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## MEMORIAM: JUSTICE RUTH BADER GINSBURG

The editors of the *Harvard Law Review* respectfully offer this collection of tributes to Justice Ruth Bader Ginsburg.

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*Brenda Feigen\**

Ruth Bader Ginsburg changed all our lives by profoundly influencing the law that had encouraged sex discrimination in the United States for centuries. I am writing now in tribute to her.

In the nineteenth century, the Supreme Court ruled that women had neither the right to practice law<sup>1</sup> nor the right to vote.<sup>2</sup> In the mid-twentieth century, the Court approved “beneficial” practices by states making women’s service on juries optional<sup>3</sup> and approved Michigan’s law preventing women from working in bars unless a male relative was present when they were working.<sup>4</sup>

In 1970, while some of us were joining the call of the women’s liberation movement to march in protest of outrageous sex discrimination, Ruth and her husband Marty, a tax lawyer, decided to represent Charles Moritz, who lived alone with his elderly mother and had tried to obtain a tax deduction for wages paid to her caregiver.<sup>5</sup> The Tax Court had said that type of deduction was available only “to a woman, a widower

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\* J.D. 1969, Harvard Law School. Ms. Feigen directed the ACLU’s Women’s Rights Project with then-Professor Ruth Bader Ginsburg. She was National Vice President for Legislation of NOW and a cofounder of the National Women’s Political Caucus and of *Ms. Magazine*. She authored *Not One of the Boys: Living Life as a Feminist* (2000), republished in electronic format twenty years later with a new edition forthcoming. Ms. Feigen is depicted in Hulu’s Emmy Award-winning limited series *Mrs. America* and featured in the Academy Award-nominated and Emmy Award-winning documentary *RBG*. Ms. Feigen is admitted to practice in Massachusetts, New York, and California and is now co-counsel with the ACLU in a large class action lawsuit on behalf of pregnant dockworkers.

<sup>1</sup> *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139 (1873).

<sup>2</sup> *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 178 (1875).

<sup>3</sup> *Hoyt v. Florida*, 368 U.S. 57, 62 (1961).

<sup>4</sup> *Goesaert v. Cleary*, 335 U.S. 464, 465–67 (1948).

<sup>5</sup> *Moritz v. Comm’r*, 469 F.2d 466, 467 (1972).

or divorcé, or a husband whose wife is incapacitated or institutionalized.”<sup>6</sup> Working with the ACLU, Ruth began her soon-to-become legendary assault on sex stereotyping by appealing to the Tenth Circuit Court of Appeals. She won.<sup>7</sup> But the federal government and its lawyer, Erwin Griswold, the Solicitor General and former unwelcoming-to-women Dean of Harvard Law School, in petitioning for certiorari, supplied a list of all the federal statutes that would have to be changed if Mr. Moritz were to succeed. The U.S. Supreme Court denied cert,<sup>8</sup> and Ruth would go on to weaponize that list a few years later when she and I presented to the U.S. Commission on Civil Rights a report on statutes that would need to change to eliminate sex discrimination in our federal code.<sup>9</sup>

In early 1971, the ACLU agreed to collaborate on a case brought by a mother, Sally Reed, whose teenage son had died. She wanted to be the administrator of her son’s estate but so did the father from whom she was divorced. Idaho mandated a preference for males in the administration of estates.<sup>10</sup> Taking over the writing of the brief, now on appeal to the U.S. Supreme Court, Ruth made the argument that there must be a *substantial relationship* between the discriminatory classification and a *legitimate state interest*.<sup>11</sup>

The Supreme Court agreed unanimously and, for the first time in history, ruled on behalf of a woman in a sex discrimination case.<sup>12</sup> That heralded the beginning of the Women’s Rights Project that I was asked in late 1971 to direct with then-Professor Ginsburg.

Shortly after I placed the “Women Working” sign on the door of our suite of offices, we heard about Sharron Frontiero, an Air Force lieutenant who wanted housing and medical benefits for her husband on the same terms that every male Air Force officer automatically received for his wife. The lower court had ruled against Sharron, and she was appealing now to the Supreme Court.<sup>13</sup> She was represented by Joe Levin of the Southern Poverty Law Center (SPLC); they were not experts in sex discrimination.<sup>14</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Comm’r v. Moritz*, 412 U.S. 906 (1973) (mem.).

<sup>9</sup> See generally U.S. COMM’N ON C.R., *SEX BIAS IN THE U.S. CODE* (1977).

<sup>10</sup> *Reed v. Reed*, 404 U.S. 71, 72–73 (1971).

<sup>11</sup> See Brief for Appellant at 60, *Reed*, 404 U.S. 71 (No. 70-4).

<sup>12</sup> *Reed*, 404 U.S. at 76–77.

<sup>13</sup> *Frontiero v. Richardson*, 411 U.S. 677, 679–80 (1973) (plurality opinion).

<sup>14</sup> In fact, it became apparent later that Levin was concerned that applying a strict standard of review to anything other than race discrimination cases would somehow dilute the scrutiny they had established in cases brought by Black people.

Writing our amicus brief with Ruth was an extraordinary experience. To reveal the sexist barriers and show the low regard for women in our society, Ruth drew on the views of famous men:

Thomas Jefferson: “[W]omen should be neither seen nor heard.”<sup>15</sup>

Alexis de Tocqueville: “American women . . . [are on a distinct pathway to never] conduct a business, or take a part in political life . . . .”<sup>16</sup>

The *New York Herald*: Women are “doomed to subjection; . . . it is the law of her nature . . . [and] women themselves would not have this law reversed.”<sup>17</sup>

William Blackstone: “By marriage, the husband and wife are one person . . . . [T]he [legal] disabilities . . . are . . . intended for her protection . . . .”<sup>18</sup>

Grover Cleveland: “[T]he statute books [are] full of proof of the chivalrous concern of male legislators . . . .”<sup>19</sup>

Henrik Ibsen: “It is an exclusively male society with laws made by men, and with prosecutors and judges who assess female conduct from a male standpoint.”<sup>20</sup>

We ended that section of the brief with the “Declaration of Sentiments,” delivered by Elizabeth Cady Stanton in Seneca Falls, New York, in 1848. Modeled after the Declaration of Independence, it stated:

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her . . . . He has endeavored, in every way that he could, to destroy her confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life.<sup>21</sup>

Having laid the groundwork, our strategy was to ask the Court to classify sex distinctions as *suspect* and rule that there would have to be a *compelling state interest* for the government to maintain such classifications, a standard like that applied in race discrimination cases.<sup>22</sup> We

<sup>15</sup> Brief of American Civil Liberties Union Amicus Curiae at 11, *Frontiero*, 411 U.S. 677 (No. 71-1694) (citing MARTIN GRUBERG, *WOMEN IN AMERICAN POLITICS* 4 (1968) (quoting Thomas Jefferson)).

<sup>16</sup> *Id.* at 12 (quoting ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 400 (Henry Reeve trans., Oxford Univ. Press 1947) (1835)).

<sup>17</sup> *Id.* (quoting Editorial, *The Woman's Rights Convention — The Last Act of the Drama*, N.Y. HERALD, Sept. 12, 1852, reprinted in *UP FROM THE PEDESTAL* 189, 190 (Aileen S. Kraditor ed., 1968)).

<sup>18</sup> *Id.* at 13, 15 (quoting 1 WILLIAM BLACKSTONE, *COMMENTARIES* \*442, \*445).

<sup>19</sup> *Id.* at 15 (citing Grover Cleveland, *Would Woman Suffrage Be Unwise?*, LADIES' HOME J., Oct. 1905, at 7-8, reprinted in *UP FROM THE PEDESTAL*, *supra* note 17, at 199, 201-02).

<sup>20</sup> *Id.* at 12 n.8 (quoting Michael Meyer, *Introduction to HENRIK IBSEN, A DOLL'S HOUSE* 3, 5 (Michael Meyer trans., Anchor Books 1966) (quoting Henrik Ibsen)).

<sup>21</sup> *Id.* at 15-16 (quoting 1 HISTORY OF WOMAN SUFFRAGE 70-71 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., New York, Arno Press 1969 (1881))).

<sup>22</sup> See *id.* at 23.

also noted that sex, like race, is an immutable characteristic.<sup>23</sup> As a fallback, we assured the Court that the discrimination suffered by Sharron Frontiero would also be barred under the more lenient standard enunciated in *Reed v. Reed*,<sup>24</sup> namely that there was no “substantial” relationship between the discrimination fostered by this statute and a “legitimate” state interest.<sup>25</sup> In the Joint Reply Brief we drafted on behalf of the ACLU and the SPLC, we were able to repeat our request for the closest possible scrutiny (strict) in sex discrimination cases.<sup>26</sup>

On the day of the hearing, upon arriving at the Court, Ruth and I were escorted through the marble-floored Great Hall past busts of former Chief Justices to the front of the courtroom. I had been able to negotiate twelve minutes of Levin’s argument time. When her turn came, Ruth began in a clear voice describing how crippling sex-based discrimination is. She asked the Court to clarify the “application of equal protection”<sup>27</sup> to distinctions based on sex. Sitting at the counsel table next to her, large casebooks stacked in front of me, I was armed with all the cites, but Ruth did not need any.

After the hearing was over, I whispered to Ruth that she would be the next Democratic nominee to the Court. Marty came over grinning, and asked if I would make sure Ruth, who now seemed dazed, got home on the Shuttle. He had another day of business in D.C. I assured him I would. From the *Frontiero v. Richardson*<sup>28</sup> brief and Ruth’s extraordinary oral argument, during which there had been no questions or comments (concerning at the time), it had become clear that Ruth had hit her stride.

The amicus brief had an impact far more dramatic than we expected. Though he was speaking for only a plurality of the court, Justice Brennan agreed that strict scrutiny should be applied in sex discrimination cases.<sup>29</sup>

For the next two decades, recognizing that there might not be a forthcoming fifth vote from the Court to make sex a suspect classification,

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<sup>23</sup> See *id.* at 27–29.

<sup>24</sup> 404 U.S. 71 (1971).

<sup>25</sup> See Brief of American Civil Liberties Union Amicus Curiae, *supra* note 15, at 48–49.

<sup>26</sup> See Joint Reply Brief of Southern Poverty Law Center, Appellants, and the American Civil Liberties Union, Amicus Curiae, *Frontiero v. Richardson*, 411 U.S. 677 (1973) (No. 71-1694), reprinted in RUTH BADER GINSBURG, MY OWN WORDS 133, 133 (2016).

<sup>27</sup> Transcript of Oral Argument at 20, *Frontiero*, 411 U.S. 677 (No. 71-1694), [https://www.supremecourt.gov/pdfs/transcripts/1972/71-1694\\_01-17-1973.pdf](https://www.supremecourt.gov/pdfs/transcripts/1972/71-1694_01-17-1973.pdf) [<https://perma.cc/SB5W-TZQL>].

<sup>28</sup> 411 U.S. 677.

<sup>29</sup> *Id.* at 688 (plurality opinion). Justice Powell’s concurring opinion for himself, Chief Justice Burger, and Justice Blackmun was disturbing. To them the Equal Rights Amendment’s having been approved by Congress and sent out to the states for ratification made Justice Brennan’s an incorrect approach: “[T]his reaching out to pre-empt by judicial action a major political decision which is currently in process of resolution does not reflect appropriate respect for duly prescribed legislative processes.” *Id.* at 692 (Powell, J., concurring in the judgment).

Ruth decided to prioritize tackling sex stereotypes that treated men and women differently.

One involved a father whose wife had died in childbirth, leaving him alone with his newborn son.<sup>30</sup> He challenged the Social Security Act's grant of survivors' benefits to widows but not to widowers, highlighting the double-edged-sword approach that Ruth was now taking.<sup>31</sup> Not only was the father harmed, but the mother's earnings were also devalued by not generating equal survivors' benefits for her spouse.<sup>32</sup> A unanimous Court agreed, concluding that since the statute's intent was to enable a parent to remain at home to care for a child, the gender-based distinction was "entirely irrational."<sup>33</sup>

It would take several more years before the Court actually upped the standard of review in sex discrimination cases. In a case involving an Oklahoma statute that allowed young women to purchase 3.2% beer at age eighteen but required young men to wait until they were twenty-one, a three-judge panel ruled for the state, concluding "that the classification" had a "fair and substantial relation to apparent objectives of the legislation."<sup>34</sup> Ruth's amicus brief for the ACLU focused on outdated male-female stereotypes. While the substance of the case may have seemed relatively trivial, Justice Brennan, writing for the Court, determined that the classification at issue was not *substantially related* to an *important state interest*.<sup>35</sup>

Finally, the Court had established a new, intermediate standard of scrutiny for gender-based equal protection claims, the heightened scrutiny that Ruth had been urging for a number of years. That standard continued to be the barometer for sex discrimination cases until after Professor Ruth Bader Ginsburg became Justice Ruth Bader Ginsburg.

In 1996, in the landmark Virginia Military Institute (VMI)<sup>36</sup> case, writing for a 7-1 majority, now-Justice Ginsburg established the new high standard we have today.<sup>37</sup> The creation of a parallel but less rigorous women's institute would not satisfy equal protection requirements.<sup>38</sup> There was no *exceedingly persuasive justification* for VMI's blanket denial of admission to women.<sup>39</sup>

The *exceedingly persuasive justification* standard appears to provide the same level of scrutiny that we had asked for more than twenty years

<sup>30</sup> See *Weinberger v. Wiesenfeld*, 420 U.S. 636, 639 (1975).

<sup>31</sup> See *id.* at 639-42.

<sup>32</sup> See *id.* at 645.

<sup>33</sup> *Id.* at 651.

<sup>34</sup> *Walker v. Hall*, 399 F. Supp. 1304, 1311 (W.D. Okla. 1975); see *id.* at 1306.

<sup>35</sup> *Craig v. Boren*, 429 U.S. 190, 197, 204 (1976).

<sup>36</sup> VMI has recently been accused of institutional racism. See Dave Philipps, *Head of Virginia Military Institute Resigns Amid Review of Racism on Campus*, N.Y. TIMES (Oct. 26, 2020), <https://nyti.ms/37KsKrc> [<https://perma.cc/99CF-7LVC>].

<sup>37</sup> *United States v. Virginia*, 518 U.S. 515, 531 (1996).

<sup>38</sup> See *id.* at 534, 551-54.

<sup>39</sup> *Id.* at 534.

earlier in our *Frontiero* brief. While many women across the country were taking to the streets to demand the end of sexist barriers, and some like me were simultaneously demanding our rights in court, Ruth was laser focused on creating an equal protection, feminist jurisprudence that raised us from having virtually no rights as a sex before the mid-twentieth century to full equality by the end of the twentieth century.

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### The Music of Ruth Bader Ginsburg

*Deborah Jones Merritt\**

*Music, when soft voices die,  
Vibrates in the memory . . . .*  
— Percy Bysshe Shelley<sup>40</sup>

The soft voice of Ruth Bader Ginsburg is gone, but her music vibrates in our memory. Ginsburg spoke softly, but insistently, about equality, opportunity, and tolerance. As an advocate for gender equality, she spoke for a man caring for his aged mother<sup>41</sup> and a mother grieving for her buried son;<sup>42</sup> for men nurturing their children<sup>43</sup> and women committed to their careers;<sup>44</sup> for litigants denied representative juries and women excluded from those juries.<sup>45</sup> Case by case, Counselor Ginsburg told the story of gender discrimination and its unconstitutional harms.

In the classroom, Professor Ginsburg taught what she practiced. She knew how to harness a class action, survive a motion to dismiss, and construct a constitutional claim. Concepts of equal protection, due process, and free speech leapt to life in her words. On gender discrimination, she spoke in stereo — her words reverberating between the classroom podium and the text of the cases she had argued.

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\* Distinguished University Professor and John Deaver Drinko/Baker & Hostetler Chair in Law, Moritz College of Law, The Ohio State University.

<sup>40</sup> Percy Bysshe Shelley, *Music when Soft Voices Die (To --)*, POETRY FOUND., <https://www.poetryfoundation.org/poems/45132/music-when-soft-voices-die-to-> [https://perma.cc/HGQ2-ZTQL].

<sup>41</sup> *Moritz v. Comm’r*, 469 F.2d 466, 467 (10th Cir. 1972). Ginsburg’s husband, Martin D. Ginsburg, joined her on the brief in the case, which combined her specialty (gender discrimination) with his (tax law). *Id.*

<sup>42</sup> *Reed v. Reed*, 404 U.S. 71, 71–72 (1971).

<sup>43</sup> *Weinberger v. Wiesenfeld*, 420 U.S. 636, 639–40 (1975).

<sup>44</sup> *Frontiero v. Richardson*, 411 U.S. 677, 680 (1973); Brief for the Petitioner at 12–13, *Struck v. Sec’y of Def.*, 409 U.S. 1071 (1972) (No. 72-178).

<sup>45</sup> *Duren v. Missouri*, 439 U.S. 357, 360 (1979); Brief for Appellees at 3, *Edwards v. Healy*, 421 U.S. 772 (1975) (No. 73-759).

I had the privilege of learning constitutional law from Professor Ginsburg and then clerking for her during her first year on the Court of Appeals for the District of Columbia Circuit. As a mentor, Judge Ginsburg excelled: she gave her clerks as much or more than we could ever give her. She taught us how to think critically, organize carefully, and write crisply. She also taught us to remember that legal disputes are about people, not just principles.

During her first weeks on the court, Judge Ginsburg took us to visit the places where paper defendants in appellate briefs served their all-too-real sentences. We walked quietly through the halls of the D.C. Jail and Lorton Penitentiary, a small cluster of white figures among a sea of nonwhite prisoners.<sup>46</sup> The jail was loud, with human shouts and television dialogue echoing off cement walls and steel bars. The prison was quieter, with male inmates standing at attention as this odd group of four carefully guarded figures passed slowly by them. We were visitors from another world — the white side of the penal system.

The prison visits created a dissonance that Ginsburg never fully resolved. She could see the stark racism of mass incarceration, but she trusted the legal system to overcome that injustice. *Brown*<sup>47</sup> and *Loving*<sup>48</sup> were the beacon stars for liberal advocates in her generation. Thurgood Marshall and the NAACP had used the Constitution to crack the foundation of state-sanctioned segregation, and Ginsburg had modelled her own challenges to gender discrimination on their success. For a lawyer educated in the heady aftermath of *Brown*, it was easy to believe that courts and the Constitution would overcome even structural racism.

When Judge Ginsburg joined the court of appeals in 1980, the court had scheduled an en banc argument in *United States v. Ross*.<sup>49</sup> Police had found thirty envelopes of heroin in a “closed but unsealed brown paper sack about the size of a lunch bag” located in the trunk of Ross’s car.<sup>50</sup> The police had legally stopped and searched the car, but did not obtain a warrant before opening the paper sack.<sup>51</sup> Was that search legal?

At the time, Supreme Court precedent was cloudy. The High Court, however, had ruled that police must obtain a warrant before searching a suitcase seized from the trunk of a car. Even when the Fourth

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<sup>46</sup> My co-clerks, James F. Rogers and Stephen F. Ross, accompanied us on the visit. Monica Wagner, who clerked for the judge the following year, assures me that the visits continued.

<sup>47</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (declaring segregated public schools unconstitutional), *supplemented*, 349 U.S. 294 (1955).

<sup>48</sup> *Loving v. Virginia*, 388 U.S. 1, 2 (1967) (striking down miscegenation laws as unconstitutional).

<sup>49</sup> 655 F.2d 1159 (D.C. Cir. 1981) (en banc), *rev'd*, 456 U.S. 798 (1982).

<sup>50</sup> *Id.* at 1162.

<sup>51</sup> *Id.*

Amendment supported the warrantless search of a car, the Supreme Court held in *Arkansas v. Sanders*,<sup>52</sup> it did not allow the warrantless search of a suitcase seized from the car.<sup>53</sup>

The issue in *Ross*, therefore, was “whether *Sanders* establishe[d] only a ‘luggage rule’ or whether the reasoning of that decision extend[ed] as well to other containers used to carry personal belongings.”<sup>54</sup> After reviewing the briefs, Judge Ginsburg was confident that the Fourth Amendment protected all closed containers. She devised a plan to persuade her ten more senior colleagues to accept that proposition.

On the day the en banc court met to decide *Ross*, Judge Ginsburg brought an array of bags to the conference. At one end of the spectrum was an expensive leather pouch fashioned to look like a brown paper lunch bag; at the other was a crumpled paper bag, much like the one seized from Ross’s car. In between were a variety of paper and plastic bags from grocery markets, department stores, and exclusive boutiques.

Judge Ginsburg’s display not only persuaded her colleagues to vote 7–4 for Ross, but also to assign her (the junior judge) the majority opinion.<sup>55</sup> She secured that honor through her characteristic style. Judge Ginsburg did not lecture her colleagues on class differences or the sanctity of the Fourth Amendment. Instead, she anchored her argument in precedent and vividly demonstrated the discriminatory effect of drawing a line between suitcases and paper bags. She reprised that demonstration in the court’s opinion, citing the plight of a homeless woman and her six children, “liv[ing] a hand-to-mouth existence, mostly on the streets of Washington, with their few belongings stuffed into paper shopping bags.”<sup>56</sup> Didn’t the Fourth Amendment protect the homeless as well as the wealthy?

*Ross* also presaged Ginsburg’s later role as the Notorious RBG. In 1982, the High Court reversed the decision she authored for the court of appeals in *Ross*.<sup>57</sup> An increasingly conservative Supreme Court ruled that the police could immediately search almost *any* container legally seized from an automobile.<sup>58</sup> The Justices agreed with Judge Ginsburg that the Constitution should not distinguish “between ‘worthy’ and ‘unworthy’ containers,”<sup>59</sup> but a majority expanded police authority to search almost all containers stowed in stopped automobiles. Although

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<sup>52</sup> 442 U.S. 753 (1979), *abrogated by* *California v. Acevedo*, 500 U.S. 565 (1991).

<sup>53</sup> *Id.* at 766.

<sup>54</sup> *Ross*, 655 F.2d at 1160.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 1170 n.30 (quoting Janet Cooke, *A Homeless Mother and 6 Children*, WASH. POST, Dec. 15, 1980, at C1).

<sup>57</sup> *United States v. Ross*, 456 U.S. 798, 825 (1982).

<sup>58</sup> *See id.* at 820–22.

<sup>59</sup> *Id.* at 822.



Ginsburg was still a new judge on the court of appeals, her eloquent *Ross* opinion counts as the first of many dissents to High Court rulings.

Justice Ginsburg's opinions from the Supreme Court, both majorities and dissents, are much better known than the *Ross* opinion. I collect here just a few of the refrains she composed for us:

[T]he Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting.<sup>60</sup>

Assistant Principal Wilson's subjection of 13-year-old Savana Redding to a humiliating stripdown search violated the Fourth Amendment.<sup>61</sup>

A prime part of the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded.<sup>62</sup>

In accommodating claims of religious freedom, this Court has taken a balanced approach, one that does not allow the religious beliefs of some to overwhelm the rights and interests of others who do not share those beliefs.<sup>63</sup>

The concerns advanced by the Court and the applicants pale in comparison to the risk that tens of thousands of voters will be disenfranchised. Ensuring an opportunity for the people . . . to exercise their votes should be our paramount concern.<sup>64</sup>

These are songs to teach our children and grandchildren. More than six decades after *Brown*, it is clear that courts and the Constitution alone cannot cure oppression. But the Constitution remains a seawall against injustice, and judges are our sentinels. As the tides mount, memories of Justice Ginsburg's vibrant voice call out.

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In Tribute to My Friend, Justice Ruth Bader Ginsburg,  
AKA "Notorious RBG"

*Hon. Harry T. Edwards\**

I was terribly saddened by the loss of Justice Ruth Bader Ginsburg. We were judicial colleagues for thirteen years and close friends for forty

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<sup>60</sup> *Shelby County v. Holder*, 570 U.S. 529, 570 (2013) (Ginsburg, J., dissenting).

<sup>61</sup> *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 381 (2009) (Ginsburg, J., concurring in part and dissenting in part).

<sup>62</sup> *United States v. Virginia*, 518 U.S. 515, 557 (1996) (citing RICHARD B. MORRIS, *THE FORGING OF THE UNION*, 1781-1789, at 193 (1987)).

<sup>63</sup> *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2400 (2020) (Ginsburg, J., dissenting).

<sup>64</sup> *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1211 (2020) (Ginsburg, J., dissenting).

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years. President Jimmy Carter brought us together in 1980 when he nominated us to serve on the U.S. Court of Appeals for the D.C. Circuit. Our personalities were completely different. She was quiet and reserved and I was not. Yet, almost from the start, we clicked and were drawn together as colleagues and friends. I could make her laugh (which was no mean feat) and she could make me cry when she sent me proofreading comments on my draft opinions. When my now-wife Pamela and I talked about getting married, she made it clear that she would agree only if Justice Ginsburg officiated our wedding. Pamela had known of RBG's seminal efforts to achieve gender equality well before she knew me. In Pamela's eyes, RBG was a dauntless figure in the law long before she became known as "Notorious RBG."

Anyone who was familiar with RBG in 1980 knew that her breadth of intellect, range of legal skills, and redoubtable history as an advocate, teacher, and scholar made her an ideal choice for appointment to the federal bench.<sup>65</sup> As an appeals court judge, RBG was "more interested in precedent than ideology,"<sup>66</sup> and earned a reputation as being a moderate and "cautious" jurist.<sup>67</sup> She was a great colleague because the quality of her work was so good. She was rigorous in her research, clear-headed in her analyses, and precise in her writing. She left no stone unturned to produce work that was always at the highest level. It was not surprising that she often found consensus with her fellow judges.<sup>68</sup> In every way, she was a masterful appellate judge who followed an apolitical approach in her work. It has been suggested that some members of the bar were disappointed with Judge Ginsburg's opinions because they did not adhere to a liberal agenda.<sup>69</sup> My take on this is quite different. During the 1980s, when Judge Ginsburg was a member of the D.C. Circuit, the court was badly fractured by political

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<sup>65</sup> When RBG was being considered for appointment to the D.C. Circuit, then-Attorney General Griffin Bell was unimpressed because he viewed Ruth Bader Ginsburg as a "one-issue lawyer." Jonathan Ringel, *Skepticism from Griffin Bell and a News Leak Led to Ginsburg's First Judgeship*, LAW.COM (Sept. 21, 2020, 2:37 PM), <https://www.law.com/dailyreportonline/2020/09/21/skepticism-from-griffin-bell-and-a-news-leak-led-to-ginsburgs-first-judgeship> [<https://perma.cc/M2YK-3TD5>]. Fortunately, President Carter was undeterred and nominated RBG.

<sup>66</sup> Sara Fritz, *Nominee Called Trailblazer Who Kept Low Profile*, L.A. TIMES (June 15, 1993), <https://www.latimes.com/archives/la-xpm-1993-06-15-mn-3242-story.html> [<https://perma.cc/C558-NBPE>].

<sup>67</sup> Paul Richter, *Clinton Picks Moderate Judge Ruth Ginsburg for High Court*, L.A. TIMES (June 15, 1993), <https://www.latimes.com/archives/la-xpm-1993-06-15-mn-3237-story.html> [<https://perma.cc/W78J-VQHB>].

<sup>68</sup> *Id.*; Richard L. Berke, *Clinton Names Ruth Ginsburg, Advocate for Women, to Court*, N.Y. TIMES, June 15, 1993, at A1.

<sup>69</sup> See, e.g., Jill Lepore, *Ruth Bader Ginsburg's Unlikely Path to the Supreme Court*, NEW YORKER (Oct. 1, 2018), <https://www.newyorker.com/magazine/2018/10/08/ruth-bader-ginsburgs-unlikely-path-to-the-supreme-court> [<https://perma.cc/Z5CY-7FFK>].

factions.<sup>70</sup> RBG's apolitical approach to judging, and the excellence of her work, served as a model for the court as we aimed to change our ways and master the art of collegial decisionmaking.

In addition to respecting her consummate professionalism, I always saw RBG as a thoughtful, kind, and righteous person. She had an abiding sense of goodness. As she once explained, she was not only an advocate for gender equality. She believed that "[w]omen's rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy."<sup>71</sup> Although she had very strong views about human rights, RBG remained mostly quiet and reserved during the time we were together on the court of appeals. She was not "Notorious RBG." She was *merely* a brilliant scholar, advocate, and judge, whose sterling work (both to promote gender equality and justice more broadly) was rarely matched by her peers in any of her professional realms. She had made her marks quietly, carefully, efficiently, and shrewdly, with unmatched skill, determination, and brilliance, but without seeking public fanfare. She was content to deliver brilliant work because she was confident that it would have lasting effects.

A strange thing happened after RBG joined the Supreme Court. Society beckoned. Many people began to better understand and appreciate the importance of RBG's body of work. They saw a woman who "ha[d] been a pioneer for gender equality throughout her distinguished career,"<sup>72</sup> who was a member of the Supreme Court, and who ranked with the best legal minds in the country. They also saw a person who was the living embodiment of our highest ideals of justice, integrity, and goodness. Countless Americans concerned about equal justice adopted RBG as their role model. Justice Ginsburg answered their call and "Notorious RBG" was born.

Justice Ginsburg's ascendancy to Notorious RBG was quite extraordinary. T-shirts, bobbleheads, dolls, coffee mugs, face masks, tote bags, and other paraphernalia, all emblazoned with "RBG" photos or emblems, became popular throughout the country. RBG opened up to us with her wry sense of humor and even shared her exercise routines. Books on RBG were published (one of which is aptly titled *You Can't Spell Truth Without Ruth: An Unauthorized Collection of Witty & Wise Quotes from the Queen of Supreme, Ruth Bader Ginsburg*). *RBG*, a documentary on the life and work of Justice Ginsburg, was released in

<sup>70</sup> Harry T. Edwards, *The Effects of Collegiality on Judicial Decision Making*, 151 U. PA. L. REV. 1639, 1648-49 (2003).

<sup>71</sup> *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, ACLU, <https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff> [<https://perma.cc/4FTG-DHYF>].

<sup>72</sup> *Id.*

2018. It received glowing reviews and earned an Academy Award nomination.<sup>73</sup> And a major motion picture, *On the Basis of Sex*, a biographical legal drama based on the life of Ruth Bader Ginsburg, was also released in 2018. Most importantly, Justice Ginsburg lectured widely to young and old alike to inspire us to strive for goodness.

There are some who might say that Justice Ginsburg's celebrity status minimized her greatness as a jurist.<sup>74</sup> This is a shortsighted view because it unfairly discounts the epic effects that Notorious RBG had on society. Justice Ginsburg was not looking to assume the mantle of a public idol, and certainly not while she was carrying a full caseload on the Supreme Court and struggling with cancer. As she said: "It was beyond my wildest imagination that I would one day become the Notorious RBG. I am now 86 years old and yet people of all ages want to take their picture with me. Amazing."<sup>75</sup> She was embraced by the public because of what she stood for. And she rose to the occasion with grace, class, and dignity. She helped to bring the best ideals of law and life together, lifting the aspirations of so many people. And she did all of this — to embrace us and be embraced by us — without ever losing her way as a brilliant and highly respected Supreme Court Justice. It was stunning to watch Justice Ginsburg take on the role and responsibilities of Notorious RBG. She was afforded an opportunity to inspire countless members of society, and she succeeded. The lessons of history will confirm that what she did was quite remarkable.

I have many special personal memories of my times with RBG. We were close colleagues on the D.C. Circuit. In between work, there were many golf outings with the Ginsburgs, during which Marty was hysterically funny encouraging RBG during her every swing at the golf ball. We shared many delightful dinner parties, during which I learned that Marty was far superior to me as a cook. When RBG officiated our wedding, after Pamela and I had exchanged vows, I kissed the Justice before I kissed the bride. RBG and my spouse never stopped teasing me about this. RBG and I once enjoyed a great trip to Scotland for a judicial conference. The best part of the trip was when RBG invited me to go shopping with her to help her pick out a sweater. I even had my turn with RBG at the opera. RBG forgave me for preferring Beethoven and Brahms symphonies, Tchaikovsky's violin concerto, and the best of Motown over *The Marriage of Figaro*. We shared birthday gifts every year. And, of course, I will never forget my friend's time as

<sup>73</sup> See, e.g., Melena Ryzik, *Ruth Bader Ginsburg Reacts to Oscar Nomination for "RBG,"* N.Y. TIMES (Jan. 22, 2019), <https://nyti.ms/2HrQO6A> [<https://perma.cc/LD5A-E74B>].

<sup>74</sup> Lepore, *supra* note 69.

<sup>75</sup> Lawrence Hurley, *U.S. Justice Ginsburg Makes First Appearance Since Latest Cancer Scare,* REUTERS (Aug. 26, 2019, 1:37 PM), <https://fr.reuters.com/article/us-usa-court-ginsburg-idUSKCN1VG1YC> [<https://perma.cc/5Y8N-MYB3>].

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Notorious RBG. I still wear my Notorious RBG T-shirts with great respect.

Ruth Bader Ginsburg had a life well lived. She left an enduring mark on our society and we are the better for it.

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*Margo Schlanger\**

It's simultaneously hard and easy for me to write an appreciation like this one for Justice Ginsburg, because my admiration for her and my debt to her are so deep. Little in my life would have been the same if I had not been her law clerk from 1993 to 1995, during her first two years on the Supreme Court. She helped me get my first job as a civil rights lawyer and was instrumental in my meeting my now-husband. She was the smartest lawyer I ever worked for or with, and the most profound thinker about equality and the law. She and her husband, Marty, modeled a marriage of personal and professional equals deeply important to my husband and me. I was very, very lucky to know her.

I thought about telling some cute stories. But instead, let me share some lessons I began to learn from RBG:

- Always (really, *always*) do your best work. Work very hard, on worthwhile things; don't waste time on projects that don't matter.
- Write with care, and without unnecessary words. (This is hard. I often write too long.)
- Find and cherish a life partner who loves partnership.
- Build a professional life consonant with a family life.
- Celebrate, don't deprecate, differences between men and women.
- Celebrate, don't deprecate, the huge differences *among* women and men.
- Counter your opponents' best arguments, not easier ones.
- Pursue a nonprofessional passion.

Among the virtues of the Notorious RBG phenomenon — the books, the movies, maybe even the merch — is amplification of many of those lessons.

These life lessons are important, but I think RBG's jurisprudential lessons are even more so. Justice Ginsburg was obviously a terrifically successful advocate, bringing gender equality into the Equal Protection Clause framework; she deepened that framework as a Justice. Yet it is undeniable that her strongest jurisprudential commitments remain unimplemented.

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In 1978, not long before she became a judge, then-Professor Ginsburg offered the hope that “the Court may take abortion, pregnancy, out-of-wedlock birth, and explicit gender-based differentials out of the separate cubbyholes in which they now rest, acknowledge the practical interrelationships, and treat these matters as part and parcel of a single, large, sex equality issue.”<sup>76</sup> This never happened. But she has left us many signs pointing the way.

Consider a not-very-celebrated case, *Coleman v. Maryland Court of Appeals*.<sup>77</sup> In 1993, Congress enacted the Family and Medical Leave Act<sup>78</sup> (FMLA), entitling eligible employees to take up to twelve weeks of unpaid leave per year.<sup>79</sup> The FMLA covered leave to tend to a newborn or newly adopted child; to care for a spouse, son or daughter, or parent with a serious health condition; and for the employee’s own serious health condition.<sup>80</sup> In 2012, the Supreme Court held that this last type of leave — for “self care” — could not be enforced by state employees.<sup>81</sup> The Court ruled that Congress’s attempt to exercise Fourteenth Amendment authority to abrogate state sovereign immunity failed, because the self-care mandate was insufficiently connected to a Fourteenth Amendment discrimination problem.<sup>82</sup>

Justice Ginsburg’s dissent is not terribly famous, but it should be. The self-care provision, she explained, was aimed directly at sex discrimination — the denial of medically necessary pregnancy and labor-recovery leave.<sup>83</sup> But to single out pregnancy’s medical complications for solicitous treatment would harm women’s employment; employers would be more reluctant to hire women who might get pregnant, in anticipation of their augmented leave rights.<sup>84</sup> Universal self-care leave was Congress’s solution.<sup>85</sup> The dissent (joined by Justices Breyer, Sotomayor, and Kagan) was a tour de force, a fluent and comprehensive summary of the centrality of pregnancy to women’s inequality in the workplace, encapsulating the sophisticated dialogue between feminists of various stripes seeking to foster equality. It set out a profoundly more humane constitutional vision than the Court’s, marking a path, so far not taken, by which both the Court and Congress could evaluate threats to equality realistically and holistically.

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<sup>76</sup> Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451, 462 (1978).

<sup>77</sup> 566 U.S. 30 (2012).

<sup>78</sup> 29 U.S.C. §§ 2601–2654.

<sup>79</sup> *Id.* § 2612(a)(1).

<sup>80</sup> *Id.*

<sup>81</sup> *Coleman*, 566 U.S. at 33 (plurality opinion).

<sup>82</sup> *Id.* at 36–37.

<sup>83</sup> *Id.* at 50–51 (Ginsburg, J., dissenting).

<sup>84</sup> *See id.*

<sup>85</sup> *See id.*

In other dissents, RBG similarly lighted so-far-not-taken paths to racial equality. Over and over again, she emphasized the continuing presence and effects of long-entrenched race discrimination, and insisted that official efforts to lift that oppressive weight off of Black people's necks should be encouraged and ratified, not subjected to skeptical fly-specking by an unsympathetic Court.<sup>86</sup>

It took decades for Justice Holmes's "great dissenter" opinions to enter into law.<sup>87</sup> I am hopeful, if not precisely optimistic, that Justice Ginsburg's dissents will follow a similar (but shorter) life cycle. For her many fans — including me — she is the best model we could have of perseverance for justice.

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*Judge Paul J. Watford\**

I first got to know Justice Ginsburg when I served as her law clerk twenty-five years ago. That was a life-changing experience in so many ways, large and small. Looking back, I realize now that much of what the Justice taught her clerks did not come from any explicit effort on her part to instruct. The lessons we absorbed came instead from observing her actions and taking stock of the example she set. Lessons that stand out for me, as they relate to what I do now, involve the importance of humility and collegiality in undertaking the job of judging.

I was struck from the outset of my clerkship with Justice Ginsburg by how remarkably humble and modest she was. Then in her third Term on the Court, she had already accomplished far more than most people achieve over the course of a lifetime in the law. Her work as a

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<sup>86</sup> See, e.g., *Missouri v. Jenkins*, 515 U.S. 70, 175 (1995) (Ginsburg, J., dissenting) ("[C]ompared to more than two centuries of firmly entrenched official discrimination, the experience with the desegregation remedies ordered by the District Court has been evanescent."); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 274 (1995) (Ginsburg, J., dissenting) ("Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice." (footnote omitted)); *Ricci v. DeStefano*, 557 U.S. 557, 609, 628–29 (2009) (Ginsburg, J., dissenting) (urging more leeway for measures undertaken to prevent disparate impact, and demonstrating that "[f]irefighting is a profession in which the legacy of racial discrimination casts an especially long shadow," *id.* at 609); *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting) ("Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.").

<sup>87</sup> See, e.g., *United States v. Darby*, 312 U.S. 100, 115–16 (1941) (adopting "the powerful and now classic dissent of Mr. Justice Holmes," *id.* at 115, in *Hammer v. Dagenhart*, 247 U.S. 251, 279–80 (1918) (Holmes, J., dissenting)); *Brandenburg v. Ohio*, 395 U.S. 444, 447–49 (1969) (per curiam) (adopting Justice Holmes's dissenting view in *Abrams v. United States*, 250 U.S. 616, 628 (1919) (Holmes, J., dissenting)).

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trailblazing advocate for women's equality in the 1970s was particularly awe-inspiring. Yet I don't recall the Justice ever bringing up her advocacy work during our time with her in chambers, and in characteristically modest fashion, she resisted comparisons between the history-altering roles that she and Justice Thurgood Marshall had played as litigators before joining the Court. Justice Marshall, she observed, put his life on the line in advocating for the cause he championed, whereas she had never endured any comparable threats to her own safety.

Justice Ginsburg modeled humility in the way she approached her role as a decider of cases. She came to each case with an open mind and invited debate and dialogue on the difficult issues at hand, first with us in chambers and then with her fellow Justices. To be sure, the Justice had firmly held views on core issues as to which she had previously devoted considerable thought and study. But she taught us that it was a mistake to assume that you have all the right answers without skeptically examining your initial leanings. She wanted to have her tentative views about a case tested and challenged, and to be confronted with the strongest arguments on the other side before coming to ground. She showed us that engaging with the views of colleagues who disagree with you is something to be welcomed rather than dreaded, as it invariably improves the quality of your written work (whether majority opinion or dissent) by forcing you to sharpen and refine your analysis.

The link between humility and collegiality was evident in the way Justice Ginsburg dealt with her colleagues on the Court. She taught us, again through example rather than word, that the key to healthy functioning of any institution dependent upon collective decisionmaking is the ability of its members to engage in constructive, civil dialogue with one another. Justice Ginsburg fostered that sort of dialogue throughout her forty-year tenure as a federal judge because she was willing to listen to, and be persuaded by, colleagues who held opposing points of view.

Justice Ginsburg taught us that you can disagree with people — passionately and on the most high-stakes issues — and still remain not just cordial colleagues but also genuine friends. The close friendship she enjoyed with Justice Scalia is certainly the most well-known (but hardly the only) illustration of that lesson. She and Justice Scalia could disagree as colleagues on the bench as strenuously as any two judges I've known, but both had great respect for the other's intellect and integrity. They never took any of their disagreements personally, and they never let those disagreements interfere with the warm relationship they shared both on and off the Court. That fact was driven home most starkly during our Term when the initial draft of Justice Scalia's dissent in the Virginia Military Institute case, *United States v. Virginia*,<sup>88</sup> arrived in chambers. I had assumed that, because the two were such good friends, Justice Scalia surely would take a more measured tone in attacking

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<sup>88</sup> 518 U.S. 515 (1996).



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Justice Ginsburg's landmark majority opinion, an opinion we all expected would rank as one of the Justice's most significant. That was definitely not the case; his dissent was a no-holds-barred affair. Yet the Justice took no offense at the harsh tone, which she shrugged off by saying: "That's just Nino being Nino."

On a more personal note, I still marvel at what a kind and caring boss Justice Ginsburg was. She found ways throughout the year to show appreciation for the hard work she knew we put in each day, such as the in-chambers birthday parties she hosted for each of us, complete with a gourmet cake baked by her husband Marty, and the small gifts she brought back for us when she returned from an overseas trip. One highlight of the year that remains etched in my memory is the dinner party the Justice threw for her clerks to celebrate the official beginning of the Term in October. She invited each of us and our significant others to her apartment in the Watergate complex, where we were treated to a multicourse, restaurant-quality meal prepared by Marty. The good food, good wine, and good cheer shared that evening helped form bonds of friendship and collegiality that endure to this day.

The Justice welcomed each of us, together with our spouses and children, into her extended family, and that relationship continued long after we left her chambers. A few years after my clerkship ended, I recall visiting the Court to watch oral arguments for the first time as a lawyer in the audience. When the arguments ended, I debated whether I should try to visit chambers to say hello to the Justice. I quickly concluded that she would be far too busy to be bothered by a former clerk, so I left. The next day I received an email from Justice Ginsburg's assistant that said: "The Justice saw you in the audience yesterday and wondered why you didn't stop by for a visit." I had no idea that, far from being bothered when former clerks stopped by, she thoroughly enjoyed those visits as an opportunity to keep up with what was happening in our personal and professional lives. From then on, I made it a point to stop by chambers to see the Justice whenever I traveled to Washington and her schedule permitted. Some of my fondest post-clerkship memories are the conversations we would have during those visits.

Each time I visited the Justice, she would always ask how my wife Sherry was doing, and she greeted Sherry with open arms at each of the law clerk reunions we attended together. That warm embrace was especially meaningful for Sherry, given the vast differences in their backgrounds and the fact that Sherry did not work outside the home. The Justice always made Sherry feel that her contributions were no less valuable than those of spouses whose career paths more closely resembled the Justice's own. In this and other areas, the Justice wanted women (and men) to have the freedom to make life choices unconstrained by sex-role stereotypes, and she respected the choices others made in exercising that freedom even if their choices differed from her own.

Justice Ginsburg was an extraordinary role model and mentor. I count myself as fortunate beyond measure to have been taken under her wing.

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*Daphna Renan\**

*Once compared to Shakespeare's Portia . . . [she] resembled Shakespeare's character in this respect: Both were individuals of impressive intellect who demonstrated that women can hold their own as advocates for justice. . . . Her enduring legacy . . . is the path she opened for women who later followed the tracks she made.*

— Ruth Bader Ginsburg<sup>89</sup>

These words were written by Justice Ginsburg, in the first assignment I had for her in chambers: a foreword to a biography of Belva Lockwood, a lawyer and advocate for suffrage who was the first woman to be admitted to the Supreme Court Bar in 1879, the first to participate in argument, and twice a candidate of the Equal Rights Party for President of the United States.<sup>90</sup>

Justice Ginsburg handed me the biography, for which she had agreed to prepare a foreword, in my first week in chambers. In rereading that foreword recently, I was struck by how much Justice Ginsburg, our own beloved and now-departed pioneer, was weaving her own story together with Lockwood's, whom she described as “[p]rincipal among way pavers in days when women were not wanted at the bar.”<sup>91</sup>

Justice Ginsburg was a giant in the law, a luminary and a leader. But she was always keenly aware of those who paved the way for her, even as she trained her sights on how she could better pave it for others. RBG came to the bench having devoted a career to the fight for women's equality — in the courtroom, in the classroom, and in the court of public opinion.

When I clerked for her in the 2006 Term, she was the only woman on the Court — a fact that greatly saddened her. As she wrote at the time in the Lockwood foreword, notwithstanding all of the progress those who struggled for equality had made, “[s]till, the presence of only

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\* Professor of Law, Harvard Law School. Professor Renan clerked for Justice Ginsburg from 2006–2007. A version of these remarks was delivered orally at a tribute for Justice Ginsburg at Harvard Law School on September 24, 2020.

<sup>89</sup> Ruth Bader Ginsburg, *Foreword to JILL NORGRÉN, BELVA LOCKWOOD*, at ix, ix (2007).

<sup>90</sup> *Id.* at x.

<sup>91</sup> *Id.* at ix.

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one woman on the current High Court bench indicates the need for women of Lockwood's sense and steel to see the changes she helped to inaugurate through to full fruition."<sup>92</sup>

I know that many were inspired by Justice Ginsburg, and that many she inspired are now hurting. If you are a student reading this, I want you to know that you are exactly whom RBG had in mind: our future lawyers of sense and steel who must help to see the changes that *Justice Ginsburg* helped to inaugurate through to full fruition.

With that goal as guide, I want to share three memories of RBG — in the way I knew her best, as my Justice.

The first is a story about her red pen. Justice Ginsburg was the most tenacious laborer in the law — the most careful writer and the clearest thinker I have ever met. When my co-clerk and I handed in our first draft of the Lockwood foreword, and when we handed in the first draft of every opinion we helped to prepare, the red pen would come out.

We would receive our drafts back with big red circles — around ideas, around particular words, even around semicolons. Because, for RBG, it was not just that the reasoning had to be tight and the legal analysis forceful, it was also that the language had to be concise, precise, and — at the level of each and every word — irresistibly compelling. The fierceness of her intellect was matched only by the tenacity of her work ethic and her commitment to the craft.

Judicial writing, for RBG, was an act of reverence: she showed her respect for the work of the law, and her acceptance of responsibility for being made a part in it, by working through as many drafts as it took — however late into the night (sometimes until 2:00 or 3:00 a.m.), over however many cups of coffee — until her writing was as lucid as her substantive ambitions for the law were visionary.

These very late nights sometimes took their toll, and there was an instance or two that the Justice would nod off a bit during the morning oral arguments. This — combined with her small build — led some reporters to speculate about her physical frailty. To remedy this, my co-clerks and I gave her a gift: a mug that said “I’m not tired. You’re just boring.” For the rest of the year, RBG would take this mug — brimming with her strongly brewed, always black coffee — on the bench with her to argument.

My second memory is of the Justice's dissents. When I was in chambers, the Justice had not yet assumed in our collective consciousness the label of “Notorious RBG.” But, in retrospect, this was the time when her dissents were beginning to assume this cultural resonance. That year in chambers, we drafted a lot of dissents. And, for me, these were devastating losses. I worried that the cases perpetuated deep injustices in our law and entrenched barriers to equality.

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<sup>92</sup> *Id.* at x.

What was harder for me to see in the moment but what, in hindsight, was pellucid to the Justice all along was that these dissents were in conversation not just with her colleagues on the current Court, or even the parties in the case. She was participating in — often constructing and catalyzing — a conversation with the other branches and across time.

This was the power of her dissent in *Ledbetter v. Goodyear Tire & Rubber Co.*,<sup>93</sup> for example. The case was brought by Lilly Ledbetter, who from 1979 until her retirement in 1998 served as a supervisor at Goodyear Tire.<sup>94</sup> Ledbetter sued for pay discrimination under Title VII.<sup>95</sup> What had started out as small pay disparities ballooned over time, as each pay decision built on the last, so that by 1997, the pay differential between Ledbetter and her male peers was dramatic.<sup>96</sup> A majority of the Court ruled, however, that any annual pay decision that Ledbetter failed to contest immediately was, as RBG put it, a “*fait accompli*,” as opposed to an ongoing harm realized every month when Ledbetter received this discriminatory pay.<sup>97</sup>

RBG’s dissent reflected not just a close study and deep knowledge of antidiscrimination statutes and precedent, it reflected as well a profound understanding of how discrimination in the workplace actually unfolds and the challenges of bringing it to the courts’ attention. “The Court’s insistence on immediate contest overlooks common characteristics of pay discrimination,” she wrote.<sup>98</sup> “Pay disparities often occur, as they did in Ledbetter’s case, in small increments; cause to suspect that discrimination is at work develops only over time. . . . Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves.”<sup>99</sup>

What RBG perceived was not only the mechanics of workplace discrimination but also those of social change. “[T]he ball,” she wrote in the last lines of her now-famed dissent, “is in Congress’ court.”<sup>100</sup> RBG understood that, although the ball would need to move from the Supreme Court to Congress’s court, the Justice could still decide how to serve it. Read from the bench, her powerful dissent — interweaving the logic of antidiscrimination principles with the inner workings of discriminatory practice — framed a call to action that would eventually land

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<sup>93</sup> 550 U.S. 618 (2007).

<sup>94</sup> *Id.* at 643 (Ginsburg, J., dissenting).

<sup>95</sup> *Id.* at 622 (majority opinion).

<sup>96</sup> *See id.*

<sup>97</sup> *Id.* at 644 (Ginsburg, J., dissenting); *see id.* at 646.

<sup>98</sup> *Id.* at 645.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 661.

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the Lilly Ledbetter Fair Pay Act on Barack Obama's desk, as the first piece of legislation that he would sign as President.<sup>101</sup>

Even as she strove for and achieved landmark changes in the law, the Justice was also a force for equal treatment in many more subtle and less known ways. Here is one final memory from my year in chambers. I was stunned that year to learn during a lunch with the Clerk of the Court that women advocates were still being advised to wear skirt suits when they argued before the Supreme Court. When we clerks returned from the lunch, I asked RBG if she knew that this was the advice women oralists were still, in 2006, being given. Before the end of the day, she had secured a change in the Court's practice.

It was remarkable to watch a brilliant mind but also a somewhat quiet and reserved person assume the role of the Notorious RBG. The power of her ideas, the rigor of her writing, the passion of her commitments somehow gave voice to a much younger generation — a generation that continues to strive for those ideals. She became the embodiment of a vision of the law and of our hopes for a more equal and just society. RBG did not ask for or anticipate this stature but she embraced it, with wit and good humor — when our culture and our politics demanded it. And so, the last note I have from the Justice was written on her personal stationery, embossed at the top: “The Notorious RBG: You can't spell Truth without Ruth.”

Let me leave you with the words that RBG herself chose to end her reflection on Lockwood — words that capture so poignantly the Justice herself: “[Her] story . . . reminds us that ideas once taken as fixed can be changed. . . . With optimism and tenacity, may we continue to strive as she did to advance in our Nation and World the ideals of liberty, equality, and justice for all.”<sup>102</sup>

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*Chief Justice John G. Roberts, Jr.\**

*On September 23, 2020, Chief Justice Roberts spoke in memory of Justice Ruth Bader Ginsburg in the Supreme Court's Great Hall as Justice Ginsburg lay in repose. The Chief Justice has provided these words, drawn from his remarks, as a conclusion to this collection of tributes.*

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<sup>101</sup> See Megan Slack, *From the Archives: President Obama Signs the Lilly Ledbetter Fair Pay Act*, THE WHITE HOUSE: PRESIDENT BARACK OBAMA (Jan. 30, 2012, 1:41 PM), <https://obamawhitehouse.archives.gov/blog/2012/01/30/archives-president-obama-signs-lilly-ledbetter-fair-pay-act> [<https://perma.cc/GN6D-QKU2>].

<sup>102</sup> Ginsburg, *supra* note 89, at xi.

\* Chief Justice of the United States.

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On behalf of all the Justices, the spouses of the Justices, and the entire Supreme Court family, I offer our heartfelt condolences on the loss of Ruth Bader Ginsburg. That loss is widely shared. But we know that it falls most heavily on her family.

Justice Ginsburg's life was one of the many versions of the American Dream. Her father was an immigrant from Odessa; her mother was born four months after her family arrived from Poland. Her mother later worked as a bookkeeper in Brooklyn. Ruth used to ask: What is the difference between a bookkeeper in Brooklyn and a Supreme Court Justice? Her answer: one generation.

It has been said that Ruth wanted to be an opera virtuosa, but became a rock star instead. But she *chose* the law. Subjected to discrimination in law school and the job market because she was a woman, Ruth would grow to become the leading advocate fighting such discrimination in court.

She was not an opera star but she found her stage — in our courtroom. There she won famous victories that helped move our nation closer to equal justice under law, to the extent that women are now a majority in law schools — not simply a handful.

Later she became a star on the bench, where she sat for twenty-seven years. Her 483 majority, concurring, and dissenting opinions will help steer the Court for decades. They are written with the unaffected grace of precision. Her voice in Court and in our Conference Room was soft, but when she spoke, people listened.

Among the words that best describe Ruth? Tough. Brave. A fighter. A winner. But also thoughtful. Careful. Compassionate. Honest. When it came to opera? Insightful. Passionate. When it came to sports? Clueless. Justice Ginsburg had many virtues of her own, but she also unavoidably promoted one particular virtue — humility — in others. For example, on more than a few occasions someone would approach or call me, and describe some upcoming occasion or event that was important to them, and I knew what was coming — could I come and speak? But no. Instead, could I pass along an invitation to Justice Ginsburg, and put in a good word?

Many of you have seen the famous picture of Justice Scalia and Justice Ginsburg riding atop an elephant in India. It captured so much of Ruth. There she was, doing something totally unexpected — just as she had in law school, where she was not only one of the few women, but a new mother to boot. And in the photograph she is riding with a dear friend, a friend with totally divergent views. There is no indication in the photo that either was poised to push the other off.

For many years of course Ruth battled serious illness. She met each of those challenges with a combination of candid assessment and fierce determination. In doing so she encouraged others who have their own

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battles with illness, including employees in the Court. And she emerged victorious, time and again, against all odds. But finally the odds won out, and now Ruth has left us.

I mentioned at the outset that Ruth's passing weighed most heavily on her family, and that is true. But the Court was her family, too. Our building was her home, too. Of course she will live on in what she did to improve the law and the lives of all of us. And yet, still, Ruth is gone, and we grieve.

May she rest in peace.