

## MEMORIES OF RBG

*Kathleen Peratis\**

When Ruth Ginsburg told the story of Stephen Wiesenfeld, as she often did, it seemed as if he had been her lifelong friend. He had married Paula in 1970, the story goes, and, two years later, Paula tragically died giving birth to their beloved child, Jason. Stephen then made an unusual choice for a father in those days: He decided, despite the legal and social headwinds, to be a stay-at-home parent and raise Jason himself.<sup>1</sup> Many years later, Ruth officiated at Stephen's second marriage.<sup>2</sup> Ruth took personal pride when Jason became a rabbi.

Ruth and Stephen did become lifelong friends, but she began as his lawyer. That's how Ruth was with clients; she saw them as full and fascinating human beings.

In 1975, Ruth told Stephen's story to the rapt (I was there) Justices of the United States Supreme Court in a case that challenged the law that prohibited Stephen and Jason from accessing benefits on Paula's Social Security account simply because Paula was presumed not to have been the "breadwinner."<sup>3</sup> Ruth argued the law, but first she told the story.<sup>4</sup>

I met Ruth in 1973 at a conference of feminist litigators in New York City sponsored by the Ford Foundation, a time when women's rights law was in its infancy. I had by then practiced law for nearly four years at a large law firm in Los Angeles.

First, a bit of context about Ruth specifically, and women generally, in the law at that time. Ruth had graduated from Columbia Law School in

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1. Oral Argument at 24:36, *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) (No. 73-1892), <https://www.oyez.org/cases/1974/73-1892> (on file with the *Columbia Law Review*) [hereinafter *Wiesenfeld* Oral Argument].

2. Robert Barnes, *Ginsburg Performs Wedding for Man in 1970s Case She Argued Before the Supreme Court*, *Wash. Post* (May 25, 2014), [https://www.washingtonpost.com/politics/ginsburg-performs-wedding-for-man-in-1970s-case-she-argued-before-the-supreme-court/2014/05/25/a1add474-e114-11e3-9743-bb9b59cde7b9\\_story.html](https://www.washingtonpost.com/politics/ginsburg-performs-wedding-for-man-in-1970s-case-she-argued-before-the-supreme-court/2014/05/25/a1add474-e114-11e3-9743-bb9b59cde7b9_story.html) (on file with the *Columbia Law Review*).

3. *Wiesenfeld* Oral Argument, *supra* note 1, at 23:24.

4. *Id.*

1959.<sup>5</sup> She had begun at Harvard, one of nine women in a class of 500.<sup>6</sup> She graduated at the top of her class from Columbia Law School, but she got no job offers from law firms. I entered law school (at the University of Southern California) ten years after she did, but the number of women had not budged much. Some Los Angeles firms hired women but many did not. My law school allowed firms to conduct interviews on campus even if they barred women from signing up. Yet things were beginning to change. The federal law prohibiting sex discrimination in employment had taken effect in 1965.<sup>7</sup> The second wave women's movement was happening, in the streets and in the courts. I was offered a job at one of those large law firms, along with twenty-four men and one other woman. The other woman and I were the firm's first regular full-time female associates.

The firm assured all twenty-six of us that we could do some pro bono legal work on firm time, and the activists among us intended to do just that. Being a newly minted feminist (I had read *The Second Sex* by Simone de Beauvoir only two years before), I knew I wanted to do women's rights work.

That turned out to be complicated. The firm represented companies, employers, governments—the very entities (then and now) that engaged in the discriminatory conduct that I wanted to disrupt. I was working in the firm's labor department, doing work that promoted conduct vis-à-vis employees that was often the exact opposite of what I thought was right. Our clients did not want to see their practices challenged. Over the next four years, the firm rejected every pro bono matter I proposed. It was neither a happy situation nor a good fit.

I often wonder how Ruth would have fared in a big law firm had she gotten the offers that, famously, she never got. Her husband Marty was already in one, doing tax work, soon to become one of the best and most successful tax lawyers of his generation. She would certainly have run into the same road blocks I did. How would she have handled them? Would she have blasted them aside, persuaded the powers that be to let her have her way? Or would she have blended into the big firm corporate culture, made a ton of money, and aided and abetted the practices she instead ended up demolishing? I can't say for sure, but think the latter is a distinct possibility. She wasn't yet the "Notorious RBG." She wasn't yet an advocate for radical equality. She became those things because of life experiences which, at that point, still lay ahead.

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5. Inside the Columbia Archives: Writing by Ruth Bader Ginsburg '59, Colum. L. Sch. (Aug. 30, 2018), <https://www.law.columbia.edu/news/archive/inside-columbia-archives-writing-ruth-bader-ginsburg-59> [<https://perma.cc/5FL6-GY3T>].

6. Ruth Bader Ginsburg, Oyez, [https://www.oyez.org/justices/ruth\\_bader\\_ginsburg](https://www.oyez.org/justices/ruth_bader_ginsburg) [<https://perma.cc/XW8A-QAHU>] (last visited Feb. 17, 2021).

7. Civil Rights Act of 1964, tit. VII, § 716(a), Pub. L. No. 88-352, 78 Stat. 241, 266 (codified as amended at 42 U.S.C. § 2000e-15 (2018)) ("This title shall become effective one year after the date of its enactment.").

One of those experiences was the sting of having been rejected from law firm and clerking jobs. She knew it was because she was a woman, a Jew, and most of all, the mother of a young child, and it was an eye opener.

Another was an academic assignment in the early 1960s that took her to Sweden on and off for two years to study civil procedure, a dry arcane subject she loved to her dying day. There, she saw a model of gender equality that, while far from perfect, was closer to equity than existed in the United States. Most significant, she saw a legal system whose goal was to ensure parents could share childcare and keep their jobs. It set her to thinking. (It also made her a rock star in Sweden, where I interviewed her at a public event in 2019 that sold a thousand tickets in a day.)

Another was a mentor, Hans Smit, who encouraged her, pushed her, to speak in public and to teach, in order to overcome (or at least ameliorate) her shyness. By her own admission, she was “diffident, modest, and shy”<sup>8</sup> in those early years as a professional, a characteristic that I can affirm never completely went away. Ruth pondered every answer to every question, even “How are you?” Many is the person who shifted uncomfortably from foot to foot, awaiting her reply.

Another was success. She and her husband Marty won a gender discrimination tax case called *Moritz* in 1972,<sup>9</sup> and she suddenly realized there were dragons to slay and maybe she could slay them. Marty, a very big personality, was voluble, hilarious, and totally supportive of Ruth. *Reed v. Reed*,<sup>10</sup> a year earlier in 1971, had been another success, and her life’s work started to take shape.

Back to me and 1973: Despite the lack of support from my firm, I still did women’s rights work in my free time, including serving as volunteer counsel to the local chapter of the National Organization for Women (NOW). It wasn’t much but it seems to be how I came to the attention of whoever was deciding on the guest list for that Ford Foundation conference. I learned later that I was the “geographic balance”—I was the only invitee from west of the Mississippi.

The invitation surprised me because I had done so little, but, in truth, few women’s rights lawyers had by then done much. Ruth was an exception. In addition to *Moritz* and *Reed*, she had created a course in women’s rights law at Rutgers Law School, and, most astonishing, earlier that year, 1973, she had argued and won a sex discrimination case (*Frontiero v. Richardson*<sup>11</sup>) in the United States Supreme Court. *Frontiero* was an atom bomb because it hinted that sex might assume the same “suspect” status

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8. Ruth Bader Ginsburg, Assoc. Just., Sup. Ct. of the U.S., Introduction of Hans Smit, Columbia Law School of Washington, D.C. Alumni Association Dinner at La Colline 2 (May 10, 2001), [https://issuu.com/clswbcomm/docs/ruth\\_bader\\_ginsburg\\_legal-career-and-influences](https://issuu.com/clswbcomm/docs/ruth_bader_ginsburg_legal-career-and-influences) [<https://perma.cc/D3RK-YW96>].

9. *Moritz v. Comm’r*, 469 F.2d 466 (10th Cir. 1972).

10. 404 U.S. 71 (1971).

11. 411 U.S. 677 (1973).

as race under the Constitution. Modest, shy Ruth—she was then barely forty—was a superstar. She was revered. But only in the very small circle of feminist lawyers. The rest of the world did not know who she was.

I don't remember much of the content of that conference (the materials exist somewhere), but I remember Ruth. I have had the experience only a few times in my life of being at a meeting where one participant is so exalted, so impressive, whose every utterance is so wise and understated, that when they speak, everyone else just shuts up. I saw that with a lawyer named Harriet Pilpel at ACLU legal meetings. I saw it with Moshe Halbertal at meetings in Israel on justice for Palestinians. And I saw it with Ruth at this Ford conference.

I think the conference was two days; at the end of it, she told me she was going to become a full-time law professor at Columbia Law School and asked me if I would like to apply for the job of succeeding her as co-director of the Women's Rights Project of the ACLU, which meant moving to New York and joining the national ACLU legal staff. Yes, I would.

For the next five years, it was my professional life to collaborate with Ruth on the ACLU women's rights agenda and work with her on her constitutional sex discrimination litigation, which she did in part with ACLU lawyers (including me) and in part with her gender discrimination law clinic at Columbia Law School.<sup>12</sup>

The ACLU offices were then on 40th Street and Madison Avenue in the mahogany paneled space of the bankrupt Johns Mansville Company. Very grand. I eventually assumed Ruth's very large corner office. Here is me sitting at her desk—my desk—at the ACLU in 1974. (I didn't have such a grand office again for many years.) We at the Women's Rights Project, a staff of four or five, communicated with her mostly by telephone (not even fax existed at that time), but also in person. She was then a General Counsel of the ACLU so her multiple hats brought her in frequently, about once a week as I recall. (Roger Baldwin, who had founded the ACLU



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12. One piece of collaborative work we did was an op-ed in the *New York Times* on the Equal Rights Amendment. Ruth B. Ginsburg & Kathleen W. Peratis, Opinion, Equal Rights for Women, *N.Y. Times* (Dec. 31, 1975), <https://timesmachine.nytimes.com/timesmachine/1975/12/31/78284987.html?pageNumber=21> (on file with the *Columbia Law Review*).



in 1920, was still around in those days. I asked him once why he never visited us in the WRP space. He said, “Oh, am I allowed?”)

It was a wonderful working environment. Even though Ruth was not much older than I, she took me under her wing. I was in New York for the first time in my life and I knew virtually no one. On one day I spent with her and Marty at their country club, she told me about Marty’s testicular cancer. It was hard to believe Marty was living under a sword of Damocles—he was one of the jolliest, funniest, most charming men I had ever met. She and Marty came to my wedding at the home of a mutual friend, and she later gave me a baby shower at her home. Over time, we got to be friends.

Ruth didn’t have to tell me much about the WRP’s overarching strategy upon arrival. I knew it from hearing her speak at the conference, from the cases that had already been decided and those in the pipeline. There were many explicit gender lines in federal laws and she wanted them all to fall. (The list of those laws was supplied by the government in the *Frontiero* case in 1973 to support its argument that gender lines were properly and inextricably embedded in U.S. law.<sup>13</sup> Ruth took it as a To Do list.<sup>14</sup>) But Ruth was not Rambo. Her assault was to be stealthy.

Ruth knew intuitively, and taught us, that success would only come one step at a time. If we asked a judge to take two steps rather than one, we might lose the opportunity to win at least that one. And this kind of modesty was not a stretch for her—it was very consonant with her personality and personal style. She was patient, conservative in temperament; she had to restrain those of us who were not.

Ruth taught us that the story comes first. We young lawyers were often in the weeds of the legal and constitutional issues. Ruth loved penetrating legal argument, but she was first and foremost a storyteller. She deeply admired good writing and her models and mentors were more often novelists—especially Vladimir Nabokov—than lawyers. When she talked about Stephen Wiesenfeld, she didn’t talk about the law, she talked about him as a human, the tragedy he lived through, and his desire to raise his child. Similarly, she spoke of how Sally Reed had lost her son to suicide and the cruelty of a law that would exclude her from being the administrator of his estate and awarding the position to the estranged father just because he was a man.

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13. Ruth Bader Ginsburg, Assoc. Just., Sup. Ct. of the U.S., *Advocating the Elimination of Gender-Based Discrimination: The 1970s New Look at the Equality Principle* (Feb. 10, 2006), [https://www.supremecourt.gov/publicinfo/speeches/sp\\_02-10-06.html](https://www.supremecourt.gov/publicinfo/speeches/sp_02-10-06.html) [<https://perma.cc/HKZ6-Q3D3>] (describing list).

14. *Id.* (“It was a treasure trove. One could use the Solicitor General’s list to press for curative legislation, and, at the same time, bring to courts contests capable of capturing public attention and accelerating the pace of change.”).

She also talked to us about who the judges were as people—their legal records, of course, but also their life experiences. What animated them, what moved them, what annoyed them? And she respected their basic conservatism, which she actually shared, their reluctance not to go too far too fast. (This was certainly apparent when she herself became a judge on the D.C. Circuit in 1980.<sup>15</sup>) Though as an advocate she sometimes spoke to the Justices of the Supreme Court as if she were a kindergarten teacher and they were five years old (she admitted this!), she and they were siblings under the skin in ways that allowed her to meet them where they were and influence them.

Finally, no one worked harder than Ruth. And she loved to work. Working all night was not at all unusual. There are many stories of Marty trying to get her to go to bed. There is an old aphorism, “No one, on their deathbed, says, ‘I wish I had spent more time at the office.’” That would not be true of Ruth.

Let me say a word about resilience. While it is often mentioned that Ruth won five of her six Supreme Court cases, I have never heard anyone point out that the one she lost—*Kahn v. Shevin*<sup>16</sup>—was in 1974, one year after she won *Frontiero* (and three months after I joined the staff). Her long-term strategy had barely been launched and suddenly she was handed a loss. It was devastating. It was also infuriating because the case had been commenced by others and Ruth had tried multiple times to stop it (long story). So, in 1974, she was not the conquering hero. She was one for two. I don’t know how she felt—she didn’t say, which is the point. The strategy moved forward.

In my five years at the ACLU, I participated in several Supreme Court briefs, I was with Ruth for one Supreme Court oral argument, and I briefed and argued many cases in lower federal courts. There was one Supreme Court case I was set to argue—a 1975 case, *Turner v. Utah Department of Employment Security*, challenging a Utah law that barred pregnant women from getting unemployment benefits<sup>17</sup>—but the unconstitutionality was so outrageous the Supreme Court decided in our favor based on my briefing alone and without asking for any oral argument. (The victory was sweet, but I had wanted my shot at sparring in the highest court in the land.)

The thrill of those five years at the ACLU is just about matched by the experience of being part of the campaign to get Ruth on the Supreme Court, many years later.

Ruth left the ACLU in 1980 to accept what Marty always called “a good job in Washington”—she became a judge on the United States Court of

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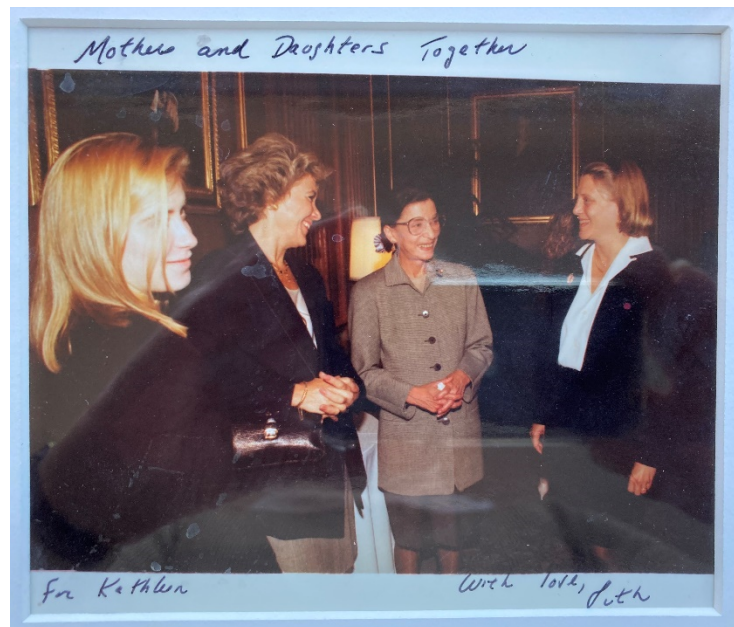
15. Ruth Bader Ginsburg, Hist. Soc’y of the D.C. Cir., <https://dcchs.org/judges/ginsburg-ruth-bader> [<https://perma.cc/6KAL-HS9U>] (last visited Feb. 17, 2021) [hereinafter D.C. Circuit Historical Society].

16. 416 U.S. 351 (1974).

17. 423 U.S. 44 (1975).

Appeals for the District of Columbia Circuit, appointed by President Jimmy Carter (who got no Supreme Court appointments).<sup>18</sup> Marty famously admitted that he had joined the Dennis Thatcher Society—husbands of women who have a job the man, deep in his heart, wishes he had.

Being a judge on the D.C. Circuit was then, and is now, a stepping stone to the United States Supreme Court. The next Supreme Court vacancy occurred the next year, but Republican President Ronald Reagan appointed Sandra Day O'Connor to be the first woman on the Court.<sup>19</sup> (My daughter, born in 1977 and named Katherine Ruth, was dismayed because I had assured her that her namesake would be the first woman on the Court.)



A Democratic President, Bill Clinton, took office in 1993.<sup>20</sup> Upon the assumption that a Supreme Court vacancy would eventually occur (which it did only a few months later), Marty began organizing support for Ruth: senators, lawyers, academics, business leaders—and feminists. My task was to help bring “name” feminist spokespeople on board. You would think

18. D.C. Circuit Historical Society, *supra* note 15.

19. Ronald Reagan, Remarks Announcing the Intention to Nominate Sandra Day O'Connor to Be an Associate Justice of the Supreme Court of the United States (July 7, 1981), <https://www.reaganlibrary.gov/archives/speech/remarks-announcing-intention-nominate-sandra-day-oconnor-be-associate-justice> [https://perma.cc/N4NK-PWCD].

20. Inauguration, Clinton Presidential Ctr., <https://www.clintonfoundation.org/clinton-presidential-center/exhibits/permanent/inauguration> [https://perma.cc/L3N2-BNZR] (last visited Feb. 17, 2021).

they would be the first to endorse Ruth, but it wasn't that simple. Remember—keep remembering—she was not yet the Notorious RBG, planetary icon. Some prominent feminists were lukewarm about her because of her Madison Lecture in December 1992,<sup>21</sup> which they viewed as evincing limp support for abortion rights. This was a grim reality. Clinton famously said about Ruth at an early point in the vetting process, “The women are against her.”<sup>22</sup> We had work to do and I happily, obsessively, and successfully did it, calling, writing, cajoling. Quickly enough, several important feminist spokespeople came around.<sup>23</sup> Marty quipped, deadly serious, “They finally recalled who it was that led them out of Egypt.”

Nevertheless, we soon learned, Marty told us, that we had lost. Clinton was going to appoint then-Judge Stephen Breyer. It was a terrible blow. I was furious at some of those feminists who had complicated the path. (Ruth later forgave them, but I never did.) Then, the next day, Marty called me—I remember where I was standing—and told me, “We won!” I screamed and threw the phone in the air. “What?!” Apparently, Breyer's in-person interview with President Clinton had not gone well. Breyer had recently broken his shoulder in a biking accident and was not at his best.<sup>24</sup> In any event, Clinton suddenly decided to interview Ruth and, of course, he fell in love with her. Hence Marty's call. (Breyer got the next vacancy.) I rushed to Washington to be in the Rose Garden the next day, June 14, 1993, one of the most exciting days of my life, when the President announced he would nominate Ruth Bader Ginsburg to succeed Justice Byron White.<sup>25</sup> When, at a reception, Ruth introduced me to the President, she said, “Mr. President, I would like to introduce you to my lawyer.” I couldn't breathe. I testified for her at the confirmation hearing.<sup>26</sup> Most of

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21. Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L. Rev. 1185 (1992).

22. Jill Lepore, *Ruth Bader Ginsburg's Unlikely Path to the Supreme Court*, *New Yorker* (Oct. 8, 2018), <https://www.newyorker.com/magazine/2018/10/08/ruth-bader-ginsburgs-unlikely-path-to-the-supreme-court> [<https://perma.cc/SFY7-6S6T>].

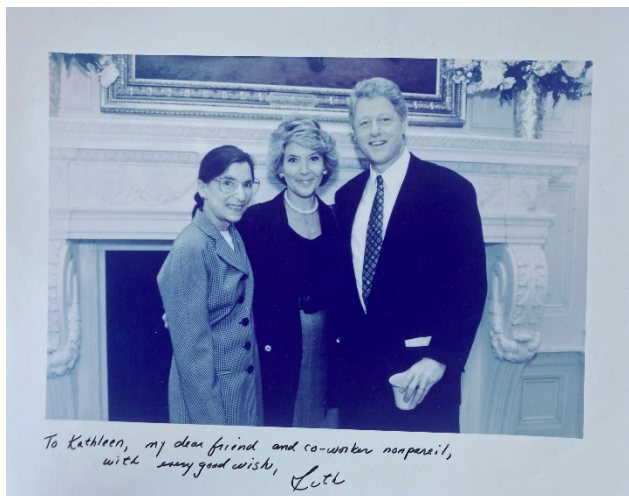
23. *Id.* (detailing a letter by the National Women's Law Center, Women's Legal Defense Fund, and NOW's Legal Defense and Education Fund stating that they didn't take a position on any candidate, and describing how “[e]ventually, key women's groups, which had been unwilling to oppose Ginsburg publicly, ceased opposing her privately”).

24. Bill Mears, *Memo Reveals Clinton's Difficulty over Supreme Court Choice*, *CNN* (Apr. 15, 2014), <https://www.cnn.com/2014/02/17/politics/clinton-breyer-selection-memo/index.html> [<https://perma.cc/J2BK-3H6B>].

25. William J. Clinton, *Remarks Announcing the Nomination of Ruth Bader Ginsburg to Be a Supreme Court Associate Justice* (June 14, 1993), <https://www.govinfo.gov/content/pkg/PPP-1993-book1/pdf/PPP-1993-book1-doc-pg842.pdf> [<https://perma.cc/8PKQ-FKML>].

26. *Nomination of Ruth Bader Ginsburg, to Be an Associate Justice of the United States Supreme Court: Hearings Before the S. Comm. on the Judiciary, 103d Cong. 409* (1993) [hereinafter *Ginsburg Confirmation Hearing*] (prepared statement of Kathleen Peratis); Kathleen Peratis, *RBG Confirmation Hearing Day 4, C-SPAN* (July 23, 1993), <https://www.c-span.org/video/?c4907689/user-clip-rbg-confirmation-hearing-day-4> [<https://perma.cc/R E94-Q523>] [hereinafter *Peratis Oral Testimony*] (oral testimony).

the other witnesses said Ruth's gender was irrelevant to this appointment. That was not true, and I said so.<sup>27</sup> Ruth's gender was crucially important. Clinton wanted to put another woman on the Court and the Court needed another woman. And what a woman.



There were many opinions Ruth wrote in her twenty-seven years as a Justice of the Supreme Court that I cheered but one that was particularly satisfying. That is *United States v. Virginia* in 1996, in which she wrote for the Court's majority that the Virginia Military Institute could not exclude women.<sup>28</sup> It was sweet because twenty years earlier, she and I struggled with local counsel, the lawyer who had the relationship with the client and who brought the case in the first place, on how to present and argue *Vorchheimer v. School District of Philadelphia*,<sup>29</sup> a case involving the same issue—the constitutionality of single-sex public education. As a practical matter, local counsel was in charge. She rejected many of Ruth's ideas and she insisted on being the one to argue the case. We lost; an equally divided Court upheld the bad decision below.<sup>30</sup> Reminiscing many years later, Ruth sent me an email saying, "It took me twenty years to win *Vorchheimer*."

Ruth had been on the Supreme Court for a few years when Yom Kippur fell on a Court sitting day. She asked me what I thought she should do. (I had converted to Judaism about five years before and was obsessive about it.) I told her I thought she should not sit. She reminded me she had always worked on Yom Kippur. I said, "But you weren't on the Supreme Court." She decided not to sit and told me in a letter that I had persuaded her. (Shortly thereafter, the Court decided not to schedule oral argument on Jewish high holy days.)

27. Ginsburg Confirmation Hearing, *supra* note 26, at 407; Peratis Oral Testimony, *supra* note 26, at 0:09.

28. 518 U.S. 515 (1996).

29. 532 F.2d 880 (3d Cir. 1976).

30. *Vorchheimer v. Sch. Dist. of Phila.*, 430 U.S. 703 (1977).

Over the years, Ruth spoke about me in public and I have spoken about her. On one occasion, in 2000, at a large event celebrating her twenty years on the federal bench, I told the story of how dismayed my daughter was when Sandra Day O'Connor became the first woman on the Supreme Court. With Ken Starr, Clinton scourge and persecutor, in the audience, I said, "It took Bill Clinton, *of all people*, to make an honest woman of me." Ruth uncharacteristically laughed her head off.

On the three or four occasions when she spoke publicly about me, she invariably said, "Kathleen is the best coworker I ever had." The first time she said it, I was speechless. But not long after, Marty commenced to burst my bubble. He said, "Notice exactly her words. She didn't say . . ." I said, "Marty, leave it alone. I'll take it just as it is."

I often say, and I mean it, that the Supreme Court is better than Broadway. They put on quite a show. One of the perks for me of being her friend was that when I asked her for passes to the blockbuster Supreme Court arguments, she usually said yes, and often gave me two passes so I could bring a friend. One of the most memorable of those blockbuster arguments was *Clinton v. Jones* in 1997.<sup>31</sup> I took my young son Sam. Unforgettable for both of us.

In the last ten years, Ruth was, of course, an icon, a meme, an international celebrity, the most admired and recognizable woman in the world. Being with her in public during these times was a crazy experience. I was her date in early 2019 for the Broadway play *What the Constitution Means to Me*. We slipped in through a side door just before the curtain and took our eighth-row aisle seats. The moment we sat down, ripples of recognition of her presence began spreading like an ink blot—from our seats throughout the theater, even up to the balconies. Inside of three minutes, the whole theater knew she was there. Nearly everyone stood, took pictures, applauded, an outpouring of love. Even after the curtain went up, the audience kept erupting, once when Ruth's presence was alluded to by the lead actor, once when Ruth's recorded voice (part of the production) was played. They were just so damn happy to be in her presence. And then there was backstage with the cast and crew, all enthralled, going absolutely crazy. The fifteen-year-old cast member was so overwhelmed she was barely able to speak. She blubbered, "I have so many questions to ask you, but I can't get them out." Ruth said, "Don't worry, dear. You'll come to visit me at the Supreme Court and you'll have a chance to ask all of your questions."

This outpouring of adulation happened every time Ruth was out in public. Every speaking event, and there were more than thirty over the last ten years, was sold out, many with an audience of a thousand or more. The swag—totes, T-shirts, collars, Halloween costumes—multiplied year after year. (A conscientious Jew, she thought the tattoos went too far.) She had dozens of stories and she told them with the wicked timing of a seasoned

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31. 520 U.S. 681 (1997).

performer. As gentle as she was, she had a snappish wit. When asked what (in the world) she and the Notorious B.I.G. had in common—she’d say, “Why, we are both from Brooklyn.”<sup>32</sup> At every event, some young woman would ask something like, “What should I do with my life?” Ruth always replied, “Do something that is bigger than you, something that is for others. Work hard and do it well.” The words sound anodyne, but she meant them. Did the adulation get tedious? Did she want it to stop? No, she didn’t. The energy and love, especially from young people, gave her great joy and sustained her.

This rock-star status was a wholly unexpected chapter in her life. It was the result (in my opinion) of a convergence of factors. Most significantly, the Court had taken a turn to the right and she began to despair of her ability to forge consensus for acceptable results. An incrementalist all her life, modest and patient, she found herself dissenting more and more. This went against her natural temperament. She didn’t like being disagreeable. But those dissents turned out to have unexpected power. In the Lilly Ledbetter equal pay case in 2007, Ruth wrote a scathing dissent in which she called upon Congress to undo the injustice the Court had just perpetrated<sup>33</sup>—and Congress almost immediately did so!<sup>34</sup> That was an exclamation point for a woman who usually ended her sentences with a period.

A few years later, her beloved Marty, the love of her life, passed away.<sup>35</sup> His absence meant she could, maybe she had to, reinvent herself. For one thing, Marty had always been wonderfully, hilariously center stage. He was the diva. Ruth loved it and never wanted to compete. But with him gone, new roles were now available to her.

A few years later, in 2013, the Supreme Court gutted the Voting Rights Act in the *Shelby County* case,<sup>36</sup> and Ruth’s furious dissent inspired law student Shana Knizhnik to create the Notorious RBG Tumblr meme.<sup>37</sup> It took off. Why, I can’t say. I was as surprised as anyone. But, even more

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32. Scott Stump, Notorious BIG’s Son: My Dad Would Be “Honored to Share Notorious Title” with Ruth Bader Ginsburg, NBC News (Sept. 25, 2020), <https://www.nbcnews.com/news/nbcblk/notorious-b-i-g-son-my-dad-would-be-n1241105> [https://perma.cc/F6JK-7K6N].

33. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 661 (2007) (Ginsburg, J., dissenting).

34. Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (codified in scattered sections of 29 U.S.C. and 42 U.S.C.).

35. Bill Mears, Justice Ginsburg’s Husband Dies of Cancer Complications, CNN (June 28, 2010), <http://www.cnn.com/2010/CRIME/06/27/scotus.ginsburg.husband/index.html> [https://perma.cc/2BLG-ZJ5J].

36. *Shelby County v. Holder*, 570 U.S. 529 (2013).

37. Nina Totenberg, Notorious RBG: The Supreme Court Justice Turned Cultural Icon, NPR (Oct. 26, 2015), <https://www.npr.org/sections/itsallpolitics/2015/10/26/450547606/notorious-rbg-the-supreme-court-justice-turned-cultural-icon> [https://perma.cc/7SKG-RGA6].

surprising, Ruth loved it, embraced it, even the swag. In her public appearances, she started carrying a canvas tote bag that said “I DISSENT.”<sup>38</sup> To the utter delight of her audiences, she placed it prominently at her feet during interviews.

Ruth’s passing on September 18, 2020, Erev Rosh Hashanah, was a shock.<sup>39</sup> It was no secret she was ill, but I was certain she was going to survive for the coming Supreme Court Term at least, and that Trump would not get the chance to fill her seat. She accepted every possible treatment to extend her life. Her granddaughter Clara publicly communicated Ruth’s dying wish that the next President, not the then-current one, name her replacement.<sup>40</sup> It was not to be. She missed by so little the fulfillment of her wish.

Ruth is justly famous for changing the world with her Supreme Court advocacy in the 1970s, and for her brilliance as a Supreme Court Justice, expanding freedom and equality. But I think an argument can be made that it is her Notorious RBG chapter, her scores of public interviews in which she told thousands of girls and women that they, too, could change their world, that counted even more. She touched so many people with her humanity—and that might be the big story. And we know how much she loved stories.



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38. Jenna Amatulli, *Iconic Ruth Bader Ginsburg Carries an “I Dissent” Tote with Her Own Likeness*, *HuffPost* (Apr. 28, 2017), [https://www.huffpost.com/entry/iconic-ruth-bader-ginsburg-carries-an-i-dissent-tote-with-her-own-likeness\\_n\\_59038b77e4b02655f83d38c7](https://www.huffpost.com/entry/iconic-ruth-bader-ginsburg-carries-an-i-dissent-tote-with-her-own-likeness_n_59038b77e4b02655f83d38c7) [<https://perma.cc/HM3Z-B4WK>].

39. Nina Totenberg, *Justice Ruth Bader Ginsburg, Champion of Gender Equality, Dies at 87*, *NPR* (Sept. 18, 2020), <https://www.npr.org/2020/09/18/100306972/justice-ruth-bader-ginsburg-champion-of-gender-equality-dies-at-87> [<https://perma.cc/Z94C-VYVJ>].

40. Matthew Choi & Josh Gerstein, *Ginsburg’s Wish: “I Will Not Be Replaced Until a New President Is Installed”*, *Politico* (Sept. 18, 2020), <https://www.politico.com/news/2020/09/18/ginsburg-rbg-dying-wish-418108> [<https://perma.cc/7NNQ-UJQW>].