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THE HONORABLE RUTH BADER GINSBURG (1933–2020)

Transcending Ideological Divides to Advance All Rights for All People

A Conversation Between the Honorable Ruth Bader Ginsburg
and Professor Nadine Strossen

66 N.Y.L. SCH. L. REV. 27 (2021–2022)

EDITOR'S NOTE: This essay is an edited version of a dialogue between Justice Ruth Bader Ginsburg and Professor Nadine Strossen on February 6, 2018, as part of the Sidney Shainwald Public Interest Lecture Series at New York Law School. 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>.

I. INTERVIEW WITH THE HONORABLE RUTH BADER GINSBURG: U.S. SUPREME COURT JUSTICE, WOMEN’S RIGHTS ADVOCATE, AND POP CULTURE ICON

Nadine Strossen (NS): Justice Ruth Bader Ginsburg, it is so generous of you to spend your precious time and share your wisdom with us, and I really appreciate the fact that you are so open. You have instructed everybody who has interviewed you to ask you anything with no preclearance, subject to the Ginsburg Rule, which means we may not ask about any issue that is before the Supreme Court or is likely to come before the Supreme Court.¹ I will try to honor that, but I do remember Alexis de Tocqueville warning that, in America, just about every issue may end up before the Supreme Court.² Will you exercise your right to cut me off if I tread on inappropriate ground?

I also solicited questions from students and other members of the New York Law School community, so I’m going to be asking you a mix of questions from myself and questions from others.

A. Ruth Bader Ginsburg’s Beginning with the American Civil Liberties Union

NS: I wanted to start with the American Civil Liberties Union because that is what first brought me in contact with you when I was a law student. And I love the fact that I can empathize with the students attending this talk and streaming it in the overflow audience because I heard you speak when I was a beginning student at Harvard Law School. You were absolutely inspiring to me, and really made me think seriously of the ACLU as a wonderful place to do work not only for women’s rights, but also for human rights more broadly. I’d love it if you could comment on why you chose to work for the ACLU and how it fit with your concept of women’s rights and gender equality.

Justice Ruth Bader Ginsburg (RBG): Let’s go back to the late 1960s, early 1970s. It was apparent to me that the Supreme Court would soon catch up with the change in the way people were living their lives. I thought about what group I might affiliate with, and I thought about the National Organization for Women (NOW)³ and the Women’s Equity Action League (WEAL),⁴ and then it came to me that, if women’s

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1. The Ginsburg Rule stems from the justice’s Supreme Court confirmation hearings, chaired by then-Sen. Joe Biden (D-DE) in 1993; there, Senator Biden recognized Ginsburg’s “understandable and self-imposed limitation about getting involved in matters that may come before the Court and in any way compromise [her].” *Nomination of Ruth Bader Ginsburg, to be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary*, 103d Cong. 259 (1994) (statement of Sen. Joe Biden, Chairman, S. Comm. on the Judiciary); see also Edwin Meese III, *The Ginsburg Rule*, HERITAGE FOUND. (July 27, 2005), <https://www.heritage.org/courts/commentary/the-ginsburg-rule>.
 2. 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 357 (Henry Reeve trans., Francis Bowen ed., 1876) (“Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question.”).
 3. NOW was established in 1966 “to take action to bring women into full participation in the mainstream of American society.” Betty Friedan, *Statement of Purpose*, NOW (Oct. 29, 1966), <https://now.org/wp-content/uploads/2014/02/Statement-of-Purpose.pdf>.
 4. WEAL was established in 1968; its sister organization, the WEAL Fund, was established in 1972; the two merged in 1981 to promote, among other things, “greater economic progress on the part of

rights ought to be high on the human rights agenda, men had to be part of the operation too. And the ACLU, the foremost protector of civil liberties in the United States, seemed the right place to be.

Early on, many ACLU supporters thought that the ACLU had a client, that client was the First Amendment, and that a shoemaker should stick to his last. The ACLU entered the women's rights advocacy arena somewhat reluctantly, but once they got there, they were at it full steam. One person who was instrumental in bringing the ACLU there was Dorothy Kenyon.⁵

NS: I never met her, but she's a legend.

RBG: Her mission was to put women on juries in every state in the United States. So, to the students today, when you hear that it wasn't so long ago that this very state, New York, had an exemption from jury service for any woman—it was Dorothy Kenyon who changed that.⁶ The other person instrumental in women's rights was Pauli Murray.⁷

NS: She was amazing.

RBG: Murray was on the ACLU's Equality Committee and had written an article in the 1960s that impressed me strongly. It was called *Jane Crow and the Law*,⁸ and she traced the many ways in which the law differentiated on the basis of gender and explained how those laws were not, as was once thought, favors to women.

NS: You're so famous for having always advocated in gender equality cases for men as well as women, and for representing men—I believe for reasons of principle but also for reasons of strategy. Could you comment on that and then why the name “Women's Rights Project”?

American women [and] educational equity for women and girls[, and] . . . to seek correction of de facto discrimination against women.” Archive of *Women's Equity Action League Records, 1966–1979*, SCHLESINGER LIBR., HARV. RADCLIFFE INST., <https://hollisarchives.lib.harvard.edu/repositories/8/resources/6840> (Oct. 2009). WEAL dissolved in 1989 due to economic hardship. *Id.*

5. Dorothy Kenyon was a social activist who served on the ACLU Board of Directors from 1965 until her death in 1972. WOMEN'S RIGHTS PROJECT, ACLU, ANNUAL REPORT 2005, at 6–7 (2005) [hereinafter ACLU ANNUAL REPORT] (crediting Kenyon for her role in persuading the ACLU to litigate sex discrimination cases).
6. Kenyon and the ACLU argued, albeit unsuccessfully, that Florida's statute exempting women from jury service was unconstitutional because it would create all-male juries for criminal trials, violating the Fourteenth Amendment. *See Hoyt v. Florida*, 368 U.S. 57, 65 (1961).
7. Murray was a civil rights activist whose work “put gender equality on the ACLU's agenda.” ACLU ANNUAL REPORT, *supra* note 5, at 6. For a recent documentary and an autobiography on Murray's monumental contributions to women's rights, see MY NAME IS PAULI MURRAY (Participant 2021) and PAULI MURRAY, PAULI MURRAY: THE AUTOBIOGRAPHY OF A BLACK ACTIVIST, FEMINIST, LAWYER, PRIEST, AND POET (1989), respectively.
8. Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232, 239 (1965) (“The boundaries between social policies that are genuinely protective of the familial and maternal functions and those that unjustly discriminate against women as individuals must be delineated.”).

A CONVERSATION BETWEEN JUSTICE GINSBURG AND PROFESSOR STROSSEN

RBG: The overall goal of the project was to advance the welfare of girls and women so that the half of society that had been a subordinate would be able to contribute and do whatever their talent allowed them to do.⁹

NS: You made this comment about the ACLU thinking that the First Amendment was the only client. You were not only the founding director of the Women's Rights Project but, what is somewhat less well known, you were also a member of the ACLU Board of Directors and general counsel at a time when the ACLU had its own glass ceilings, right?¹⁰ There were relatively few women in those positions of organizational leadership. I remember when you were nominated for the Supreme Court¹¹: Marty called me, and we had to help him produce every single minute of every single Board meeting that you had ever attended, and every issue you had ever debated.

RBG: Let me tell you something about that. My White House handlers were a little concerned about my ACLU connection. And they knew that the committee had asked for all those materials. And so, the handlers would quiz me: "You were on the ACLU Board in 1976? That year they passed this or that resolution, how did you vote?" And my response was, "forget it." There was nothing that you could do that would lead me to speak of the ACLU in any but the most praiseworthy terms. Well, as it turned out, in July 1993, not a single question was asked at the hearings about the ACLU.

NS: It was very surprising, and obviously you had been prepared for that, and just a few years earlier Michael Dukakis—for the young people in the audience, he had been the Democratic nominee for president—was attacked by George Bush, Sr., as a "card-carrying member of the ACLU," so it was not the most popular organization in many quarters. And I remember that Calvin Trillin wrote this amazing ditty in *The Nation*, *On the Nomination of Ruth Bader Ginsburg*.¹² I'm only going to read a few lines:

9. The ACLU Women's Rights Project (WRP) was founded in 1972 by Ruth Bader Ginsburg, ACLU ANNUAL REPORT, *supra* note 5, to fight for gender equality in "six core areas" relating to "[1] employment issues, [2] discriminatory governmental aid to private institutions, [3] reproductive control, [4] admissions policies in educational institutions, [5] government training programs, and [6] discrimination in credit." Amy Leigh Campbell, *Raising the Bar: Ruth Bader Ginsburg and the ACLU Women's Rights Project*, 11 TEX. J. WOMEN & L. 157, 165–66 (2002).

10. Ginsburg was general counsel for the ACLU from 1973 to 1980; she also served on the ACLU Board of Directors from 1974 to 1980. See *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, ACLU, <https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff> (last visited Apr. 7, 2022).

11. President Bill Clinton nominated Ginsburg for associate justice of the U.S. Supreme Court on June 22, 1993; she was confirmed 96–3 on August 3, 1993. *Supreme Court Nominations (1789–Present)*, Legislation & Records, U.S. SENATE [hereinafter *Supreme Court Nominations*], <https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm> (last visited Apr. 7, 2022).

12. Calvin Trillin, *On the Nomination of Ruth Bader Ginsburg*, THE NATION, July 12, 1993, at 1, 53.

And somehow all the White House vetters
 Remained unmoved by those four letters
 That spooked Dukakis through and through—
 The dread quartet, A.C.L.U.
 The paths in women’s law she plowed.
 Were plowed while working for this crowd.
 Republicans don’t seem annoyed
 To hear the judge was thus employed.
 They cheer: She made some law impartial,
 And got compared to Thurgood Marshall.¹³

RBG: Nadine, may I go back to the comment you made before about the ACLU’s advocacy for both men and women in 1970s gender equality cases? The plaintiffs were men; the person disadvantaged was always the woman. So, those cases were all about how society treated women. Take one of my favorite cases, Stephen Wiesenfeld’s case.¹⁴ This was a man who was married to a high school math teacher; she had a healthy pregnancy; she taught into the ninth month; they went to the hospital and the obstetrician came out and said, “You have a healthy baby boy, but your wife died of an embolism.”

Stephen Wiesenfeld vowed that he would not work full time until his child was in school full time. And he figured out that, between Social Security benefits plus what he could earn up to the ceiling, he could just about make it. So, he went to the Social Security office and applied for what were called “child-in-care” benefits. He was told, “We are very sorry, but these are mothers’ benefits; they’re not available to fathers.” He then wrote a letter to the editor of his local newspaper, *New Brunswick Home News*, in New Jersey,¹⁵ and the essence of it went like this: “I’ve been hearing so much about Women’s Lib, let me tell you my story.”¹⁶ And then the tagline was, “I wonder if Gloria Steinem knows about this?”¹⁷ It was suggested to him that he call the New Jersey affiliate of the ACLU, and that’s when his case began.

NS: And how did you get involved with it, Justice Ginsburg?

RBG: A friend who was on the Rutgers faculty in the Spanish department and lived in New Jersey read the letter, called me, and I suggested to her that she have Stephen call the New Jersey affiliate. In those days, you could go to a three-judge federal district court and then write to the Supreme Court with no intermediate appellate

13. *Id.*

14. *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

15. Stephen Wiesenfeld, *My Journey with RBG*, 121 COLUM. L. REV. 563, 564 (2021) [hereinafter *My Journey with RBG*] (reproducing Wiesenfeld’s letter to the editor).

16. *Id.* “Women’s Lib” is short for the Women’s Liberation Movement. *Women’s Lib*, NATGEO (June 26, 2013), <https://www.nationalgeographic.org/media/second-wave-feminism>. Also referred to as “second-wave feminism,” items on the Women’s Lib agenda included educational reform, economic and workplace equality, and access to practical family planning. *Id.*

17. *My Journey with RBG*, *supra* note 15.

court in between. So, it was up to the Supreme Court's decision. Unanimous judgment. Reasoning divided three ways. Justice [Lewis F.] Powell [Jr.] led a group that said, of course the discrimination begins with the woman: The woman pays the same Social Security taxes as the man, but her taxes don't get for her family the same benefits that a male wage-earner family would get.¹⁸

But several justices thought this is discrimination against men as parents: If women are widows, they have the choice to take personal care of their infants, but men don't have that choice; they must work and provide a substitute for themselves at home.¹⁹ And then one who later became my chief, he was then Justice [William] Rehnquist, said this is totally arbitrary from the point of view of the baby: Why should the child have the opportunity for care from a sole surviving parent if that parent is female but not if the surviving parent is male?²⁰ That case illustrates how gender-based lines in the law hurt everyone. They hurt women, they hurt men, and they hurt children.

NS: And you make that point brilliantly.

B. Ruth Bader Ginsburg's Supreme Court Confirmation

RBG: Let me start with the 1980s, when my good friend Justice [Antonin] Scalia was nominated.²¹ It was well known what his views were—he had been a law professor, done a lot of speaking and writing, and he had been my buddy on the D.C. Circuit. The vote was unanimous to confirm him. In 1993, despite my ACLU connection, the vote to confirm me was 96–3.

NS: May I tell people who those three naysayers were? As reported in *The New York Times*, “[t]he only votes against her came from three conservative Republicans: Jesse Helms of North Carolina, Don Nickles of Oklahoma and Robert C. Smith of New

18. *Weinberger*, 420 U.S. at 654–55 (Powell, J., concurring) (“The statutory scheme . . . impermissibly discriminates against a female wage earner because it provides her family less protection than it provides that of a male wage earner, even though the family needs may be identical.”).

19. *Id.* at 651–52 (majority opinion).

The fact that a man is working while there is a wife at home does not mean that he would, or should be required to, continue to work if his wife dies. It is no less important for a child to be cared for by its sole surviving parent when that parent is male rather than female.

Id.

20. *Id.* at 655 (Rehnquist, J., concurring).

[I]t is irrational to distinguish between mothers and fathers when the sole question is whether a child of a deceased contributing worker should have the opportunity to receive the fulltime attention of the only parent remaining to it. To my mind, that should be the end of the matter.

Id.

21. President Ronald Reagan nominated Scalia for associate justice of the U.S. Supreme Court on June 24, 1986; he was confirmed 96–0 on September 17, 1986. *Supreme Court Nominations*, *supra* note 11.

Hampshire.”²² Senator Helms also contended that you “support[] the right to abortion unreservedly, and”—this is 1993—that you are “likely to uphold the homosexual agenda.”²³ There was one Democratic senator who was absent from the vote.²⁴

RBG: And let me say, Jesse Helms was extremely helpful in this respect. My colleague on the D.C. Circuit, David Sentelle,²⁵ came into my chambers at the D.C. Circuit; he gave me a big bear hug and he said, “Ruth, Jesse’s not going to vote for you, but he won’t hold you up.” Because any senator could have put a hold on me and that would have carried the nomination over until the fall.

I was confirmed on August 3, 1993, so I could prepare fully for that first Monday in October. But just think, it was the same for Justice [Stephen G.] Breyer; his vote was in the 1990s too.²⁶ For the last four nominees, it hasn’t been that way.²⁷ The vote has divided on party lines, and this is a plague on both houses because that was true not just of Justice [Elena] Kagan and Justice [Sonia] Sotomayor, but also my current chief, Chief Justice [John G.] Roberts [Jr.] and Justice [Samuel A.] Alito [Jr].²⁸ My hope is that we will one day get back to the way it was and the way it should be.

NS: Do you have any advice for how that could happen?

RBG: Judge [Robert] Katzmann arranged what I think was a very good beginning. There’s an opera called *Scalia/Ginsburg*.²⁹ And he decided it would be a good idea if the members of the House and the Senate Judiciary Committee and their respective staff were invited to hear excerpts from *Scalia/Ginsburg*. I think it may have been

22. Linda Greenhouse, *Senate, 96–3, Easily Affirms Judge Ginsburg as a Justice*, N.Y. TIMES, Aug. 4, 1993, at B8.

23. *Id.*

24. *Id.* (reporting Sen. Donald W. Riegle Jr.’s (D-MI) absence).

25. Judge David B. Sentelle was appointed U.S. circuit judge for the D.C. Circuit in October 1987 and then served as chief judge from 2008 to 2013, when he took senior status. *David B. Sentelle*, U.S. CT. OF APPEALS FOR D.C. CIR., <https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL+-+Judges+-+DBS> (last visited Apr. 2, 2022).

26. President Bill Clinton nominated Stephen G. Breyer for associate justice of the U.S. Supreme Court on May 17, 1994; he was confirmed 87–9 on July 29, 1994. *Supreme Court Nominations*, *supra* note 11.

27. The same sharp divide prevailed in more recent nominations, including those of Associate Justices Brett Kavanaugh, confirmed 50–48 on October 6, 2018; Amy Coney Barrett, confirmed 52–48 on October 26, 2020; and Ketanji Brown Jackson, confirmed 53–47 on April 7, 2022. *Id.*

28. The four justices most immediately confirmed to the Court prior to Ginsburg’s 2018 conversation with Strossen, and their respective votes, are as follows: Alito, confirmed 58–42 on January 31, 2006; Sotomayor, confirmed 68–31 on August 6, 2009; Kagan, confirmed 63–37 on August 5, 2010; Justice Neil Gorsuch, confirmed 54–45 on April 7, 2017. *Id.* Earlier, on September 6, 2005, President George W. Bush nominated Roberts for chief justice; he was confirmed 78–22 on September 29, 2005. *Id.*

29. *Scalia/Ginsburg* is a one-act opera and comedy by composer-librettist Derrick Wang that was introduced at the U.S. Supreme Court in 2013 and later premiered at Lorin Maazel’s Castleon Festival in 2015. *Scalia/Ginsburg*, DERRICK WANG [hereinafter DERRICK WANG], <http://www.derrickwang.com/scalia-ginsburg> (last visited Apr. 2, 2022).

effective. At least Sen. [Chuck] Grassley (R-IA)³⁰ asked to have a copy of my remarks the next day. I think it will happen. And I expect to live to see it.

C. Ruth Bader Ginsburg's Relationships with Other Supreme Court Justices

NS: You famously called Justice Scalia your “best buddy” on the Court, so that obviously bridged some ideological differences. But you’ve also talked about the Supreme Court as the most collegial place you’ve ever worked, and that remains true despite the partisan breakdowns in the appointment process. You’ve actually said it was an even more—is an even more—collegial place to work than the ACLU? Than Columbia Law School? Than Rutgers Law School? How is it that the Supreme Court as an institution is able to work so collegially and even have personal friendships across divides that seem unbridgeable not only in Congress, but also on so many college campuses and in our community at large?

RBG: We know that the institution can’t work well for the people of the United States if we don’t respect and, in most cases, genuinely like each other. We begin every conference and every sitting day by going around the room: Each justice shakes hands with every other. That’s to say, “You circulated a nasty dissent yesterday, but we’re all in this together.” It’s one of Justice Scalia’s favorite expressions: “Get over it.”³¹

The Supreme Court is small in a town that’s puffed up with bureaucracy. Our operation, it’s only the nine justices, each having, in my experience, four law clerks, two judicial assistants, one chambers aid, and that’s it. I can tell you why I regard my colleagues in some way as family. During my tenure, I have had two bouts with cancer. And both times my colleagues rallied around me and made it possible to get through those trying times without missing a day in court.

Justice [Sandra Day] O’Connor’s advice: “Ruth, you’re going to have chemotherapy. Set it up for Friday, that way you get over it by Monday. And don’t even think about answering all of the letters and the calls from well-wishers that you will receive.”

Justice [David] Souter said, “Anything that I can do, Ruth, anything at all, just call me.” So, I called him one day and said, “I’m at [MedStar] Washington Hospital Center and I just finished with my chemotherapy.” Marty, my husband, had called me and said, “When you’re through at the Cancer Center, come see me in the heart wing.” He was having a heart procedure. We had tickets the next night to the Washington National Opera. So, I called Justice Souter and said, “You told me that

30. Senator Grassley was elected to the U.S. Senate in 1981. *Biography, About*, CHUCK GRASSLEY, <https://www.grassley.senate.gov/about/biography> (last visited Apr. 2, 2022).

31. When asked in 2014 whether a case had ever “rattled” his friendship with Ginsburg, Scalia replied:

I have never gotten angry at Ruth or at any of my colleagues because of the way they voted in an opinion. I mean if you cannot disagree with your colleagues on the law without taking it personally, you oughta get another day job. It’s just not the kind of a job that will allow you to behave that way. So, Ruth and I disagree on the law all the time, but it has never had anything to do with our friendship.

The Kalb Report, *Ruth Bader Ginsburg & Antonin Scalia*, YouTube (Apr. 17, 2014), https://youtu.be/z0utjAu_iG4.

if there was anything at all that I would like, just call you. I'm calling to ask if you will come with me to the opera tomorrow night because I don't want to sit next to an empty seat." And Justice Souter, who is the only person I know who works even harder than I do, he came to the Washington Opera. People were astonished because he had received so many invitations, and he'd always said, "Sorry."

And then the Chief [Justice Roberts] said, and I can't tell you which opinions these were, "Ruth, I'm going to keep your assignments light." And I said, "Not yet." I'd already had the surgery but hadn't yet started the chemotherapy radiation. I said, "Chief, not now. Now I feel good but maybe when I'm going through radiation." He said, "Which case would you like?" That had never happened before, and it never happened again. When I told him, he said, "Oh, I was going to take that one for myself." But he gave it to me.

NS: What you're describing obviously is getting to know people as individuals and not putting them in ideological boxes. Unfortunately, from what we read statistically and anecdotally, there are a lot of people who won't even, or don't even want to, meet somebody of a different political party. You have often commented in the same vein, both on a personal and an institutional basis, about how anger is such an unconstructive emotion. In fact, I've heard those lines from you quoted a lot because we're living in an era of outrage, and it is often righteous outrage justified by explosion against injustices that have been committed, such as sexual harassment or racial discrimination in the criminal justice system. Can you comment about a constructive way to be passionately engaged in combating injustice, but how anger might not necessarily effectively advance that cause?

RBG: I'll give you the example of a young woman named Shana Knizhnik. She was a second-year student at New York University School of Law when the Court handed down its 2013 decision in *Shelby County v. Holder*,³² which declared the most important provision of the Voting Rights Act of 1965 (VRA) unconstitutional³³ despite that act having been renewed periodically with overwhelming majorities on both sides. Shana was angry but then she thought, "That's not constructive." And she instead focused on what she could do that would be positive.

32. 570 U.S. 529 (2013).

33. *Id.* at 557 (invalidating section 4(b)). Section 4(b) of the VRA outlined a "coverage formula" to determine whether local jurisdictions required federal approval for changes made to their voting laws. *Id.* at 538; Voting Rights Act of 1965 § 4(b), § 42 U.S.C. § 1973b(b) (2006), *invalidated by* *Shelby County v. Holder*, 570 U.S. 529 (2013) (current version at 52 U.S.C. § 10303).

D. Ruth Bader Ginsburg as the ‘Notorious RBG’

RBG: What she did was start a Tumblr with my dissenting opinion in the *Shelby County* case,³⁴ and it took off from there into the wild blue yonder.³⁵ I think it’s amazing. I am soon to be eighty-five, and everyone wants to take their picture with me.

NS: This was the beginning of the “Notorious RBG” movement.³⁶ It’s just unbelievable. You’ve often said that if you had your fantasy job, you would be an opera diva.³⁷ Instead, you have to settle for having an opera written about you and being a social media rock star, not to mention the star of a film, *RBG*.³⁸ And after you talked with Nina Totenberg about that film at Sundance,³⁹ all the buzz was that you were the biggest celebrity there. (I also heard that you said that Robert Redford really is good-looking!) I must also tell you that one of my former research assistants and her best friend are having your initials tattooed on their . . . they didn’t tell me which body part; I did not inquire.

I love to celebrate law students and the potential power that they have. So, the fact that a second-year law student started the whole Notorious RBG movement is incredible. You’ve also mentioned the *Scalia/Ginsburg* opera; that was written by another law student, right?

RBG: Yes, it was a young man, a musician. He had degrees in music from Harvard and Yale and then decided that it might be good to know a little about the law, so he enrolled in his local law school, which was the University of Maryland. He takes a constitutional law course, and he comes upon these dueling opinions—Scalia for the Court, Ginsburg dissenting; Ginsburg for the Court, Scalia dissenting—and decided that this could make a very funny opera.⁴⁰ The opera is roughly based on the plot of

34. 570 U.S. at 590 (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.”).

35. Shana Knizhnik, *Notorious R.B.G.*, TUMBLR, <https://notoriousrbg.tumblr.com/post/53878784482/throwing-out-preclearance-when-it-has-worked-and> (last visited Apr. 2, 2022).

36. Mark Sherman, *Ginsburg, a Feminist Icon Memorialized as the Notorious RBG*, AP NEWS (Sept. 18, 2020), <https://apnews.com/article/us-supreme-court-new-york-ruth-bader-ginsburg-voting-rights-courts-c07e92e4f9891954c3e7d8dc7f0be2c2> (“Late in her court tenure, [Ginsburg] became a social media icon, the Notorious RBG . . .”).

37. See, e.g., Benjamin Ivry, *Remembering RBG as a Lover of Opera and Diva of Human Rights*, FORWARD (Sept. 19, 2020), <https://forward.com/culture/454768/remembering-rbg-as-a-lover-of-opera-and-diva-of-human-rights/> (appreciating Justice Ginsburg’s “ambition” to be an opera diva).

38. *RBG* premiered at the 2018 Sundance Film Festival in Park City, Utah, and went on to become an Oscar-nominated documentary. Virginia Yapp, *RIP, Supreme Court Justice Ruth Bader Ginsburg (1933–2020)*, SUNDANCE INST. (Sept. 19, 2020), <https://www.sundance.org/blogs/rip-supreme-court-justice-ruth-bader-ginsburg/>.

39. Sundance Institute, *Cinema Cafe with Ruth Bader Ginsburg & Nina Totenberg*, YOUTUBE (Jan. 21, 2018), <https://youtu.be/pDXxsRB4s7Y>.

40. DERRICK WANG, *supra* note 29.

*The Magic Flute*⁴¹: Antonin Scalia is locked in a dark room, being punished for excessive dissenting. I then enter through a glass ceiling to help him get through the test that he must pass to be released from the dark room. Then a character who's left over from *Don Giovanni*⁴² asks, "Why would you want to help him? He's your enemy." And I say, "He's not my enemy, he's my good friend." And then we sing a duet: "We are different, we are one." Different in our interpretation of written texts, one in our reverence for the Constitution and for the institution we serve.⁴³

Before that closing duet, the two of us are introduced to the audience, Scalia by singing a very Handelian-rage aria, which goes like this: "The justices are blind, how could they possibly spout this? The Constitution says absolutely nothing about this." And then I answer him, "You are searching for bright-line solutions to problems that don't have easy answers. But the great thing about our Constitution is that, like our society, it can evolve." And then the lyric soprano breaks into a jazz routine.

E. Ruth Bader Ginsburg as a Professor of Law

NS: I thought I knew a lot about you—I have read everything you've written, dissents and majority alike, and read a lot about you—but in preparing for this interview I learned some things that I hadn't known before. One was, and maybe it's not accurate, that you first started teaching classes about women and the law, or about women's equality, when you were at Rutgers Law School at the behest of female students who asked you to do so. Is that right, and can you tell us a little bit about it? What had you been doing before that?

RBG: I'd been teaching Procedure in Federal Court and Conflict of Laws. There are two things that propelled me into the women's rights arena. One was the students, as you mentioned. They asked to have a course on women and the law.

NS: Were those courses being taught at other law schools at that point?

RBG: NYU had a student-initiated course—I think the students at Rutgers were stimulated by the NYU students—and a few other schools did as well. To teach this course, I repaired to the library and in very short order, I'd read every federal decision that had to do with women's rights or the lack thereof. There was precious little. I think there was no more than what would be produced in six months these days.

NS: Did the students approach you because you were one of the few female faculty members?

41. *The Magic Flute* is a two-act opera by Mozart in which two characters on a quest to rescue another are given a magic flute and silver bells to protect them on their path. *Synopsis: The Magic Flute*, METRO. OPERA, <https://www.metopera.org/discover/synopses/the-magic-flute/> (last visited Apr. 2, 2022).

42. *Don Giovanni* is a two-act opera by Mozart chronicling the self-destructive and romantically seductive behavior of one Don Giovanni. *Don Giovanni*, METRO. OPERA, <https://www.metopera.org/season/on-demand/opera/?upc=811357018750> (last visited Apr. 22, 2022).

43. Dara Lind, *Read Justice Ginsburg's Moving Tribute to Her "Best Buddy" Justice Scalia*, Vox (Feb. 14, 2016), <https://www.vox.com/2016/2/14/10990156/scalia-ginsburg-friends>.

RBG: There was one other woman on the faculty; she preceded me by a year. And then there was another thing: the New Jersey affiliate of the ACLU. They began to get complaints of the kind they didn't have before, so, who should help them with these cases? Well, why not the Procedure teacher at Rutgers? Many of the complaints were from schoolteachers who were forced onto what was formalistically called "maternity leave" as soon as said pregnancy began to show—because after all, the children didn't think the teacher had swallowed a watermelon. The women filing claims, their view was, "We are ready, willing, and able to do this job. There's no reason why we should have to go unpaid, on so-called 'leave,' in the fourth month or the fifth month of a nine-month pregnancy."

And then there were some women factory workers whose employers had good health insurance programs. The women wanted health insurance to cover themselves and their families. The employer told them, "You can have coverage for yourself, but family coverage is available only to men." Those new complaints were coming into the ACLU, so it was a combination of the students and the new complainants that spurred my teaching the courses about women's rights.

F. Ruth Bader Ginsburg as a Law Student

NS: You have talked about when you were at Harvard Law School where you started your legal studies and then you transferred to Columbia to be with Marty in New York. I know Columbia is very proud to claim you as a graduate. I think Harvard probably claims you as an alum too but—

RBG: Anyone who has attended one day is an alum.

NS: Touché. And at Harvard, there were actually so few women's restrooms that you even had to leave the building where you were taking an exam to go to another building?

RBG: There was only one women's restroom at Harvard. There's a wonderful book called *Pinstripes and Pearls*.⁴⁴ It's about the Class of 1964 at Harvard Law School—Justice Breyer's class; mine was earlier, in 1959—what was it going to cost Harvard to admit women for the very first time in 1950–1951? It was going to cost the installation of eight women's bathrooms including the dormitories. When I was a student there, between the two classroom buildings, Langdell and Austin, there was just one women's bathroom. If you were in Langdell, you had to make a mad dash to Austin, and that was particularly trying at exam time. But the thing that is remarkable to me today, the nine women in my class and the five women in Marty's class, we never complained. We just thought that's the way it is.

NS: I'm struck by that, and I would love to know what changed. What made you think that you should complain and that complaining would get you somewhere?

44. JUDITH RICHARDS HOPE, *PINSTripES & PEARLS* (2003).

RBG: The Women’s Movement that came alive in the late 1960s.⁴⁵ And leading up to that one of the prime movers of the Columbia Law School’s Project on International Procedure,⁴⁶ the great Judge Jack Weinstein. We were going through the U.S. Code and the federal rules to try to facilitate international cooperation and litigation, and part of the project was to study another legal system. There was a book on France, one on Italy, and one on Sweden, and I was assigned to Sweden.⁴⁷ I’ve always suspected that the reason I got Sweden is that knowledge of French law or Italian law might have some commercial payoff, but Sweden—it had fewer people than this city we are in—so, I think they went down the list of women’s graduates and then came to me.

NS: And you actually learned Swedish for this project.

RBG: Yes, I had to read the *Sveriges Rikes Lag*, a compilation of Swedish legislation and regulation.⁴⁸ So, I am in Stockholm when I read a column in the daily newspaper about why a woman should have two jobs and the man only one.⁴⁹ Sweden was ahead of the United States at the time, in the early 1960s—it was well accepted that families ought to have two earners if they want to do well for their children but the woman was expected also to have dinner on the table at 7:00 p.m., to buy their children new shoes, take them for their medical check-ups. So, this newspaper column was a subject of interest and debate among Swedish families.

Some women, the “Queen Bee” types, thought, “I can do it all. I can do everything. I can maintain my medical practice and still make sure that the slippers are waiting for my husband when he comes home.” Others said none of that; they thought, “He should do a lot more than take out the garbage.” That was the tenor of

45. The 1960s and 1970s Women’s Movement pressed for “equality with men in all human rights and responsibilities,” and particularly in professional and educational settings. Anna Gedal, *The 1970 Women’s March for Equality in NYC*, N.Y. HIST. SOC’Y: BEHIND THE SCENES (Mar. 10, 2015), <https://behindthescenes.nyhistory.org/march-for-equality-in-nyc/> (reproducing the flyer distributed to promote the August 26, 1970, Women’s Strike for Equality March); see also Sascha Cohen, *The Day Women Went on Strike, History*, TIME (Aug. 26, 2015), <https://time.com/4008060/women-strike-equality-1970/> (“Participants [at the march] held signs with slogans like ‘Don’t Iron While the Strike is Hot.’”).

46. See Stefan A. Riesenfeld, *Reviewed Works: Civil Procedure in Sweden by Ruth Bader Ginsburg, Anders Bruzelius; Civil Procedure in Italy by Mauro Cappelletti, Joseph M. Perillo*, 67 COLUM. L. REV. 1176, 1176 (1967) (“The Columbia Law School’s Project on International Procedure provides a welcome opportunity for American lawyers to compare civil procedure in representative European countries.”).

47. “[T]he books are highly competent, comprehensive and realistic.” *Id.* at 1178.

48. *Sveriges Rikes Lag* [Swedish National Law], NORSTEDTS JURIDIK, <https://www.nj.se/sveriges-rikes-lag> (last visited Nov. 15, 2021). *Sveriges Rikes Lag* was first published in 1861, well before the promulgation of Sweden’s Code of Judicial Procedure in 1942. *Id.*; RÄTTEGÅNGSBALKEN [RB] [CODE OF JUDICIAL PROCEDURE] 1:1. The translated version to which Ginsburg contributed reflects the code as amended in 1967. See 15 THE AMERICAN SERIES OF FOREIGN PENAL CODES: THE SWEDISH CODE OF JUDICIAL PROCEDURE (Anders Bruzelius & Ruth Bader Ginsburg trans., 1968), https://www.government.se/contentassets/a1be9e99a5c64d1bb93a96ce5d517e9c/the-swedish-code-of-judicial-procedure-ds-1998_65.pdf.

49. Eva Moberg, *Kvinnans villkorliga frigivning* [The woman’s conditional release], UNGA LIBERALER [YOUNG LIBERALS] (Sweden), 1961, at 68.

the conversation. I kind of put it on the back burner in 1962 and 1963 because I didn't think our society was ready to make that move.⁵⁰

And then there was something else that made me think to "complain." Sherri Finkbine was a woman who had been prescribed Thalidomide by her doctor when she was pregnant, and she was at a very high risk, if she carried the fetus to term, of having a child that would have multiple disabilities and not live very long.⁵¹ As she was from Arizona, abortion wasn't available to her. She had heard that Sweden was a place with good health care facilities and that she could go there and have her abortion. What struck me was that a woman from the United States traveled to Sweden to get a procedure that should have been available to her here.

G. Ruth Bader Ginsburg on the Supreme Court's Women's Rights Rulings

NS: I remember [the Sherri Finkbine] case well. We saw that Senator Helms at your confirmation hearings said that you supported abortion. And, as you know, just a couple of weeks ago was the forty-fifth anniversary of the 1973 *Roe v. Wade* decision.⁵² It's still as contested as it was.⁵³ You famously at the time were constructively critical of the Court's analysis, suggesting that maybe a different rationale would have been a stronger one. Is that something that you feel free to comment on? Has your criticism been vindicated by what's happened in the many decades since?

RBG: This is a highly debatable topic. It was my view that it would have been better for the Court to proceed the way Thurgood Marshall did [as a civil rights litigator].⁵⁴

50. Justice Ginsburg notoriously and often warned the American people that "[r]eal change, enduring change, happens one step at a time." Ian Millhiser, *Justice Ginsburg's Warning to a Dysfunctional Nation*, THINKPROGRESS (Oct. 28, 2015), <https://archive.thinkprogress.org/justice-ginsburgs-warning-to-a-dysfunctional-nation-c2c0130bc3a/>.

51. Sherri Finkbine was a television host who was denied an abortion by an Arizona state court, from which she sought approval for the procedure after having taken the drug Thalidomide. See Karina Bland, *54 Years After Abortion, No Regrets for 'Romper Room' Host, But Still Sadness*, AZCENTRAL (Apr. 19, 2016), <https://www.azcentral.com/story/news/local/karinabland/2016/04/15/sherri-chessen-miss-sherri-romper-room-abortion-reproductive-rights-donald-trump/82957074/> (reciting the court's conclusion that Arizona doctors could be criminally charged for performing an abortion). Thalidomide was approved for use abroad but only tested in the United States through clinical trials to treat morning sickness in the 1950s and 1960s; it was later found to cause severe birth defects in babies. Katie Thomas, *The Story of Thalidomide in the U.S., Told Through Documents*, N.Y. TIMES (Mar. 24, 2020), <https://www.nytimes.com/2020/03/23/health/thalidomide-fda-documents.html>.

52. 410 U.S. 113 (1973). *Roe* was decided on January 22, 1973. *Id.*

53. See, e.g., Texas Heartbeat Act, TEX. HEALTH & SAFETY CODE ANN. § 171.201 (West 2021) (prohibiting abortion once a physician has detected or failed to test to detect a fetal heartbeat); *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2496 (2021) (Roberts, C.J., dissenting) (willing to stay operation of the Texas Heartbeat Act pending a ruling on whether the state can delegate enforcement of the law to Texans, so as to insulate itself from responsibility through state action).

54. Ginsburg criticized the *Roe v. Wade* decision in a 1993 lecture at NYU:

The seven to two judgment in *Roe v. Wade* declared "violative of the Due Process Clause of the Fourteenth Amendment" a Texas criminal abortion statute that intolerably shackled a woman's autonomy; the Texas law "except[ed] from criminality only a *life-*

That is, many times he stood before courts not challenging the “separate but equal” standard set out in *Plessy v. Ferguson* [1896],⁵⁵ but separate facilities that claimed to be equal but were not. He worked up to *Brown v. Board of Education* [1954]⁵⁶ and the building blocks were in place. But *Roe* was the first time the Supreme Court had an abortion case. They’d had a child contraceptive case, *Eisenstadt v. Baird* [1972],⁵⁷ but never an abortion case.

My thought was that the Court would have an easy case before it. Texas had the most extreme law in the nation: no abortion unless necessary to save the woman’s life. The Court could have declared that most extreme law unconstitutional. It was something that a very distinguished constitutional law scholar, Paul Freund,⁵⁸ said about *Roe*. He said it’s like a grandmother is having tea for her friends, and she trots out her little grandchild to show him off and asks him, “Do you know how to spell b-a-n-a-n-a?” And he says, “Well, I know how to start, but I don’t know where to stop.” With *Roe*, the Court could have stopped at Texas [instead of ruling more broadly to touch every state abortion law then in place], so that *Roe* would be the beginning, the first step toward constitutionalizing abortion. Then it would be expanded in other cases, like to provide Medicaid coverage for abortion. But it happened in reverse: The Supreme Court decided *Roe* and then started chipping away at that holding.⁵⁹

H. Ruth Bader Ginsburg’s Advice on Oral and Written Advocacy

NS: That touches on actual litigation strategy, and it’s an opportunity for me to put to you a question that many students were eager to hear you comment on, Justice Ginsburg. Obviously, you were a very successful advocate, and as a judge and a justice, I’m sure you’ve heard advocacy from the worst to the best. Can you give some

saving procedure on behalf of the [pregnant woman].” Suppose the Court had stopped there, rightly declaring unconstitutional the most extreme brand of law in the nation, and had not gone on, as the Court did in *Roe*, to fashion a regime blanketing the subject, a set of rules that displaced virtually every state law then in force. Would there have been the twenty-year controversy we have witnessed, reflected most recently in the Supreme Court’s splintered decision in *Planned Parenthood v. Casey*? A less encompassing *Roe*, one that merely struck down the extreme Texas law and went no further on that day . . . might have served to reduce rather than to fuel controversy.

Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L. REV. 1185, 1199 (1992) (alterations in original) (footnotes omitted) (citations omitted) (quoting *Roe*, 410 U.S. at 164).

55. 163 U.S. 537, 550–51 (1896).
56. 347 U.S. 483, 495 (1954) (holding *Plessy*’s “separate but equal” doctrine violative of equal protection in the public education context).
57. 405 U.S. 438, 443 (1972) (invalidating a Massachusetts statute that criminalized the distribution of contraception to unmarried persons on equal protection grounds).
58. Freund taught at Harvard Law School and was authority on both the Constitution and the Supreme Court. See PAUL A. FREUND, ON LAW AND JUSTICE (Harvard Univ. Press 1968).
59. See, e.g., *Beal v. Doe*, 432 U.S. 438, 447 (1977) (finding it not inconsistent with federal law to deny Medicaid coverage of abortion); *Maher v. Roe*, 432 U.S. 464, 474 (1977) (holding it lawful for states to pay expenses incident to childbirth for indigent women but not expenses incident to nontherapeutic abortions).

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pearls of wisdom for beginning advocates? How can they be more effective, both in their oral and their written advocacy?

RBG: For oral advocacy, my advice would be to remain flexible. You are there to answer the questions that are on the court's mind. If you come with a prepared spiel, you will be distracted. You don't need to lecture the court because they read already the main lines of your argument in your brief. So, use the time. Don't have a pained expression when you're asked a question. Welcome it. Ride with the wave.

For brief writing and for opinion writing, my advice would be to take the time to write it in a manner that is not only clear, but also short. Lawyers tend to fill the space allotted. No matter how many words we say a brief can include, even in a single-issue case, the lawyers will fill it up to the last page. Lawyers who do that are losing an opportunity to keep the court's attention. If you want to be sure that not only the law clerk but also the justice will read beyond the summary of argument, then keep it clear and concise. I think Bob [Katzmann] mentioned reading aloud—that's a good test of writing. If the sentence runs on and on so that you have to take a breath in between when you're reading it, rewrite it.

NS: It's so interesting that you say take the time to make it short because one of the questions I got from students was how much editing you do of your own opinions. How many drafts do they go through before you circulate them?

RBG: Many. And there are many drafts before I circulate to the Court and then there are more drafts after I get it back in what I call "Dear Ruth" letters⁶⁰ (inside the Court, we use only first names). And the Dear Ruth letter might say, "I would like to join your opinion if you will include a citation to my opinion in the XYZ case and delete footnote five." And when I receive such a letter, I follow the advice of Chief Justice [Charles Evans] Hughes,⁶¹ who said he always tried to write his opinion as clearly and concisely as possible, but if a colleague wanted him to put something in or take something out, well, in it goes or out it goes, and let the law schools figure out what it means. Because by being collegial, we can get an opinion of the Court.

60. Relatedly, Justice Ginsburg reminisced in a 2014 interview on her responsive drafting process for the majority opinion in *United States v. Virginia (VMI)*, 518 U.S. 515 (1996):

[Justice Scalia] wasn't finished writing the dissent; it was getting rather late; we were into June already. He gave me what was the penultimate copy of his dissent. He wasn't ready to circulate it yet, but he came to my chambers and he gave it to me and said, "I want to give you as much time as I can to answer this." So, I went off to my circuit judicial conference, read the thing on the plane, and it ruined my whole weekend. [laughter] But he gave me the extra days to respond—I really appreciated that.

The Kalb Report, *supra* note 31. For a direct response from Ginsburg to Scalia's dissent, see *VMI*, 518 U.S. at 535 n.8.

61. Hughes began on the Court as associate justice in 1910; he resigned in 1916 to join the presidential race against Woodrow Wilson. Scott Bomboy, *The Remarkable Career of Charles Evans Hughes*, NAT'L CONST. CTR. (Apr. 11, 2021), <https://constitutioncenter.org/blog/the-man-most-qualified-to-be-president-who-wasnt>. Hughes lost that election, but was appointed chief justice of the U.S. Supreme Court in 1930 and served in that role until retiring in 1941. *Id.*

At conference, I will take notes on what my colleagues say and try to incorporate their views when we are on the same side. I never write a majority opinion as though I were “queen.” I am not. I am writing for the Court. Although sometimes when the Court divides 5–4, you try mightily to change your four into the five. And it happens. Not often, but every now and then, it does. I can’t disclose the opinion, but there was one time my senior colleague assigned me a dissent in a criminal case. The vote at the conference was 7–2. In the fullness of time, after the Court’s opinion and the dissent were circulated, the opinion was released 6–3, but the two had become six. So yeah, it ain’t over ’til it’s over.

II. AUDIENCE QUESTIONS

Audience Member: What has it been like as more women have joined the Court? What differences have women made on the Supreme Court?

RBG: It makes a tremendous difference for the public coming to see the Court. Sandra Day O’Connor was alone; she was the lone woman for twelve years.⁶² When I joined her, the bar was accustomed to there being only one woman on the Court. So invariably, at one sitting or the next, a lawyer would refer to me as Justice O’Connor.

And she would sometimes jump up and say, “I’m Justice O’Connor; she’s Justice Ginsburg.” The worst time was when Justice O’Connor left, I think it was 2006, and I was all alone. When the Court took the bench, you saw these eight rather well-fed men and this one very little woman. Now I am joined by Justice Sotomayor and Justice Kagan. I sit toward the middle because of my seniority, but Justice Sotomayor is to my left, Justice Kagan to my right. And anyone who has attended a Court session will know that my newest female colleagues are not shrinking violets—they take a very active part in the discussion that goes on at oral argument. So, it’s great when the schoolchildren who come to watch the Court see that. I think we are a “critical mass.” When I’m asked, “So when will there be enough?” I say, “It’s evident. When there are nine.” They say, “You don’t mean that do you?” Well, why not? There was nothing strange about nine men for most of our tradition.

Audience Member: I would like to present you with something, please: an assortment of vintage French lace collars for you to wear.

RBG: Thank you so much.

NS: Well, you’re giving me permission to discuss fashion.

RBG: Can I tell you, fashion on the Court, the fashion maker, you would think this is unlikely, but it was the old chief justice, Chief Justice Rehnquist, who one day came into the conference room with a new robe that had four thin gold stripes on each sleeve. People were appalled: “Is he trying to act like a master sergeant?” And I couldn’t contain my laughter because I knew just what he was doing. That summer in

62. Justice O’Connor was the first woman appointed to the Court, in 1981. *Justices 1789 to Present*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/about/members_text.aspx (last visited Apr. 22, 2022). O’Connor retired in 2006. *Id.*

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Washington, D.C., there was a production of the Gilbert & Sullivan operetta, *Iolanthe*.⁶³ There's a part in that for the Lord Chancellor—this was a company with a low budget. The Lord Chancellor that sits in London's Parliament has four gold stripes, but they're wide; they're brocade and glittery. The Chief copied the small opera company's costume with the thin gold stripes. And then when people asked, "Well, why did you add stripes to your robe?" He said, "I didn't want to be upstaged by the women." Because Justice O'Connor and I both had a variety of collars that we wore.

NS: Well, are you the justice who started what now seems to be a pattern among female jurists of wearing collars?

RBG: Actually, I started wearing collars on the D.C. Circuit, and it was the result of a gift from a woman who was then on the Supreme Court of Canada. In Quebec, both the lawyers and the judges wear the robes; the men wore the traditional black robes. The women at the bar in Quebec decided, "We can do a little better than that, let's put on a fancy lace collar." So that gift started my collar collection, and now I have many from all around the globe.

NS: I read that you have a dissent collar and a majority opinion collar?

RBG: Yes. The majority opinion collar was a gift from my law clerks, and it is gold. Eye-catching. And the dissent collar is black with gray beads.

Audience Member: What advice would you give to young lawyers? How can they become more successful advocates?

RBG: The advice I would give to young lawyers about their careers is, if you regard yourself as a true professional, you will do something outside yourself. You will do something that makes life in your community, in your country, a little better. Pick whatever is your passion, whether it's the environment, whether it's equality, and work together with like-minded people.

And regarding advocacy, it's not an occasion for speech making; it is a conversation between the lawyer and the judges.

Audience Member: I'm a reporter for NY1, a television station here.⁶⁴ A number of us in New York have been reporting on corruption cases within the city and the state. And a couple [of those cases] have been overturned because of the 2016 decision in *McDonnell v. United States*.⁶⁵ Forgive me if this breaks the Ginsburg Rule, but can

63. *Iolanthe* is a satirical operetta about a love triangle involving the Lord Chancellor and poking fun at the British reign. *Iolanthe*, ENG. NAT'L OPERA, <https://www.eno.org/operas/iolanthe/> (last visited Apr. 2, 2022).

64. For NY1's coverage of Ginsburg and Strossen's conversation, see Josh Robin, *Returning to NYC, Notorious RBG Reflects On Her Place in History*, SPECTRUM NEWS NY1 (Feb. 7, 2018), <https://spectrumlocalnews.com/nc/triad/politics/2018/02/07/ruth-bader-ginsburg-conversation-new-york-law-school>.

65. 136 S. Ct. 2355, 2373–75 (2016) (vacating convictions of former Virginia Governor Robert McDonnell on grounds that the jury instructions too broadly defined the term "official act," raising due process and federalism concerns).

you explain the decision, considering it's being cited so much and people are concerned about corruption within New York and across the country?

RBG: I can only say that every defendant, no matter how small or how large, is entitled to due process. And if you read the *McDonnell* opinion, you'll find that is what motivated it.

NS: Justice Ginsburg, thank you so much for everything that you've done and that you're going to do.