

## REFLECTIONS ON RBG: MENTOR, FRIEND, HERO

*Goodwin Liu\**

I'm often asked what it was like to clerk for Justice Ruth Bader Ginsburg.

I first met Justice Ginsburg at my clerkship interview. I was excited and nervous, so I asked a couple of former clerks for advice. They said they loved working with her, and they noted that she spoke softly and often paused between sentences, so I should be careful not to interrupt her. Over the years, I got used to her pace of conversation, but at the interview, I took extra care not to speak over her words. In fact, I let so much time pass before responding to anything she said that she must have thought I was waiting for translation.

The fact is that Justice Ginsburg was always very careful in choosing her words, written or spoken. If we were as careful as she was, we might slow down and pause more often too.

Ten minutes into the interview, she offered me the clerkship. I was so thrilled that the rest of the conversation was a blur. I do remember that she had read my writing sample, an obscure law review article titled *Social Security and the Treatment of Marriage*.<sup>1</sup> She knew this topic inside and out because one of her favorite cases as a litigator was *Weinberger v. Wiesenfeld*, in which the Supreme Court struck down a Social Security provision that allowed widows but not widowers to collect survivor benefits.<sup>2</sup> We found common ground in critiquing gendered breadwinning and caregiving roles, and now as a parent balancing work and home life, I often draw inspiration from the example that she and her husband Marty set for all of us.

During my year at the court, the clerks had a regular basketball game on Tuesdays and Thursdays on the top floor of the building, “the highest court in the land.” During one game, I collided with a very genial and very tall Scalia clerk, and I badly sprained my ankle. As I lay in bed the next morning, the first person to call to check on me was Justice Ginsburg—and she was not a morning person. She was incredibly thoughtful that way.

---

\* Associate Justice, California Supreme Court. The author clerked for Justice Ginsburg during October Term 2000. This remembrance is adapted from Goodwin Liu, Opinion, *Ginsburg's Vision Led Us to a Better America. We Can Do the Same.*, Wash. Post (Sept. 20, 2020), [https://www.washingtonpost.com/opinions/ginsburgs-vision-led-us-to-a-better-america-we-can-do-the-same/2020/09/20/e3f57194-fb51-11ea-b555-4d71a9254f4b\\_story.html](https://www.washingtonpost.com/opinions/ginsburgs-vision-led-us-to-a-better-america-we-can-do-the-same/2020/09/20/e3f57194-fb51-11ea-b555-4d71a9254f4b_story.html) (on file with the *Columbia Law Review*); Goodwin Liu, *Clerking for Justice Ginsburg Was a Gift Beyond Measure*, SCOTUSblog (Sept. 22, 2020), <https://www.scotusblog.com/2020/09/clerking-for-justice-ginsburg-was-a-gift-beyond-measure> [https://perm a.cc/FBQ3-AM9N].

1. Goodwin Liu, *Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and the Challenge of Reform*, 1999 Wis. L. Rev. 1.

2. 420 U.S. 636, 638–39 (1975).

Another memory is the time Justice Ginsburg took me to the opera. Marty was unavailable, and I drew the lucky straw in our chambers. That evening I met her at the Kennedy Center, and afterward I walked her back to her apartment at the Watergate. This was well before she became a global celebrity. As we walked, she talked about her neighborhood routines and pointed out some of her favorite shops and her dry cleaner. If she had a security detail that night, I didn't see it. In so many ways, she was an extraordinary person, but I was glad to see how she was ordinary too.

Justice Ginsburg was a meticulous writer and editor. One day I went into her office to look at a case file. The file contained a bench memo written by a clerk, and I noticed that the memo had edits, including missing commas and various typos, marked by Justice Ginsburg in faint pencil. Such editing was apparently her regular practice when she read our memos, but it was a surprise to me because she never returned those memos to us. It was just her way of demanding perfection in whatever writing was before her eyes. My co-clerks and I were mortified at the thought that we had given her memos with such errors. And it taught me to be vigilant because every error, no matter how small, is a speed bump on the road of one's argument or analysis.

I clerked in October Term 2000, the year of *Bush v. Gore*.<sup>3</sup> Throughout that controversy, Justice Ginsburg was a paragon of even temperament and collegiality. She analyzed the issues carefully and never lost her cool. Having now, as a judge myself, experienced disagreement over matters far less consequential than the presidency of the United States, I have even more regard for how she navigated that challenging period.

*Bush v. Gore* was perhaps the beginning of Justice Ginsburg's public identity as a "great dissenter." In hindsight, this role was hardly foreordained. But she was resolute on matters of principle, and she grew into the role. Her notable dissents—in *Ledbetter v. Goodyear Tire & Rubber Co.*,<sup>4</sup> *Shelby County v. Holder*,<sup>5</sup> *Epic Systems Corp. v. Lewis*,<sup>6</sup> *Burwell v. Hobby Lobby Stores, Inc.*,<sup>7</sup> *Gonzales v. Carhart*,<sup>8</sup> *Wal-Mart Stores, Inc. v. Dukes*,<sup>9</sup> and others—are studies in judicial craft. She was masterful at framing issues and using language. She knew what to say and what to leave unsaid. Her writing was never toxic, but still powerful enough to sting.

Although dissents are sometimes seen as acts of futility, her dissents came to be viewed as acts of resistance, especially when she dissented

---

3. 531 U.S. 98 (2000).

4. 550 U.S. 618, 643 (2007) (Ginsburg, J., dissenting), superseded by statute, Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (codified as amended in scattered sections of 29 U.S.C. and 42 U.S.C.).

5. 570 U.S. 529, 559 (2013) (Ginsburg, J., dissenting).

6. 138 S. Ct. 1612, 1633 (2018) (Ginsburg, J., dissenting).

7. 573 U.S. 682, 739 (2014) (Ginsburg, J., dissenting).

8. 550 U.S. 124, 169 (2007) (Ginsburg, J., dissenting).

9. 564 U.S. 338, 367 (2011) (Ginsburg, J., concurring in part and dissenting in part).

against an all-male majority. She inspired countless women and girls to believe their voice matters and to have the courage to use it.

Justice Ginsburg is best known for her work advancing women's rights. But that work was part of a more powerful whole, a vision of equal citizenship that also extended to racial minorities, people with disabilities, and workers.

Her successes as a lawyer and founding director of the ACLU Women's Rights Project are memorialized in case law,<sup>10</sup> as is her signature accomplishment on the bench: her 1996 opinion declaring unconstitutional the Virginia Military Institute's refusal to admit women.<sup>11</sup> "[G]eneralizations about 'the way women are,'" Justice Ginsburg wrote, cannot be used "to create or perpetuate the legal, social, and economic inferiority of women."<sup>12</sup> More broadly, sex-based classifications may not be used "to create or perpetuate the legal, social, and economic inferiority of women."<sup>13</sup>

At her 1993 confirmation hearing before the Senate Judiciary Committee, Justice Ginsburg said, "I surely would not be in this room today" without the efforts of "[p]eople like Susan B. Anthony, Elizabeth Cady Stanton, and Harriet Tubman . . . I stand on the shoulders of those brave people."<sup>14</sup> In naming heroes who were both suffragists and abolitionists, she understood that the causes of gender equality and racial equality have been intertwined throughout our history. For example, the ratification of the Nineteenth Amendment in 1920 still left Black women and men disenfranchised as a result of poll taxes, literacy tests, and other obstacles. She credited Justice Thurgood Marshall with reminding us that despite the "blind spots" in the original Constitution, "through a combination of judicial interpretation, constitutional amendment, laws passed by Congress, 'We the People' has grown ever larger" to include women and those "once held in bondage."<sup>15</sup>

One such law was the Voting Rights Act of 1965, what Justice Ginsburg called "one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history."<sup>16</sup> She wrote those words in a 2013 dissent from a decision invalidating the Act's core

---

10. She argued six cases in the Supreme Court and won all but *Kahn v. Shevin*. See *Duren v. Missouri*, 439 U.S. 357 (1979); *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Edwards v. Healy*, 421 U.S. 772 (1975); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Kahn v. Shevin*, 416 U.S. 351 (1974); *Frontiero v. Richardson*, 411 U.S. 677 (1973).

11. *United States v. Virginia*, 518 U.S. 515 (1996).

12. *Id.* at 533–34, 550.

13. *Id.* at 533–34.

14. 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. 50 (1993) [hereinafter Justice Ginsburg's Nomination Hearing] (statement of Ruth Bader Ginsburg, Circuit Court J., U.S. Court of Appeals for the District of Columbia).

15. *Id.* at 119.

16. *Shelby County v. Holder*, 570 U.S. 529, 562 (2013) (Ginsburg, J., dissenting).

mechanism to prevent certain states and localities from erecting barriers to minority voting—a decision she compared to “throwing away your umbrella in a rainstorm because you are not getting wet.”<sup>17</sup> After an extensive review of voting rights history, including Bloody Sunday and the march from Selma to Montgomery, she concluded (with a nod to Dr. Martin Luther King, Jr.) that “[t]hanks to the [Voting Rights Act], progress once the subject of a dream has been achieved and continues to be made.”<sup>18</sup>

That dissent, perhaps her most famous, parallels a 2003 opinion upholding affirmative action, in which she emphasized that despite the formal end of Jim Crow, “many minority students encounter markedly inadequate and unequal educational opportunities.”<sup>19</sup> Well before today’s protests for racial justice, Justice Ginsburg warned that “conscious and unconscious race bias, even rank discrimination based on race, remain alive in our land, impeding realization of our highest values and ideals.”<sup>20</sup>

Discrimination was a topic she knew well. In a 2004 case allowing individuals to sue public entities for failure to provide reasonable accommodations under the Americans with Disabilities Act (ADA), Justice Ginsburg observed that the law was intended to advance “equal-citizenship stature for persons with disabilities.”<sup>21</sup> Congress, she said, understood that “[i]ncluding individuals with disabilities among people who count in composing ‘We the People,’ . . . would sometimes require not blindfolded equality, but responsiveness to difference; not indifference, but accommodation.”<sup>22</sup>

In a 1999 case, *Olmstead v. L.C. ex rel. Zimring*, her opinion for the Court held that unnecessary institutionalization of persons with mental disabilities “perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life” and constitutes discrimination under the ADA.<sup>23</sup> Many disability rights activists consider *Olmstead*, in attacking a pernicious form of segregation, to be their *Brown v. Board of Education*.<sup>24</sup>

Justice Ginsburg’s vision of equal citizenship also extended to the economic sphere. Through her own familiarity with “[t]he realities of the workplace,” she saw employment not only in material terms but also as a

---

17. *Id.* at 590.

18. *Id.* at 593.

19. *Grutter v. Bollinger*, 539 U.S. 306, 346 (2003) (Ginsburg, J., concurring).

20. *Id.* at 345.

21. *Tennessee v. Lane*, 541 U.S. 509, 536 (2004) (Ginsburg, J., concurring).

22. *Id.*

23. 527 U.S. 581, 600 (1999).

24. 347 U.S. 483 (1954); see also Samuel R. Bagenstos, Justice Ginsburg and the Judicial Role in Expanding “We the People”: The Disability Rights Cases, 104 *Colum. L. Rev.* 49, 49 (2004).

source of dignity, belonging, and social regard.<sup>25</sup> Her dissent in the case of Lilly Ledbetter, a factory supervisor barred from suing her employer despite being paid thousands less per year than her male peers, prompted Congress to write new fair pay legislation.<sup>26</sup> Perhaps less well known are her dissents objecting to the enforcement of arbitration agreements that, in her view, reflect “inequality of bargaining power,”<sup>27</sup> thwart “effective access to justice,”<sup>28</sup> and undermine “the well-being of vulnerable workers.”<sup>29</sup> The legacy of those dissents, which also urge congressional action, may be still to come.<sup>30</sup>

Irin Carmon and Shana Knizhnik famously seized on Justice Ginsburg’s dissents to vest her with a larger-than-life persona as the “Notorious RBG.”<sup>31</sup> On a personal level, it was fascinating to see Justice Ginsburg grow into her celebrity status. This was not at all expected. Despite her powerful voice on the bench, she was quite shy and soft-spoken in person. In social settings, she often said little and instead delighted in the wit and charm of her beloved husband Marty, who was always ready with an amusing story or a clever joke, often at her expense. Marty’s death in 2010 was a huge loss for Justice Ginsburg. But she did not crawl into her shell or shrink from public view. To the contrary, she stepped into the limelight on her own with great savvy and mass appeal well into her eighties.

I clerked for Justice Ginsburg one year after she was diagnosed with colon cancer. During my clerkship, she underwent several rounds of treatment. None of it could have been pleasant, but she never missed oral argument and finished all her work on time. If she was ever anxious or in pain, she never let it show.

She survived that cancer and, despite subsequent cancer diagnoses, kept surviving and thriving. Over the years, there were multiple cycles of a health scare followed by intense media speculation, and then her successful recovery and return to work. Frankly, I became a bit desensitized to worries about her health. She told me that one time, when she was a little slow in getting up from her seat at the end of oral argument, the press inquired whether she was ill. Not at all, she said—the reason was that she had kicked off her shoes during argument and was having difficulty putting one of them back on!

---

25. See *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 649–50 (2007) (Ginsburg, J., dissenting), superseded by statute, Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (codified as amended in scattered sections of 29 U.S.C. and 42 U.S.C.).

26. See Lilly Ledbetter Fair Pay Act of 2009, 123 Stat. 5.

27. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1637 (2018) (internal quotation marks omitted) (quoting 29 U.S.C. § 151 (2018)).

28. *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1422 (2019) (Ginsburg, J., dissenting) (quoting *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 59–60 (2015) (Ginsburg, J., dissenting)).

29. *Epic Sys. Corp.*, 138 S. Ct. at 1646 (Ginsburg, J., dissenting).

30. E.g., Forced Arbitration Injustice Repeal Act, H.R. 1423, 116th Cong. (2019).

31. Irin Carmon & Shana Knizhnik, *Notorious RBG: The Life and Times of Ruth Bader Ginsburg* (2015).

She appeared to be in good health all the way to last year. The last time I saw her was in February 2020 at an intimate dinner hosted by Judge David Tatel of the U.S. Court of Appeals for the District of Columbia Circuit (for whom I also clerked) and his wife, Edie. D.C. Circuit Chief Judge Sri Srinivasan was also in attendance. It was a warm occasion. Justice Ginsburg had a special fondness for the Tatels and delighted in the fact that Judge Tatel succeeded her on the D.C. Circuit. She also had evident affection for Chief Judge Srinivasan, whom she was planning to take to the opera until the pandemic hit. She was in good spirits and looking ahead. When she arrived that evening, she said her doctor had limited her to one glass of wine. By the end of dinner, she was on her third.

Justice Ginsburg never stopped working and never stopped fighting until the very end. She understood that it is one thing to have a disease, but quite another for the disease to have you.

At her Supreme Court confirmation hearing, she introduced herself as “a Brooklynite, born and bred—a first-generation American on my father’s side, barely second-generation on my mother’s.”<sup>32</sup> “What has become of me could happen only in America,” she said, reflecting on her modest upbringing by parents who lacked the means to attend college.<sup>33</sup> “Like so many others, I owe so much to the entry this Nation afforded to people yearning to breathe free.”<sup>34</sup> As a child of immigrants myself, I share with Justice Ginsburg a deep appreciation for the faith this country placed in our parents and in us. Throughout her life, Justice Ginsburg repaid that faith by serving our nation and widening its circle of inclusion. She lived out her creed that all people should have “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.”<sup>35</sup> That vision led her to make America better, and it insists that we can too.

I am deeply saddened to lose a cherished mentor and friend, and the outpouring of grief throughout the nation upon her passing was truly extraordinary. In late September 2020, along with over 100 of her former clerks, I had the honor of standing vigil with her casket atop the front steps of the Supreme Court while thousands of people walked by to pay tribute. I remember a few indelible images: There was an elderly white woman in a wheelchair who lingered at the bottom of the steps, looking up with admiration and wiping away tears as she was gently wheeled away. There was a trio of little girls, not more than five years old, each wearing an identical RBG-emblazoned T-shirt. And there was a middle-aged African American woman who slowly walked the length of the plaza, from one end of the

---

32. Justice Ginsburg’s Nomination Hearing, *supra* note 14, at 49 (statement of Ruth Bader Ginsburg, Circuit Court J., U.S. Court of Appeals for the District of Columbia).

33. *Id.* at 50.

34. *Id.*

35. *United States v. Virginia*, 518 U.S. 515, 532 (1996).

steps to the other. Just before exiting, she paused, looked up in silence, and then burst into applause.

Justice Ginsburg dedicated her life to making America better, and she gave it her all. The law books contain only part of her powerful legacy. The rest resides in the hearts and minds of the millions who love and admire this exceptional woman.

