

A Conversation Regarding the Legacy of Justice Ruth Bader Ginsburg

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The George Washington University Law School*

The Honorable Stephen G. Breyer & Laura A. Dickinson***

PROFESSOR LAURA A. DICKINSON: Welcome Justice Breyer and thank you for coming. It's very meaningful to have you here today. We'll start with whatever recollections you'd like to share and then I'll ask you a few questions about Justice Ginsburg's legacy.

JUSTICE STEPHEN G. BREYER: A great jurist, a great Justice, a woman of valor, a rock of righteousness, and my very, very good friend.

Justice Ruth Bader Ginsburg will be remembered as a brilliant judge, a great jurist who did much for women—indeed for everyone—before she became a Justice and after she became a Justice. She was intelligent. She was logical. She was hardworking. And her opinions reflect her principles. When I wanted to know what she was thinking—and I always wanted to know what she was thinking—I would read her memos and her drafts. Her analysis of a case would be clear. It would be true to the record. It would be true to the party's argument. She would explain the law succinctly, and she would not omit necessary detail. As a Justice, she wrote opinions that reflected her basic decency. She understood the basic indecency of discrimination and unfair treatment. She correctly assumed that law, its object, is to try to help people lead better lives.

Ruth was a woman who made the world a better place for us to live in, not just in big ways, but in small ones too. She paid attention to the details, and that included her clothes—she dressed well! She loved those collars that she wore with her robes on the bench. And she paid attention to the details of human relationships. Only a few weeks before she died, she sent my newly born grandchild a T-shirt with the words, “future RBG law clerk” printed on it. Her note to the grandchild said, “This is too large for you. It's going to have to be for Brian (his older half-brother), until you get big enough to fill it.”

* Justice, United States Supreme Court, 1994–2022.

** Oswald Symister Colclough Research Professor of Law, The George Washington University Law School.

She was a thoughtful person. Ruth understood, perhaps not like me or a few others, that not every silence needs to be filled. She would think before she spoke, even on social occasions. She had a good sense of humor. Over the years, I might go into her office to tell her something I found funny. And I would say, “Ruth, what do you think of that?” And she would find it funny, usually. She would chat about it. We would chat about it. As long as I did not stay too long. If I stayed too long, she would just stand up from behind her desk, and I knew what that meant. That meant she wanted to get back to work, and that is what she did. She was a rock.

When I came back to D.C. for her memorial service and went into my office, I found a birthday card she had sent on my birthday a few days before. The card had a picture of her, and it said, “I order you to have a happy birthday.” And it added, “To my *younger* colleague, stay cool and well.” And she underlined “younger.” Which she always thought was very funny; and I liked it too. She wrote, “We will get together when this epidemic is over, and see an opera, and life will go on.” Even now, thinking about that cheers me up.

What was it like to work with Ruth? It was always interesting. It was always challenging. It was always educational. The longer you knew her, the more you liked her. And I did know her, for many years, and I did like her, very much. I think sometimes, “What would Ruth say?” And then I cannot ask Ruth. So I will miss Ruth, very much indeed.

QUESTION & ANSWER

LAURA DICKINSON: Thank you, Justice Breyer for those insightful and really very moving remarks. They are an important element of Justice Ginsburg’s legacy. We are thankful that you are willing to take just a few questions. And so I wanted to begin by asking you whether there might be any particular lessons that you have taken from serving with Justice Ginsburg as a colleague on the Supreme Court?

JUSTICE BREYER: Well, the second piece of advice my father gave me before he died—I saw her put that into practice. My father told me, “Do your job.” Just do it, and do it as well as you can. And that is just it. And you know what his first piece of advice was? His first piece of advice was, “Stay on the payroll.” And I have managed to do that too. But that was it. You have a case and you put your heart and soul into it. It matters to people, and that is true, whatever level of judiciary you are on. It matters what the judge is doing. You pay at-

tention. There is no case that you can let up on. And I saw her do that. I saw her do it seriously, and I saw her do it thoroughly. She was a good model.

LAURA DICKINSON: What would you say, for you, are some of the most significant aspects of her jurisprudential legacy?

JUSTICE BREYER: There are two separate things in that question, aren't there? None of us really knows what future history will say about something we did. Fifty years from now, who knows? About me or anybody else. Historians look at what happened afterwards, and then they say it was obvious to those people who lived 40 years before. But as for Ruth, I think it will be something about her doing a good job. And then, perhaps even importantly, I think, here is something else your question brought to my mind. I was talking to Sandra O'Connor, maybe 15 years ago, and she told me that Thurgood Marshall came to her one day, and he was looking gloomy. And she asked, "Thurgood, what's the problem?" He said, "You know, I don't know that I have really accomplished very much on this Court." She said, "Thurgood! What are you talking about? You are the only member of this Court who, even if he had never been a member of the Supreme Court of the United States, would have been a national hero." You see. And Ruth? I think that is her, too.

She did a lot just to overcome stereotypes, discrimination, and stereotypical thinking; she did a lot. And even if she had never been on the Court, she would be remembered for that. And that, I think, endures. It is impossible to take away from that.

LAURA DICKINSON: That is a really powerful way of putting it, Justice Breyer. You know, one distinctive aspect of Justice Ginsburg's legacy that is less often discussed than the kind of impact you just mentioned, is the fact that she was a civil procedure professor and a conflicts of laws professor before she became a judge. She wrote many judicial opinions in those areas, and those cases are less popular and less well-known, we might say, than some of her other decisions. Do you think it is important to have an expert in these areas on the Supreme court?

JUSTICE BREYER: No, I mean, it helps. Nothing is absolutely essential. I think a broad set of backgrounds—and not everybody has the same background—I would probably say that was helpful. When I was a law clerk at the Supreme Court, Justice Hugo Black had been a senator, Justice Earl Warren had been a governor, and Justice Arthur Goldberg had been Secretary of Labor and a union leader. You had a wide range. And Justice Thurgood Marshall, of course, had his back-

ground, and so forth. So I think it is helpful to have members of the Court with a broad set of backgrounds.

Do you need specialists? I am not sure that you do. It is helpful, I admit that! As I would be working on a case, I would very often think, “I wonder what Ruth is thinking?” And I would go ask her. If it was a procedure case, I would think, “I *wonder* what Ruth is thinking?!” You see? And, indeed, that was particularly helpful.

LAURA DICKINSON: That is so interesting, Justice Breyer! You have shared so much already, but is there anything else, or any additional personal recollection that you would like to share with us today?

JUSTICE BREYER: Oh, she could be teased. I remember talking to her one time, and I would say, “Well, what would Swedish civil procedure say about this?” She wrote a book about Swedish civil procedure, and I said she would know the answer to that question. But she would say, “I am not sure if it is relevant or not.” I thought it was quite funny, and she thought it was funny too, actually. Once, we were visiting a court, the European Court of Justice in Luxembourg. We went through Paris, I think, to get there, and we were being interviewed by a group of journalists. She had terrible laryngitis, and they were interviewing us in English, I think, but she could not make herself heard. So she asked me if I would tell them what she was saying. And so they were asking some really obvious things, and we would answer them yes or no. And every time she would say yes, I would say no. And she realized what I was doing, and so did the journalists. And she did think that was sort of funny, but I could only get away with it for a short time.

LAURA DICKINSON: It is so generous of you, Justice Breyer, to share those reflections on your time serving with Justice Ginsburg, both the substantive accounts of her legacy and also your personal memories—they are so meaningful for us to hear. So we are very grateful to you for participating in this event and contributing to our recollection of her life and legacy. Thank you so much.

JUSTICE BREYER: Well, thank you very much. Thank you very much for asking me. She was a wonderful person.