

A TRIBUTE TO RUTH BADER GINSBURG (1933-2020) STRONG VOICE, GIANT INTELLECT, AND A WARM HEART¹

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The United States Supreme Court is one of the most traditional institutions in the United States of America, and one that, up to until fairly recently (1981), has been closed to women. In this tribute, I recall my interview with the second woman ever to be appointed to the Supreme Court, Ruth Bader Ginsburg, who died this year. Ginsburg, who has been described as the legal architect of the women's movement, was born in Brooklyn, New York to a middle-class family. Her mother, who Ruth greatly admired did not have the advantage of education, but nonetheless encouraged Ruth to develop herself intellectually, and she did – winning a scholarship to Cornell University and then moving on to Harvard and graduating from Columbia School of Law. She was unable to find a job as a lawyer upon graduation because law firms were simply not hiring women, so she joined the faculty at Rutgers Law School and co-founded the Women's Rights Project of the American Civil Liberties Union. She began arguing sex discrimination cases in front of the United States Supreme Court and developed a national reputation for her excellence. Ruth Bader Ginsburg joined the faculty at Columbia School of Law and, in 1980, was appointed by President Carter to the Court of Appeals for the District of Columbia. At the time, there were only eight women on any of the federal courts. In 1993, President Bill Clinton nominated Ruth Bader Ginsburg to the Supreme Court, recognizing her reputation as a talented judge, her role as one of the foremost legal advocates for women's rights, and her potential to build consensus on the Supreme Court. In her later years, she would become a cultural icon, popular with young people, a phenomenon that surprised her. Through her immense intellect, bravery, humanity and careful, persistent communication, Ruth Bader Ginsburg advanced her mission of gender equality and changed the lives of the American people, and American society.

In 2008, I started researching the communication styles and strategies of the female Supreme Court justices. Justice Ruth Bader Ginsburg granted my request for a personal interview and I met her in her chambers in Washington, D.C. on August 19, 2010. While I contacted all four women (O'Connor, Sotomayor, Kagan and Ginsburg) at the same time, RBG was the first (and most infirmed since she was recovering from her first fight with pancreatic cancer) to meet with me. Not only that, she put in a good word for me with Justice Sotomayor who was not granting interviews at the time. My research on Ruth Bader Ginsburg took place years before the phrase 'the notorious RBG' was introduced. As I studied her biography, my admiration for her personal life was as deep as her professional accomplishments. She was deeply committed to her marriage and her family.

Her character was reflected in her speaking. In my book *The Rhetoric of Supreme Court Women*, I described her character as slow, meticulous and careful. Her communication is illustrative of her approach to the law: just what is needed. She tells her law clerks: "Don't write sentences that people will have to re-read. The same is true of public speaking." She says: "My effort was to speak slowly so that those ideas could be grasped." In her public speeches, her style is professorial, hearkening back to her days as a law professor, first at Rutgers School of Law, briefly at Harvard Law School and at Columbia School of Law.

In 2007, when she read two stinging dissents from the bench, to criticize the majority for opinions that she said jeopardize women's rights, she was indeed, deliberately making

a statement. In one case, in which the court upheld the federal Partial-Birth Abortion Ban Act seven years after having struck down a similar state law, she noted that the Court was now “differently composed than it was when we last considered a restrictive abortion regulation.” In *Ledbetter v. Goodyear*, speaking for the three other dissenting justices, Justice Ginsburg’s voice was even and measured, and the message was potent and immediately impactful. In this utterance she was speaking to, as she put it, “convey a message I thought was so right and proper.”

In her dissent she described the Court’s reading of the law as ‘parsimonious’ and added: “In our view, the court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination.” Lilly Ledbetter was a supervisor at Goodyear Tire and Rubber plant in Gadsden, Alabama, from 1979 until her retirement in 1998. For most of those years, she worked as an area manager, a position largely occupied by men. Initially, Ledbetter’s salary was in line with the salaries of men performing substantially similar work. Over time, however, her pay slipped in comparison to the pay of male area managers with equal or less seniority.

I asked her why reading her dissent aloud felt like a powerful way to express her views. She told me: “Most often I do not announce. I write it out. But if I want to emphasize that the Court not only got it wrong, but egregiously so, reading aloud a dissent can have an immediate objective.”

Only six times previous to 2007, in thirteen years on the Court did Justice Ginsburg read her dissent aloud, and never twice in one term. She told her audience at a lecture in 2007: “I described from the bench two dissenting opinions. The first deplored the Court’s approval of a federal ban on so-called ‘partial-birth abortion.’ Departing from decades of precedent, the Court placed its imprimatur on an anti-abortion measure that lacked an exception safeguarding a woman’s health. Next, I objected to the Court’s decision making it virtually impossible for victims of pay discrimination to mount a successful Title VII challenge.”

The ‘immediate impact’ of Justice Ginsburg’s oral dissent was realized in the *Ledbetter v. Goodyear* case. She told me that “Several members of Congress responded within days after the Court’s decision was issued.” With Lilly Ledbetter present, President Obama signed the Lilly Ledbetter Fair Pay Act into law on January 29, 2009.

Justice Ruth Bader Ginsburg’s public speaking is similar to her strategy on behalf of the Women’s Rights Project of the ACLU in the 1970s: slowly, meticulously, carefully and just what is needed. She reflected on her life’s work and said, slowly and distinctly: “What a luxury I had to be an advocate for people who needed my services and to work for a cause for society.”

RIP Justice Ruth Bader Ginsburg. Thank you for your giant intellect and warm heart.