

## BEYOND THE NOTORIOUS: A TRIBUTE TO MY JUSTICE

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By the time I first met her, Justice Ginsburg was already the Notorious RBG. I had spent the week prior to my clerkship interview pouring over her opinions and gathering advice from former clerks. I had revisited her storied career as an advocate for gender equality, marveling over her strategic patience disassembling the status quo brick-by-brick. I had reread her major opinions, including *United States v. Virginia*, which established heightened scrutiny for gender-based classifications.<sup>1</sup> I had been seeped in her meme-inducing rhetoric, rereading her powerful dissent in *Shelby County v. Holder*, where she pointed out that “[t]hrowing out preclearance when it has worked . . . is like throwing away your umbrella in a rainstorm because you are not getting wet.”<sup>2</sup> I was awed by the courage of her convictions as she stood as the lone dissenter in *Fisher v. University of Texas*, where she called out that “only an ostrich” could regard race-neutral alternatives in college admissions as race unconscious.<sup>3</sup> I had been briefed that she was a perfectionist with exceedingly high standards. I had been warned not to interrupt her deliberate mode of speech. And so, like most in my shoes, I walked into my interview feeling predominantly nervous—*visibly* nervous. My cab driver gave me an unsolicited pep talk on my way to the courthouse.

Justice Ginsburg was simultaneously exactly what I had prepared for and nothing like I expected. I reached out to shake her hand, which was much firmer than her diminutive frame would suggest. Her office was lively and worked-in. Modern art adorned the walls, and the shelves and surfaces were overflowing with photos and tchotchkes: a photo of the Justice in utter glee as she met one of her favorite opera singers; a fleet of sharpened pencils ready for editing; a dagger ominously placed on her desk (a gift from a trip to Turkey, I later learned). As we began the interview, she peered down at my resume and then looked back up at me and said something completely disarming: “I see that you won the Ruth Bader Ginsburg prize [at Columbia Law School]. I don’t know what that is, but I’m sure that it’s great.” I *never* expected that she would start our conversation with a joke—a joke that eased my nervousness. We spent the interview talking about the law, her career, and mine. We talked about our generational divide. I asked her when she started to believe *this* was all possible for her.

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1. 518 U.S. 515, 531–34 (1996).

2. 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

3. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 335 (2013) (Ginsburg, J., dissenting).

And she told me that it would have been foolish for her to dream to be a Justice in a time when going to college as a woman was a dream.

During the year that I clerked for her, I learned so much from Justice Ginsburg. Disagree without being disagreeable. There is no substitute for hard, hard, hard work. Keep it right and keep it tight. Cases are not just issues, but people with stories and struggles. “When a thoughtless or unkind word is spoken,” “it helps sometimes to be a little deaf.”<sup>4</sup> But most of all, to work to secure a future in which later generations will be able to take for granted the things we don’t even deign to dream about.

I thought a great deal about what to write that would do the Justice justice. It is not her advocacy, her opinions, or her love of opera, but rather the *moments* that I shared with her that have left the deepest imprint on me. With Justice Ginsburg, there is so much more than meets the eye. I want to share a few memories—not about the myth, the legend, or the notorious—but about the woman.

In spite of her stature, Justice Ginsburg could be so relatable. She invited each of our families to attend an argument at the Court and sit in her reserved seats. During the first sitting, my parents—immigrants from Iran who did not learn English until later into their lives—took the Justice’s invitation. After argument, I took them for a tour of the courthouse and then finally, to meet the Justice. My mother, who is not ordinarily emotional, turned to the Justice with a tear in her eye and said, “I never imagined that I—an immigrant from Iran—would come to the Supreme Court and tell the security guards that I am Justice Ginsburg’s guest. Only in America does this happen.” Justice Ginsburg wanted my parents to know that not only were they welcome, but they belonged in that marble building. She replied, “I am a child of an immigrant who could not finish his education.” Her father, an immigrant from Russia, left high school because he had to work. “Only in America, I could grow up to be a Justice on the Supreme Court.”

I have often seen people remark about Justice Ginsburg’s superhuman ability to power through tragedy or illness to work. Her work ethic and drive surpassed anything I could have imagined. But there is a less well-known piece of the Justice that I cherish: her ability to put the work down and celebrate the moments that matter. The Justice held a birthday party—complete with prosecco, cupcakes, and gifts—for each member of her Chambers family. I remember hearing the rustling of the cupcake box and the pop of the prosecco bottle. Distracted, I would save whatever I was working on and go join the commotion in setting up the celebration. The eight of us—five clerks and three members of the Justice’s permanent staff—would file into the Justice’s office, shuffle papers, books, and even furniture. All the while, the Justice was firmly fixated on the opinion, brief,

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4. Ruth Bader Ginsburg, Opinion, Ruth Bader Ginsburg’s Advice for Living, N.Y. Times (Oct. 1, 2016), <https://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html> (on file with the *Columbia Law Review*).

or memo before her. We would take our seats and make eyes at each other as the room fell quiet. After a couple of minutes, the boldest among us would muffle a “Justice?” Not having noticed that we all came in, she would look up and her expression would change as her mood shifted into birthday mode. She would join us and spend an hour talking about travel, music, current events, and sometimes . . . cases. As the guest of honor opened gifts, the Justice would perk up to see what the clerks and Chambers staff had gifted each other. At one such exchange, the guest of honor received earrings with her favorite athlete’s face on them. Although sports were far from the Justice’s interests, she could get right to the heart of the motivation behind the gift. She asked the guest of honor, “He’s handsome, yes?” “Yes,” the guest replied. “And you’re fond of him?” The guest of honor turned bright red as she admitted yes, she is fond of him. Several years later, when the Justice received a book about that same athlete, she gave it to that guest of honor, reasoning, “you should have this.”

In March, we returned the favor and held a celebration for the Justice’s birthday. Unbeknownst to her, the later clerk classes had developed a tradition of competitive gift giving. There was even a section of the clerk manual that collected some of the most noteworthy gifts—among them, jabots, a poster signed by her favorite opera diva, and even a private opera performance. Through a friendship my co-clerk sparked, we brought down several sommeliers from a well-known restaurant in New York and gifted the Justice a wine tasting complete with a food-and-wine themed opera soundtrack. The Justice taught us about the opera notes that played, as the sommeliers taught us about the notes we tasted. As I feigned a sophisticated wine pallet, the Justice broke into—not a belly laugh, but one that I can describe only as—a throat laugh. That was the best part of these celebrations, hearing the Justice laugh in an infectious, almost startling way. The wine flowed and the party ran long. And at the end, the Justice did something only RBG would do. She went to the Justice’s gym, met with her trainer, and did her workout.

That’s the thing about the Justice. She could tune everything out and focus all of her attention on her top priority. In the official Chambers photos taken during my term, you can see the Justice looking at the camera, but also talking to my co-clerk. They were working on an opinion at the time and nothing, not even posing for photographs, would stop their progress. I think it was this ability to tune out all distractions and zone in on the task at hand that earned the Justice the reputation of the fastest opinion writer at the Court. This meant that we too were expected to zone in when she was focused on one of our cases. As clerks, we could predict with some degree of accuracy the major times we would be on call: right before an argument or after we had turned in an opinion draft. But sometimes, the Justice would call on us when we least expected it. We knew it was the Justice calling because she used the “buzz” feature when she tried to reach us. We feared the buzz when we were underprepared. Worse still, missing

the buzz. But some of the brightest moments of my year with the Justice came from unexpected buzzes.

One day after the Justice's conference, my co-clerk's phone buzzed while she was away from her desk. The Justice then buzzed the rest of us in sequence to find her. None of us knew where she was. She then issued the Supreme Court equivalent of an amber alert. She had her assistant send an email to every other assistant in the building to locate my co-clerk, to no avail. About ten minutes later when my co-clerk returned to confront her worst nightmare, she rushed to the Justice's office to learn what had been so pressing. Evidently, the Justice had heard that my co-clerk had brought in banana bread.

I had my own unexpected buzzer encounter. The Justice and I had been working together on an unexpectedly active case that had me in and out of her office with some frequency. Things had calmed down and I believed my time on call had ended. My phone buzzed while I was in another Chambers. My co-clerk spotted me and told me I had missed the Justice. I grabbed a pen and a pad and rushed to the Justice's office. She held up an opinion that another Justice had circulated in the case, "Have you seen this?" I told her I had read it earlier in the day. I wasn't sure what I had missed—the worst position to be in. As I waited for the other shoe to drop, she started laughing that deep throat laugh. As it turned out, she hadn't buzzed me to ask a question. She buzzed me so I could laugh with her at the other Justice's jokes. We spent some time together picking out our favorite zingers, insisting to each other "this part is funny," "no, this part is funny!"

Some years later, I visited the Justice to seek some advice. I was contemplating a career move and expecting my first child. She gave me the same counsel that I have since learned she has given many of her former clerks, about how to be a parent and also be a full person. She told me to take the job that would bring me fulfillment because each part of my life would give me respite from the other. About a year later, I returned to Chambers with my young daughter for what would be the last time I saw the Justice in person. I saw a different side to the Justice, "bubby mode." She had a big smile on her face as she played with my daughter's feet and showed her the brightly colored paintings and knickknacks in Chambers. She was so warm with my daughter, her "grandclerk."

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The Justice would often tell people that when she graduated from law school, she had great difficulty finding her first job. Despite graduating first in her class and serving on the *Columbia Law Review*, she had three strikes against her. She was a woman, a Jew, and a mother. She had spent a summer at a law firm that did not extend her a full-time offer, reasoning that it had hired a woman the year prior. Justice Felix Frankfurter declined to interview Ginsburg for a clerkship, explaining that he was not yet ready

to hire a woman. It took a determined professor, Gerald Gunther, to persuade Judge Edmund Palmieri to give Ginsburg her first job. Gunther had assured Palmieri that if Ginsburg did not deliver, Gunther would have a replacement available. Fifty-four years later, when I graduated from Columbia Law School, the same law firm that turned Justice Ginsburg away recruited me. Not only did I clerk, but I had the privilege to clerk for two women, including Justice Ginsburg. What happened in that half century? To borrow from Justice Kagan, “Ruth Bader Ginsburg happened.”<sup>5</sup>

When the Justice passed, I felt a deep personal loss. I know that there are many who grieved a broader social loss. In the last decade or so of her tenure on the bench, Justice Ginsburg became a symbol of progress and change. To many, it felt as though that movement lost its greatest figure. She lived so many lives in the law—from pathbreaking advocate, to learned teacher, to one of the first women judges on the D.C. Circuit—that had she not served a single moment on the Supreme Court, she would have merited every good word, tribute, and piece of merchandise adorned with her face. We lost a legal giant. But when I reflect back on a moment that we shared in the halls of the Court, I am heartened about the future.

I once accompanied the Justice to a talk that she gave to a group of high school students in the Court’s East Conference Room. Former Associate Justices’ portraits hang in the Supreme Court. But the portraits of former Chief Justices hang in the East and West Conference Rooms. The Justice oriented her remarks around the figures in the room, from Chief Justice Jay to Chief Justice Marshall to Chief Justice Fuller. Then she took out her pocket Constitution, read part of the Fourteenth Amendment, and closed with remarks about the Constitution’s inclusive protections. She quoted Dr. Martin Luther King, Jr., “[T]he arc of a moral universe is long, but it bends toward justice.”<sup>6</sup> As we walked back to Chambers, I said, “Justice, there are a lot of men’s portraits hanging in that room.” She stopped, turned to me, and said, “These things take time.”

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5. Justice Elena Kagan, Remarks at the Celebration of the Twenty-Fifth Anniversary of Ruth Bader Ginsburg’s Investiture (Sept. 21, 2018).

6. Martin Luther King, Jr., Remaining Awake Through a Great Revolution, Speech at the National Cathedral (Mar. 31, 1968), *in* 114 Cong. Rec. 9397 (1968).

