father.

35. As MacKinnon described the phenomenon in *Sexual Harassment of Working Women* at page 33: "To date, all of the legally successful suits for sexual harassment have alleged some form of the trilogy of unwanted advances, rejection, retaliation."

36. *Ibid.*, 32-40.

37. *Ibid.*, 40, 44.

38. Battiat, "Mechelle Vinson's Tangled Trials."

39. Quoted in *ibid.*

40. Transcript of Trial, January 22, 1980 at 33, 34, *Vinson v. Taylor*, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

41. Strebeigh, *Equal*, 211-212.

42. Opposition of Plaintiff to Defendant's Motion to Dismiss, Declaration of Christine Malone, *Vinson v. Taylor*, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

43. Plaintiff's Motion to File First Amended Complaint and to Add Parties, Declaration of Mary Levarity, *Vinson v. Taylor*, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

44. Joint Appendix at 14-15, *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986) (No. 84-1979).

45. Quoted in Hacker, "A Bank-Sex Case Becomes Cause Celebre."

46. Title VII includes this "pattern or practice" language, which is generally used to bring class action discrimination

claims involving large numbers of employees. Relying on it was Barry's effort to ground her "condition of work," a/k/a hostile environment claim, not yet recognized in any federal court, in the text of the statute.

47. Transcript of Trial, January 23, 1980 at 16, 22, Vinson v. Taylor, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

48. 347 U.S. 483 (1954).

49. Adam Bernstein, "U.S. District Court Judge John Garrett Penn, 75," *The Washington Post*, September 12, 2007.
<http://www.washingtonpost.com/wp-dyn/content/article/2007/09/11/AR2007091102335.html>.

50. Strebeigh, *Equal*, 263–264.

51. *Ibid.*; Cochran, *Sexual Harassment and the Law*, 70–71.

52. Strebeigh, *Equal*, 264.

53. Cochran, *Sexual Harassment and the Law*, 70–71.

54. Answers of Plaintiff to Interrogatories Propounded by Defendant at 23, Vinson v. Taylor, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

55. Battiata, "Mechelle Vinson's Tangled Trials."

56. Transcript of Trial, January 22, 1980 at 82, Vinson v. Taylor, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

57. Transcript of Trial, January 31, 1980 at 8, Vinson v. Taylor, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

58. Cochran, *Sexual Harassment and the Law*, 71.

59. Transcript of Trial, January 31, 1980 at 14, Vinson v. Taylor, No. 78-1793, 1980 U.S. Dist. LEXIS 10676 (D.D.C. Feb. 26, 1980).

60. Jane H. Aiken, "Protecting Plaintiffs' Sexual Pasts," *Emory Law Journal* 51 (2002): 561–563.

61. Vinson, 1980 U.S. Dist. LEXIS 10676 at *23.

62. *Ibid.* at *20.

63. Strebeigh, *Equal*, 268–269.

64. 29 C.F.R. § 1604.11(c) (1980) (rescinded Oct. 29, 1999).

65. *Ibid.* § 1604.11(a) (1980) (emphasis added).

66. 641 F.2d 934 (D.C. Cir. 1981).

67. *Ibid.* at 945.

68. Philip Smith, "Court Eases Rule on Sex Harassment," *The Washington Post*, January 26, 1985,
<http://www.washingtonpost.com/archive/local/1985/01/26/court-eases-rule-on-harassment/6c4eaf93-a091-4b46-bcc1-88f360effa8c/>.

69. Eric Pace, "Spottswood W. Robinson 3d, Civil Rights Lawyer, Dies at 82," *The New York Times*, October 13, 1988,
<http://www.nytimes.com/1988/10/13/us/spottswood-w-robinson-3d-civil-rights-lawyer-dies-at-82.html>.

70. Barnes v. Costle, 561 F.2d 983 (D.C. Cir. 1977). Fred Strebeigh makes a strong case that Judge Robinson received an early version of MacKinnon's *Sexual Harassment of Working Women* (when it was still just a research paper) at the time

the D.C. Circuit was deciding *Barnes*. MacKinnon's father, Judge George MacKinnon, was on the panel with Robinson, and MacKinnon happened to be visiting her father's chambers doing research when an unidentified woman, believed to be one of Robinson's clerks, borrowed the paper. See Strebeigh, *Equal*, 241–245, 250–258.

71. Marjorie Hunter, "Judge J. Skelly Wright, Segregation Foe, Dies at 77," *The New York Times*, August 8, 1988, <http://www.nytimes.com/1988/08/08/obituaries/judge-j-skelly-wright-segregation-foe-dies-at-77.html>.

72. *Ibid.*

73. Ruth Bader Ginsburg, "Four Louisiana Giants in the Law," Judge Robert A. Ainsworth Jr. Memorial Lecture, February 4, 2002, Loyola University New Orleans School of Law, http://www.supremecourtus.gov/publicinfo/speeches/sp_02-04-02.html.

74. Strebeigh, *Equal*, 269.

75. Hacker, "A Bank-Sex Case Becomes Cause Celebre."

76. Strebeigh, *Equal*, 269.

77. *Vinson v. Taylor*, 753 F.2d 141, 145 (D.C. Cir. 1985) (emphasis in original).

78. *Ibid.* at 146.

79. *Ibid.*

80. *Ibid.* at 146 & n.36.

81. *Ibid.* at 150.

82. Ronald J. Ostrow, "Law Center Opposes Nomination: Bork Termed a Peril to the Rights of Women," *The Los Angeles Times*, August 19, 1987, http://articles.latimes.com/1987-08-19/news/mn-826_1_judge-robert-h-bork.

83. M. L. Nestel, "Conservative Scold Ken Starr Got a Billionaire Pedophile Off," *The Daily Beast*, January 30, 2015, <http://www.thedailybeast.com/articles/2015/01/30/conservative-scold-ken-starr-got-a-billionaire-pedophile-off.html>.

84. *Vinson v. Taylor*, 760 F.2d 1330, 1331 (D.C. Cir. 1985) (per curiam) (Bork, J., dissenting).

85. *Ibid.*

86. *Ibid.*

87. Hacker, "A Bank-Sex Case Becomes Cause Celebre."

88. Georgia Dullea, "Sexual Harassment at Work: A Sensitive and Confusing Issue," *The New York Times*, October 24, 1980, <http://timesmachine.nytimes.com/timesmachine/1980/10/24/111303733.html?pageNumber=20>.

89. *9 to 5* (Twentieth Century Fox, 1980).

90. Rebecca Traister, "If You Want to See What Revolutionary Workplace Policies Really Look Like, Watch '9 to 5,'" *The New Republic*, May 13, 2015, <http://www.newrepublic.com/article/121785/enduring-relevance-9-5>.

91. Hacker, "A Bank-Sex Case Becomes Cause Celebre."

92. Battiata, "Mehelle Vinson's Tangled Trials."

93. As Fred Strebeigh details, Thomas had helped write a memo to the Reagan transition team advocating against vigorous enforcement of the Guidelines. "[T]he elimination of personal slights and sexual advances which contribute to an 'intimidating, hostile or offensive working environment' is a goal impossible to reach," he wrote. "Expenditure of the EEOC's limited resources in pursuit of this goal is unwise." Strebeigh, *Equal*, 283.

94. *Ibid.*, 282–284.
95. *Ibid.*, 283.
96. Barry told Fred Strebeigh, however, that her poor showing was an example of “self-sabotag[e]” motivated by insecurity. Quoted in Strebeigh, *Equal*, 290.
97. Interview with Carin Clauss, Madison, Wisconsin, August 26, 2014.
98. *Lehman v. Nakshian*, 453 U.S. 156 (1981).
99. Oral Argument at :33, *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986) (84-1979), available at http://www.oyez.org/cases/1980-1989/1985/1985_84_1979.
100. *Ibid.*, 13:18; 13:52; 14:25; 21:30.
101. *Ibid.*, 7:10; 8:10; 9:37; 9:47.
102. *Ibid.*, 26:40.
103. *Ibid.*, 28:20, 35:52.
104. *Ibid.*, 36:12; 37:48; 47:33.
105. *Ibid.*, 56:00.
106. Strebeigh, *Equal*, 299.
107. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986).
108. *Ibid.* at 67.
109. *Ibid.*
110. *Ibid.*
111. *Ibid.* at 68.
112. *Ibid.* at 69. Although this part of the decision was dispiriting to women’s advocates, its impact was somewhat blunted by later changes to the Federal Rules of Evidence. In 1994, the rules applying to civil cases were changed to import the so-called rape shield law from criminal cases. Under Rule 412 of the Federal Rules of Evidence, the dress and behavior of the victim of an alleged sexual offense is irrelevant, except as toward the alleged offender himself. Under such a standard, much of the disputed evidence about Mechelle Vinson would likely have been excluded. Notably, Justice Rehnquist wrote to Congress to object to the rape shield rule’s extension to civil cases precisely because it would conflict with the “welcomeness” defense left available to defendants under *Vinson* (“[S]ome Justices expressed concern that the proposed amendment [to extend Rule 412 to civil cases] might encroach on the rights of some defendants”). See Aiken, “Protecting Plaintiffs’ Sexual Pasts,” at 573 (and citations contained therein).
113. *Meritor*, 477 U.S. at 72. Justice Marshall, in an opinion joined by Justices Brennan, Blackmun, and Stevens, filed a concurrence that disagreed with the Court’s ruling on employer liability. The Court of Appeals’ strict liability standard, which imported the EEOC Guidelines, was correct, Marshall wrote. The EEOC’s (and solicitor general’s) brief backing away from those Guidelines, said Marshall, was “untenable.” 477 U.S. at 76 (“A supervisor’s responsibilities do not begin and end with the power to hire, fire, and discipline employees, or with the power to recommend such actions. Rather, a supervisor is charged with the day-to-day supervision of the work environment and with ensuring a safe, productive workplace. There is no reason why abuse of the latter authority should have different consequences than abuse of the

former.”).

114. Meritor, 477 U.S. at 72–73.

115. Battiata, “Mechelle Vinson’s Tangled Trials.”

116. Quoted in *ibid.*

117. *Ibid.*

118. *Ibid.*

119. *Ibid.*

120. Judith Resnik, “Old and New Depictions of Justice: Reflections, Circa 2011, on Hill-Thomas,” in Amy Richards and Cynthia Greenberg, eds., *I Still Believe Anita Hill* (New York: The Feminist Press, 2013), 53.

121. Catharine MacKinnon, “Voice, Heart, Ground,” in Richards and Greenberg, *I Still Believe Anita Hill*, 72 (citations omitted).

122. *United States v. Taylor*, 867 F. 2d 700 (D.C. Cir. 1989).

123. Tanya Kateri Hernandez, “‘What Not to Wear’—Race and Unwelcomeness in Sexual Harassment Law: The Story of Meritor Savings Bank v. Vinson,” in Elizabeth M. Schneider and Stephanie M. Wildman, eds., *Women and the Law: Stories* (New York: Thomson Reuters/Foundation Press, 2011), 293.

124. Quoted in Sheila Weller, “These Women Changed *Your* Life,” *Glamour*, September 2005, 268.

第5章 「床」であって「天井」ではない

Unless otherwise indicated, direct quotes, biographical and historical details, and mental impressions come from the following sources: Interview with Carin Clauss, Madison, Wisconsin, August 25, 2014; interview with Lillian Garland, Dale City, Virginia, April 8, 2015; interview with Patricia Shiu, Washington, DC, April 9, 2015; and phone interview with Linda Krieger, June 1, 2015.

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5. Brower, “A Working Mother’s Fight.”

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11. Carol J. Williams, “Critics Want to Bench Judge Manuel L. Real,” *The Los Angeles Times*, August 16, 2009,

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12. Weinstein, "Controversial Federal Judge Steps Down."
 13. *Ibid.*
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 15. Terry Carter, "Real Trouble," *ABA Journal*, September 1, 2008, http://www.abajournal.com/magazine/article/real_trouble.
 16. Bill Farr, "Contempt Charges Against Flynt Dismissed," *The Los Angeles Times*, March 29, 1985, http://articles.latimes.com/1985-03-29/local/me-20456_1_larry-flynt.
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 18. *The People vs. Larry Flynt* (Columbia Pictures, 1996).
 19. The preemption doctrine stems from the Constitution's Supremacy Clause, which provides that the "Constitution and the laws of the United States . . . shall be the supreme law of the land . . . anything in the constitutions or laws of any State to the contrary notwithstanding." U.S. Constitution, Article VI.
 20. *California Federal Sav. & Loan Ass'n v. Guerra*, No. 83-4927R, 1984 U.S. Dist. LEXIS 18387 at *2 (C.D. Cal., Mar. 21, 1984).
 21. *Ibid.*
 22. Jack Jones, "Court Overturns Maternity Leave Job Protection," *The Los Angeles Times*, March 20, 1984.
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 25. Patricia A. Shiu and Stephanie M. Wildman, "Pregnancy Discrimination and Social Change: Evolving Consciousness About a Worker's Right to Job-Protected, Paid Leave," *Yale Journal of Law & Feminism* 21 (2009): 134.
 26. Mont. Code Ann. § § 39-7-201 (pre-1983 amendment).
 27. Wendy W. Williams, "Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate," *N.Y.U. Review of Law and Social Change* 13 (1984-85): 325.
 28. *Ibid.*, 327.
 29. *60 Minutes: Maternity Leave* (CBS television broadcast, December 2, 1984).
 30. Krieger and Cooney, "The Miller-Wohl Controversy," 518-519 (internal citations omitted).
 31. *Ibid.*, 519 (internal citation omitted).
 32. See Fred Strebeigh, *Equal: Women Reshape American Law* (New York: W. W. Norton & Co., 2009).
 33. Krieger and Cooney, "The Miller-Wohl Controversy," 520 (internal citation omitted).
 34. *Ibid.*, 519.
 35. Katharine T. Bartlett, "Pregnancy and the Constitution: The Uniqueness Trap," *California Law Review* 62 (1974): 1532.
 36. *Muller v. Oregon*, 208 U.S. 412 (1907).
 37. Quoted in Gail Collins, *When Everything Changed* (New York: Little, Brown & Co. 2009), 70.
 38. *Ibid.*

39. At the time, Carin Clauss was a young lawyer at the Labor Department. (She later was appointed its Solicitor.) She recalled the dismay registered by Peterson, by then the Department's Special Assistant for Consumer Affairs, when Smith proposed adding "sex" to Title VII:

Esther Peterson burst into my office. "Carin, you have to do something. Congress is about to pass a law that will undo all of our protective legislation!" [She] had been at [former Secretary of Labor] Francis Perkins' side when the Triangle Shirtwaist fire [happened, killing 145 young female sweatshop workers], and they had worked so hard. . . ."They're gonna repeal all these laws, you gotta do something!"

40. Williams, "Equality's Riddle," 325.

41. See, e.g., *Rosenfeld v. Southern Pacific Co.*, 444 F.2d 1219, 1223 (9th Cir. 1971); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969); *Weeks v. Southern Bell Tel. & Tel. Co.*, 408 F.2d 228 (5th Cir. 1969).

42. See, e.g., Deborah A. Widiss, "Gilbert Redux: The Interaction of the Pregnancy Discrimination Act and the Amended Americans with Disabilities Act," *University of California Davis Law Review* 46 (2013): 979–980 (and citations contained therein).

43. See *General Elec. Co. v. Gilbert*, 429 U.S. 125, 142 (1976) (internal citation omitted).

44. *Ibid.* at 143 (internal citation omitted).

45. Strebeigh, *Equal*, 116.

46. *Ibid.*, 116–118.

47. 29 C.F.R. § 1604.10(a)–(b) (1973). Moreover, if a pregnant woman needed time off and she had exhausted any available leave under whatever policy the employer had in place for such absences, the employer had to allow the additional leave if refusing it would have a "disparate impact" on pregnant women—that is, if it would result in pregnant women's being disproportionately fired as compared to other employees who needed temporary leaves. *Ibid.* § 1604.10(c).

48. *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974).

49. *Turner v. Department of Employment Security*, 423 U.S. 44 (1975).

50. *Nashville Gas Co. v. Satty*, 434 U.S. 136 (1977).

51. Deborah L. Brake and Joanna L. Grossman, "Unprotected Sex: The Pregnancy Discrimination Act at 35," *Duke Journal of Gender Law & Policy* 21 (2013): 73.

52. *Geduldig v. Aiello*, 417 U.S. 484 (1974).

53. 429 U.S. 125 (1976).

54. Widiss, "Gilbert Redux," 993.

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57. *Ibid.*

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59. *Troupe v. May Dep't Stores Co.*, 20 F.3d 734, 738 (7th Cir. 1994).

60. Shiu and Wildman, "Pregnancy Discrimination and Social Change," 129 (internal citation omitted).
61. Miller-Wohl Co. v. Commissioner of Labor and Industry, 692 P.2d 1243 (Mont. 1984), vacated by 479 U.S. 1050 (1987), remanded to 744 P.2d 871 (Mont. 1987).
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63. Bruce Weber, "Warren J. Ferguson, 87, Federal Judge, Is Dead," *The New York Times*, July 12, 2008, <http://www.nytimes.com/2008/07/12/washington/12ferguson.html>.
64. Just the Beginning—A Pipeline Organization, "Earl B. Gilliam," <http://www.jtb.org/index.php?src=directory&view=biographies&srctype=detail&refno=66>.
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68. Stephanie M. Wildman, "Pregnant and Working: The Story of California Federal Savings & Loan Association v. Guerra," in Elizabeth M. Schneider and Stephen M. Wildman, eds., *Women and the Law: Stories* (New York: Thomson Reuters/Foundation Press, 2011), 267.
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70. Margaret Wolf Freivogel, "Woman Wins Her Fight for Job Rights," *St. Louis Post-Dispatch*, December 13, 1987.
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74. *Ibid.* at 8:20, 8:42-9:29; 9:55-10:17.
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76. *Ibid.* at 37:20-38:09.
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第6章 女性パートナーへの道

Unless otherwise indicated, direct quotes, biographical and historical details, and mental impressions come from the following sources: interview with Ann Hopkins, Washington, DC, September 30, 2014; interview with Doug Huron, November 7, 2014; May 5, 2015 e-mail from Doug Huron to author; phone interview with Susan Fiske, Ph.D., April 15, 2015.

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24. *Ibid.*, 138.
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49. *Ibid.* at 1121.
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55. Brief for Amicus Curiae American Psychological Association in Support of Respondent at 37, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (No. 87-1167).
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58. Oral Argument at 1:35-2:50; 15:44-17:14, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (No. 87-1167), available at http://www.oyez.org/cases/1980-1989/1988/1988_87_1167.
59. *Ibid.* at 9:15.
60. *Ibid.* at 19:00-19:30.
61. *Ibid.* at 27:30-32:03.
62. *Ibid.* at 32:06-32:24.
63. *Ibid.* at 29:47-30:23.
64. *Ibid.* at 43:37.
65. Hopkins, *So Ordered*, 293, 294, 296.
66. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251, 256 (1989). What the six couldn't agree on, though, was how much

evidence of bias the plaintiff needed to show in order to shift the burden to the defendant to prove it would have made the same decision anyway. When Congress amended Title VII in 1991, it clarified this standard—and minimized the burden of proof on the plaintiff.

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第7章 妊娠する可能性のある方は

Unless otherwise indicated, direct quotes and biographical and historical details come from the following sources: interview with Joan Bertin, January 8, 2015, New York, New York; interview with Carin Clauss, Madison, Wisconsin, August 25 and 26, 2014; interview with Miriam Horwitz, Milwaukee, Wisconsin, August 25, 2014; interview with Marley Weiss, October 3, 2014, Bethesda, Maryland; interview with Patricia Shiu, April 9, 2015; phone interview with Judith Nason, July 15, 2015.

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67. *Ibid.* at 2:30–2:54; 1:02–1:20.
68. *Ibid.* at 6:30–6:57.
69. *Ibid.* at 10:00–10:50.
70. Before 2004, transcripts of oral arguments did not identify the questioner. Some voices—such as Justice O'Connor's—are immediately recognizable from the audio recording of the argument. Others may be identified because the attorney addresses the justice by name in answering.
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72. *Ibid.* at 24:03–25:20.
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74. *Ibid.* at 31:13–31:53.
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76. *Ibid.* at 44:04–46:46.
77. *Ibid.* at 51:19–51:54.
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