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THE HONORABLE ROBERT A. KATZMANN (1953–2021)

Honoring Justice Ruth Bader Ginsburg

66 N.Y.L. SCH. L. REV. 19 (2021–2022)

EDITOR'S NOTE: This essay is an edited version of opening remarks delivered by the Honorable Robert A. Katzmann on February 6, 2018, as part of the Sidney Shainwald Public Interest Lecture Series at New York Law School, to introduce a dialogue between Justice Ruth Bader Ginsburg and Professor Nadine Strossen. Video of the full lecture is available at New York Law School, *Sidney Shainwald Public Interest Lecture with Hon. Ruth Bader Ginsburg (Feb. 6, 2018)*, YOUTUBE (Feb. 9, 2018), <https://youtu.be/mlos5dd3Po8>. Katzmann edited his remarks for the *New York Law School Law Review* shortly before his passing on June 9, 2021.

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HONORING JUSTICE RUTH BADER GINSBURG

I have the great privilege and pleasure of calling Justice Ruth Bader Ginsburg a close friend, and I have thought of her, and her beloved husband Marty Ginsburg,¹ as family members. We met in the 1980s, when I was in D.C. working at the Brookings Institution and then at Georgetown, where Marty taught as well. I was a witness to her confirmation journey, nearly a quarter century ago, when Sen. Daniel Patrick Moynihan (D-NY),² her Senate sponsor,³ asked that I be of assistance (not that she needed any) as her nomination weaved its way through the Senate.⁴

How do you introduce someone who needs no introduction? How do you introduce someone who is so famous she's known by just her initials: R-B-G? Who is so much in demand that she is the subject of a new documentary,⁵ a feature film starring Felicity Jones,⁶ an opera,⁷ T-shirts and mugs,⁸ and a workout book?⁹

That Ruth Bader Ginsburg has been a path-marking legal mind—as the litigating architect of gender equality—we know.¹⁰ That she has been a jurist of extraordinary

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1. Martin “Marty” Ginsburg died on June 27, 2010. Tom Goldstein, *Marty Ginsburg Has Died*, SCOTUSBLOG (June 27, 2010), <https://www.scotusblog.com/2010/06/marty-ginsburg-has-died/>.
 2. Senator Moynihan held office from 1976 to 2001. *Daniel Patrick Moynihan: A Featured Biography*, U.S. SENATE, https://www.senate.gov/senators/FeaturedBios/Featured_Bio_MoynihanDP.htm (last visited Apr. 7, 2022).
 3. Sidney Blumenthal, *A Beautiful Friendship*, NEW YORKER, July 5, 1993, at 34, 34–36.
 4. Ginsburg was nominated to the Supreme Court by President Bill Clinton on June 22, 1993, and was confirmed by the Senate on August 3, 1993. *Supreme Court Nominations (1789–Present)*, U.S. SENATE, <https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm> (last visited Apr. 7, 2022).
 5. RBG (Magnolia Pictures 2018). *RBG* was a 2018 documentary on Ginsburg’s life and career, directed and produced by Betsy West and Julie Cohen. *RBG: Story*, MAGNOLIA PICTURES, <https://www.rbgmovie.com/synopsis/> (last visited Apr. 4, 2022). Ginsburg has since been the subject of several more documentaries, including *RBG: Her Legacy and the Court’s Future* (PBS NEWSHOUR television broadcast Sept. 25, 2020) and *RUTH: JUSTICE GINSBURG IN HER OWN WORDS* (Sanders & Mock Productions 2019).
 6. *ON THE BASIS OF SEX* (Focus Features 2018) (depicting Ginsburg’s early career and marriage to Marty Ginsburg).
 7. *SCALIA/GINSBURG* (Derrick Wang 2021). *Scalia/Ginsburg* is a one-act opera and comedy by composer-librettist Derrick Wang, which was introduced to the U.S. Supreme Court in 2013 and later premiered at Lorin Maazel’s Castleton Festival in 2015. *Scalia/Ginsburg*, DERRICK WANG, <http://www.derrickwang.com/scalia-ginsburg> (last visited Apr. 4, 2022).
 8. *E.g.*, ETSY, <https://www.etsy.com/> (search “RBG T-shirt”); ETSY, <https://www.etsy.com/> (search “RBG Coffee Mug”).
 9. BRYANT JOHNSON, *THE RBG WORKOUT* (2017).
 10. Before her appointment as associate justice, Ginsburg successfully litigated gender equality cases before the Supreme Court, writing the brief in the 1971 case of *Reed v. Reed* and then presenting oral argument in the 1973 case of *Frontiero v. Richardson*. Brief for Appellant at 14, 60, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70–4) (contesting Idaho’s statutory preference for one sex over another when appointing estate administrators); *Frontiero v. Richardson*, 411 U.S. 677, 690–91 (1973) (“[B]y according differential treatment to male and female members of the uniformed services for the sole purpose of achieving administrative convenience, the challenged statutes violate the Due Process Clause of the Fifth Amendment insofar as they require a female member to prove the dependency of her husband.”).

distinction who has left an indelible mark on the law, we know. That the world is a better place because of her, we honor and cheer.

What more, then, can be said about this brilliant, compassionate jurist, appreciator of music, art, and the world, who really is a living legend? And deservedly so, I may add. Some details, perhaps. Some glimpses into the life of this Renaissance human.

Ruth Bader's concern about the world around her began early. As a thirteen-year-old, in a bulletin of the East Midwood Jewish Center published a year after the end of World War II, she wrote:

We must never forget the horrors which our brethren were subjected to in Bergen-Belsen and other Nazi concentration camps. Then, too, we must try hard to understand that for righteous people hate and prejudice are neither good occupations nor fit companions We cannot feel safer until every nation, regardless of weapons or power, will meet together in good faith, the people worthy of mutual association. There can be a happy world and there will be once again, when men create a strong bond towards one another, a bond unbreakable by a studied prejudice or a passing circumstance.¹¹

As she grieved the loss of life in Bergen-Belsen, thirteen-year-old Ruth Bader could not have known that one casualty of that concentration camp, just a year earlier, was a young girl just four years older, Anne Frank, who too wrote about the human condition and yearned for a happier world.¹² Some years ago, I sent Justice Ginsburg a new edition of *The Diary of Anne Frank* because I had read a passage from her diary in which Anne Frank pondered why women were thought inferior to men.¹³ I have imagined that, had Anne Frank survived, somehow, she and Ruth Bader Ginsburg would have met in the course of their lives and become friends and worked together, these models of humanity.

Justice Ginsburg's literary influences were many. Always a writer, sensitive to words and rhythm and style, she says herself that her writing bears the traces of one of her

11. Ruth Bader, *One People*, BULL. E. MIDWOOD JEWISH CTR., June 21, 1946, at 2, reprinted in RUTH BADER GINSBURG ET AL., *MY OWN WORDS* 16 (Simon & Schuster 2016).

12. See ANNE FRANK, *THE DIARY OF A YOUNG GIRL* 333 (Otto H. Frank & Mirjam Pressler eds., Susan Massotty trans., Doubleday 1995) (1947).

In spite of everything I still believe that people are really good at heart. I simply can't build up my hopes on a foundation consisting of confusion, misery, and death. I see the world gradually being turned into a wilderness, I hear the ever approaching thunder, which will destroy us too, I can feel the sufferings of millions and yet, if I look up into the heavens, I think that it will all come right, that this cruelty too will end, and that peace and tranquility will return again.

Id.

13. See *id.* at 235 (“One of the many questions that have often [bothered] me is why women have been, and still are, thought to be so inferior to men. It's easy to say it's unfair, but that's not enough for me; I'd really like to know the reason for this great injustice!”).

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college professors, Vladimir Nabokov.¹⁴ Her words and word order are perfectly chosen, giving elegance and force to the writing. The next time you read a Ginsburg opinion, I urge you to read her sentences aloud, and you will understand what I mean. Her writings are guides for the rest of us in the trenches.

Justice Ginsburg's passions are indicative of the wide range of her life canvases. With broad interests, she might recommend any number of books, for example, Donna Leon's novels.¹⁵ The mysteries take place in Venice, with detailed descriptions not just of the city but also of the food. She performed not so long ago at the Washington Opera.¹⁶ And of course, Plácido Domingo serenaded her at a Harvard degree ceremony.¹⁷

Justice Ginsburg is truly a friend for all seasons. She has been blessed with a happy, thriving family and a close network of friends, colleagues, and former clerks. She is steadfast in her devotion, as I can attest. When a friend is in the hospital during the holiday season confronting serious health issues, this Supreme Court justice checks in daily with indispensable support and guidance, giving hope, inspiration, and cheer.

Her life has been one marked with determination and perseverance. After she missed her high school graduation because her beloved mother, a role model to Ruth and others and a hardworking bookkeeper,¹⁸ had just died, the young Ruth carried with her that searing loss.¹⁹ But she continued with discipline,²⁰ tackling challenging work at

14. *R.B.G.'s Advice for Living*, N.Y. TIMES, Oct. 2, 2016, at SR4.

At Cornell University, my professor of European literature, Vladimir Nabokov, changed the way I read and the way I write. Words could paint pictures, I learned from him. Choosing the right word, and the right word order, he illustrated, could make an enormous difference in conveying an image or an idea.

Id.

15. Marty Ginsburg was a fan of Leon's novels and, with his wife, first met the author on a trip to Venice. Susanna Rustin, *Donna Leon: Why I Became An Eco-Detective Writer*, GUARDIAN (Apr. 15, 2017), <https://www.theguardian.com/books/2017/apr/15/donna-leon-interview-commissario-brunetti-earthly-remains>. After that meeting, Leon and Justice Ginsburg became friends, and Leon even dedicated one of her novels, *Earthly Remains*, to the jurist. *Id.*; see DONNA LEON, *EARTHLY REMAINS* (2017).
16. Andrew Beaujon, *Ruth Bader Ginsburg Starred in an Opera in DC This Weekend*, WASHINGTONIAN (Nov. 14, 2016), <https://www.washingtonian.com/2016/11/14/ruth-bader-ginsburg-starred-in-an-opera-in-dc-this-weekend/>.
17. Harvard Magazine, *Plácido Domingo Sings to Justice Ruth Bader Ginsburg*, YOUTUBE (May 26, 2011), <https://www.youtube.com/watch?v=UUYaA48rAfw>.
18. Melissa Boughton, *Ruth Bader Ginsburg Reviews Her Remarkable Life, Battles for Gender Equality in Raleigh Appearance*, NC POL'Y WATCH (Sept. 24, 2019), <https://ncpolicywatch.com/2019/09/24/ruth-bader-ginsburg-reviews-her-remarkable-life-battles-for-gender-equality-in-raleigh-appearance/> ("What is the difference between a bookkeeper in New York's Garment District, which my mother was, and a Supreme Court justice? . . . [O]ne generation.").
19. Gillian Brockell, *Ruth Bader Ginsburg Lost Her Mother to Cancer as a Teen. It Made Her Work Harder.*, WASH. POST (Sept. 21, 2020), <https://www.washingtonpost.com/history/2020/09/21/ruth-bader-ginsburg-mother-cancer/>.
20. *RBG: Mother 'Armed Me with Strength to Persist'*, CNN, <https://www.cnn.com/videos/us/2018/02/11/rbg-on-her-mother.cnn> (last visited Apr. 1, 2022).

Cornell when so few women were there.²¹ It was perseverance that would mark her approach to life. Still so young, but grounded, she had the good fortune and judgment—and she has such good judgment—to meet and connect with one Martin Ginsburg.²²

I observed the fruits of Justice Ginsburg’s lifetime of preparation and discipline during the confirmation process, when a parade of legal experts came to the White House to brief Ruth on a host of topics that might be the subject of questions at the confirmation hearings. Ruth Bader Ginsburg seemed to me to know more than the experts who came to the White House to brief her. Of course, that was not at all surprising, given her record of unsurpassed excellence—top of the class at both Harvard and Columbia Law Schools,²³ the co-founder of the ACLU Women’s Rights Project,²⁴ the trailblazing architect on behalf of gender equality with an enviable record as a Supreme Court litigator,²⁵ a professor at Rutgers and Columbia Law Schools,²⁶ and a judge on the D.C. Circuit.²⁷

Taking a break from a conference in Madrid not long ago, visiting Gaudí’s unfinished cathedral, Sagrada Família, where she’d not been in about twenty years, and observing the display, Justice Ginsburg reminisced about her incomparable

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21. See Jon Craig, *Ruth Bader Ginsburg Reminisces About Her Time on the Hill*, CORNELL CHRON. (Sept. 22, 2014), <https://news.cornell.edu/stories/2014/09/ruth-bader-ginsburg-reminisces-about-her-time-hill>; Cornell University, *Enrollment at Cornell University Ithaca, 1868 to Present*, INST.’L RSCH. & PLAN., <https://irp.dpb.cornell.edu> (last visited Apr. 7, 2022) (choose “Undergraduate” from dropdown) (admitting more than 5800 men but not even 1800 women to Ginsburg’s entering class of 1954).
 22. Justice Ginsburg met her husband Marty while attending Cornell University as an undergraduate. Chloe Foussianes, *How Ruth Bader Ginsburg’s Late Husband, Marty, Helped Her Reach Her Potential*, TOWN & COUNTRY (Sept. 19, 2020), <https://www.townandcountrymag.com/society/money-and-power/a26292252/ruth-bader-ginsburg-martin-husband-love-story-rbg/>. The couple married in 1954 and remained together until Marty died in June of 2010. *Id.*; Michael S. Rosenwald, *The Day After Her Husband Died, Ruth Bader Ginsburg Went Back to the Supreme Court*, WASH. POST (Sept. 23, 2020), <https://www.washingtonpost.com/history/2020/09/23/rbg-husband-marty-ginsburg-ruth-bader-death/>.
 23. Justice Ginsburg attended Harvard Law School from 1956 to 1958, where she served as an editor of the *Harvard Law Review*. Linda Grant, *Ruth Bader Ginsburg and Harvard Law: A 64-Year Journey*, HARV. L. TODAY (Sept. 24, 2020), <https://today.law.harvard.edu/ruth-bader-ginsburg-and-harvard-law-a-sixty-four-year-journey/>. To be with her husband in New York, Ginsburg transferred for her final year to Columbia Law School, from which she graduated in 1959, tied for first in her class. *In Memoriam: Ruth Bader Ginsburg ’59*, COLUM. L. SCH. (Sept. 18, 2020), <https://www.law.columbia.edu/news/archive/memorial-ruth-bader-ginsburg-59>.
 24. *Biography of Associate Justice Ruth Bader Ginsburg*, SUP. CT. OF THE U.S. [hereinafter *Biography*], <https://www.supremecourt.gov/about/biographyginsburg.aspx> (last visited Apr. 7, 2022); *About the ACLU Women’s Rights Project*, ACLU, <https://www.aclu.org/other/about-aclu-womens-rights-project> (last visited Apr. 1, 2022) (“[T]he ACLU Women’s Rights Project has been the principal group responsible for systematic legal reform through the courts in the areas of women’s equality and economic rights.”).
 25. See cases cited *supra* note 10 and accompanying text.
 26. Ginsburg was a law professor at Rutgers from 1963 to 1972, and at Columbia from 1972 to 1980. *Biography*, *supra* note 24.
 27. On April 14, 1980, President Jimmy Carter nominated Ginsburg for a judgeship on the D.C. Circuit. *Ruth Bader Ginsburg*, HIST. SOC’Y OF THE D.C. CIR., <https://dcchs.org/judges/ginsburg-ruth-bader> (last visited Apr. 1, 2022). The Senate confirmed her on June 18, 1980; she served in that role until her appointment to the Supreme Court in 1993. *Id.*

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husband and shared that he had been fascinated by the innovative structural engineering of the cathedral. Theirs was a partnership for the ages, one that still endures . . .

We know that Justice Ginsburg has left her mark and continues to do so, with the extraordinary opinions and dissents that bear her signature, and in so doing has expressed the fairness that is America's promise.²⁸ She is a jurist who never takes a cheap shot; who understands that opposing sides have their views as well, even as she might dismantle them; who is always respectful and civil in tone. In a time of discord and polarization, she appeals to us to do better—to work together. She is our polar star.

How to understand a capacious, organized brain, that knows the Constitution, that knows the law, that's methodical as well as attentive to nuance and style, that has such a keen understanding of the noble aspirations of this country, keeping in mind the rights of individuals, especially those most vulnerable in society? How to solve a great gift, indeed miracle, to us all, like Ruth Bader Ginsburg?

Perhaps sometimes there's no fully accounting for greatness. We do well when we recognize it and honor it. I know I speak for everyone here when I say, Welcome, Justice Ginsburg. We are so happy you're here, and we can't wait to hear what you have to say.

28. *E.g.*, *United States v. Virginia (VMI)*, 518 U.S. 515, 558 (1996) (“There is no reason to believe that the admission of women capable of all the activities required of [male] cadets would destroy the [Virginia Military] Institute rather than enhance its capacity to serve the ‘more perfect Union.’”); *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting) (“Throwing out [federal] preclearance [of state voting laws] 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.”).