

# Tribute to Justice Ruth Bader Ginsburg

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Ruth Bader Ginsburg was appointed to the U.S. Court of Appeals for the District of Columbia Circuit in 1980 by President Jimmy Carter and elevated to the Supreme Court by President Bill Clinton in 1993. I had the good fortune to clerk for her in 1983–84, when she was still on the D.C. Circuit. In these pages, I offer a few personal reflections on her hugely consequential life.

Ginsburg was America's leading women's rights lawyer in the 1970s, the decade in which the Supreme Court first recognized that the Fourteenth Amendment guaranteed sex equality. When President Clinton nominated her to the high court, he rightly compared her contributions to women's rights to the contributions of the great NAACP lawyer Thurgood Marshall to civil rights.<sup>2</sup>

Ginsburg's story encapsulates what the professional world was like for women in the 1950s and 1960s and how much it has changed since then. She entered Harvard Law School in 1956, one of only nine women in a class of over five hundred. At that time, women were not permitted to live in law school dormitories, they were denied access to dining tables in the faculty club, and the Law Review banquet welcomed members' fathers but not their wives or mothers.<sup>3</sup> Early in the school year, Dean Ervin Griswold invited the nine women in the first-year class to his house for dinner, and during the course of the evening asked them why they wanted to be at Harvard, occupying the space of a man who presumably could have put his legal education to better use.<sup>4</sup> Unprepared for the question, Ginsburg said something to the effect that it was important for a woman to be informed about her husband's profession.<sup>5</sup> (Her spouse, Marty Ginsburg, was a year ahead of her at the law school.)<sup>6</sup> In 1956, nobody could have confidently predicted that a woman would ever serve on the Supreme Court.

Ginsburg graduated from Columbia Law School in 1959, having transferred after her second year at Harvard to keep her family united, as Marty

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<sup>2</sup> See Remarks Announcing the Nomination of Ruth Bader Ginsburg to be a Supreme Court Associate Justice, President William J. Clinton (June 14, 1993), <https://www.presidency.ucsb.edu/documents/remarks-announcing-the-nomination-ruth-bader-ginsburg-be-supreme-court-associate-justice>, archived at <https://perma.cc/PE8Z-DG5B>.

<sup>3</sup> See Hon. Justice Ruth Bader Ginsburg, *The Changing Complexion of Harvard Law School*, 27 HARV. WOMEN'S L.J. 303, 307 (2004).

<sup>4</sup> See Hon. Justice Ruth Bader Ginsburg & Linda Greenhouse, *A Conversation with Justice Ginsburg*, 122 YALE L.J. ONLINE 283, 285–86 (2013).

<sup>5</sup> See Amy Leigh Campbell, *Raising the Bar: Ruth Bader Ginsburg and the ACLU Women's Rights Project*, 11 TEX. J. WOMEN & L. 157, 161 (2002).

<sup>6</sup> See *id.*

had graduated in 1958 and taken a job with a New York City law firm, and they had a young daughter.<sup>7</sup> (Harvard refused to award her a degree at the time, a decision the institution later regretted and sought to make amends for.)<sup>8</sup> Ginsburg was tied for first in her class, and had served on both the Harvard and Columbia Law Reviews.<sup>9</sup> Her professors tried to find her a federal judicial clerkship, for which she was eminently well qualified, but no federal judge in the area would hire a young mother as a law clerk.<sup>10</sup> Finally, Professor Gerald Gunther convinced a federal district judge, Edmund Palmieri, to hire Ginsburg by offering a personal guarantee that if she did not work out, he would find a male replacement.<sup>11</sup> She worked out so well that Palmieri eagerly hired female law clerks thereafter.<sup>12</sup>

Ginsburg enjoyed telling a revealing story about how she got her start in legal academia. Rutgers Law School had no women on its faculty—like most American law schools in the early 1960s—but it did have one African American faculty member, which was pretty rare at the time.<sup>13</sup> When he departed Rutgers to become dean at Howard Law School, faculty members sought to replace him with another Black man.<sup>14</sup> Not finding one to their liking, they hired a white woman instead; Black and female professors were equally curiosities in those days.<sup>15</sup>

In 1972, Ginsburg became the first female tenured professor at Columbia Law School.<sup>16</sup> As she recounted the story, she was a direct beneficiary of affirmative action.<sup>17</sup> The Nixon Administration's Department of Health, Education, and Welfare was threatening to cut off federal funds to universities that discriminated against women.<sup>18</sup> Columbia hired her to avert a lawsuit.<sup>19</sup> That same year, Ginsburg helped found the Women's Rights Project ("WRP") at the American Civil Liberties Union ("ACLU").<sup>20</sup> She argued

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<sup>7</sup> See *id.*

<sup>8</sup> See Hon. Justice Elena Kagan, Justice Ruth Bader Ginsburg Distinguished Lecture on Women and the Law at Iowa State University (Feb. 3, 2014), <https://awpc.cattcenter.iastate.edu/2017/03/09/ruth-bader-ginsburg-distinguished-lecture-feb-3-2014/>, archived at <https://perma.cc/R7EB-BBHL>.

<sup>9</sup> See Campbell, *supra* note 5, at 161.

<sup>10</sup> See Herman Hill Kay, *Ruth Bader Ginsburg, Professor of Law*, 104 COLUM. L. REV. 1, 8 (2004).

<sup>11</sup> See *id.*

<sup>12</sup> See Campbell, *supra* note 5, at 162.

<sup>13</sup> See Kay, *supra* note 10, at 10 n.40.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See Malvina Halberstam, *Ruth Bader Ginsburg: The First Jewish Woman on the United States Supreme Court*, 19 CARDOZO L. REV. 1441, 1447 (1998).

<sup>17</sup> See Hon. Justice Ruth Bader Ginsburg, *Women on the Bench*, 12 COLUM. J. GENDER & L. 361, 370 (2003).

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See Campbell, *supra* note 5, at 165.

six landmark sex discrimination cases in the Supreme Court in the 1970s, winning five of them.<sup>21</sup>

One of my favorite Ginsburg stories comes from this time period, when she was heading the WRP, litigating cases in the Supreme Court, teaching law classes, and traveling around the country testifying in support of state ratification of the Equal Rights Amendment (“ERA”).<sup>22</sup> Simultaneously, Ginsburg was receiving frequent phone calls at the office about her son, James, who was then about ten years old and acting up at school.<sup>23</sup> Ginsburg eventually grew exasperated by the calls and said in reply to one, “This child has two parents. Please alternate calls. It’s his father’s turn.”<sup>24</sup> In her later recounting of the story, Ginsburg reported that even though James’s behavior did not materially improve, the phone calls quickly ceased because the school would not dream of bothering a busy male tax attorney during his working hours.<sup>25</sup>

Women’s rights lawyers also faced unique barriers in court, where elderly male jurists did not always take their claims seriously. At the end of Ginsburg’s oral argument in the Supreme Court in a case challenging Missouri’s exclusion of women from juries, one of the Justices leaned over from the bench to ask one final question, “You won’t settle for putting Susan B. Anthony on the new dollar then?”<sup>26</sup>

Indeed, Ginsburg’s most difficult challenge in the 1970s was probably convincing elderly male judges of the insidious consequences of sex classifications. The problem was that virtually all sex classifications, as Ginsburg liked to say, were a double-edged sword. Many such statutes tangibly disadvantaged males, not females, though they intangibly harmed women by perpetuating stereotypes of female dependency, passivity, and lack of business acumen. Ginsburg needed to convince the Justices that women were harmed, for example, by laws permitting young girls access to a certain sort of alcohol at an earlier age than boys,<sup>27</sup> requiring men but not women to pay ali-

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<sup>21</sup> See Halberstam, *supra* note 16, at 1448.

<sup>22</sup> See Campbell, *supra* note 5, at 225, 240.

<sup>23</sup> See Nina Totenberg, *Justice Ruth Bader Ginsburg Reflects On The #MeToo Movement: ‘It’s About Time’*, NPR (Jan. 22, 2018), <https://www.npr.org/2018/01/22/579595727/justice-ginsburg-shares-her-own-metoo-story-and-says-it-s-about-time>, archived at <https://perma.cc/6R6T-7UFU>.

<sup>24</sup> *Id.*

<sup>25</sup> See Emma Brockes, *Ruth Bader Ginsburg: The Last Interview and Other Conversations—Review*, GUARDIAN (Dec. 27, 2020), <https://www.theguardian.com/books/2020/dec/27/ruth-bader-ginsburg-the-last-interview-and-other-conversations-review>, archived at <https://perma.cc/PDC4-6HNF>.

<sup>26</sup> Eileen Barroso, *Without Precedent: Ruth Bader Ginsburg Honored at Law School*, COLUM. MAG. (Spring 2012), <https://magazine.columbia.edu/article/without-precedent-ruth-bader-ginsburg-honored-law-school>, archived at <https://perma.cc/SHC4-FF67>.

<sup>27</sup> See Craig v. Boren, 429 U.S. 451 (1976).

mony,<sup>28</sup> and permitting women but not men the choice of whether to serve on juries.<sup>29</sup>

In the 1970s, many male judges retained doubts whether all sex classifications really harmed women. In a telling conversation with Harvard Law School students early in 1973, Justice Potter Stewart expressed bewilderment as to why women supported the ERA. In his view, “[T]he female of the species has the best of both worlds. She can attack laws that unreasonably discriminate against her while preserving those that favor her.”<sup>30</sup> Ginsburg reported being depressed when she read an account of Stewart’s talk.<sup>31</sup> She tried to educate the Justices into seeing that all sex classifications reflected “the double-edged discrimination characteristic of laws that chivalrous gentlemen, sitting in all-male chambers, misconceive as a favor to the ladies.”<sup>32</sup> While such laws might afford tangible benefits to women, those always came with a cost—perpetuating harmful stereotypes. The most insidious of those stereotypes, Ginsburg believed, was that of male breadwinner and female homemaker.

Ginsburg discovered that her task was easier when she could point to statutory classifications that tangibly disadvantaged women as well as men. Thus, where the male spouse of a female wage earner was denied benefits that would have been provided to the female spouse of a similarly situated male wage earner, it was obvious that a woman (the wage earner) as well as a man (the would-be benefits recipient) was suffering from sex discrimination.<sup>33</sup> The Justices had an easier time seeing these laws as denigrating the worth of female labor. Thus, in one such case, Justice Brennan’s opinion quoted language presented to him in Ginsburg’s brief about how women’s supposed “pedestal” was often really “a cage.”<sup>34</sup>

However, when that element of the case was missing—when a man was being denied benefits to which a similarly situated woman would have been entitled, but there was no corresponding female laborer who had earned the benefits—the Justices had difficulty comprehending that women were being harmed intangibly by the stereotype of economic dependency. Thus, a majority of the Justices upheld a Florida law awarding a property tax exemption to widows but not widowers, despite Ginsburg’s insistence that the law

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<sup>28</sup> See *Orr v. Orr*, 440 U.S. 190 (1979).

<sup>29</sup> See *Duren v. Missouri*, 439 U.S. 357 (1979).

<sup>30</sup> Ruth Bader Ginsburg, *The Need for the Equal Rights Amendment*, 59 A.B.A. J. 1013, 1017 (1973) (quoting Harv. L. Sch. Rec., Mar. 23, 1973, at 15).

<sup>31</sup> See Campbell, *supra* note 5, at 194.

<sup>32</sup> Brief for Appellee at 23, *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1974) (No. 73-1892).

<sup>33</sup> See, e.g., Brief for Appellee at 5, *Califano v. Goldfarb*, 430 U.S. 199 (1977) (No. 75-699).

<sup>34</sup> *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (quoting Brief for Appellant at 21, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70-4)).

simply “perpetuates Victorian assumptions concerning the station of men and women.”<sup>35</sup>

A lengthy exchange at the oral argument in *Califano v. Goldfarb*<sup>36</sup> between lawyer Ginsburg and some of the Justices reveals how difficult it was to convince elderly male jurists that all sex classifications invidiously affected women because of their double-edged nature. The Social Security provision at issue in *Goldfarb* automatically provided survivors’ benefits to the widows of covered male employees, but required widowers of covered female employees to demonstrate their economic dependency on their late spouses (meaning that the men had to show that at least fifty percent of their financial support had come from their wives).<sup>37</sup> To Ginsburg, such a law had three flaws: it discriminated against female wage-earners, it discriminated against male beneficiaries, and it perpetuated the invidious sex stereotype that males were breadwinners and females were homemakers.<sup>38</sup> Some Justices had difficulty comprehending these points.

The first question directed to Ginsburg from the bench (apparently coming from Justice Potter Stewart)<sup>39</sup> was whether the provision at issue discriminated against males or females, whether it could not be cast either way, and why Ginsburg had chosen to treat it as anti-female discrimination.<sup>40</sup> If the sexes were switched and only female beneficiaries were required to establish financial dependency, Stewart wondered, would that make a constitutional difference?<sup>41</sup> Ginsburg’s response was that “[t]he line drawn here, like virtually every gender discrimination, is a two-edged sword.”<sup>42</sup>

Her interlocutor persisted: some recent Court decisions had focused on the history of discrimination against women, but he doubted that any analogous history of discrimination against men existed.<sup>43</sup> Ginsburg responded that “most anti-female discrimination was dressed up as discrimination favoring the woman.”<sup>44</sup> Stewart replied impatiently: “I know that. I know that, but the courts, through the help of advocates such as you, have been able to see through that, haven’t they?”<sup>45</sup> That comment elicited laughter in

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<sup>35</sup> Transcript of Oral Argument at 6, *Kahn v. Shevin*, 416 U.S. 384 (1974) (No. 73-78).

<sup>36</sup> 430 U.S. 199 (1977).

<sup>37</sup> *See id.* at 199.

<sup>38</sup> *See* Brief for Appellee at 12, 18, 19, *Califano v. Goldfarb*, 430 U.S. 199 (1977) (No. 75-699).

<sup>39</sup> *See Califano v. Goldfarb Oral Argument—October 5, 1976*, OYEZ, <https://www.oyez.org/cases/1976/75-699> (last visited Dec. 27, 2020), archived at <https://perma.cc/TWW3-9H3J> [hereinafter *Califano Oral Argument*].

<sup>40</sup> *See* Transcript of Oral Argument at 22–23, *Mathews v. Goldfarb*, 430 U.S. 199 (1977) (No. 75-699).

<sup>41</sup> *See id.*

<sup>42</sup> *Id.* at 23.

<sup>43</sup> *See id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

the courtroom.<sup>46</sup> Ginsburg gamely reiterated that sex classifications almost inevitably harmed women.<sup>47</sup> Persisting, Stewart asked her to imagine an instance of discrimination against males: would her constitutional argument be equally strong?<sup>48</sup> Ginsburg replied that her argument would remain unchanged “because I don’t know of any purely anti-male discrimination. In the end, the women are the ones who end up hurting.”<sup>49</sup>

A moment later, recently appointed Justice John Paul Stevens took up the same line of questioning:<sup>50</sup> should discrimination against males be subjected to the same standard as discrimination against females or a different one?<sup>51</sup> Ginsburg repeated her previous answer, “[A]lmost every discrimination that operates against males operates against females, as well.”<sup>52</sup> Bewildered and apparently annoyed, Stevens responded, “Is that a yes or a no answer. I just don’t understand you and—Are you trying to avoid the question or . . . ?”<sup>53</sup> Ginsburg insisted that she was trying to clarify, not evade: she was aware of no sex classifications that failed to operate as a double-edged sword.<sup>54</sup>

*Craig v. Boren* had been argued in the Court that same morning. That case involved an Oklahoma law—described by almost everyone involved as “ridiculous”<sup>55</sup>—that permitted the purchase of 3.2% “near beer”<sup>56</sup> by young women at the age of eighteen but by young men only at the age of twenty-one.<sup>57</sup> To some Justices, that law seemed even more clearly than the one at issue in *Goldfarb* to discriminate against males rather than females. Ginsburg was asked during her *Goldfarb* argument whether this Oklahoma law should be examined under the same standard she was advocating.<sup>58</sup> She replied that Oklahoma’s law adversely affected women by perpetuating the stereotypes of female docility and passivity.<sup>59</sup>

From the bench came the objection, “But your answer always depends on their finding some discrimination against females. You seem to put that in every answer to this question.”<sup>60</sup> Ginsburg, who must have been growing

<sup>46</sup> See *id.*

<sup>47</sup> See *id.*

<sup>48</sup> See *id.*

<sup>49</sup> *Id.* at 23–24.

<sup>50</sup> See *Califano* Oral Argument, *supra* note 39.

<sup>51</sup> See Transcript of Oral Argument at 24, *Mathews v. Goldfarb*, 430 U.S. 199 (1977) (No. 75-699).

<sup>52</sup> *Id.*

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

<sup>54</sup> See *id.* at 24–25.

<sup>55</sup> Brief for ACLU as Amicus Curiae at 21, *Craig v. Boren*, 429 U.S. 190 (No. 75-628).

<sup>56</sup> Beer that contained 3.2% alcohol was commonly referred to as “3.2 beer” or “near beer.”

<sup>57</sup> See Transcript of Oral Argument at 3, *Craig v. Boren*, 429 U.S. 190 (1976) (No. 75-628).

<sup>58</sup> See Transcript of Oral Argument at 25, *Mathews v. Goldfarb*, 430 U.S. 199 (1977) (No. 75-699).

<sup>59</sup> See *id.*

<sup>60</sup> *Id.*

exasperated at this point, reiterated, “I have not yet come across a statute that doesn’t have that effect.”<sup>61</sup> Justice Stevens persisted, “But, if there were one, you would say it should be tested under a different standard, I take it.”<sup>62</sup> Not wishing to alienate a potential ally or make a concession that could harm her case, Ginsburg relented: If there were such a statute, she would reserve judgment on what the standard should be. But, she repeated, she had yet to come across such a statute.<sup>63</sup>

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A great deal of Ginsburg’s work as a social reform lawyer took place outside of the courtroom. The strategy of the WRP included not just litigating cases but also lobbying legislatures, training lawyers, and educating the public about issues of sex equality.<sup>64</sup> Ginsburg devoted at least as much of her time to such pursuits as she did to litigation. When her female students at Rutgers Law School asked for a seminar on women and the law in the late 1960s, Ginsburg spent a month in the library reading every court decision and law-review article she could find on the topic in order to prepare such a course.<sup>65</sup> Given the relative dearth of such material, this was “not a very taxing undertaking,”<sup>66</sup> as she later reported. Ginsburg and two of her colleagues also put together one of the nation’s first casebooks on women and the law, and she encouraged other schools to offer similar classes.<sup>67</sup> She authored numerous journal articles on sex-discrimination litigation and maintained a steady stream of correspondence with student law-review editors, urging them to write about recent sex-discrimination cases, educating them about the issues involved, providing them with briefs and other materials to enhance their scholarship, and supplying words of encouragement.<sup>68</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *See id.*

<sup>64</sup> *See* Halberstam, *supra* note 16, at 166–67.

<sup>65</sup> *See* Ruth Bader Ginsburg & Barbara Flagg, Some Reflections on the Feminist Legal Thought of the 1970s, Keynote Address for the University of Chicago Legal Forum Symposium (Oct. 14–15, 1988), in 1989 U. CHI. LEGAL F. 9, 11.

<sup>66</sup> Justice Ruth Bader Ginsburg, Remarks on Women’s Progress in the Legal Profession in the United States, Remarks Presented at the Oklahoma Bar Association Women in the Law Conference (Aug. 28, 1997), in 33 TULSA L.J. 13, 16 (1997).

<sup>67</sup> *See* Campbell, *supra* note 5, at 1450.

<sup>68</sup> *See* Letter from Ruth Bader Ginsburg to Jack Blumenfeld, Student, Yale Law Sch. (Oct. 24, 1974) (on file with the Harvard Law School Library) (sharing her thoughts about sex discrimination cases in the Supreme Court, sending him a chapter of her sex discrimination casebook, and inviting him to look through a couple of her litigation files); Letter from Ruth Bader Ginsburg to Harv. L. Rev. (Mar. 28, 1977) (on file with the Harvard Law School Library) (encouraging treatment of *Califano v. Webster*, 430 U.S. 313 (1977), in the issue summarizing the Court’s 1976 Term); Letter from Ruth Bader Ginsburg to “Kahn v. Shevin note-writer,” Student, Harvard Law Sch. (Nov. 27, 1974) (on file with the Harvard Law School Library) (quarreling with the author’s description of her argument in *Kahn v. Shevin*, 416 U.S. 384 (1974), and wondering why the Harvard Law Review was publishing a note on *Kahn* but not on *Geduldig v. Aiello*, 417 U.S. 484 (1974)); Letter from Ruth Bader Ginsburg to Jeffrey S. Saltz, Exec. Ed., Harv. L. Rev. (Aug. 15, 1977) (on file with the Harvard Law School

Ginsburg also traveled around the country, testifying before state legislatures in support of the ERA and speaking to ACLU affiliates and university audiences about sex-equality issues.<sup>69</sup> Appreciating that social reform litigation is not just about winning cases in court but also influencing public opinion in support of social change, Ginsburg became an organizer, mobilizer, publicist, and educator for the sex-equality movement.

When Ginsburg learned of the ACLU's involvement in *Reed v. Reed*,<sup>70</sup> which became the Court's landmark sex-discrimination case in 1971, she asked Melvin Wulf, the organization's legal director, whether a woman ought not be involved as co-counsel in the case, and he promptly invited her to join his team.<sup>71</sup> In WRP litigation, as Ginsburg later noted, "particular attention [was] given to encouraging participation by women lawyers who seek assistance in maintaining their skills during periods when family responsibilities prevent them from working full time."<sup>72</sup> Her leadership of the WRP and her oral advocacy in the Supreme Court were inspirational to countless women, and she received many notes of gratitude from those she had inspired (which she assiduously replied to). One of Ginsburg's many impressive qualities was that she never failed to highlight the contributions of prior generations of feminists to her own work. In her landmark brief in *Reed*, she listed on the title page the names of path-breaking feminists Dorothy Kenyon and Pauli Murray as a symbolic acknowledgment of the intellectual debt owed to them by contemporary feminists.<sup>73</sup>

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Like most of Ginsburg's law clerks, I relished the experience, admiring her legal brilliance, learning from her exemplary writing skills, and both admiring and liking her. However, as any of us would tell you, Ginsburg was not an ordinary, down-to-earth sort of person. Conversations with her could be awkward because she always thought carefully before speaking, did not waste words, and declined to engage in small talk. Thus, conversations with her often featured long pauses, while you tried to figure out if she was finished speaking and it was now your turn, or she was still formulating her thoughts. One certainly did not want to interrupt an eminent federal jurist in mid-thought.

I have three favorite stories about Ginsburg from my clerkship that I like to share with my students. The first two relate to sports—an obsession

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Library) (in response to his request, sending him briefs in recent sex discrimination cases, providing additional information about the cases, and offering to meet with him when she visits Cambridge later in the month).

<sup>69</sup> See Campbell, *supra* note 5, at 225, 240.

<sup>70</sup> 404 U.S. 71 (1971).

<sup>71</sup> See FRED STREBEIGH, *EQUAL: WOMEN RESHAPE AMERICAN LAW* 27 (2009).

<sup>72</sup> Prospectus of Women's Rights Project of the ACLU 6 (Oct. 1972) (on file with the Harvard Law School Library).

<sup>73</sup> See Brief for Appellant at i, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70-4).



of mine that the Justice did not share—and the last is about her famous friendship with Justice Scalia. Soon after her appointment to the D.C. Circuit, the Washington football team won the Super Bowl, and there was a celebratory parade down Constitution Avenue, which runs right beside the courthouse. Disturbed by the noise, Ginsburg asked her secretary, “What’s that?” “Why, Judge, that’s the Super Bowl parade,” her secretary replied. To which Ginsburg responded, “What’s the Super Bowl?”

My second story is more personal. Thirty-five years ago, as now, I was a huge baseball fan, although then my team was the Baltimore Orioles, having grown up in Charm City. (Now, of course, my team is the Red Sox). The Orioles won the World Series in 1983, the last time they have participated in the fall classic. I clerked in the 1983–84 term and to celebrate their championship, I wanted to go to Opening Day in Baltimore (at the old Memorial Stadium, not Camden Yards) in April 1984. I went into the judge’s office and requested the day off. She looked at me like I was a lunatic. To be clear, she had no problem with clerks’ taking time off from work. Part of what made her a great boss is that while she expected us to get our work done in a timely fashion, she did not care much how we managed to do so. Had I asked for time off to attend Opening Night at the Opera, she would have understood completely! (I have often been struck by the great coincidence that the only time I have visited the Baseball Hall of Fame in Cooperstown, New York, Justice Ginsburg was also present in the town—attending the Glimmerglass Opera Festival!)

In the spring of 1981, my Constitutional Law class at Stanford Law School was taught by a visiting professor from the University of Chicago—Antonin Scalia. When I arrived in Washington, D.C. for my clerkship with then-Judge Ginsburg in the summer of 1983, Scalia already had been appointed by President Reagan as a judge on the D.C. Circuit. I and my co-clerks were pretty liberal, and Scalia, of course, was not. We were somewhat befuddled by Ginsburg’s great friendship with Scalia and saw it as part of our job to ensure that he didn’t slip anything into the footnotes of his opinions to make subtle but significant changes in the law. We worried that her fondness for him might cause her to lower her guard. Thirty-seven years later, I am astounded at the arrogance of three twenty-five-year-olds attempting to save the world from Judge Scalia—an effort that, shall we say, proved remarkably unsuccessful.

Ginsburg and Scalia shared a common upbringing in the outer boroughs of New York City, as well as a love of language and opera.<sup>74</sup> The two jurists made joint cameo appearances at Washington National operas.<sup>75</sup> Their families celebrated New Year’s Eve together, and the Justices sometimes traveled

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<sup>74</sup> See Richard Wolf, *Opera, Travel, Food, Law: The Unlikely Friendship of Ruth Bader Ginsburg and Antonin Scalia*, USA TODAY (Sept. 20, 2020), <https://www.usatoday.com/story/news/politics/2020/09/20/supreme-friends-ruth-bader-ginsburg-and-antonin-scalia/5844533002/>, archived at <https://perma.cc/858F-MT32>.

<sup>75</sup> See *id.*

together, rode elephants together in India, and shopped together on their international trips.<sup>76</sup> (Marty Ginsburg did not like to shop, but apparently Justice Scalia was a great shopper.) Ginsburg certainly did not approve of the scathing dissents that Scalia proved so adept at writing, but she simply shrugged it off as “Nino being Nino,” and they went on with their great friendship.<sup>77</sup> When Justice White retired in 1993, and Scalia—who had been promoted to the High Court in 1986—was asked with whom he would rather be stranded on a desert island, Professor Laurence Tribe or Governor Mario Cuomo, his response was, “Ruth Bader Ginsburg.”<sup>78</sup> And he got his wish!

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Whether or not the Reverend Dr. Martin Luther King, Jr., was right that the arc of the moral universe bends towards justice, it is certainly possible for social-reform lawyers such as Ruth Bader Ginsburg to push it in that direction. In her decade as the nation’s leading legal advocate for sex equality, and in her forty years as a federal judge and Supreme Court Justice, she consistently favored the causes of race and sex equality, gay rights, equal access to justice, and the bolstering of democracy. She embodied the old adage of Justice Oliver Wendell Holmes, Jr., that it is possible for a man—or a woman, he might have said—to live greatly in the law.<sup>79</sup>

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<sup>76</sup> Brett Milano, ‘It’s Hard to Imagine a More Consequential Life’: Harvard Law Professors Remember Ruth Bader Ginsburg as a Teacher, Inspiration and Friend, HARV. L. TODAY (Sept. 25, 2020), <https://today.law.harvard.edu/its-hard-to-imagine-a-more-consequential-life/>, archived at <https://perma.cc/JB9E-JWZB>.

<sup>77</sup> See *id.*

<sup>78</sup> Richard Carelli, *The Story of the Desert Island and Antonin Scalia*, AP NEWS (June 15, 1993), <https://apnews.com/article/651ed2df8fec6e4c855a7439fb26b8f8>, archived at <https://perma.cc/T4V5-BWE9>.

<sup>79</sup> See OLIVER WENDELL HOLMES, JR., *The Profession of Law*, in SPEECHES 22, 23 (1891).