CATHARINE MACKINNON INTERVIEW
MAKERS: WOMEN WHO MAKE AMERICA
KUNHARDT FILM FOUNDATION

Catharine MacKinnon
Legal Scholar & Activist
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Interviewed by Betsy West
Total Running Time: 1 hour, 12 minutes and 55 seconds

START TC: 00:00:00:00

ON SCREEN TEXT:

The following video contains mention of sexual assault.

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ON SCREEN TEXT:

Makers: Women Who Make America

Kunhardt Film Foundation

ON SCREEN TEXT:

Catharine MacKinnon

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BETSY WEST:
So Professor MacKinnon, I wanted to start by asking you a few questions about your childhood. If you could just describe to me where you grew up, what kind of family you grew up in, what your upbringing was like?

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CATHARINE MACKINNON:
I grew up on a farm in Minnesota, that at the time was more or less out in the middle of nowhere. I grew up very close to the animals and to the land, and went to a farm high school, it was a consolidated high school for all the small towns around. And the teachers there actually cared about teaching.

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And my father was a lawyer, often didn't have any money but kept practicing law and he would go to the office everyday, and mother was a homemaker, stayed home and did that.

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BETSY WEST:
What kind of student were you?

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CATHARINE MACKINNON:
I didn't know… My parents never compared me to anyone on any dimensions, and so when my report cards would come home, they would say

what they would say, and the only thing anyone ever said was my father would look at them and say, “What is this B in deportment?” Or something. If something seemed to be taking care of itself, no one said anything and if something needed to be improved, you would get told.

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So I learned about a week before graduation that there were three of us from high school, and by the end of the term—although they didn't know—someone would be number one, someone would be number two, and someone would be number three. And so, we were told that probably John was going to be the valedictorian, and then they say, “And anyway Catie, you give the speech. So we'll make you the salutatorian, if that's okay with you Patty.”

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And she said she didn't care, Patty. So, that's when I learned what my grades were like comparatively.

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BW:

You mentioned to me before that you had a friend who was more influential to you, maybe than your brothers or other members of your-

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CM:

It's not influential. No. We were close. She moved away to Hawaii when I was I think twelve or thirteen, but we were very close before that time.

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BETSY WEST:
How did you get interested in the law? How did that happen?

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CATHARINE MACKINNON:
I knew that I wanted- Like here's where it is, I want to do this. It was a casebook. We used a regular legal casebook. It was red, which must mean it was Little, Brown and it was constitutional law. And that was where I knew that I wanted to do that. Now that didn't mean I wanted to be a lawyer, it didn't even mean I wanted to go to law school, it just meant, "Okay, this is where it is."

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BETSY WEST:
What was it about it that…

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CATHARINE MACKINNON:
We read Brown against Board of Education, and it was about equality and it was- I was at the same time- What Leo Weinstein did is he taught political

theory at the same time he taught constitutional law, so here's all this political theory, he was essentially trained as a political theorist, and he also taught a course on constitutional law. And I took them both and all of his things more or less at the same time,-

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-and although he didn't precisely say so, what he taught, what I learned, what was clear, is that these are about the same things, which is to say this law part is about everything that the political philosophers are working with, which is what kind of community do you have? How do people relate to each other? What are the structures of connections? What is a person?

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What are the values? What are the rules? All those ancient questions were the… And how do you think about it? How do you know what's happening in the world? And just what is governance? Where does legitimacy come from? What is authority? Just, what is community? All of that, that was going on in everything that I was doing in government, which was my major,-

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-I saw going on in this case book. Whether that was exactly what we were talking about or not, but it's like, in this constitutional law case book was where all of those questions were being made real now.

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BETSY WEST:

Alright, it was a way to grapple with those questions.

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CATHARINE MACKINNON:
No, it was where they are made real now, not how to grapple with them. You can grapple with them in a million different ways. But it's how we, shortly there after, came to term where the street is for all of these issues, for us now in our life, in our time.

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BETSY WEST:
You went to the same women's school as your mom and grandmother, might have been a very different place than when you went. What was that like being in college then in the 1960s? It must have been going through a transition, Smith in the mid 60s?

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CATHARINE MACKINNON:
It must have been but I didn't notice it in that way. I did notice the '60s in that H. Rap Brown came to speak and we had a course on the Black civil rights movement, although it was called The Negro in America… and I guess that juxtaposes the transition. But all of the social changes that were taking place didn't really hit me, I think, at all-

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-until I went to New Haven in 1969, '70. So when I graduated, which was from Smith, which was 1969- I mean, certainly people were listening to Bob Dylan, like that, but so far as what I know now were the broad scale social changes that were taking place and that particularly women were doing in New York and in other parts of the world, I had no awareness of it. And I don't know anyone at Smith who was doing it.

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BETSY WEST:
So tell me what happened when you went to New Haven.

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CATHARINE MACKINNON:
That's when everything happened. The women's movement happened, the Black Panthers… I mean, I studied political science and political philosophy in the political science department. I went to law school. But fundamentally, it was when I and the women's movement, as I knew it at least, began. And so New Haven was the duration, was where all this took place for me.

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BETSY WEST:
And what was your turning point moment with the women's movement? Can you remember that?

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CATHARINE MACKINNON:
Oh, I remember it all very vividly but it had no single turning point moment. It just… It was a total context. It was the context in which I lived and studied and worked and was. And I was there from basically 1970 to 1980.

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BETSY WEST:
I mean, for someone who wasn't living there at the time, do you have any examples of things you remember where a light bulb went on, or your sense of what was- the importance of what was being discussed among your friends, or…

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CATHARINE MACKINNON:
Well, we had you know lots- We had organizations, we had groups, we shut down university the first year I was there. That was a striking thing to do. We decided-

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BETSY WEST:
Why did you shut down-

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CATHARINE MACKINNON:

It had to do with Kent State and murdering people. And also with the Vietnam War and murdering people. And also with the Black Panthers and the trial, their trial… Basically the socialist feminist groups that came together in those connections and were organized in New Haven were among the strongest parts of women's liberation.

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But there was also- So I was in those and there was also a CR group—a consciousness raising group that we put together at the political science department, which included the secretaries and the wives of the male graduate students. In other words, there was a women's group in connection with the political science department, and what I learned from them-

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-was basically that no one really knew what was going on with women, that all the ideas that people had about what women's lives were really like, they just hadn't the faintest clue. They did not know what they were talking about… I mean, what it showed was like the layers of life. Here's everybody acting a certain way such that you would assume a certain biography or trajectory or state of facts or even a background or whatever-

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-or even a quality of a relationship that the person had with say the male graduate student that you knew in the department. And none of it was true. I got it real clear that nobody knows what's going on with women and that is

the fundamental sort of step in to figuring out what we really need to know to make anything be the way it needs to be.

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First of all, you have to figure out how it is and I still notice, obviously now that even there's been a tremendous amount of scholarship on women in an attempt to pursue real information in a systematic way about all the kinds of things we began to learn about at that time, and we know a great deal more than we did, but we still don't know what people think they know.

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And so it's an ongoing process but… that was really crucial. It was just a fracturing open of reality, in a way that it was methodological and I've never forgotten it. I mean, it just changed me.

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BETSY WEST:
Can you give me an example of something that we didn't know, we didn't understand that became apparent to you in the-

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CATHARINE MACKINNON:
Well yeah. Nobody knows how much sexual abuse there is, and no one knew then, had even the faintest clue then. And what I specifically remember was finding out about it from all these women. I mean, them having been sexually abused as children, them having been raped before and rather recently, what

was going on in their sexual relationships either with men they were close with or friends or men that they knew.

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And in the context of all this coming in, Diana Russell did her research in San Francisco and started publishing articles and eventual books from it, toward the end of the '70s and moving into the early '80s. And I mean I remember where I was in New Haven.

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The street I was on, the bridge abutments and the bridge that went over the road, like exactly where I was when it hit me. All of the things that Diana Russell had studied were all the things that happened to the women that I knew, that nobody knew happened. In other words, what hit me was the systematicity of it.

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The interlinked, interconnectedness of all these things that had been regarded as either separate and discrete criminal acts against individuals, with no social context or basis other than the deviancy presumed, of the person who committed it. And a whole set of other things that hadn't even been known to exist, which at this point I was beginning to work with, namely sexual harassment.

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But all these things that had seemed to be discreet just all of the sudden lined up and interconnected into this systematic set of practices based on sex as one might call it, that is because… But what I understood at that moment

was that… what it really is to be a second-class citizen as a woman is to be in a position to be systematically sexually violated. And targeted for this in a whole range of-

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Across the lifespan and in a whole range of possible ways in all of the settings that women are in. And that the denial of the existence of this together with the prevention of access to knowledge and information about it had created a total lack of understanding, not to mention a lack of law or remedy of the interconnectedness of it all,-

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-as well as the actual quantitative amount and the place in the lives of individuals. So, that's what happened there. I got it, in other words. And that's the work I've done ever since.

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BETSY WEST:
By the time you got to law school, the number of women was increasing in law schools at that time-

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CATHARINE MACKINNON:
A little bit.

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BETSY WEST:
A little bit.

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CATHARINE MACKINNON:
I mean, I started actually in law school in '72, and I don't remember how many there were of us but it was still like a thing. There weren't that many. Very soon thereafter, there were… many more and now of course, there are a majority in a great many law schools.

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BETSY WEST:
What was law school like in those early years, when there weren't many women?

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CATHARINE MACKINNON:
You noticed everything a woman said… in terms of the fact that she was a woman. There was only one woman law professor. You knew that, that she was there, that she was the one and only woman law professor. When I first got there, the bathroom that we could use was called Visiting Women. They changed that at some subsequent point.

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And there was no actual bathroom for the women faculty other than all the way on the other side of the building and down in the basement. What I found to be most… jarring, and I don't know the degree to which this is being a woman or was it just being me, about being in law school was the response in the room to speaking ordinary language.

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And I started attending law school classes before I was admitted to law school and participated a couple of times, and I still remember like, verbatim, things that I said and what happened and what it was like.

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BETSY WEST:
When I began my career in television journalism in the 1970s, my female colleagues and I certainly knew what sexual harassment was. We didn't have a name for it then. Can you tell me when you first became aware of the issue?

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CATHARINE MACKINNON:
What was happening is I was in law school and—not really in law school, I was auditing a course in the law school on sex discrimination—and reading a series of cases—it would've been '72 or 3, I think—Talking about sex discrimination, although it was very early and very primitive and barely developed. But the basic idea was that first you're similarly situated and then you're differentially treated, and when it's in that posture,-

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-you can be seen to be discriminated against based on sex and I was thinking to myself that if this is what they think it is, we're never going to get equality because most of the problems that really matter for women, women are not already similarly situated. Things are done to us that are not done to men. There's nobody to compare with and we aren't in the same situation men are in, so we're not seen as being equal to begin with, such that when we're treated differently and differentially it seemed to be discrimination.

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And so I was thinking this, and along comes this newsletter from Cornell, in which a woman named Carmita Wood talked about her own situation in which she had been working for a man at a lab, I think, as his secretary. He was sexually all over her. He was insisting on dates. He was feeling her up at the water fountain. He was looking up her skirt at the file cabinet.

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He was looking down her dress over the typewriter and she started to get physical symptoms from it. I think her arm was impaired at a certain point and she was hospitalized. and so there's a combination of her physiological reaction with her physically breaking down from it. And she concluded she had to leave that job although she needed the job and didn't have another one. So she applied for workers comp and was turned down and was told that she wasn't going to get compensation because her reasons for leaving work were quote-unquote just personal. And that did it.

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I said, “Yeah, now this is what sex discrimination really looks like. This is what it really is.” And this is what it means to be not yet similarly situated. These are the kinds of things that happen to women because they are women and that's what sex discrimination is and the problems that everybody is off thinking about by analogy to race discrimination—because that had already been established and sex discrimination hadn't—

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—were important problems, but they weren't going to the basis of it and they were leaving out a whole set of other problems that I thought were at least, if not more, fundamental. Mainly sexual issues. And that came together with what I had been learning from the CR group.

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BETSY WEST:
So, what did you do after hearing about Carmita Wood?

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CATHARINE MACKINNON:
Well, in the newsletter, it said that, “If anybody had any ideas about this, please write.” So I wrote them, and I said, "I did have an idea actually." I thought this was sex discrimination, and so even though sex discrimination law didn't know that yet- And they said, “Oh, yes. Great.” And then they proceeded to go ahead and do more organizing and they had a big speak out, of which a transcript was made which was very helpful.

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And I decided to write my senior analytic paper and do this. So I went to Tom Emerson who I went to Yale in order to study with and said I wanted to do my senior analytic work about sexual harassment. And he said, “Oh. But, will there be enough for you to read?” I said, “Well, there aren't really any cases but I just thought I'd redo sex discrimination law.”

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He said, “Oh. Okay. So there's plenty to read,” and signed the sheet slip. This is the way Yale was. I mean, you tell them you have an idea, that you want to do something with, and they let you do it.

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BETSY WEST:

Who actually came up with name "sexual harassment?"

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CATHARINE MACKINNON:

There were numbers of ones out there and there was a group in Boston that was working on the same issue and they called it “sexual coercion.” And… I decided to use the term sexual harassment, recognizing that it wasn't perfect. So, I don't really know?

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I mean, we were all talking about what we were beginning to define as this issue, and people were calling it a number of different things, and I chose this

one. And it could be that other people chose it too at the same time. So, I don't really know.

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BETSY WEST:
Tell me about the paper that you wrote.

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CATHARINE MACKINNON:
So, it was 125 pages and I turned it into Tom Emerson as my senior analytic writing.

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BETSY WEST:
And what did you conclude about the condition of working women and-
What was the central argument of your-

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CATHARINE MACKINNON:
It was called *Sexual Harassment of Working Women: Colunate Case of Sex Discrimination*. It was a legal argument in which I took all the evidence that I could find and talked about the realities of women's lives—which was by the way something no one did at the time—and then did a critique of existing

discrimination law about what it was about it that was inadequate in grasping this problem.

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And then created a sex equality argument out of what I could use and find making the argument about why this is actually a form of sex discrimination, which you have to do if you're going to have it be a legal term of art. And so I did that.

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BETSY WEST:
And what is the argument? That harassment and discrimination, what's the basis of the argument?

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CATHARINE MACKINNON:
That it happens to women because they're women and to men because they're men. And because it is therefore based on sex, it is discriminatory.

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BETSY WEST:
What is sexual harassment?

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CATHARINE MACKINNON:

In ordinary terms, it is unwanted sexual pressure imposed on a person who's not in a position to resist it or refuse it actually. There's numbers of different legal definitions but that's what it is in reality.

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BETSY WEST:
And did you break it up into two kinds of sexual-

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CATHARINE MACKINNON:
Yeah, I did. I decided when I- Well then, Yale Press said they wanted this book and- I mean I decided to expand it into a book and then Yale Press decided they wanted it so… I thought that basically that men, namely judges, would understand-

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-something that looked like a course of contract in which somebody says to you, “Sleep with me and I'll give you an A,” because men are in those kinds of relationships and things like that can happen to them, and they can experience themselves as harmed by that in- or, you know, “If you have sex with me I'll give you this promotion,” or, “I'll hire you for this job.” And so I just called that quid pro quo, and decided that it was much the simplest and the easiest for men to understand,-

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-and so everything that was in that form was that, and then the rest of it which is just the hell you live in, the thing that is surrounding you constantly, the thing that sets the conditions of your working existence or your educational environment, that is just you know the water dripping on stone, except you aren't stone, I called that condition of work or hostile environment.

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And the strategic choice there was to make that distinction was not because they are ultimately distinguishable, because they're not. I mean the longer this environment goes on, say you leave the job, that's called a constructive discharge, which is actually a form of quid pro quo, although the Supreme Court doesn't seem to have grasped that fully.

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But it is because your tolerance for the abuse, which is at an unlegally high level, is the exchange for having your job. That's the quid for the quo, once you quit. I divided into those two kinds for that strategic reason that, which turned out to be true, that the courts would be more readily sympathetic,-

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-and this has been true worldwide as well, a lot of places have laws against quid pro quo sexual harassment that don't have laws against environmental, or at least they would do that for the first say ten years of their legal system and then eventually do something about the other.

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BETSY WEST:
Sounds like it's a practical strategy.

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CATHARINE MACKINNON:
Right.

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BETSY WEST:
It kind of seems-

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CATHARINE MACKINNON:
I'll tell you why I really did it.

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BETSY WEST:
Yeah.

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CATHARINE MACKINNON:
I didn't want them to be thinking about hostile environment and make it impossible for the quid pro quo to be actionable. In other words, them thinking, "Oh my God! If we do this then we will have to do that," which is

what they're big on thinking even though nobody makes them have to do anything. Okay. But their idea of the slippery slope is their big…

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BETSY WEST:
You made a bump…

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CATHARINE MACKINNON:
So, I just made a divide saying, "At least you can do this."

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BETSY WEST:
I mean, it sort of seems obvious now, sexual harassment is a form of sex discrimination. I mean, how unusual or controversial was it at the time when you came out with this?

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CATHARINE MACKINNON:
Well, I was told I was crazy. I called up Nine to Five, at the time I was doing the research, before I used the term and before I published anything certainly, and it was in the process of just talking to everybody that I could find. And I asked them, I asked the person I talked to if she would talk to her members, and I was working on this thing and explained it and said-

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-“Like when they make you sleep with them in order to get hired or be promoted or whatever,” and I didn't hear for a really long time. So I called back. She said, “Yeah, you know,” she said, "I talked to a lot of people about it and they don't want to be involved. They don't want to talk to anyone about it. They don't want this to happen.” I said, “Why is that?” She said, “They're afraid of losing their only source of power.” Unquote.

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I said, “Funny. I thought we were talking about losing their source of powerlessness. I'm talking about actually being able to do something about this.” She said, “Yeah, I know.” She said, “I agree with you, but everybody's just too scared here, that this is all they've got.” I thought, “Okay.” I know a lot of women who really want to do something about this and if it's a legal claim, nobody’s going to make them use it.

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If they think that they've got more power, so called, sleeping their way to the top, than they do suing somebody who's making them sleep their way to the top, that's their choice. This is a legal claim, a civil legal claim for sex discrimination that won't be used unless you use it. So, I just went ahead working with the women who did want to do something about it, actually most of whom were Black.

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BETSY WEST:

So you interviewed women you knew about the realities of their lives?

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CATHARINE MACKINNON:
I would say I would talk to them about it. Mostly they would hear I was working on it and they would come to me.

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BETSY WEST:
What kinds of things would they say?

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CATHARINE MACKINNON:
Well, just, I mean just ordinary sexual harassment things. They're working for a guy who's very powerful with the city and one day they come in and he says, “Come on over here and sit on my lap.” Pulls the gun out of his drawer and sticks it on the top of the desk. “You can take dictation here now.” Proceeds to, like, undress himself and do what we now call a lap dance. And she gets up and leaves.

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He's trying to do this. He keeps doing it. The gun is there. He keeps demanding that this is now the way she's going to be a secretary. Just like that. That was just one, but there's scores and scores of them.

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BETSY WEST:
Was there a moment, a sort of turning point moment when your idea about sexual harassment became more accepted?

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CATHARINE MACKINNON:
Yeah. When it won in court.

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BETSY WEST:
Tell me about that.

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CATHARINE MACKINNON:
There was a case, Barnes? In the D.C. Circuit, and the paper that I'd written got circulated to the judges in the case. I was there in the court and was actually finishing up a whole set of sites because it was the first time that Lexis started to work and they had their- they had the machines and one of the first places they installed them was in the federal courts.

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So I was in a room that was… you know what a new room is like before anything is finished? It's like all the wires are running around and all the plugs are uncovered but you can plug things in. And anyway, it had just been

stuck in there. And it was on a holiday. And so I went there for the first opportunity to plug in the kinds of things you could do in an electronic search because I'd done it all by hand up to this point.

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And so I was plugging in all these words to see if there were cases that I had missed or things I could find, and a young woman came up to me and said, "I've heard your writing on this subject-" She said, "I work for Judge Robinson and I've heard that you're writing on this subject that nobody knows anything about." And I said, "Well, yeah. I sort of am." And she said, "If anything I could see would be really helpful to us in thinking about this."

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So I picked up my manuscript, which was my only copy of it at the time, and handed it over to her. I said, "It's unfinished and it's not site checked and it's not complete or anything." She said, "Anything would help." And so I kissed my baby goodbye, hoping to get it back and said, "I'll need this back. It's my only copy." And so I handed it over to her.

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So I never heard further about that, but like two years later or so, the first case was decided, which was Barnes on appeal, written by Judge Robinson in which he held that it was sex discrimination for the first time. People were beginning to say that this was sex discrimination. They didn't use the word sexual harassment yet. But lawyers were starting to call it sex discrimination under Title VII .

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The Williams case won on this point, but that was all the further that it went. And there had been another case in the ninth circuit that had… I mean all these other cases had lost so far, either at the district court or on appeal and no one had won an appeal. So the Barnes case deciding in a leading circuit, the D.C. Circuit, that it was sex discrimination-

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-and this very carefully crafted opinion by Judge Robinson, which he took two years to write, was very careful in writing. Was the turning point. That was it. I mean after that, all the other circuits fell into line and then ten years later, in Michelle Vinson's case the Supreme Court ruled the same way.

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BETSY WEST:
It must have been gratifying.

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CATHARINE MACKINNON:
It was amazing.

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BETSY WEST:
Tell me.

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CATHARINE MACKINNON:
Well, it was amazing to win Michelle's case. Patricia Barry represented her and actually did bring the case based on my book, which was a quite risky move because the argument she used wasn't law, it was in my book. And she kept hauling out this book and saying, "But judge…" and getting overruled.

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So she lost and appealed, at which point I was brought into the case and worked with a set of women's groups, but I wrote the brief for Michelle. And the women's groups were also all around it and… So arguing that in the Supreme Court, I mean Pat Barry argued it, but I was her second chair so I was there with her the whole time.

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BETSY WEST:
And then the decision came down…

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CATHARINE MACKINNON:
Yeah. And we won, which was astonishing. We really won. I mean, we didn't win every issue on it, but being that it- Michelle's case was… I mean, we first fought the Supreme Court taking it because we were very worried that we wouldn't win.

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BETSY WEST:
Which would have been really bad.

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CATHARINE MACKINNON:
Which would've been really bad. And the bank was, I mean… The way it was, was she… had been forced to have sex- I mean as her lawyer I believe her, although the trial court didn't, fifty-some times over a two, two and a half year period with- Sidney Taylor was her supervisor who hired her and kept promoting her based on her merit,-

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-but started insisting she have sex with him. And he forced her to do it in the bank vault, at various motels that he took her too. He would haul out pornography—this is not in the record, but it happened—to get himself ready to do this.

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Shove it in her face. Stand over her naked in the bank vault, rape her there. Make her go to lunch with him and then to the nearby motel saying things like, "Just like I hired you, I can fire you." Things like this. So she lost the job and sued for sex discrimination, and both the bank and him-

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-But the bank because it's companies that are covered by Title VII- It's what's been decided, rather than the individuals; It's the individuals in their capacity as working for the company and therefore the company that's responsible for

it. So, the company said, “We didn't know. And anyway, whatever happened, she wanted it.” And Sidney Taylor said they didn't have sex, but if they did, she wanted it.

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And it's the typical, “She's a liar, she's a whore, it didn’t happen, but it did because she does it all the time and she consented.” Both of which cannot be true at once, but this somehow doesn't bother them. And logic not being male dominance’s fine point so she went to trial and lost, and appealed to the District of Columbia Court of Appeals and won.

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On the argument that the idea of the hostile environment had not been properly resolved or addressed by the judge. And that he was operating on the wrong theory. That is that there was no such theory essentially and, so the bank appealed back to the Supreme Court and we obviously fought that because if they didn't take review, we would win, because we'd already won in the court of appeals.

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But they took it. And nobody wanted this case to be appealed because she had been raped so many times was what was the real story. The idea was, “Wow, if it had happened that often, maybe that looks like she did want it.” Aside from which the facts of the case, as resolved by the judge, were that she wanted it. Or actually the facts were if it happened, she wanted it.

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And so what I said was, “Okay. They took this case. We have to appeal this. We can't appeal this. I mean this won't work if the facts are- if it was found that she wanted it.” ‘Cause you can't appeal facts. But, what we argued, and it was my argument, was if she wanted it, if it happened she wanted it, is not a factual finding. It's a hypothetical. It isn't a finding of fact.

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He's got to decide whether it happened or whether it didn't, but if it happened she wanted it, is a character finding. It's not a finding of fact. And on that we got in to the Supreme Court being able to say that they didn't use the right theory in assessing the facts, given that the facts had to be resolved as to whether it happened or not, not if it happened, she wanted it.

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So, the other aspect to it had to do with her dress and her so called fantasies and we lost on it. We said that that was irrelevant, that has nothing to do with what sex she wanted, and that in fact people lied about what was said to be her fantasies at trial. And the Supreme Court didn't agree with us on that point, unfortunately. But they did agree with us that sexual harassment is a legal claim, that it is a legal claim for sex discrimination, that if it happens to you because of your sex or because you are a woman,-

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-if it is based on your sex therefore it is a valid claim under Title VII, and the fact that her claim was a hostile environment claim made it even stronger because she had left her job, but the piece of the theory that hadn't been appropriately resolved by the judge, although it was brought up by Pat Barry

because she was litigating using my book—which wasn't law at the time, it was just a book—

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But she brought up this idea of environmental harassment. But the judge didn't rule on it because it was the failure to consider that as a possible legal claim that got us our legal review. That established that hostile environment is a sexual harassment claim. So it was really a double win really-

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-on both, we established the theory and we established that what, to that point, had been the weaker of the two possible forms of the claim, was the one that established it. And we established it in a case for a young Black woman who had been raped serially over a period of two and a half years.

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BETSY WEST:
Can you tell me how you first became interested in the issue of pornography?

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CATHARINE MACKINNON:
Yeah. It was really through Andrea Dworkin, and Linda who was then Marchiano. Again it wasn't an issue in the way we framed it at all. What we did with it hadn't been seen, but…

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BETSY WEST:
Can you explain who they are?

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CATHARINE MACKINNON:
Yes. Andrea Dworkin is a writer of brilliance and Linda Marchiano had been coerced into the film Deep Throat, a piece of pornography which went virally mainstream in the early '70s and legitimated both oral sex and pornography- domesticated them both in a way that had not been done before. So I learned about pornography from her really and- But you asked how I was interested in it.

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I was interested in it from Andrea Dworkin who'd written a book *Pornography: Men Possessing Women* which I read while driving from New Haven to California on my way from teaching at Yale Law School to teach at Stanford Law School. And my car broke down in Terre Haute, Indiana, and I had a long wait before it got fixed and spent much of the time sitting beside the road reading Andrea Dworkin's manuscript for what became, called *Pornography: Men Possessing Women*.

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BETSY WEST:

So you and Andrea Dworkin had a different approach to pornography, that previous opponents to pornography- Can you describe what the approach was?

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CATHARINE MACKINNON:
Well, there were a group of women- Again, the women's movement had worked on the issue. There was Women Against Violence Against Women in the Bay Area, there was Women Against Pornography in New York, and they had been focusing largely on the relation between pornography and the mainstream media and advertising. So they talked about the pornographic influences on the media that most people see upfront.

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And so they had been pioneering these issues and we're strongly opposed to pornography but they had no real legal approach. The only people who talked about it legally would talk about obscenity law and kind of just shrug their shoulders and say, "Well, it would be kind of good if people would understand that this stuff we're talking about here is obscene."

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BETSY WEST:
Community standards.

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CATHARINE MACKINNON:

Yeah. Or if community standards were such that it was… If women were the community, maybe community standards would include this stuff. But as it is now, obviously this isn't obscene because it's all there. Obscenity is a crime and this stuff is everywhere. So it obviously isn't obscene, is it? And so, I mean that was about more or less what was seen and I thought obscenity law was censorship.

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In that it was going after the content of these ideas and… I understood that technically if something was obscene, it didn't violate the First Amendment. That's the whole point. You can do anything at all to obscenity, or to people in relation to it, and you're not seen to be violating freedom of speech, but actually under the aegis of obscenity law,-

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-more material that wasn't pornography had been censored and more people who were not pornographers had been persecuted, and so I just thought it was a bad idea in total.

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BETSY WEST:

You've had a lot of critics of your ideas of pornography. How do you characterize the objections and how do you counter them?

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CATHARINE MACKINNON:

Well, most of them are based on ignorance of the evidence of the harm of pornography. They don't… A lot of the critics just don't seem to know what the social science does show, which is that exposure to materials that as is defined by our law make life more dangerous for women.

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They make it… They make the viewers think that when they're forcing a woman that that's what she wants. They promote rape in society. They stimulate not only a range of atrocities and violence to women in ways that often the people who are committing those acts don't experience as being violent because they've been so desensitized by the pornography,-

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-but they also sexualize women in general in society in a way that is discriminatory but short of violence against women. For example, it's really well documented that male teachers, on the whole, tend to think that girls are less smart than boys and tend to teach them less well. And also there's a lot of sexual harassment that goes on in education-

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-that has a catastrophic effect on women's life chances going forward even when it is short of actual sexual aggression against them. And this kind of way of seeing women is actively promoted in pornography and it's sexually conditioned through the use of pornography. And pornography is the largest form of sex education that we have in this country.

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It's how men learn about their own bodies and their own responses while they're being manipulated by these pimps. And I'm waiting for them to resent it. I think it's going to be a rather long, cold wait, but they are consuming it and using it and learning about women and sexuality and relationships from it.

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And the subordination of women is what their learning to sexualize and the objectification of women, that is making a women into an object for sexual use and learning to see her in this way and it's a massive and widespread cultural phenomenon and people who support pornography as freedom as speech minimize or are ignorant of that impact.

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BETSY WEST:
Do you think that your view on this will prevail?

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CATHARINE MACKINNON:
Yeah, I do. I feel like for some reason very clear about that, contrary to all the evidence. And I can't tell you why on a real, rational way I feel that. I just think- What I think is that when Andrea Dworkin and I said what this really is, something came loose in the universe and that had just been locked down and kept under always up till then.

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And I think it never goes back in the bottle. It keeps getting- They keep trying to submerge it, but everyday more and more people see it and know it and understand it and realize it for what it is.

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BETSY WEST:
Can you tell me how you came to be prosecuting a case in New York defending women?

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CATHARINE MACKINNON:
Well actually a young woman student I was working with, Natalie Nenadić, whose parents are of Croatian ethnicity, she's of Croatian ethnicity also, had been telling me about what was going on in Bosnia and Herzegovina—she speaks Croatian—and had been going back there. And in particularly what was happening in Croatia at the time,-

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-which is where, first, the Serbs went in and exterminated people and raped a lot of women and—it was early '91—and not much was being reported. And she walked into my office at Christmas just as I was about to leave on break—this would've been '92—and said these women wanted to know if I would represent them.

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And I said, “Where and for what?” She said, “That'd be your first job.” And I just sort of took a deep breath, looked at the next couple of decades of my life passing before eyes to come and said, “Yes.” And representing someone is like being pregnant. It’s like, you take what comes, honey. I mean there's no such thing as being a little bit.

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It's like if you're representing someone, that's it. You do what it takes. You... You know this is going to grow, it's going to have its own life, yet it is as part of you. Right? So I didn't know what was going to happen and or anything, but I just decided I was going to do this and fairly soon I realized I was representing tens of thousands of raped women,-

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-a lot of whom were dead and a lot of whom were alive and started trying to get my arms around what it was going to take to represent them. And went over there, met with them, talked with them, went to a couple of international conferences where some of them were and spoke with them there, started thinking about it, started giving speeches about it, and figured out this legal claim that fit them.

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Which is for rape as an act of genocide. Radovan Karadzic was the person they felt to be ultimately responsible for this because they same as being the architect of the genocidal strategy that had rape as a central element or weapon for it's effectuation. And so I wrote up this memo and it had that in it,

but—as rape as genocide—but the only place we could do that really was under the U.S. Alien Tort Act as a civil claim-

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-but that would require that Karadzic would come to New York. So I'd just like written all these things that were required because that claim requires that you actually serve process on the person, in the jurisdiction. You have to give him physical notice of the lawsuit so that he personally has it, in the jurisdiction. And so I was in Europe doing something else and Natalie called me and said, "He's coming to New York." So I flew home and I did my personal best on all nighters, twelve out of fourteen.

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I was up all night twelve out of fourteen nights and wrote our case and created our claim and got people in it and everything, and then we needed to serve it on him, but it was for under the Alien Tort Act in New York for rape as genocide, rape as a war crime, and rape as torture.

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BETSY WEST:
So tell me about serving him.

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CATHARINE MACKINNON:
Oh. Well, he didn't want to be served so he kept avoiding it.

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BETSY WEST:
Why was he there?

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CATHARINE MACKINNON:
He was there to raise money and to go around and- I mean he was the being, the president of this unit called Republika Srpska, which they created through their genocide, which still exists. They were given it, in date. And… he was the president of it and leader of the armed forces as well, and came to New York to make like a diplomat.

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And was on television and was raising money and was doing all that and avoiding service of process, so I decided we were going to have to litigate that. So we went to court, found out that he had these people around him who were from, it turned out, the State department. So I called the State Department, people that I knew there. I said, "I didn't know you guys had a goon squad." He goes, "I hear you're trying to hassle our people up in New York."

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I said, "I didn't know the State Department had a goon squad. What are you doing protecting genocidal war criminals from their victims? From American justice for their victims?" That's what I said to this guy, this friend of mine. He took it really well. He said, "Well, okay. Just let me know what you're doing." I

said, “Okay. Look, I'm going to court. I'm going to say service on your guys is service on my guy, and that will be deemed to be such as a matter of law and they will be ordered to give it to him.”

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I said, “So a federal marshal will at some point walk up to your people and hand him this lawsuit.” And the reason I wanted to do it that way, is because I knew that they… once the State Departments guards… they keep five minute records or at least ten minute records, so it will appear in their record. So if he decided to say that we didn't serve him, we could prove that we actually physically did, even though we as a matter of law actually got the judge to sign the order that said when he's-

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Okay. So, we get a federal marshal to go up to him as he’s, as it turns out, coming out of the Russian Embassy, which was this huge embarrassment, it was diplomatically like a very big deal, and handed it to him and we eventually did get the records and it says… Got order, order says give to so and so, give to subject, subject looked surprised. Right? So I mean we got this.

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Anyway he never said he didn't get it. He... He accepted service of process. So he got a lawyer, Ramsey Clark, who said he was served by our case when we finally managed to get it done in this fashion. And we served him. So we did that jurisdictional requirement.

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BETSY WEST:
And then what happened? As his case went on and on.

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CATHARINE MACKINNON:
It went on and on and there was also another case brought about the same time of people who were copying it, who wanted us to be part of theirs, but my clients did not want to be represented by them, who they claimed they were a whole- they were the class of everybody which included us and we asked to be let out of their class, but the kind of class that they had gotten themselves certified was the kind of class that you couldn't opt out of.

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So the judge said, “Sorry. I certified your class. I'm not going to let them opt out of it.” So we moved to decertify their class. And we won. So, they ended up going to trial after us. I mean they basically did everything we did after we did it. Although they didn't make much of a claim of genocide as we had. So, we then clear them.

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By this time, Karadzic has been delegitimized as a leader. Actually the real thing that happened, the first thing that happened is I said, “Okay. The first thing we need here is legitimacy. Forget this legal business.” So I started contacting every journalist I knew and said, “Make like a journalist. Go interview my clients. Go talk to these people.” And they did. And they believed them, amazingly, and got Pulitzer Prizes and so on,-

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-and started publishing all over the place about these women who were being raped in Bosnia, which people believed. So, we had that going in, and we sort of kept doing that and working with the press to document what was going on there, and I worked with Cherif Bassiouni also and trained his investigators who went and documented a fair amount of what was going on, although nothing close. Some of the big NGO's started getting on it, although they couldn't seem to find more than one or two raped women in most of these places.

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But there was more activity going on this in public, so by the time Karadzic came here, we'd gotten some place, and then over the process of getting ourselves clear of this class action which we disagreed with, our view was you can't represent people you haven't met and talk about injuries, their injuries like they were.

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And that you couldn't adequately represent them, was the claim. So, we got clear of that and went forward. So by the time we actually went to trial, what we were able to do was get him defaulted on a discovery violation because we set up his deposition in New York City,-

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-at which point he would've received a very warm welcome from Interpol at the airport, because he was wanted on, by that time- Actually we also created the idea of the ICTY. The clients and I were saying- they were saying they

wanted their own- a place where they could pursue all these people and they wanted everybody to be able to pursue them. So we had our own case but they wanted what I started calling our own Nuremberg.

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And so I went and talked to Madeline Albright about it at the U.N. and she thought it was a great idea to set up a criminal tribunal just for the former Yugoslavia, which was what we were saying, that it wasn't about everything. There needed to be an international criminal court, but this was just for this. And so I started to persuade the people who wanted to have a big international criminal court that this was going to help them.

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This wasn't going to derail that, this wasn't going to substitute for that, this was going to move that forward 'cause it would show international justice could work, et cetera, we would get it, we would get it funded, and the United States loved it, especially Clinton loved it 'cause it meant he didn't have to do anything to stop the genocide. So-

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BETSY WEST:
But you had a trial-

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CATHARINE MACKINNON:

So we got- No, that has nothing to do with us. We got that idea and we got that and the U.N. took off with it and we were part of all the meetings and so on, and they didn't set it up the way we told them they should set it up, but they did create the ICTY, which was our idea originally.

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BETSY WEST:
The ICTY being?

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CATHARINE MACKINNON:
The International Criminal Tribunal for Former Yugoslavia, which then they set up another for Rwanda and then another one for Sierra Leone and another one for Cambodia, and we got the International Criminal Court, which is where I now work for the prosecutor. But our case went forward by the year 2000, which is actually the year of the passage of the Rome Statute that created the International Criminal Court.

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We were in Federal District Court, in our civil case in August of the year 2000. Having liability being concluded for us, in other words because he defaulted on discovery and didn't show up, he lost. So all of our substantive claims, we won on, but you can't get damages without proving your damages. So we basically had to prove our whole case, so we did.

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And the first day of trial his lawyer, Ramsey Clark, showed up and said that it was actually better for his client if he wasn't there, which I found to be a stunning thing for a lawyer to say, but nonetheless, and we objected to his being allowed to leave but the judge allowed him to leave and so we tried it to an empty chair which we kept talking to and saying things about, filling up with things and put all our clients on the stand, all talking about their rapes and the murders of their family, which they witnessed.

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One girl witnessed her mother being raped and having her throat slit while she lay on top of her brother to keep him from being shot by the Serb soldiers that came to their home. And the women talked about being raped night after night after night, about lying together with each other at night, just holding hands and crying and waiting to see which one of them would be taken that night and then holding her when she came back. And they just described all this for a couple of weeks.

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BETSY WEST:
And then? And you- What happened?

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CATHARINE MACKINNON:
The jury, which we empanelled, said that we had proved our damages and said how much damage each person individually was entitled to. And it

added up to $745 million all together in compensatory and punitive damages, but each person was given a specific amount.

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BETSY WEST:
Will they ever get that money?

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CATHARINE MACKINNON:
We continue to try to collect it to this day. Like, there isn't a week goes by that I don't do something more to try to do that, many different things all at once. So I hope someday we'll get something.

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BETSY WEST:
Your approach to feminism challenges fundamental assumptions about power. How important do you feel are practical politics? Do you think it's more important to elect more female politicians?

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CATHARINE MACKINNON:
I do.

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BETSY WEST:
Tell me about that.

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CATHARINE MACKINNON:
Well look, men can represent women, they just haven't very much. Women can not represent women and sometimes they don't, but one thing I do know is- I mean, we don't know that if a lot of women- if there was a lot more women, that things will be a lot better for women, but we sure do know that if there aren't a lot of women, it isn't going to be. And so I just think- I just feel like it's important that first of all, that women get to be everybody.

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Not all women have to make being women their issue. They get to be women in whatever way being a woman is for them. That is really the point. And so yeah, I think that both changing how power is constituted and having more people who are women have power as it is presently constituted, has to be done both at the same time.

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And that that's… I mean, I understand that there are serious tensions in that, but that's the tension we are living in, at this point in time, historically.

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BETSY WEST:

You've worked with a lot of men. Can you generalize about a fundamental difference between men and women? Where do you come down on that question?

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CATHARINE MACKINNON:
Well, society makes people fundamentally be who they are, and since society has fundamentally different ideas about women and men and is constructed for male supremacy and female subordination, you're going to produce generic distinctions with people, but it's no more fundamental than that.

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BETSY WEST:
So you don't think women, for example, have a different style of leadership for women.

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CATHARINE MACKINNON:
Well, they may have it because they've had to develop their style out of being subordinated, and had to learn certain things, and be attentive to various things, so it can be that they have a more collective style of leadership and I think that's sort of been documented. Although there are men who have very collective styles and sometimes do very well with it. But I don't think it's- I mean, I know that it isn't biological.

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One of the things too about sort of the myth of gender- the myth of gender difference being the sex difference, in other words, the myth of what is male superiority and female inferiority being natural and biologically rooted, is the idea of that is a certain idea of nature which is that it is fixed and can't change.

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Well, actually it can and is very fragile and- I mean when you realize we've changed the weather more than we've changed male dominance, and if anything is nature, it's the weather. We didn't even mean to, you know> And mean time, male dominance is more or less pretty much gone on as it's been.

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BETSY WEST:
Do you think that's true? Do you think there are any chinks in male dominance?

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CATHARINE MACKINNON:
Oh, sure. There's always been chinks in it.

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BETSY WEST:
I mean, don't you think we've made some big inroads here?

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CATHARINE MACKINNON:
We're working with it, but if you look globally, a lot of women are challenging it and so on, but what I mean to say is it isn't natural. In other words women's inferiority is not based in biology and it's the enforced inferiority of women that is the issue. It isn't about difference. It's like difference doesn't matter, is all I mean to say.

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Unfortunately people think it really does, and therefore it's made to matter. But if you're asking like really fundamental, ultimatistic questions, since inferiority and superiority is the issue, not sameness and difference, the problem is not biologically based.

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BETSY WEST:
Was there something that spoke to you personally? Have you been subject to violence yourself? Is there something that really- Why you have devoted your life to this?

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CATHARINE MACKINNON:
Nothing that's happened to me is why I've devoted my life to it. No. It's because it happens to them, which isn't to say things haven't happened to me,

but they just don't seem all that important compared to things that have happened to other people. And I think that… Certainly my mother's love made a tremendous impression on me,-

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-and the fact that she was a deeply, broadly gifted person whose life never had the scope of… anything close to the scope for her abilities. I just will never get over that. But…

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BETSY WEST:
Tell me about that a little bit. When did you realize that? When did that kind of dawn on you?

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CATHARINE MACKINNON:
With the women's movement. In the '70s. “Oh! My mother's a woman. Uh-huh.” You know? This is what a woman is, you know? It's like… It just suddenly became clear to me like, and she didn't see it that way. She saw herself as fulfilled. I mean, she was clinically depressed half her life.

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But… And she wanted a family and she understood that many women do of course, but she understood that if you did that, that that meant you had to give up other things and so she did.

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BETSY WEST:

There are a lot of really smart lawyers out there, and not saying they're necessarily as gifted as you are as a lawyer, but there are a lot of smart lawyers that have not chosen to devote their life to the issues that you have. I guess I'm just trying to get at, how did this happen?

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CATHARINE MACKINNON:

Yeah. I don't really ultimately know except that other women are real to me, and maybe it's because I was real to my mother and that she became real to me and then other women were. But I don't understand. I mean, ask all these other women who don't do this. How is it that they can go through life knowing—if they do know—what really happens to women and do nothing about it?

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And I mean women- There's something karmic or archetypal here, going on, where what happens is women come to me and tell me things, often things that they haven't ever told anyone. And sometimes they want me to do something about them, and sometimes they just tell me because they want me to know this and they think that if I know it, that it will matter somehow.

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If people trust you with that, how can you just do nothing? How can you not try to do something to change that with whatever it takes, whatever means you can devise? How can you not?

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