

TRIBUTE TO JUSTICE RUTH BADER GINSBURG

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I. INTRODUCTION

On the evening of September 18, 2020, the world mourned the loss of a deeply revered champion of justice, fairness, and rights embodied in the U.S. Constitution.¹ U.S. Supreme Court Justice Ruth Bader Ginsburg had become affectionately “notorious”² in the eyes of her countless admirers, both nationally and internationally, for her advocacy on behalf of gender equality, her commitment to human rights throughout the globe, and her understanding of

*† Associate Dean for Teaching and Engagement and Professor, University of North Dakota School of Law. This article is dedicated to my law students, with my heartfelt gratitude for their commitment to ensuring justice, fairness, and the rights of all people as embodied in the U.S. Constitution. I am also grateful for invaluable research assistance from my Burtness Scholar Research Assistants who have worked with me on RBG initiatives over the years: Dixie Holland, Wenjuan Huang, Anastasija Ceklic, and Lauren Kauffman. Additionally, I deeply appreciate the support and encouragement for this tribute to Justice Ruth Bader Ginsburg from UND School of Law Dean Michael S. McGinniss and from Professor Kathryn R.L. Rand, both long-standing mentors who believe strongly in our democratic system of government, the rule of law, the independence and integrity of the courts, and our deep-rooted constitutional values.

1. *Biography of Associate Justice Ruth Bader Ginsburg*, SUP. CT. OF THE U.S., (last visited Jan. 19, 2022), <https://www.supremecourt.gov/about/biographyginsburg.aspx>.

2. See, e.g., PBS NEWSHOUR, *How Ruth Bader Ginsburg Became ‘the Notorious RBG’*, YOUTUBE (Sept. 23, 2020), <https://www.youtube.com/watch?v=UEkSdYhEreY>.

the U.S. Constitution as a foundational centerpiece of our nation's democracy that embraces the dignity and rights of all people.

After Justice Ginsburg's passing, an outpouring of news stories,³ reflections,⁴ and events⁵ commemorated her life's work and accomplishments. At the University of North Dakota (UND) School of Law, Professor Kathryn Rand and I teamed up to host two events in memory of "RBG"—the first for our law school community and the second for our broader UND community and alumni along with members of the State Bar Association of North Dakota (SBAND) in conjunction with UND's Homecoming. At the law school, I teach *Constitutional Law I*, and Professor Rand teaches *Constitutional Law II*. We felt it particularly fitting to memorialize Justice Ginsburg's immense influence on constitutional interpretation, on gender equality and women's rights, and on society in general—both in the United States and throughout

3. See, e.g., Linda Greenhouse, *Ruth Bader Ginsburg, Supreme Court's Feminist Icon, is Dead at 87*, N.Y. TIMES (Sept. 18, 2020), <https://www.nytimes.com/2020/09/18/us/ruth-bader-ginsburg-dead.html>; Nina Totenberg, *Justice Ruth Bader Ginsburg, Champion of Gender Equality, Dies at 87*, NPR (Sept. 18, 2020), <https://www.npr.org/2020/09/18/100306972/justice-ruth-bader-ginsburg-champion-of-gender-equality-dies-at-87>; Holly Honderich & Jessica Lussenhop, *Ruth Bader Ginsburg: Obituary of the Supreme Court Justice*, BBC NEWS (Sept. 19, 2020), <https://www.bbc.com/news/world-us-canada-49488374>.

4. See, e.g., *To Truly Honor Justice Ruth Bader Ginsburg Heed her Call to Make the ERA a Reality*, LEGAL MOMENTUM (Sept. 22, 2020), <https://www.legalmomentum.org/press-releases/honoring-justice-ruth-bader-ginsburg>; Liz Mineo, *The Life and Legacy of RBG*, HARVARD GAZETTE (Sept. 20, 2020), <https://news.harvard.edu/gazette/story/2020/09/harvard-community-reflects-on-the-life-achievements-of-ruth-bader-ginsburg/>.

5. See, e.g., *Event Honoring Ruth Bader Ginsburg*, (Nov. 18, 2020), <https://mitchellhamline.edu/careers/2020/11/18/event-honoring-ruth-bader-ginsburg-11-20/>; Tammy Ortiz, *Honoring Ruth Bader Ginsburg*, UNIV. OF N. CO. (Oct. 9, 2020), <https://www.unco.edu/inside-unc/campus-community/cwge-rbg.aspx>; *Live with Carnegie Hall: Remembering Ruth Bader Ginsburg*, (Nov. 19, 2020), <https://www.carnegiehall.org/Calendar/2020/11/19/Live-with-Carnegie-Hall-Remembering-Ruth-Bader-Ginsburg-0730PM>; *Honoring the Life and Impact of Ruth Bader Ginsburg*, ROGER WILLIAMS UNIV., <https://www.rwu.edu/events/honoring-life-and-impact-ruth-bader-ginsburg> (last visited Jan. 19, 2022).

the world.⁶ This tribute arises out of those events, and it incorporates and expands upon our conversations about her achievements and lasting impact.⁷

Another reason I felt so strongly about wishing to honor Justice Ginsburg's legacy stemmed from my interactions with her over the decades. I will share some of these experiences throughout this tribute.⁸ Hence, this essay adopts a more personal and narrative tone than traditional law review articles.

II. ENCOUNTERS WITH JUSTICE GINSBURG

My first interaction with then Judge Ruth Bader Ginsburg occurred while I was a student at the University of Michigan Law School in 1993. I spent that summer in Washington, DC, conducting research with Professor Margaret Weir⁹ at the Brookings Institution.¹⁰ After her nomination, I attended Judge Ginsburg's confirmation hearing at the U.S. Senate Committee on the Judiciary. Arriving early to ensure a good spot in line among the crowds of people thronging to observe the senators' consideration of her candidacy, I was fortunate to obtain a seat near the front of the room. Intensely moved by the fact that our nation might finally secure its second woman on

6. I am indebted to Kathryn Rand for her enthusiasm about partnering with me in these endeavors. She has significantly influenced my approach to teaching Constitutional Law through her generosity in sharing her Con Law I materials when I first joined the faculty at our law school, as she had taught both courses before her deanship. During my search for a law faculty position in 2010, the fact that the UND School of Law had a woman at the helm made a profoundly positive impression of North Dakota as a welcoming place for women lawyers, as women still held only a minority of law school dean positions in our country. In 2010, 21% of law school deans were women, up from 10% in 2000. The trend toward equality continued in 2021, when 41% of law deans were women. *Women in the Legal Profession*, A.B.A. PROFILE OF THE LEGAL PRO. (last visited Mar. 1, 2022), <https://www.abalegalprofile.com/women/>. Men currently hold about 55% of law deanships, compared to about 45% held by women. Candice Norwood, *More Black Women Are Leading Law Schools and Changing the Conversation On Race and Gender*, THE 19TH NEWS (Feb. 8, 2022), <https://19thnews.org/2022/02/black-women-law-school-deans/> ("A database maintained by Mississippi College School of Law breaks down the race or ethnicity of 207 law school deans. Currently, 89 of those are White men, 54 of them are White women, 13 are Black men, 28 are Black women, seven are Hispanic or Latino men, five are Hispanic or Latina women, four are Asian or Pacific Islander men, and three are Asian or Pacific Islander women.").

7. We combined the conversations from these two events for clarity and brevity.

8. In addition to relating my interactions with Justice Ginsburg, I have incorporated footnotes referring to other sources containing similar accounts by Justice Ginsburg, as she frequently told the same stories to multiple audiences.

9. Now at Brown University's Watson Institute for International & Public Affairs, Professor Weir focuses her teaching and research on poverty, class, race, education, social policy, and politics. (<https://watson.brown.edu/public-policy/people/faculty/margaret-weir>).

10. According to its website, "The Brookings Institution is a nonprofit organization devoted to independent, in-depth research that leads to pragmatic and innovative ideas on how to solve problems facing society. . . . Brookings's commitment to institutional independence is rooted in the individual independence of its scholars. Therefore, the Institution does not take positions on issues." *See Brookings Policies on Independence and Integrity*, THE BROOKINGS INST. (last visited Jan. 19, 2022), <https://www.brookings.edu/about-us/brookings-policies-on-independence-and-integrity/>.

the U.S. Supreme Court,¹¹ I sat riveted throughout her testimony. She reminded me of my father, John Richard Ernst, a state trial judge who always spoke carefully and purposefully from the bench to parties appearing before him.¹² After a taxing full day of answering questions, Judge Ginsburg seemed fatigued yet satisfied, engaging in polite conversation with well-wishers. I remained seated observing her interactions, deliberating whether I should join the line of admirers to offer my accolades, yet not wanting to impose. Realizing this may be my only chance to meet the presumptive next justice on the U.S. Supreme Court, I approached her, extended my hand, introduced myself, and thanked her for being such a marvelous inspiration for me and for so many other law students and young women throughout the country. She smiled broadly through her exhaustion. Despite my attempt to maintain respectful restraint and composure, I am sure my beaming expression manifested my elation at meeting her.

An enthusiast of political science and government, I spent as much time in the nation's capital as possible during college and law school and relished opportunities to visit the Supreme Court. During the summer of 1994, I worked as a summer associate with the law firm of Hunton & Williams¹³ and had the opportunity to visit the court, observing for the first time Justice Ginsburg on the bench. During that outing, the summer associates met former Justice Lewis Powell, who regularly worked at his office in the Supreme Court building long after his retirement in 1987.¹⁴ Although they never

11. Out of the 115 justices who have served on the U.S. Supreme Court, 110 have been men and five have been women. Justice Sandra Day O'Connor became the first woman on the court in 1981, Justice Ruth Bader Ginsburg joined the court in 1993, Justice Sonia Sotomayor in 2009, Justice Elena Kagan in 2010, and Justice Amy Coney Barrett replaced Justice Ginsburg in 2020. See *Justices*, SUP. CT. OF THE U.S. (last visited Jan. 19, 2022), <https://www.supremecourt.gov/about/justices.aspx>.

12. After my father's death in 2019, I learned attorneys often referred to him as "the whispering judge," since he spoke so slowly, deliberately, and quietly on the bench.

13. HUNTON ANDREWS KURTH LLP, (Jan. 23, 2022) <https://www.huntonak.com/en/> (Now Hunton Andrews Kurth after its merger with Andrews Kurth Kenyon in 2018).

14. See Lyle Denniston, *Retired Justice Powell Dies at 90*, THE BALTIMORE SUN (Jan. 23, 2022), <https://www.baltimoresun.com/news/bs-xpm-1998-08-26-1998238018-story.html>. Justice Powell had previously served as a partner at Hunton & Williams for more than a quarter century and regularly met with the firm's summer associates. When one of my colleagues asked a question about the most difficult cases he had faced on the Supreme Court, Justice Powell, though customarily a conservative, noted *McCleskey v. Kemp* (in which he voted to uphold the death penalty despite research demonstrating people were sentenced to death at a rate up to forty times higher for killing a white victim versus a black victim) and *Bowers v. Hardwick* (in which he had voted to uphold a state law criminalizing sodomy), expressing his misgivings about his vote in both of those cases. He mentioned these reservations in other contexts, as well. *McCleskey v. Kemp*, 482 U.S. 920, 107 S. Ct. 3199 (1987); *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841 (1986).

served together on the bench, reportedly Justices Powell and Ginsburg interacted with each other amicably.¹⁵ When Justice Powell died, Justice Ginsburg noted: “He lived as the prophet Micah counseled, doing justice, loving goodness and walking modestly with his God.”¹⁶

After graduating from law school and working for a firm in Detroit, Michigan for several years, I returned to Washington to pursue my passion of advocating for international women’s human rights with a public interest legal organization. I worked on issues such as reducing child marriage, polygamy, violence against women, and female genital mutilation, and increasing global access to healthcare for pregnant women, post-natal care, and family planning services. During that timeframe, I resumed watching major Supreme Court cases whenever possible and decided to apply for membership in the U.S. Supreme Court Bar Association along with my father.¹⁷ Our attempts to join stalled due to the terrorist attacks on September 11, 2001,¹⁸ as well as the anthrax attacks shortly thereafter.¹⁹ Despite several postponements, our date for induction finally arrived in 2002. My mother, father, and I sat together in the first row at the U.S. Supreme Court among numerous other individuals and groups awaiting the swearing-in ceremony that morning. During our turn, when Chief Justice Rehnquist announced Judge John Richard Ernst and Ms. Julia Louise Ernst, Justice Ginsburg leaned over to

15. See *Justice Ginsburg and Justice Powell*, THE LIBR. AT WASH. & LEE SCH. OF L. (last visited Jan 23, 2022), <https://lawlib.academic.wlu.edu/2017/01/10/justice-ginsburg-and-justice-powell>.

16. Lyle Denniston, ‘A Gentleman, a Wise Man,’ *Lewis F. Powell Jr., Who Died Last Week at 90, Championed ‘Little People’ During His Tenure as a Supreme Court Justice*, THE BALTIMORE SUN (Aug. 29, 1998) <https://www.baltimoresun.com/news/bs-xpm-1998-08-30-1998242131-story.html>.

17. Members of the U.S. Supreme Court Bar may enter the courthouse through a side door without waiting in the often-long lines filled by the general public to enter through the front of the courthouse. I previously had the experience of lining up overnight in my business suit outside the Supreme Court building hoping to observe one of the cases. I was one of the last people to enter the courtroom before it reached capacity, leaving dozens of disappointed hopefuls outside.

18. Before our applications could be processed, terrorists attacked the Twin Towers in New York City, United Airlines Flight 93 in Pennsylvania, and the Pentagon in Washington, DC. I recall driving across the Francis Scott Key Memorial Bridge from Virginia into Washington when I heard about the airplane flying into the first tower, and I was at my office downtown when the second airplane struck. My husband was consulting at Fort McNair military base that morning when the third hit the Pentagon across the Potomac River. For hours, I could not reach him as telecommunications were jammed. Since taxis had evacuated the city and people mobbed the Metro stations attempting to flee, he walked four miles from the military base to a friend’s apartment where my colleagues and I huddled around the television, watching events unfold along with the rest of the nation. When we were finally able to leave DC, we drove home past the still-smoldering Pentagon.

19. *The Anthrax Investigation*, NPR (last visited Jan. 23, 2022), <https://www.npr.org/2011/02/15/93170200/timeline-how-the-anthrax-terror-unfolded>. The Beltway Sniper attacks also terrorized the region for three weeks in October 2002, randomly killing 10 people and injuring 3 others. *Beltway Snipers*, FED. BUREAU OF INVESTIGATION (last visited Mar. 1, 2022), <https://www.fbi.gov/history/famous-cases/beltway-snipers>.

take a closer look at this father-daughter pair and nodded approvingly, smiling at us with a glimmer in her eye.²⁰

When a position opened in late 2003 in the office of U.S. Representative Louise McIntosh Slaughter, I jumped at the opportunity to spearhead her work on women's rights issues and to co-direct the bipartisan Congressional Caucus for Women's Issues (CCWI). Comprised at the time of all the women members of the U.S. House of Representatives, the CCWI had a reputation for being one of the few well-functioning bipartisan organizations on Capitol Hill. By tradition, one Republican and one Democratic member would jointly co-chair the caucus, and one Republican and one Democrat would serve as vice-chairs.²¹ Together they would lead the caucus during one two-year congressional session, at the end of which the vice-chairs would ascend to become the co-chairs, and new vice-chairs would be selected. The CCWI engaged in numerous initiatives during the 108th Congress, outlined in an article titled *The Congressional Caucus for Women's Issues: An Inside Perspective on Lawmaking by and for Women*, which I published in the MICHIGAN JOURNAL OF GENDER AND LAW in 2006.²² For example, I helped organize and host a CCWI event in honor of U.S. Supreme Court Justices Ruth Bader Ginsburg and Sandra Day O'Connor, as described in the article and excerpted below:

Women in the Law Forum Honoring U.S. Supreme Court Justices

The Women's Caucus leaders held a "Women in the Law Forum" in October 2004, to celebrate the advancements that women have made in the legal profession, to commemorate the anniversary of the birth of Belva Lockwood, the first woman to be admitted to the U.S. Supreme Court Bar, and to honor Justices Sandra Day O'Connor and Ruth Bader Ginsburg, the first women to serve on the U.S. Supreme Court. Such events bring together women serving at the top levels of the legislative and judicial branches of government to foster increased communication, support and goodwill among these leaders.

The forum consisted of a two-part program. About 20 Women's Caucus Members welcomed the two Justices, and their family members and law clerks, at a pre-reception in the Lindy Boggs Room. After a period of informal conversation, they then walked down to

20. My joy at being sworn in alongside my father reminded me fondly of the day he served as the judge who swore me into the Michigan State Bar when I first became a lawyer in 1995.

21. See *Caucus Leadership*, WOMEN'S CONG. POL'Y INST. (last visited Feb. 4, 2022), <https://www.wcpinst.org/our-work/the-womens-caucus/caucus-leadership/>.

22. Julia L. Ernst, *The Congressional Caucus for Women's Issues: An Inside Perspective on Lawmaking by and for Women*, 12 MICH. J. GENDER & L. (2006), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1094&context=mjgl>.

the Speaker's Dining Room for the formal program and reception. This part of the event was held in conjunction with the Women's Studies Program at George Mason Law School and the Women's Law & Public Policy Fellowship Program at the Georgetown University Law Center. Several people attended from both law schools, and a representative from each spoke about various aspects of women in the law. The Women's Caucus leaders made brief remarks on women lawmakers in Congress and presented a framed copy of personalized Congressional Record statements honoring Justices Ginsburg and O'Connor. The two Justices then offered a few words about their experiences as the first [two] women to serve on the Supreme Court. Finally, the Justices graciously had their photographs taken by the official House photographer with all of the Members of Congress in attendance, and with the representatives from the law schools and the Women's Caucus staffers who had helped organize the forum.²³

My tenure serving on Capitol Hill and co-directing the Women's Caucus provided a phenomenal opportunity to help advance issues close to my heart. When my member of Congress rotated out of the co-chair position with the caucus, she generously gave me a high-profile portfolio of other issues, yet my passion remained committed to human rights and social justice. Therefore, I was thrilled to receive a call encouraging me to apply for a position running a legal fellowship program focusing on women's rights within the United States and internationally.

In 2005, I became the Executive Director of the Women's Law and Public Policy Fellowship Program (WLPPFP) and the Leadership and Advocacy for Women in Africa (LAWA) Fellowship Program at the Georgetown University Law Center. WLPPFP provides a year-long work experience with an organization focusing on women's rights in Washington, DC for recent law graduates. The LAWA Program provides lawyers and judges from Africa with an LL.M. degree at Georgetown Law focusing on how to use the international and regional human rights systems to advance women's rights within their countries, along with an internship opportunity in Washington, DC. Fellows from both programs meet together throughout the year for professional development workshops, networking opportunities, and other programming.

Each year Justice Ginsburg invited the WLPPFP and LAWA fellows to have tea with her at the U.S. Supreme Court.²⁴ She shared stories about her

23. *Id.* at 255-56.

24. For example, during my first summer, Justice Ginsburg invited the fellows to meet not only with her but also with Justices Yvonne Mokgoro and Kate O'Regan from the South African

challenges at Harvard Law School, including the lack of bathrooms for women (she had to dash to another building in the middle of taking the hours-long exams, because that building had no restrooms for women), the “ladies’ day” by some professors—the only day on which those professors would call on the women students, and Harvard Dean Erwin Griswold’s infamous dinner party for the women law students, where he required each woman to stand and explain why she was taking the seat away from a man. When her husband Marty graduated a year ahead and secured a job in New York City, Harvard refused to allow Ruth to visit for her final year at Columbia Law School to keep her family together, so she transferred to Columbia. Justice Ginsburg told our fellows about her difficulty finding any legal job upon graduation, despite being at the top of her class at both Harvard and Columbia and serving on the law review at both schools. One of her Columbia law professors, Gerald Gunther,²⁵ convinced U.S. District Judge Edmund Palmieri to take her as a law clerk on a trial basis, noting that he would find a suitable alternative clerk for the judge if Ginsburg did not perform satisfactorily.²⁶ She related accounts about her work as a law professor at Rutgers and Columbia and her advocacy as a litigator with the Women’s Rights Project of the American Civil Liberties Union.²⁷ She described her work as a judge on the U.S. Court of Appeals for the District of Columbia and as a U.S. Supreme Court Justice.²⁸ Our fellows would also observe Justice Ginsburg on the bench attending oral arguments before the U.S. Supreme Court each year.²⁹

Constitutional Court. See *Welcome 2005-2006 Women’s Law Advocates*, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Fall-2005-Newsletter-Accessible.pdf>.

25. Gerald Gunther originally authored the *Constitutional Law* casebook my Constitutional Law students use, which I also read as a student at the University of Michigan Law School in 1991. GERALD GUNTHER, *CONSTITUTIONAL LAW* (11th ed. 1985).

26. Ruth Bader Ginsburg, *Memories of Gerald Gunther*, 55 *STANFORD L. REV.*, 639, 639 n. 33 (2002). See also Z. Payvand Ahdout, *Beyond the Notorious: A Tribute to My Justice*, 121 *COLUMBIA L. REV.* 577 (2021).

27. *Biography of Associate Justice Ruth Bader Ginsburg*, SUP. CT. OF THE U.S., <https://www.supremecourt.gov/about/biographyginsburg.aspx>.

28. *Id.*

29. For example, during my tenure the fellows observed cases such as: “*Rice v. Collins*, 546 U.S. 333 (2006) (addressing racial discrimination in jury selection) and *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006) (addressing employment discrimination under Title VII of the 1964 Civil Rights Act).” *Outreach: The Newsletter of the Women’s Law & Public Policy Fellowship Program*, (Geo. Women’s L. & Pub. Pol’y Fellowship Program), Spring 2006, at 3, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Spring2006-Newsletter-Accessible.pdf>; “*Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007) (addressing gender-based employment discrimination), and *Gonzales v. Planned Parenthood Fed’n of Am., Inc.*, 549 U.S. 807 (2006) . . . about women’s reproductive health[.]” *Outreach: The Newsletter of the Women’s Law & Public Policy Fellowship Program* (Geo. Women’s L. & Pub. Pol’y Fellowship Program), Fall/Winter 2006, at 3, <https://www.law.georgetown.edu/wlppfp/wp->

Marty Ginsburg, a prominent tax law expert, worked as a professor at the Georgetown University Law Center from 1980 until his passing in 2010. As noted above, I served as Executive Director of the fellowship programs and taught at Georgetown Law from 2005-2011, overlapping with him for several years. Colleagues at the law school loved Marty's great sense of humor, optimism, and positive energy. As was readily apparent to those who knew him, he was also the embodiment of a supportive husband in an equal partnership throughout his deeply loving relationship with Ruth Bader Ginsburg. When the WLPPFP and LAWA Fellows met with Justice Ginsburg, she frequently told stories about Marty's fabled dinners, baked goods, and other culinary creations, as he was quite a talented chef.

While running the fellowship programs at the Georgetown University Law Center and teaching an International Women's Human Rights Seminar at both Georgetown's law school and main campus, I developed a deep passion for teaching. Therefore, I decided to earn an LL.M. degree and International Human Rights Certificate from Georgetown Law as a prelude to seeking a full-time law faculty position. Still serving as the WLPPFP/LAWA Executive Director, I took one or two classes on international human rights or social justice each semester for several years while jointly raising our young daughter, whom my husband and I had adopted as an infant from China in 2005. Upon graduating in 2010, I entered the law school job market, and my family and I were thrilled to move to Grand Forks in 2011, so I could join the University of North Dakota School of Law. I absolutely love coordinating our *Professional Foundations* course for our first-year students and teaching *Constitutional Law I*—addressing the structure of government and

content/uploads/sites/30/2018/09/WLPPFP-Fall-Winter2006-Newsletter-Accessible.pdf; “Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379 (2008) (employment discrimination), United States v. Williams, 553 U.S. 285 (2008) (child pornography)[.]” *Outreach: The Newsletter of the Women’s Law & Public Policy Fellowship Program* (Geo. Women’s L. & Pub. Pol’y Fellowship Program), Fall 2007 Winter 2008, at 3, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Fall2007-Winter2008-Newsletter-Accessible.pdf>; “United States v. Hayes, 555 U.S. 415 (2009) (involving domestic violence and gun legislation), Chambers v. United States, 555 U.S. 122 (2009) (involving a criminal case defining “violent felony”), Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246 (2009) (involving sexual harassment in schools), AT&T Corp. v. Hulteen, 556 U.S. 701 (2009) (involving the Pregnancy Discrimination Act), Ashcroft v. Iqbal, 556 U.S. 662 (2009) (involving discrimination suits against high-level governmental officials)[.]” *Outreach: The Newsletter of the Women’s Law & Public Policy Fellowship Program* (Geo. Women’s L. & Pub. Pol’y Fellowship Program), Fall 2008/Spring 2009, at 5, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Winter-2009-Newsletter-Accessible.pdf>; Skilling v. United States, 561 U.S. 358 (2010) (whether the former CEO of Enron received a fair trial). *Outreach: The Newsletter of the Women’s Law & Public Policy Fellowship Program* (Geo. Women’s L. & Pub. Pol’y Fellowship Program), Summer 2010, at 8, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Summer-2010-Newsletter-Accessible.pdf>; Thompson v. North Am. Stainless, LP, 562 U.S. 170 (2011) (employment discrimination). *Outreach: The Newsletter of the Women’s Law & Public Policy Fellowship Program* (Geo. Women’s L. & Pub. Pol’y Fellowship Program), Spring 2011, at 9, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Spring-2011-Newsletter-Accessible.pdf>.

separation of powers, *Legislation*—highlighting the role of the North Dakota Legislative Assembly and Congress along with statutory interpretation, *International Human Rights Advocacy*—introducing students to global legal issues, and *Gender and the Law*—including Justice Ginsburg’s legal legacy.

I have also become actively involved in the Women Lawyers Section (WLS) of the State Bar Association of North Dakota (SBAND). During the 2019 SBAND Annual Meeting in Fargo, I helped spearhead an “*RBG* Movie Screening and Panel Discussion,” attended by around 100 SBAND members.³⁰ Moderated by WLS President Katie Bertsch, the panel included Meagen Essen Powell (then with MBI Energy Services in Dickinson), Shannon Roers Jones (North Dakota Legislative Assembly Representative from Fargo), Mary Muehlen Maring (retired North Dakota Supreme Court Justice), William Neumann (retired North Dakota Supreme Court Justice), and Kirsten Sjue (North Dakota District Judge in Williston).³¹ When the Women Lawyers Section acquired the *RBG* documentary, the producers indicated they would grant rights to show the film to both SBAND and the University of North Dakota.³² See the Appendix for the bibliography of continuing legal education (CLE) materials accompanying this session.

On the evening of Friday, September 18, 2020, while walking along the coulee through my Grand Forks neighborhood, my mother interrupted my recounting the day’s events during one of our daily telephone conversations. She had the television muted in the background at her home in Michigan, and the story about Justice Ginsburg’s death had flashed across the screen. Like many others experienced that evening, a profound ache clenched my heart as Mom shared the news. As soon as I stepped in the door returning home, my husband came from the kitchen to give me a sympathetic hug. Having been touched in so many ways by Ruth Bader Ginsburg, I felt an imperative to mark her passing in some way. Over the weekend, I contacted my colleague Kathryn Rand, who immediately agreed to collaborate in honoring Justice Ginsburg, and UND School of Law Dean Michael McGinniss, who gave his full support.³³ Our first program memorializing Justice Ginsburg’s legacy for the UND School of Law community went so well that immediately afterward, Kathryn and I began planning a follow-up event for the wider UND community along with members of the State Bar Association of North Dakota (SBAND) in conjunction with UND’s Homecoming.

30. *RBG* (Magnolia Pictures 2018); 120th Annual Meeting, SBAND (June 13, 2019) https://cdn.ymaws.com/www.sband.org/resource/resmgr/2019_cle_seminars/am19_/am19_schedule_at_a_glance_ye.pdf.

31. *Id.* Patty Castro, also on the agenda, had a last-minute conflict preventing her participation.

32. Correspondence on file with the author.

33. Dean McGinniss similarly provided a tribute to Justice Antonin Scalia upon his passing in 2016: Michael McGinniss, *A Tribute to Justice Antonin Scalia*, 92 N.D. L. Rev. 1 (2016).

As noted above, we began each program showing the phenomenal documentary film *RBG*,³⁴ and then discussed Justice Ginsburg's life and achievements after the screening. Kathryn creatively formulated a series of probing and informative questions for each of us to address during the conversation segment of the events. To kick-off each discussion, Kathryn and I each highlighted our favorite among Justice Ginsburg's many well-known axioms, expounding why that particular saying inspired each of us so powerfully. The audience had heard many of Justice Ginsburg's now-famous quotations throughout the documentary, and media outlets had been showering the public with others as the memorials honoring her life continued in the weeks following her death, so we thought this would be a good place to start.

III. FAVORITE GINSBURG QUOTATIONS

To frame our first topic of conversation, Kathryn and I asked each other what adage from Justice Ginsburg resonates most deeply with each of us, and why.

Kathryn Rand: The quotation from Justice Ginsburg I chose is: “Fight for the things that you care about, but do it in a way that will lead others to join you.”³⁵ This quote particularly speaks to me right now, especially in the context of the fall of 2020, for two reasons. First of all, because she's talking about fighting from a place of inclusiveness—of bringing people together, of finding common ground and shared values—not fighting from a place of hatred, or resentment, or even anger. Leading in a way that helps us come together based on the many, many things that all of us have in common—I think that's what she had in mind. And I think that's what she would counsel, to find ways to help us fight together to make our country better, rather than to fight against each other.

The other reason it speaks to me is because I think this is a fantastic lesson for lawyers. Our job is to persuade. We don't just get up there and say what our opinion is and hammer away at it. We need to persuade others that our position is the best one. And that means we have to understand why people would disagree with us. We have to understand what are the best arguments against what we want to have happen. And then we need to figure out a way to speak to those different points of view in a way that brings people over to our side, even if that means adjusting our side.

34. *RBG* (Magnolia Pictures 2018). As noted above, when the Women Lawyers Section of the State Bar Association of North Dakota purchased the rights to show the film at the SBAND Annual Meeting in 2019, the producers granted the rights to show the film to both SBAND and UND audiences.

35. Colleen Walsh, *Honoring Ruth Bader Ginsburg*, THE HARVARD GAZETTE (May 29, 2015), <https://news.harvard.edu/gazette/story/2015/05/honoring-ruth-bader-ginsburg/> (response to a question regarding advice she would give young women today during a luncheon at Harvard).

Julia Ernst: For my favorite Ginsburg quote, I chose: “**Women will have achieved true equality when men share with them the responsibility of bringing up the next generation.**”³⁶ As I elucidated during the program and explain in greater detail here, Justice Ginsburg and her husband Marty embodied that sentiment within their own marriage. I love the story Marty relayed in the documentary—with sheer delight and a mischievous grin—describing a brief exchange when a journalist asked their young daughter Jane about her parents. In the forthright manner of children, she indicated her parents’ responsibilities divided equally within the marriage: her father did the cooking, and her mother did the thinking. Marty Ginsburg exuded great amusement in relating that story, as well as his exuberant pride in his wife’s intellect and the heights within the legal profession to which she had climbed. He was renowned for his excellent cooking skills;³⁷ whereas Justice Ginsburg’s lack of cooking acumen frequently arose as a topic of conversation in their public appearances.

Justice Ginsburg often stated that Marty truly believed in the significance of her work. More broadly, he felt a woman’s work, whether at home or on the job, was just as important as a man’s. They both believed in 1) valuing the contributions of both partners in a marriage regardless of gender; 2) the equality of each partner both at home and on the job; and 3) that both of these spheres are equally important for men and women. Marty lived his values by sharing responsibilities around the home, such as cooking, as well as childrearing duties.

As noted above, every year Justice Ginsburg would invite me to bring our Women’s Law and Public Policy Fellows to have tea with her in one of the Supreme Court’s formal conference rooms. During those conversations, she would often tell the story of the stolen elevator (she also liked to relay this vignette in interviews).³⁸ She would start by relating when her son James was a young child, he was—in her eyes—quite “lively.” By contrast, his teachers considered him to be somewhat of a troublemaker. Frequently she would receive a call at work and have to drop everything she was doing to go down to the school and address the issue. After burning the midnight oil and pressing through her fatigue to complete an urgent project, the school called her again, informing her this time young James had “stolen the elevator.” Exhausted and harried to finish the project, she told the school this child has two parents, both parents share responsibility for parenting him, and this time

36. N.Y.C. Bar Ass’n, *A Conversation with Justice Ruth Bader Ginsburg*, 56 THE RECORD 18 (2001).

37. See Martha Ann Alito et. al, CHEF SUPREME: MARTIN GINSBURG—CREATED BY THE JUSTICES’ SPOUSES IN MEMORIAM (2011), <https://supremecourtgifts.org/products/111803>.

38. *My Own Words*, 2019 National Book Festival, C-SPAN (Aug. 31, 2019), <https://www.c-span.org/video/?463458-12/supreme-court-justice-ruth-bader-ginsburg-dies-87#>.

it was his father's turn to handle the issue, so please call his father. The school phoned Marty Ginsburg, then a lawyer at a major law firm, and he dutifully left his office and went to the school. When he arrived, the principal informed him that his son had stolen the elevator, to which Marty quipped with his characteristic wit and classic style, "Well, how far could he have taken it?"³⁹ It turns out one of their son's classmates had dared him to take the entire kindergarten class up to the top floor, and James boldly took up the challenge. Justice Ginsburg noted that after this incident involving Marty, the couple received dramatically fewer calls from the school. She surmised this change likely resulted because, although the school officials had not thought twice about calling a mother away from her work, they were much more hesitant to call a father away from his.⁴⁰

This story aptly illustrates Justice Ginsburg's maxim that gender equality will only occur once men and women share responsibilities equally from the office to the school, from the courtroom to the laundry room.⁴¹ It also highlights the triple shift many working women still bear:

The first shift entails women's work for their employer, including the fatiguing pressure to work twice as hard as male counterparts in the workplace,⁴² for a woman working in male-dominated employment to act like a man yet not be manly,⁴³ and to pretend in the workplace like they do not to

39. Nina Totenberg, *Justice Ruth Bader Ginsburg's Life Immortalized In Song*, NPR (July 18, 2018), <https://www.npr.org/2018/07/18/623893240/justice-ruth-bader-ginsburgs-life-immortalized-in-song>.

40. Jessica Gresko, *A Rapper, An Elevator and an Elephant: Stories Ginsburg Told*, WASHINGTON POST (Sept. 20, 2020), https://www.washingtonpost.com/politics/courts_law/a-rapper-an-elevator-and-a-camel-the-stories-ginsburg-told/2020/09/20/4e10fbfa-fafa-11ea-85f7-5941188a98cd_story.html; Liz McNeil, *Ruth Bader Ginsburg's Late Husband Marty Was the 'Only Boy Who Cared She Had a Brain'*, PEOPLE (Dec. 19, 2018), <https://people.com/politics/ruth-bader-ginsburg-husband-marty-only-boy-who-cared-she-had-a-brain/>.

41. In 2019, Melinda Gates shared a story about her husband, Bill Gates, driving their daughter to school, and how other parents noticed, which led to other fathers driving their children instead of just the mothers. Alyson Shontell and Allana Akhtar, *Something Interesting Happened When Bill Gates Started Driving His Daughter to School*, BUSINESS INSIDER (April 25, 2019), <https://www.businessinsider.com/microsoft-bill-melinda-gates-drive-daughter-to-school-2019-4>.

42. Joan Williams, *Why Women Have to Try Twice as Hard at Work*, LEAN IN (last visited Mar. 1, 2022), <https://leanin.org/education/what-works-for-women-at-work-part-1-prove-it-again#!>; Joan Williams, Marina Multhaupt, Su Li, and Rachel Korn, *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession*, A.B.A.'S COMM'N ON WOMEN IN THE PRO. AND THE MINORITY CORP. COUNS. ASS'N 7 (2018), <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf> ("Women of color, white women, and men of color reported that they have to go 'above and beyond' to get the same recognition and respect as their colleagues.").

43. See generally Susan Chira, *The Manly Jobs Problem*, N.Y. TIMES, Feb. 8, 2018, <https://www.nytimes.com/2018/02/08/sunday-review/sexual-harassment-masculine-jobs.html>.

have a family and certainly not children,⁴⁴ to say nothing of the sexual harassment, sexist jokes, and other inappropriate treatment to which many women are subjected at work.⁴⁵

The second shift entails women's perceived responsibility for the housework—reinforced by traditions concerning “women's proper sphere in the home,” stereotypes regarding “women's work,” and societal expectations constricting both women and men—including cooking, cleaning, shopping, dishes, laundry, and other household duties (note these responsibilities still largely fall on wives, whether or not they have children).⁴⁶

The third shift entails women's perceived responsibility to bear the primary role of taking care of the children⁴⁷—getting them ready for school; taking care of any problems at school; taking them to medical, dental and other appointments; scheduling and supervising play dates; registering them for programs; maintaining their calendars; being their chauffeurs; helping with homework; feeding them; cleaning them; putting them to bed; and so on—a full-time job in itself.⁴⁸ Women also typically provide care for elderly parents and for sick or disabled family members.⁴⁹

Of course, many men help with these tasks—and are lauded as outstanding fathers; yet for women, instead of accolades for going above-and-beyond, they are simply doing as expected.⁵⁰ Under the “traditional” division of

44. Claire Cain Miller, *The Motherhood Penalty vs. The Fatherhood Bonus*, N.Y. TIMES, Sept. 6, 2014, <https://www.nytimes.com/2014/09/07/upshot/a-child-helps-your-career-if-youre-a-man.html> (“One of the worst career moves a woman can make is to have children.”).

45. Joan Williams, Marina Multhaup, Su Li, and Rachel Korn, *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession*, A.B.A.'S COMM'N ON WOMEN IN THE PRO. AND THE MINORITY CORP. COUNS. ASS'N 7 (2018), <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf> (“About 25% of women but only 7% of white men and 11% of men of color, reported that they had encountered unwelcome sexual harassment at work, including unwanted sexual comments, physical contact, and/or romantic advances. Sexist comments, stories, and jokes appear to be widespread in the legal profession: more than 70% of all groups reported encountering these.”).

46. Andrea L. Miller and Eugene Borgida, *The Separate Spheres Model of Gender Inequality*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Jan. 22, 2016) (“when men and women violate gender stereotypes by crossing spheres, with women pursuing career success and men contributing to domestic labor, they face backlash and economic penalties.”), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4723260/>.

47. In many families mothers bear this responsibility, but in other families grandmothers, aunts, or other female caregivers serve in this role. MARGUERITE GUZMAN BOUVARD, *MOTHERS IN ALL BUT NAME: GRANDMOTHERS, AUNTS, SISTERS, FRIENDS, STRANGERS, NANNIES* (2009).

48. See generally Laura Garnett, *If You're a Working Woman, You Should Think Twice Before Having a Child in the U.S.*, INC. (Mar. 8, 2019), <https://www.inc.com/laura-garnett/if-your-a-working-woman-you-should-think-twice-before-having-a-child-in-us.html>.

49. National Center on Caregiving reviewed by Phyllis Mutschler, Ph.D., *Women and Caregiving: Facts and Figures*, FAM. CAREGIVING ALL. (last visited Feb. 27, 2022), <https://www.caregiver.org/resource/women-and-caregiving-facts-and-figures/>.

50. Marilisa Racco, *Dad Bias: Why Are Fathers Disproportionately Praised for Parenting Their Kids?* GLOB. NEWS (June 10, 2018), <https://globalnews.ca/news/4263122/dad-bias-praise->

household labor, many men contribute to the family by performing maintenance on the home, vehicles, and yard, yet when men care for children, they are often seen as babysitting instead of parenting.⁵¹ Women frequently multitask—e.g., doing laundry and watching children at the same time—increasing the intensity of each responsibility.⁵² Research supports Justice Ginsburg’s attention to the unequal burden on women. A 2020 report by the Institute for Women’s Policy Research highlights that “[o]n an average day, women in the United States spend 37 percent more time on unpaid household and care work than men.”⁵³ Thus in many families today, women still shoulder the lion’s share of the work in the home.

For women who work outside the home, this triple burden can be exhausting and has been exacerbated by the pandemic.⁵⁴ “Work-life balance” remains a chimera for many, as it is often impossible to feel like one is adequately fulfilling both work and home responsibilities.⁵⁵ But as the *RBG* film depicts, the Ginsburgs forged a new model of a strong marital partnership in which both of their careers could thrive as well as their family life, by demonstrating equality in their relationship with each other.

In modeling shared work and family responsibilities, and in making the statement quoted above, I do not believe Justice Ginsburg meant all families must follow the same template. For example, increasingly in recent years, more husbands want to be stay-at-home-dads as the primary caregivers for

parenting/; Ross McCammon, *Why Do We Praise Dads Just for Being Dads?*, PARENTS (June 1, 2016), <https://www.parents.com/parenting/dads/issues-trends/why-do-we-praise-dads-for-just-being-dads/>.

51. Terence Mentor, *Dads, Stop It With The ‘We Don’t Babysit’ Thing*, WASHINGTON POST (Dec. 29, 2017), <https://www.washingtonpost.com/news/parenting/wp/2017/12/29/dads-dont-babysit-or-do-they/>; Emma Wilson, *The Fathers Saying ‘Dads Don’t Babysit’*, BBC (Apr. 27, 2016), <https://www.bbc.com/news/blogs-trending-36144487>; Alexis Coe, *Dads Caring for Their Kids: It’s Parenting, Not Babysitting*, THE ATLANTIC (Jan. 23, 2013), <https://www.theatlantic.com/sexes/archive/2013/01/dads-caring-for-their-kids-its-parenting-not-babysitting/267443/>.

52. Leah Ruppner, *Women Are Not Better at Multitasking. They Just Do More Work*, STUDIES SHOW, THE CONVERSATION (Aug. 15, 2019), <https://www.sciencealert.com/women-aren-t-better-multitaskers-than-men-they-re-just-doing-more-work>.

53. Cynthia Hess, Tanima Ahmed & Jeff Hayes, *Providing Unpaid Household and Care Work in the United States: Uncovering Inequality*, INST. FOR WOMEN’S POL’Y RSCH. (Jan. 2020), <https://iwpr.org/wp-content/uploads/2020/01/IWPR-Providing-Unpaid-Household-and-Care-Work-in-the-United-States-Uncovering-Inequality.pdf> (“In the United States, women spend considerably more time than men over their lifetime doing unpaid household and care work. The unequal distribution of this work—work that is essential for families and societies to thrive—not only limits women’s career choices and economic empowerment, but also affects their overall health and well-being.”).

54. See generally Pallavi Dogra and Arun Kaushal, *Underlying Triple Burden Effects on Women Educationalists Due To COVID-19*, NAT’L CTR. FOR BIOTECHNOLOGY INFO. (July 16, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8284183/>.

55. As Justice Ginsburg explained, “our workplaces do not adequately accommodate the demands of childbearing and childrearing.” RUTH BADER GINSBURG ET AL., MY OWN WORDS xviii (Mary Hartnett & Wendy Williams eds., 2016).

the children and caretakers of the home,⁵⁶ such as my husband, Rich, who took four months of parental leave when we adopted our infant daughter. Growing numbers of wives want to serve as the primary breadwinners.⁵⁷ Our LAWA Fellows were astonished to learn that Rich does the shopping, cooking, and much of the housecleaning in our family, enabling me to focus on my work, and they expressed greater shock at Rich even changing our baby's "nappies" (diapers). As illustrated above, Justice Ginsburg was famous for burning the midnight oil. I admire her willingness to give it her all for something she believed in and to pursue a career that was meaningful to her. My family will tell you I also frequently work nights and weekends, as I care deeply about my work as well as my family. Fortunately, I have very supportive, understanding, and encouraging family members who inspire my dedication to my work. So again, regarding balance, I think every individual and family needs to find the appropriate balance for themselves.

In some families, the couple may mutually choose more traditional roles, such as Justice Ginsburg's parents. As another example, my father served for decades as a state trial judge, and my mother still maintains her license as a registered nurse, although she left the workforce for about two decades to raise my brothers and me before returning to work until both she and my father retired.

Some families may have only one parent who manages all roles. In addition to modeling equality in her relationship with her husband, Ginsburg's legal work helped open the way for men to be caregivers, including single fathers. She famously represented male clients to try to break down harmful stereotypes against both men and women, demonstrating how gender-based stereotypes harm all people. For example, in the case *Weinberger v. Wiesenfeld*,⁵⁸ she represented Stephen Wiesenfeld, who—after his wife died during childbirth—wanted to stay home and take care of his son during his early infancy.⁵⁹ Whereas women in the same situation would have been able to obtain Social Security benefits from their deceased husbands' Social Security, husbands were not allowed to do so.⁶⁰ This gender-based discrimination hurt women workers (because their work earned fewer benefits than men), male spouses (because they could not obtain the benefits and be caretakers

56. Anne-Marie Slaughter, *Wanted: A Word to Describe Men Who Stay Home to Take Care of Their Families*, THE ATLANTIC (May 6, 2013), <https://www.theatlantic.com/sexes/archive/2013/05/wanted-a-word-to-describe-men-who-stay-home-to-take-care-of-their-families/275568/>.

57. Sarah Jane Glynn, *Breadwinning Mothers Continue to be the U.S. Norm*, CTR. FOR AM. PROGRESS (May 10, 2019), <https://www.americanprogress.org/article/breadwinning-mothers-continue-u-s-norm/>.

58. 420 U.S. 636 (1975).

59. *Id.* at 639-41.

60. *Id.*

for their children), and their children (who would only benefit by a parent caring for them when their fathers passed away but not their mothers).⁶¹

Some families may have two parents of the same gender who will choose the roles that best suit each of them. And some families, like the Ginsburgs, entail husbands and wives sharing a more equal division of labor across all spheres.

Until society, employers, and governmental policies support a real choice for each family, Justice Ginsburg believed we still have a distance to travel before reaching true equality. To name a few ideas, employers could encourage “parental leave” equally for men as fathers, instead of focusing primarily on “maternity leave” for women. Libraries could offer “parent and me” events instead of “mommy and me” events. Daycare providers could hire as many males as females to work in childcare, because men are valued for their nurturing and caregiving capabilities as much as women. When the “work-life balance” problem falls as heavily on men as it does on women, that is when I believe we will see real change. We discuss this topic in my *Gender in the Law* class; hence my appreciation for this quotation by Justice Ginsburg. Justice Ginsburg and Marty Ginsburg forged a strong marital partnership in which both their careers and their family life could thrive.

In preparing for this question, choosing among Justice Ginsburg’s adages proved to be challenging, so I offer a few more of her memorable sayings here:

- “I don’t say women’s rights; I say the constitutional principle of the equal citizenship stature of men and women.”⁶²
- “I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks.” Ginsburg was quoting Sarah Moore Grimké, an abolitionist and founder of the women’s suffrage movement, during her first oral argument before the U.S. Supreme Court in the 1973 case of *Frontiero v. Richardson*.⁶³
- “Feminism [is the] notion that we should each be free to develop our own talents and not be held back by manmade barriers.”⁶⁴

61. Sandra Pullman, *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, ACLU, <https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff>.

62. Academy of Achievement, *Justice Ruth Bader Ginsburg, Academy Class of 1995, Full Interview*, YOUTUBE (Oct. 11, 2016), <http://youtube.com/watch?v=YCH32n7drMc>.

63. Transcript of Oral Argument at 20, *Frontiero v. Richardson*, 411 U.S. 677 (1973) (No. 71-1694), https://www.supremecourt.gov/pdfs/transcripts/1972/71-1694_01-17-1973.pdf.

64. Makers, *Ruth Bader Ginsburg: Free to Be . . . You and Me . . . and a Feminist*, YOUTUBE (Jul. 2, 2012), <https://www.youtube.com/watch?v=IwkhV-q0V20>.

- “Women belong in all places where decisions are being made. It shouldn’t be that women are the exception.”⁶⁵
- “For both men and women the first step in getting power is to become visible to others, and then to put on an impressive show . . . As women achieve power, the barriers will fall. As society sees what women can do, as women see what women can do, there will be more women out there doing things, and we’ll all be better off for it.”⁶⁶
- “If you’re going to change things, you have to be with the people who hold the levers.”⁶⁷
- “Generalizations about ‘the way women are,’ estimates of what is appropriate for most women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.”⁶⁸
- “Speak your mind, even if your voice shakes,” echoing Maggie Kuhn, Founder of the Gray Panthers.⁶⁹
- “My mother told me to be a lady. And for her, that meant be your own person, be independent.”⁷⁰
- “I said on the equality side of it, that it is essential to a woman’s equality with man that she be the decision-maker, that her choice be controlling. If you impose restraints, you are disadvantaging her because of her sex. . . . The state controlling a woman would mean denying her full autonomy and full equality.”⁷¹

65. H. Darr Beiser, *Ginsburg: Court Needs Another Woman*, USA TODAY (Apr. 16, 2021), https://usatoday30.usatoday.com/news/washington/judicial/2009-05-05-ruthginsburg_N.htm.

66. RUTH BADER GINSBURG ET AL., *MY OWN WORDS* 5 (Mary Hartnett & Wendy Williams eds., 2016).

67. Emily Bazelon, *The Place of Women on the Court*, N.Y. TIMES Jul. 7, 2009, <https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html>.

68. *United States v. Virginia*, 518 U.S. 515, 517 (1996).

69. Laura Lane, *Remembering Ruth Bader Ginsburg*, LONG ISLAND HERALD, Sept. 24, 2020, <https://www.liherald.com/stories/remembering-ruth-bader-ginsburg,127915>; Denise Elliott, *Quietly, Fiercely, She Paved a Path For Women in the Law*, LANCASTER ONLINE, Sept. 27, 2020, https://lancasteronline.com/opinion/columnists/quietly-fiercely-she-paved-a-path-for-women-working-in-law-column/article_498c493a-fe93-11ea-9fda-57daa33e8414.html; *Maggie Kuhn*, NAT’L WOMEN’S HALL OF FAME (last visited Mar. 1, 2022), <https://www.womenofthehall.org/inductee/maggie-kuhn/>.

70. Julie Cohen & Betsy West, RBG (2018); Miranda Gershoni and Jair Oballe, *RBG Champions Human Rights*, DUKE HUM. RTS. CTR. (last visited Mar. 1, 2022), <https://human-rights.fhi.duke.edu/rbg-champions-human-rights/>.

71. The Supreme Court, *Excerpts from Senate Hearing on the Ginsburg Nomination*, N.Y. TIMES, July 21, 1993, <http://www.nytimes.com/1993/07/22/us/the-supreme-court-excerpts-from-senate-hearing-on-the-ginsburg-nomination.html?pagewanted=2>.

- “So now the perception is, yes, women are here to stay. And when I’m sometimes asked when will there be enough [women on the supreme court]? And I say when there are nine, people are shocked. But there’d been nine men, and nobody’s ever raised a question about that.”⁷²
- “Women’s rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy.”⁷³
- “In every good marriage, it helps sometimes to be a little deaf.” Her mother-in-law gave her this guidance before her marriage, which she took to heart as good advice for all relationships—with spouses and other relatives, as well as in the workplace.⁷⁴

IV. JUSTICE GINSBURG’S INFLUENCE ON OUR CAREERS

To set the framework for the second topic in our conversation, we highlighted that Justice Ginsburg was a trailblazer for women in countless ways. In light of RBG’s successes in laying the groundwork for greater equality for women, we described how she had affected each of our own career paths.

Kathryn Rand: Let me state that as clearly as I possibly can. I would not be here without Justice Ginsburg, and women like her, period. It’s not just that she helped change the laws so people like me could pursue a legal career, become a licensed attorney, land a job, get promoted, and in my own case be fortunate enough to serve as the first woman dean here at UND School of Law. It’s also that she inspired people like me. When you see someone who looks like you in a position of power, or someone who looks like you who’s achieving audacious goals, that’s when you imagine maybe you could do something like that, too. Representation matters. So I am very grateful, not only for the work she did to change our laws to create more opportunities for women, but I’m also grateful that she was such a visible role model in so many ways. How about you, Julia, how would you say the Justice impacted your career?

Julia Ernst: As mentioned previously, I was fortunate to be able to attend part of Justice Ginsburg’s confirmation hearing upon her nomination to the U.S. Supreme Court in 1993. Throughout the hearing, what struck me about

72. *Justice Ruth Bader Ginsburg Remarks at Georgetown Law School*, C-SPAN (Feb. 4, 2015), <https://www.c-span.org/video/?324177-1/discussion-supreme-court-justice-ruth-bader-ginsburg>.

73. *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, ACLU-<https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff?redirect=womens-rights/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff> (last visited Oct. 23, 2021).

74. GINSBURG ET AL., *supra* note 66, at 5.

her demeanor was how reflective she was regarding every question the senators asked her. She took her time to listen carefully and to think deeply about each question before responding. You could see her mind working as she answered each question very slowly, thoughtfully, and deliberately. She often took a seemingly inordinate length of time to ponder before answering a question, and she would pause in the middle of answering a question to continue formulating her thoughts. In our Professional Foundations course for first-year students at the UND School of Law, the faculty emphasizes the importance of reflection—taking the time to slow down and think before one responds to a situation. Justice Ginsburg epitomized such reflectiveness through her very deliberate manner and thoughtful style of speaking.

When I would take our Women's Law Fellows to have tea with Justice Ginsburg at the Supreme Court, I would remind them to wait patiently after asking a question to give her time to think before she spoke—and even after she spoke, because she was probably not finished. When the fellows sat quietly after Justice Ginsburg responded to an inquiry, even when she was seemingly done, she would often continue her train of thought and treat them to an elaboration or anecdote they would otherwise have missed. I think that experience afforded a great lesson for the fellows—one I try to share with our law students as well. Allow the other party sufficient time and silence in a conversation, which will help them think and become even more forthcoming than they otherwise might. People often find it difficult or uncomfortable to have periods of silence in a conversation, so if the other party is not saying anything, they will jump in to fill the void. Yet it is especially important for lawyers to learn to be attentive listeners, including being comfortable with silence and giving the other party time to think, reflect, and then speak. This is true when lawyers are talking with clients, witnesses, opposing counsel, or judges—to train themselves to be comfortable with silence and truly to listen. The adage highlighting we have two ears and one mouth, so we should listen twice as much as we speak, rings especially true for lawyers.⁷⁵ Justice Ginsburg embodied that concept and provided a fantastic example of the benefits of adhering to that wisdom.

Justice Ginsburg also taught me that women can be *ourselves* as lawyers—we do not have to fit into some mold of what we see in the movies or on television to be powerful advocates. This was especially salient as I watched her confirmation hearing back in 1993 between my second and third

75. I have tried to take Justice Ginsburg's example to heart throughout my career, observing and listening more than speaking. My students may doubt this assertion, as I speak quickly in class to ensure coverage of important material, and I can go on and on discussing subjects about which I am passionate! I have also regretted instances when I should have been listening more—and speaking less. Listening is an important skill in so many contexts, one we should all continue to practice.

years of law school.⁷⁶ She modeled that women can be themselves and be very powerful. I love the fact that this diminutive, quiet woman has had such a powerful voice in shaping our country's entire legal system and undeniably our entire society. I like to share with our law students a fantastic book called *Quiet: The Power of Introverts in a World that Can't Stop Talking* by Harvard-educated lawyer Susan Cain.⁷⁷ This book reminds me of Justice Ginsburg, emphasizing you can remain true to yourself *and* be a great lawyer, even if you are not the loud, table-pounding, aggressive, effusive, grand-standing lawyer traditionally depicted in popular culture (and until relatively recently, lawyers were typically male and white, since women and people of other racial and ethnic backgrounds were not allowed into law schools).⁷⁸ When I attended law school, I often had a severe case of impostor syndrome, thinking I did not fit the mold of how a lawyer should look or act. Watching Justice Ginsburg during her confirmation hearing made me start to believe that, yes, I could have a place in the law as well.⁷⁹

V. IMPERATIVE TO CONTINUE JUSTICE GINSBURG'S WORK

For our next question, we asked one another whether each of us thought Justice Ginsburg's work related to gender equality is done—that is, have we accomplished all of her goals, both within the legal system and as a society?

76. As a fun coincidence, Kathryn Rand and I overlapped in our studies at the University of Michigan Law School (she attended from 1990 to 1993, and I attended from May 1991 through December 1994 as a summer-starter and political science joint-degree student). However, since Michigan Law enrolled a sizeable student body, I did not have the fortune of engaging with Kathryn during that timeframe. Having attended a large law school as a student and having worked at another huge institution (Georgetown Law) later in my career, I feel incredibly privileged to be part of our smaller and close-knit UND School of Law community. As Kathryn noted during our conversation:

I bet people don't know we overlapped in law school. I graduated just a year ahead of you, but Michigan Law School was big enough that we didn't actually know each other. This is, I know, something you and I both love about UND School of Law—that we all get to know each other, and our students don't have the experience that you and I had, where we had to get jobs at the same place decades after graduating in order just to meet each other.

77. SUSAN CAIN, *QUIET: THE POWER OF INTROVERTS IN A WORLD THAT CAN'T STOP TALKING* (2013).

78. In 1970, the year after I was born, only 3% of lawyers were women. *Women in the Legal Profession*, supra note 6. My father told me only a few women and people of color attended the University of Michigan Law School in his Class of 1963. Helen Hamilton, the first woman to graduate from the University of North Dakota School of Law in 1905, tried unsuccessfully to gain admission to the American Bar Association in 1915, although she had attained ABA membership by 1925 and practiced law in North Dakota for decades. Tom Dennis, *Helen Hamilton Opens American Bar Association Convention in 1915*, UND TODAY (March 30, 2021), <http://blogs.und.edu/und-today/2021/03/helen-hamilton-opens-american-bar-association-convention-1915/>.

79. I still had trouble internalizing this concept. As a law firm associate in the 1990s, I felt I should not discuss at work my life outside the firm—trips to visit my parents, dental or medical appointments, my wedding, and so on. The concept of “sweat equity” permeated my experience.

Kathryn Rand: What a great question! I'm going to give a "lawyer answer"—I'm going to say yes and no. On the yes part, I think it's really important that we recognize and acknowledge the significant progress we've made in realizing the constitutional ideal of equality. We've come a long way, as they say. And those steps have been both big and small. When I started work as a federal prosecutor after law school, I wasn't allowed to wear pants in court—that was in the late 1990s; it wasn't in the 19th century. So we've made a lot of progress, but at the same time there's always more work to do. Equality isn't only the removal of legal obstacles. Women are still paid less for the same jobs. We are still subject to sexual harassment at work and on the streets. Women are still vulnerable to sexual assault and violence—especially in their homes and at the hands of the men they love. And all of these issues are even more acute for women of color. I also want to point out to that that Justice Ginsburg cared about gender equality for men as well as women, not just as a litigation strategy but as a constitutional ideal. She really believed that if we could achieve gender equality, society would be better for all of us—men and women. How about you, Julia? Tell us your take on how far we've come in achieving Justice Ginsburg's goals of gender equality in the law and our society, especially from your perspective as someone who teaches Gender and the Law.

Julia Ernst: I fully agree that, although we have made great strides in the law and society, we have a long way to go toward gender equality in many areas. Discrimination against women remains manifest through gender-based violence, sex trafficking, inequities in health care, sexual harassment, employment discrimination, and the pay gap between women and men. Justice Ginsburg was not only concerned about equality for men and women, but she also recognized the intersectionality of gender-based discrimination with other forms of discrimination. People throughout the United States experience numerous, overlapping facets of discrimination, such as inequalities based on race, ethnicity, national origin, religion, gender identity, sexual orientation, class, age, disability, and other areas in addition to gender.

Having studied political science and different forms of governmental structures in the United States and other countries, I strongly believe in the value of democracy and civic participation in government. I teach *Constitutional Law I* and *Legislation*, both of which address the structure and functioning of our national and state governments. We have yet to reach equality in most of those arenas, as Justice Ginsburg documented in her law review articles, case briefs, and judicial opinions. The Federal Judicial Center, the National Association of Women Judges, Catalyst, and the Center for American Women & Politics (CAWP) provide recent statistics regarding the rates of women and men in various positions in our country within the executive, legislative, and judicial branches at the national and state levels.

Federal Level

U.S. Congress: As of 2022, women hold 145 of 535 seats in the 117th Congress (27.1%),⁸⁰ including 24 of 100 seats in the Senate (24%), and a record 121 of 435 seats in the House of Representatives (27.8%).⁸¹ CAWP highlights: “Congresswoman Nancy Pelosi (D-CA), the first woman Speaker of the House, holds the highest position in the House and is second in line of presidential succession.”⁸² It also notes: “The record high for women serving in the U.S. Senate was 26, last set between January 3, 2021 and January 18, 2021.”⁸³ The 2020 election sent at least 51 women of color to Congress, about 9.2% of the total members of Congress.⁸⁴ Of 145 women serving in Congress, about 35% are women of color.⁸⁵ Forty-eight women of color currently serve in the U.S. House of Representatives, and three women of color serve in the U.S. Senate.⁸⁶

Federal Executive: In 2020, the United States elected Kamala Harris, the first female vice-president. She is also the first woman of color, the first Black person, and the first South Asian person elected to this office.⁸⁷ Few women have ever held a U.S. cabinet position. Only 64 women have held a total of 72 cabinet positions or cabinet-level appointments in the history of the United States.⁸⁸ President Biden has comprised his cabinet of 12 women, totaling half of the President’s cabinet, which is the most women to serve concurrently, 7 of whom are women of color.⁸⁹ These appointments include the first women ever to serve in key posts, including Treasury Secretary and Director of National Intelligence. Biden has also hired the first all-female

80. *Women in the U.S. Congress 2022*, CTR. FOR AM. WOMEN IN POL. (last visited Feb. 17, 2022), <https://cawp.rutgers.edu/facts/levels-office/congress/women-us-congress-2022>.

81. *Id.*

82. *Women in Elective Office 2021*, CTR. FOR AM. WOMEN IN POL. (last visited Mar. 3, 2022), <https://cawp.rutgers.edu/women-elective-office-2021>.

83. *Id.*

84. *Women of Color in Elective Office 2021*, CTR. FOR AM. WOMEN IN POL. (last visited Mar. 3, 2022), <https://cawp.rutgers.edu/women-color-elective-office-2021>. Calculating the total number of women of color is complicated by self-identification as more than one race/ethnicity.

85. *Women Officeholders by Race and Ethnicity*, CTR. FOR AM. WOMEN AND POL. (last visited Feb. 17, 2022), <https://cawp.rutgers.edu/facts/women-officeholders-race-and-ethnicity>. (51/145=35%).

86. *Women Officeholders by Race and Ethnicity*, CTR. FOR AM. WOMEN IN POL. (last visited Mar. 3, 2022), [https://cawpdata.rutgers.edu/women-elected-officials/position?current=1&position\[\]=US+Senator&position\[\]=US+Representative&race_ethnicity\[\]=Asian%2FPacific+Islander&race_ethnicity\[\]=Black%2FAfrican+American&race_ethnicity\[\]=Hispanic%2FLatina&race_ethnicity\[\]=Middle+Eastern%2FNorth+African&race_ethnicity\[\]=Multi-racial&race_ethnicity\[\]=Native+American](https://cawpdata.rutgers.edu/women-elected-officials/position?current=1&position[]=US+Senator&position[]=US+Representative&race_ethnicity[]=Asian%2FPacific+Islander&race_ethnicity[]=Black%2FAfrican+American&race_ethnicity[]=Hispanic%2FLatina&race_ethnicity[]=Middle+Eastern%2FNorth+African&race_ethnicity[]=Multi-racial&race_ethnicity[]=Native+American).

87. *Id.*

88. *Women Appointed to Presidential Cabinets*, CTR. FOR AM. WOMEN AND POL. (last visited Feb. 17, 2022), <https://cawp.rutgers.edu/sites/default/files/resources/womenapptdtoprescabinets.pdf>.

89. *Id.* (pending the approval of Shalanda Young’s nomination as Director of the Office of Management and Budget).

White House communications team.⁹⁰ The first Native American woman was appointed to the presidential cabinet in 2021: Debra Haaland as Secretary of the Interior.⁹¹ Elizabeth Prelogar began serving as the Acting Solicitor General at the U.S. Department of Justice in January 2021; Biden officially nominated her to this role on August 11, 2021, and she was confirmed on October 28, 2022.⁹² President Biden appointed Shalanda Young as acting Director of the Office of Management and Budget in March 2021 and has since officially nominated her.⁹³ If confirmed, she will be the first Afghan American woman to hold this position.⁹⁴ United States has not yet had a woman president, though many other countries have had female heads of state, such as the United Kingdom, Ireland, France, Germany, Iceland, Norway, Finland, Denmark, Poland, Portugal, Turkey, Israel, Argentina, Brazil, Peru, Panama, Haiti, Senegal, Mozambique, Malawi, Namibia, Liberia, India, Pakistan, the Philippines, Australia, New Zealand, and the list goes on.⁹⁵

Federal Judiciary: In 2020, the federal judiciary had 665 women (29%), which increased to 790 (32%) in 2021.⁹⁶ As of February 2022, President Biden had nominated 82 jurists to the federal bench; 62 (about 75.6%) of those nominees are women, and 39 (about 63%) are women of color.⁹⁷ Four of the 50 women nominees are part of the LGBTQ community.⁹⁸ The Senate confirmed Beth Robinson to the U.S. Court of Appeals for the Second Circuit; she is the first openly lesbian woman to serve on any federal circuit

90. Aris Folley, *Record Number of Women To Serve in Biden Cabinet*, THE HILL (Jan. 20, 2021, 3:38 PM), <https://thehill.com/homenews/administration/535082-record-number-of-women-to-serve-in-bidens-cabinet>; Lois Phillips et al., *Women in Biden Cabinet Need to be Seen and Heard*, WOMEN'S ENEWS (Mar. 15, 2021), <https://womensenews.org/2021/03/women-in-biden-cabinet-need-to-be-seen-and-heard/>.

91. *Women Appointed to Presidential Cabinets*, *supra* note 88.

92. Angie Gou, *Senate Confirms Prelogar as Biden's Solicitor General*, SCOTUSBLOG (Oct. 28, 2021), <https://www.scotusblog.com/2021/10/senate-confirms-prelogar-as-bidens-solicitor-general>; *President Biden Nominates Elizabeth Prelogar for Solicitor General*, THE WHITE HOUSE (Aug. 11, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/11/president-biden-nominates-elizabeth-prelogar-for-solicitor-general/>.

93. *Confirmation Hearing for Budget Nominees*, C-SPAN (Feb. 1, 2022), <https://www.c-span.org/video/?517488-1/white-house-budget-office-nominees-testify-senate-budget-committee>.

94. *Id.*

95. *Women in Government: Quick Take*, CATALYST (Jan. 20, 2021), <https://www.catalyst.org/research/women-in-government/>.

96. FORSTER-LONG, INC. AND THE NATIONAL ASSOCIATION OF WOMEN JUDGES, THE AMERICAN BENCH: JUDGES OF THE NATION, 17 (2021), https://www.nawj.org/uploads/statistics/americanbench_genderdatadata_2020vs2021_nawj.pdf.

97. Amanda Becker, *Biden's Federal Judicial Picks Are 77 Percent Women So Far*, THE 19TH NEWS (July 7, 2021, 1:47 PM), <https://19thnews.org/2021/07/biden-judicial-nominees-women/>; *Biden's Nominees*, BALLS AND STRIKES (last visited Feb. 17, 2022), <https://ballsandstrikes.org/bidens-nominees/>.

98. *Biden's Nominees*, BALLS AND STRIKES (last visited Mar. 3, 2022), <https://ballsandstrikes.org/bidens-nominees/?data-status=Confirmed&data-woman=true>.

court.⁹⁹ As previously mentioned, Forster-Long’s gender diversity survey reported 790 sitting female judges on the federal bench accounting for 32.3% of all federal judges.¹⁰⁰ Within this total, 3 Supreme Court Justices (33%), 105 U.S. Court of Appeals judges (29.4%), 546 U.S. District Court justices (32.7%), 106 Bankruptcy Court Justices (35.3%), and 30 other Federal Court Judges (29.1%) are women.¹⁰¹ President Biden has also chosen Ketanji Brown Jackson as the first Black woman nominated to the U.S. Supreme Court.¹⁰² If a woman replaces Justice Stephen Breyer, the Supreme Court will consist of four women and five men—44% of the highest court in the nation.¹⁰³

State Level

State Legislature: So far in 2022, 2,297 (31.1%), of the 7,383 state legislators in the United States are women.¹⁰⁴ According to 2021 figures, women of color constituted 26.5% of women state legislators serving nationwide.¹⁰⁵ Therefore, women of color constituted 8.2% of the total state legislators.¹⁰⁶ Women hold 561 (28.4%), of the 1,972 state senate seats and 1,736, (32.1%), of the 5,411 state house seats.¹⁰⁷ Since 1971, the number of women serving in state legislatures has more than quintupled—a record high for women serving in state legislatures, representing the most women elected at one time.¹⁰⁸ In 2021, a total of 93 women served in legislative leadership positions, 48 in house chambers and 45 in the senate chambers.¹⁰⁹ As of 2022, 88 women currently serve in leadership positions, and

99. Beth Robinson, *BALLS AND STRIKES* (last visited Feb. 17, 2022), <https://ballsandstrikes.org/nominees/beth-robinson/>.

100. FORSTER-LONG, INC. AND THE NATIONAL ASSOCIATION OF WOMEN JUDGES, *supra* note 96.

101. *Id.*

102. Robin Givhan, *Ketanji Brown Jackson Shatters Stereotypes While Making History*, WASHINGTON POST (Feb 25, 2022), <https://www.washingtonpost.com/nation/2022/02/25/ketanji-brown-jackson-defies-stereotypes/>.

103. Robert Barnes, *Four Women on the Supreme Court Would Bring Historic Near Parity for Institution Long Dominated By White Men*, WASHINGTON POST (Feb. 27, 2022), <https://www.washingtonpost.com/politics/2022/02/27/ketanji-jackson-supreme-court/>.

104. *Women in State Legislatures 2022*, CTR. FOR AM. WOMEN AND POL. (last visited Mar. 3, 2022), <https://cawp.rutgers.edu/facts/levels-office/state-legislature/women-state-legislatures-2022>.

105. *Women of Color in Elective Office 2021*, *supra*, note 84.

106. *Id.*

107. *Id.*

108. Martha Saenz, *Women in State Legislatures for 2020*, NAT’L CONF. OF STATE LEGS. (last visited Oct. 2, 2021), <https://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2020.aspx>; *Women in Elective Office 2021*, *supra* note 82.

109. Martha Saenz, *Female Legislative Leaders 2021*, NAT’L CONF. OF STATE LEGS. (last visited Mar. 3, 2022), <https://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/female-legislative-leaders-2021.aspx>.

among them 67 identify as white, 13 as Black, 8 as Latina, and 3 as Asian American/Pacific Islander.¹¹⁰

State Executive Branch: Nine women (6 Democrats and 3 Republicans) are serving as state governors in 2022, along with one as governor of Guam.¹¹¹ As of February 2022, 95 women hold statewide elective executive offices across the country; women hold 30.6% of the 310 available positions.¹¹² Of the 95 women, 22 (23.16%) are women of color.¹¹³ The 95 women include 19 lieutenant governors, 8 attorneys general, 12 secretaries of state, 8 chief state education officials, 10 chief financial officers/treasurers, and 10 state auditors.¹¹⁴

State Judiciary: Within the state level, there are currently 6,507 female judges within the state judiciary accounting for 36.4% of all state judges. Of those, 132 serve state final appellate courts (39%), 396 are within the state intermediate appellate courts (41%), 4061 are state general jurisdiction judges (34.9%) and 1918 serve in state limited and special courts (39%).¹¹⁵ Currently, “17 women serve as state supreme court chief justices” (33%).¹¹⁶

Municipal Level

As of April 2021, women make up 30.5% of municipal officeholders. This number includes members and officers of the municipal legislative branch of incorporated cities and towns with populations over 10,000 as per the U.S. Census.¹¹⁷ These bodies vary by municipality and include city councils, boards of alderman, city commissions, and other officials who perform mayoral functions.¹¹⁸ As of May 2021, of the 1,621 mayors of U.S. cities with populations of 30,000 and above, 407 (25.1%) were women.¹¹⁹ Of those women, 91 (25.6%) were mayors of the 356 cities with populations of

110. *Women in State Legislative Leadership 2022*, CTR. FOR AM. WOMEN AND POL. (last visited Mar. 3, 2022), <https://cawp.rutgers.edu/facts/levels-office/state-legislature/women-state-legislative-leadership-2022>. Some self-identify as more than one race/ethnicity.

111. *Women in Statewide Elective Executive Office 2022*, CTR. FOR AM. WOMEN AND POL. (last visited Mar. 3, 2022), <https://cawp.rutgers.edu/facts/levels-office/statewide-elective-executive/women-statewide-elective-executive-office-2022>.

112. *Id.*

113. *Id.*

114. *Id.*

115. FORSTER-LONG, INC. AND THE NATIONAL ASSOCIATION OF WOMEN JUDGES, *supra* note 96.

116. *Id.*; Dave Beaudoin, *The Daily Brew: Women in Top Federal, State, Judicial Offices*, BALLOTEDIA NEWS (last visited Mar. 3, 2022), <https://news.ballotpedia.org/2021/03/08/the-daily-brew-women-in-top-federal-state-judicial-offices/>.

117. *Women in Elective Office 2021*, *supra* note 82.

118. *Id.*

119. *Id.*

100,000 or above.¹²⁰ As of September 2021, among the 100 largest cities in the U.S., 31 had women mayors, seven of whom are Black women.¹²¹

North Dakota

North Dakota Legislature: Currently, North Dakota ranks 42nd in the nation, with 22% of the state's legislature comprised of women.¹²² Of its 47 senators, 11 are women.¹²³ Of the 94 house seats, women hold 21—a trend mirrored within its municipalities.¹²⁴ In municipalities with populations of 10,000 or more (9 major cities), 22% of officers of the municipal legislative branch are women.¹²⁵

North Dakota Executive: Of the 13 executive positions, women hold 3 (23%): the Superintendent of Public Instruction, the Commissioner of Labor, and one of the Public Service Commissioners.¹²⁶ The Governor's Cabinet consists of 19 seats, 5 (26%) of which are women (the Chief People Officer for Human Resources Management Services, Director of Water Resources, Commissioner of Securities, Commissioner of Labor and Human Rights, and the Commissioner of Financial Institutions), one of whom is a woman of color.¹²⁷ As of May 2021, N.D. has no current women mayors elected in communities of 30,000 or more.¹²⁸

North Dakota Judiciary: Currently, 14 women sit on the bench in state courts (25%)—a 2% increase from 2020. Courts of general jurisdiction have 13 female judges (25%); the North Dakota Supreme Court includes one female justice accounting for 20% of the highest bench.¹²⁹

U.S. Legal Profession: In 2020, 47.3% of legal associates were female, and 15.2% were women of color. However, only 30.6% of non-equity partners were female (5.3% women of color) and 22.3% of equity partners (3.3% of women of color).¹³⁰ Women comprised only 19% of managing partners

120. *Id.*

121. *Id.*

122. *Women in Municipal Office*, CTR. FOR AM. WOMEN AND POL. (last visited Oct. 2, 2021), <https://cawp.rutgers.edu/women-municipal-office>.

123. *Women Elected Officials by Position*, CTR. FOR AM. WOMEN AND POL. (last visited Mar. 3, 2022), https://cawpdata.rutgers.edu/women-elected-officials/position?current=1&yearend_filter=All&level%5B%5D=State+Legislative&state%5B%5D=North+Dakota&items_per_page=50.

124. *Id.*

125. *Id.*

126. *Facts on Women of Color in Office*, CTR. FOR AM. WOMEN AND POL. (last visited Oct. 2, 2021), <https://cawp.rutgers.edu/fact-sheets-women-color>.

127. *Cabinet Members*, N.D. OFF. OF THE GOVERNOR (last visited Oct. 2, 2021), <https://www.governor.nd.gov/cabinet-members>.

128. *Women Mayors in U.S. Cities 2021*, CTR. FOR AM. WOMEN AND POL. (last visited Oct. 2, 2021), <https://cawp.rutgers.edu/women-mayors-us-cities-2021>.

129. FORSTER-LONG, INC. AND THE NATIONAL ASSOCIATION OF WOMEN JUDGES, *supra* note 96.

130. *Women in Law: Quick Take*, CATALYST (last visited Oct. 2, 2021), <https://www.catalyst.org/research/women-in-law/>.

at law firms in 2021.¹³¹ As in other sectors of the economy, the gender wage gap persists in the legal profession in the United States. In 2020, female lawyers' median weekly earnings were \$1,665 USD, only 71.6% of their male counterparts, \$2,324 USD.¹³² According to a 2019 report, "half of all female lawyers (50%) said they experienced unwanted sexual conduct at work, and 1 in 4 women said they avoided reporting sexual harassment due to fear of retaliation."¹³³ Additionally, 75% of women in the legal profession reported experiencing "demeaning comments, stories, or jokes."¹³⁴

	Associates	Of Counsel	Non-equity Partners	Equity Partners	All Lawyers
All Women	47.3%	40.4%	30.6%	22.3%	36.9%
Women of Color	15.2%	7.4%	5.3%	3.3%	9.4%

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The good news is that women are making progress. For example, in 1970, only 3% of legal professionals were women,¹³⁶ and fewer than 2% of the nations' judges were women, compared with the current numbers noted above.¹³⁷ We have more than five times as many women serving in state legislatures today than 50 years ago. In the fall of 2020, women accounted for 54.5% of first-year law students, and women of color accounted for 19.9% of first-year students.¹³⁸ The prior year, women were 51.5% of law school graduates, with women of color accounting for 19.5% of graduates.¹³⁹ We have seen quite a bit of progress in the past 50 years, since Justice Ginsburg began working on women's equality in the early 1970s. Although we have not crossed the finish line in terms of equality and significant distance

131. *Women in the Legal Profession*, *supra* note 6.

132. *Women in Law: Quick Take*, *supra* note 130.

133. *Women in the Legal Profession*, *supra* note 6, (citing Roberta Liebenberg and Stephanie Scharf, *Walking Out the Door*, ABA & ALM INTELLIGENCE LEGAL COMPASS (2019), <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf>).

134. *Id.*

135. *Women in Law: Quick Take*, *supra* note 130.

136. *Women in the Legal Profession*, *supra* note 6.

137. *40 Years Later, Pioneering Women Judges Savor Place in History*, U.S. CTS. (Aug. 14, 2019), <https://www.uscourts.gov/news/2019/08/14/40-years-later-pioneering-women-judges-savor-place-history> ("In 1977. . . presidents had appointed 1,824 life-tenured federal judges. Only 23 were African Americans, and just 10 had been women.").

138. *Women in Law: Quick Take*, *supra* note 130.

139. *Id.*

lies ahead,¹⁴⁰ progress continues to overcome the remaining obstacles along the path to full equality, rights, and human dignity.

VI. JUSTICE GINSBURG'S INSPIRATION

Justice Ginsburg “leaned in” long before Sheryl Sandberg coined that phrase. In her book *Lean In*, Sheryl Sandberg “encouraged women to ‘sit at the table,’ seek challenges, take risks, and pursue their goals with gusto.”¹⁴¹ How does Justice Ginsburg’s willingness to “lean in” inspire you?

Kathryn Rand: What I’d like to highlight is how she embodied our legal profession’s collective duty to work to improve the administration of justice in our nation. That’s something that we as the legal profession take on both as individuals and as a collective. I’m most inspired by her faith in our legal system and her faith in our democracy. Our institutions are imperfect, and they are fragile, and it’s our job as lawyers to improve and support those institutions. And I think that her life’s work encompassed both of those aspects. She saw flaws and imperfections in many areas of our jurisprudence, particularly in our equality jurisprudence, and she worked incredibly hard to improve that field. She also worked tirelessly to support the legal system, to support the rule of law, and to honor the role of the Supreme Court and the judiciary in our system of government. I really love how she showed that a lifetime of dedication and commitment could make things demonstrably better—not just for women, not just for a group of people, but for our nation—to bring us closer to the constitutional ideals that our framers had in mind. So when I think about Justice Ginsburg “leaning in” in that way, I think about working hard, having faith, and leading with heart. And I think that is good guidance, no matter whether the piece we’re working on is huge in the ways that she was working, or if it’s the smaller piece that is in our corner of the world. So what I take away from her is work hard, have faith, and lead with heart, not hate.

How about you, Julia? I know you have given a lot of thought to this, and of course, not only do you have personal connection with Justice Ginsburg, but you are also very familiar with her legacy. What do you take away as an inspiration with regard to her dedication to our legal system?

Julia Ernst: We have common responses to this question, which probably stems from the fact that we both teach constitutional law and have seen how

140. See generally *Building a More Inclusive Federal Judiciary*, CTR. FOR AM. PROGRESS (Oct. 3, 2019), <https://www.americanprogress.org/article/building-inclusive-federal-judiciary/>; Athar Mirza and Chiqui Esteban, *Female Judges Were a Rarity When Ruth Bader Ginsburg Was Born. They Still Are.*, WASHINGTON POST (Sept. 21, 2020), <https://www.washingtonpost.com/politics/2020/09/21/female-judges-were-rarity-when-ruth-bader-ginsburg-was-born-they-still-are/>.

141. See description of SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013), <https://www.amazon.com/Sheryl-Sandberg-Lean-Women-Work/dp/B00N4ES2NQ>.

Justice Ginsburg revered the Constitution, the legal system, the U.S. Supreme Court, and justice. I could not agree more in terms of Justice Ginsburg's optimism and faith in our legal system, along with her dedication to our U.S. Constitution and her abiding belief in the United States' continual progress toward the betterment of our nation. Her dedication to our legal system inspires me through her confidence that our legal system, our Constitution, and our nation are capable of continual growth and improvement. Of course, all of these are human institutions and, as Professor Rand rightly pointed out, no human institution will ever be perfect. Yet within the words at the very beginning of our U.S. Constitution is our founding fathers' vision of continual progress that she highlighted in the film. She often liked to quote the very first words in our Constitution—in its preamble: “We the People of the United States, in order to form a *more perfect Union*”¹⁴² The phrase goes on with respect to various components of the aspirations toward a more perfect union to which the Constitution aspires. It bears repeating here.

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity do ordain and establish this Constitution for the United States of America.*¹⁴³

With those words, our founding fathers embraced the principle of our continual efforts to strive toward a more perfect union, toward progress, toward all the virtues and values on which our country was founded. Our Constitution was designed to move our country forward, and to enable future generations to continue moving our country forward. Furthermore, the Declaration of Independence—the foundational document upon which our Constitution is based—embodies the aspirational value that all men are created equal:

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed*¹⁴⁴

We all know these words very well; we learned them from the time we were young. Of course, the framers understood that equality did not yet exist

142. For example, Justice Ginsburg quoted a phrase from the Preamble in her opening statement during the Senate committee hearing considering her nomination to the U.S. Supreme Court: “Constant realization of a more perfect Union, the Constitution’s aspiration, requires the widest, broadest, deepest participation on matters of government and government policy.”) GINSBURG, ET AL., *supra* note 66, at 183.

143. U.S. CONST. PMBL.

144. THE DECLARATION OF INDEPENDENCE PMBL. (U.S. 1776).

within the United States. Indeed, at the time of ratification of the U.S. Constitution, a mere 6% of the population could vote—only citizens who were white, male property owners.¹⁴⁵ Around 20% of the people were enslaved, infamously including by Thomas Jefferson, who penned the Declaration of Independence,¹⁴⁶ James Madison, the primary author of the U.S. Constitution,¹⁴⁷ and George Washington, the first president of the United States.¹⁴⁸ Native Americans were largely left out of the Constitution,¹⁴⁹ white settlers continually encroached upon Native American lands in breach of treaties,¹⁵⁰ and many Native Americans were denied full U.S. citizenship and the right to vote until granted by an act of Congress in 1924.¹⁵¹ And although women had long been advocating for equality and fairness,¹⁵² they were not even explicitly acknowledged in the Declaration of Independence, which only specifically referenced the rights of “men.” Notably, the broader term “people” in the Constitution written several years later may have been a move toward an implicit acknowledgement of the rights of women.

After reciting the original Constitution’s aspiration “to form a more perfect union,” Justice Ginsburg would then note, beaming as we saw in the *RBG* documentary, that the 14th Amendment to the Constitution enshrined the concept of equality, providing that no state shall “deny to *any person* . . . the

145. Grace Panetta, Olivia Reaney, and Talia Lakritz, *The 19th Amendment Passed 100 Years Ago Today. The Evolution of American Voting Rights in 244 Years Shows How Far We’ve Come—And How Far We Still Have To Go*, BUSINESS INSIDER (Aug. 18, 2020), <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10#1776-and-before-only-men-who-owned-property-who-were-mainly-white-christian-and-over-21-have-the-right-to-vote-1>.

146. *The Constitution and Slavery*, CONST. RTS. FOUND. (last visited Mar. 3, 2022), <https://www.crf-usa.org/black-history-month/the-constitution-and-slavery>.

147. *The Enslaved Household of President James Madison*, WHITE HOUSE HIST. ASS’N, (Aug. 28, 2019), <https://www.whitehousehistory.org/slavery-in-the-james-madison-white-house#:~:text=James%20Madison%20was%2C%20according%20to,conditions%20of%20his%20enslaved%20household>.

148. *10 Facts About Washington & Slavery*, GEORGE WASHINGTON’S MOUNT VERNON (last visited Feb. 27, 2022), <https://www.mountvernon.org/george-washington/slavery/ten-facts-about-washington-slavery/>.

149. See generally Angela R. Riley, *Native Nations and the Constitution: An Inquiry into ‘Extra-Constitutionality’*, 130 Harv. L. Rev. F. No. 6, 173-199 (April 2017).

150. Richard Harless-GEO. MASON, *Native American Policy*, GEORGE WASHINGTON’S MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/native-american-policy/>.

151. *Voting Rights for Native Americans*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-native-americans/>.

152. See, e.g., Letter from Abigail Adams to John Adams (Mar. 31, 1776), *Founders Online*, NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Adams/04-01-02-0241> (“Remember the ladies” letter); Mary Wollstonecraft, *A VINDICATION OF THE RIGHTS OF WOMEN WITH STRICTURES ON POLITICAL AND MORAL SUBJECTS* (1792) (nearly contemporaneously with the adoption of the U.S. Constitution); the life of St. Hildegard of Bingen in the 12th Century as described by Lisa Miller, *Hildegard von Bingen, 12th Century Feminist*, NEWSWEEK (Oct. 10, 2010), <https://www.newsweek.com/miller-hildegard-von-bingen12th-century-feminist-73949> (“She supported education and independence for women at a time when most women had neither.”).

equal protection of the laws.” Therefore, the Constitution embraces the value of equality for both women and men, as well as for all people regardless of race, ethnicity, religion, or any other protected characteristic, as a fundamental constitutional principle. As described by the editors of her book, *MY OWN WORDS*:

Invoking Madison and Hamilton, Ginsburg endorses the concept of a living Constitution. She illustrates her vision with a brief history of the American ideal of equality, a concept limited at the nation’s founding by a culture that kept early Americans “from fully perceiving or acting upon ideals of human equality and dignity,” but which, she notes, had “growth potential.” The story of the Constitution, she says, is “the extension. . . of constitutional rights and protections to once-excluded groups: to people who were once held in bondage, to men without property, to Native Americans, and to women.”¹⁵³

Justice Ginsburg’s commitment to ensuring that the Constitution’s ideals are a reality for all people, her strong faith in our legal system and strong faith in our Constitution, along with her commitment to ensuring that the Constitution’s ideals are made a reality for all people, are deeply inspiring to me, as well.

VII. LESS WELL-KNOWN ATTRIBUTES OF JUSTICE GINSBURG

Our audiences during these programs had just seen the *RBG* documentary, along with the opportunity to view many moving and informative tributes to Justice Ginsburg circulating after her death. For our final question, we switched gears and asked each other to discuss an important aspect about Justice Ginsburg not typically mentioned in a tribute to her.

Kathryn Rand: *Well, something that might not typically be mentioned, but something that we actually did see in the documentary, is the fact that she worked out. I love that! I love the footage of her lifting weights and doing push-ups and working with a personal trainer. For far too long, women have been encouraged to be physically weak, and we saw some references to that in the documentary: “too weak” to serve on a jury, “too weak” to fight in combat, “too weak” to work as a litigator, “too weak” to do real push-ups, “too weak” to run a marathon. And, in my opinion, those are all interconnected. Physical strength, emotional strength, and intellectual strength. . . all the things that make us strong and solid people. . . all of those things are important. And I think that was something she saw: the more women were held up as the “weaker and fairer sex,” the more that we would be viewed as incapable of doing some of the work we are more than capable of doing. And*

153. GINSBURG, ET. AL., *supra* note 66, at 195.

so I love that Justice Ginsburg paid attention to her physical strength . . . that she demonstrated her strength in so many ways, including in the gym. She was a role model in that way, too, because we're not just strong women, we're strong period. That's something she showed just by working out and actually letting the cameras film her holding her five-pound weights. I love it! How about you, Julia, what's something about Justice Ginsburg that we don't see mentioned or highlighted very frequently that you think is important.

Julia Ernst: I will tell a couple of stories that relate to your comments in terms of women historically being treated as the weaker sex and being encouraged to play that role, and then people in power using the notion that women are the weaker sex to keep them out of public life—not only gyms but also the workplace, including the legal profession. As a prime example, the 1873 U.S. Supreme Court ruling in *Bradwell v. Illinois*¹⁵⁴ upheld the decision by the State of Illinois forbidding Myra Bradwell from joining the Illinois bar because she was a woman.¹⁵⁵ After successfully completing law school and applying to the Illinois bar to become a lawyer, the State of Illinois refused her admission due to her gender. She had successfully completed law school and had applied to the Illinois bar to become a lawyer but was rejected since she was female. She sued. The Supreme Court upheld the ability of the state to employ gender-based discrimination against Bradwell.¹⁵⁶ In his concurring opinion, Justice Bradley explained:

The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say the identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head

154. 83 U.S. 130 (1872).

155. *Id.* at 140.

156. *Id.* at 142.

and representative in the social state; and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most States. One of these is, that a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counsellor.

It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.

The humane movements of modern society, which have for their object the multiplication of avenues for women's advancement, and of occupations adapted to her condition and sex, have my heartiest concurrence. But I am not prepared to say that it is one of her fundamental rights and privileges to be admitted into every office and position, including those which require highly special qualifications and demanding special responsibilities. In the nature of things it is not every citizen of every age, sex, and condition that is qualified for every calling and position. It is the prerogative of the legislator to prescribe regulations founded on nature, reason, and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence. This fairly belongs to the police power of the State; and, in my opinion, in view of the peculiar characteristics, destiny, and mission of woman, it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men, and shall receive the benefit of those energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex.

For these reasons I think that the laws of Illinois now complained of are not obnoxious to the charge of abridging any of the privileges and immunities of citizens of the United States.¹⁵⁷

157. *Id.* at 141-42.

Reading this opinion would be somewhat humorous today, if it did not reflect lingering effects we continue to see in our society and our legal system. Indeed, these notions were some of the very same ideas many held just a few decades ago that Justice Ginsburg challenged both as an advocate before the Supreme Court and once she served on the bench. An apt example is Justice Ginsburg's opinion in *United States v. Virginia*¹⁵⁸ about the Virginia Military Institute, which relates to my next story.

As mentioned previously, when I served as the Executive Director of the Women's Law and Public Policy Fellowship Program (WLPPFP) at Georgetown, part of that program included our Leadership and Advocacy for Women in Africa (LAWA) Fellowship Program. Through this initiative, we invited lawyers and judges from various countries in Africa who had worked on women's rights to attend the Georgetown University Law Center. They would earn an LL.M. (a Master of Laws degree) focusing on international human rights advocacy, learning how to use the international and regional human rights systems to continue advancing women's rights in their countries once they returned back home. I taught an International Women's Human Rights Advocacy seminar for our LAWA Fellows and other LL.M. and J.D. students at Georgetown, and our LAWA Fellows also took a course on global women's rights with Professor Susan Deller Ross. Every year, along with our Women's Law Fellows from across the United States, our LAWA Fellows would visit Justice Ginsburg at the Supreme Court to have tea with her and hear her inspiring stories about women's rights in the United States and her work advancing them throughout her career. Of course, we talked with Justice Ginsburg about her landmark opinion enabling women to enter the Virginia Military Institute—a case the LAWA Fellows had been studying at Georgetown each year, which the *RBG* film also highlights.

Since our LAWA Fellows had significant expertise on women's rights issues in their own countries, I also provided them with speaking opportunities while they were in Washington, DC, to share their knowledge and expertise with people in the United States. Our LAWA Fellows spoke at congressional briefings on Capitol Hill for members of Congress and their staff, at the World Bank, at the U.S. Agency for International Development, and various other places. One year, Johanna Bond, a former Executive Director of the WLPPFP and LAWA Fellowship Program and then a professor at Washington and Lee School of Law, invited me to bring our LAWA Fellows to Washington and Lee ("W&L") to give a presentation at her law school.¹⁵⁹ I

158. 518 U.S. 515 (1996).

159. 2008-2009 *Women's Law and Public Policy Fellows*, THE NEWSL. OF THE GEO. WOMEN'S L. & PUB. POL'Y FELLOWSHIP PROGRAM 1, 10, <https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2018/09/WLPPFP-Summer-2009-Newsletter-Accessible.pdf>.

drove our LAWA Fellows to Lexington, Virginia, to spend the weekend at W&L, arriving on a Friday afternoon.

As we turned off the highway exit and drove up the hill, there in front of us was a huge Virginia Military Institute building—we unexpectedly found ourselves entering the VMI campus.¹⁶⁰ We all started screaming because we knew how important this place was in U.S. history for women’s rights—we were so thrilled! We decided to make a quick detour from our schedule, parked, and hurried to the main part of the VMI campus, where we found several women cadets walking through in their uniforms. I am sure they were shocked when we ran up to them and expressed our excitement to meet them. We explained to them why we were there, why our LAWA Fellows were here in the United States, how they recently met Justice Ginsburg and spoken with her about the VMI case, and how honored and delighted we were to meet some of the female cadets. They were very familiar with Justice Ginsburg’s role in enabling them to join VMI, and they seemed genuinely interested in learning about our LAWA Fellows’ experiences. With their permission and good humor, I took several photographs of our LAWA Fellows with them. It was truly a memorable experience!¹⁶¹

Another vignette also centers on the teas Justice Ginsburg used to host for our fellows. I often tell this story to our first-year students, as it is quite embarrassing, and hopefully teaches them a valuable lesson. Justice Ginsburg maintained a long-standing tradition of inviting the Women’s Law Fellows and LAWA Fellows to have tea with her at the U.S. Supreme Court. The prior Executive Director informed me I should write to Justice Ginsburg to ask if she would be available for the fellows to visit with her. That first year, I dutifully wrote a letter to Justice Ginsburg, asking if she would be willing to invite our fellows to meet with her at the Supreme Court.

Justice Ginsburg very graciously responded with a warm invitation for me to bring our fellows to talk with her over tea. But she also sent back my letter, and on it she had circled in red pen her name in my salutation: “Dear Justice Ginsberg,” because I had misspelled her name! Not only did she send back that correction, but she also corrected several grammar errors, including a split infinitive and a dangling preposition. I was mortified! I felt so embarrassed that I think I destroyed the letter, and I really wish I had it now to show my students. I can tell you I have never forgotten that lesson—I always double and triple-check spelling and have become a stickler for grammar. I now pass all of this along to our students, so they can learn from my mistakes, proofread carefully, and hopefully not have their documents returned to them with corrections from the courts. As lawyers, they will want their arguments

160. I had not remembered that VMI and Washington and Lee are in the same town.

161. *2008-2009 Women’s Law and Public Policy Fellows*, *supra* note 159, at 1, 10.

to shine, and they will not want the judge or others to be tripping over spelling or grammar or formatting, which will only inhibit their power and persuasiveness. In addition to the basic spelling and grammar lesson, this also demonstrates Justice Ginsburg's lofty standards and her willingness to take the time to mentor others, for which I have always been grateful (at least once I recovered from my initial mortification).

Kathryn Rand: I have to say, Julia—I love your story about the red-lined letter. And part of what I like about that is, since I know you as a person and as a colleague, I can imagine that yes, you were embarrassed, and it was shocking to see the letter returned to you, and you would be a little taken aback by her response. But I also love that you were so open to taking her feedback as something positive. In the way you have framed it, you got the opportunity in that small but important way to be mentored by her. I love how that attitude of continual learning and continual growth—and taking even a red-lined, uninvited criticism of your own writing—the experience actually becomes something positive that helps you to grow.

VIII. AUDIENCE QUESTIONS ABOUT JUSTICE GINSBURG

After our prepared remarks, we fielded questions and comments members of the audience had submitted.

Kathryn Rand: I am turning to our Q and A and see that we already have some great questions here. I would like to start with one that asks about Justice Ginsburg and what she considered to be a misstep on her part in speaking out about a presidential candidate. This question might also touch on the role of the justices and politics. I think that for judges and for Supreme Court justices, we necessarily hold them to some artificial constraints. In fact, as lawyers in our legal profession, we often hold ourselves to artificial constraints. I am using the word artificial—it's not quite the right word. What I mean is that we hold ourselves to ideals that don't allow for human frailty. . . that don't allow for the very human nature of making mistakes. It's not that we're not people. It's not that we don't make mistakes. It's not that we're not influenced by things other than the law. It's not that our decisions are not affected by our own beliefs, not just precedent and other sources of law. It's that we always strive to know the difference. And I think that's something that Justice Ginsburg, even when she had spoken on a topic outside of what we might expect a Supreme Court Justice to speak about, she was striving to know the difference. I like the aspect in the documentary about her decision that she had made a mistake—owning it, taking responsibility for it, and publicly apologizing. And I also like that people who were in a position to criticize her accepted that she had simply made a mistake and she apologized for it. How about you, Julia, anything to add on that one?

Julia Ernst: I think that is such a fantastic example of what the law school tries to teach our students, particularly in our Professional Foundations course, and also throughout their time here—that *everyone* makes mistakes; *everyone* is human; *nobody* is perfect. Just like none of our institutions are perfect, as we talked about before. We need to try to minimize our mistakes, obviously, and we also need to own up to mistakes when we make them, take responsibility for them, and correct them. I think Justice Ginsburg’s acknowledgement of her mistake, owning up to it, and publicly apologizing for it, is a great example. We always try to teach our law students that when they are in the real world, when they are practicing, they *will* make mistakes. But the most important thing is to try to learn from them, and also to own up to them, and correct them, and then don’t make the same mistake twice.

Let me take another question: “Thank you so much for sharing, Professors Rand and Ernst. I would like to follow up with a question about attaining balance in work and life. What’s your view about interview questions that women often get asked as a euphemism, ‘What are your plans upon graduation?’ as a veiled way to ask about plans for family?”

Our law students may well have questions like these on their minds as they go out and seek their first legal jobs. As hopefully everyone knows at this point, pointed questions about what your plans are with respect to family, having children, how family might impact your work and career, and so on, are questions that employers should not be asking, although they were very prevalent not long ago. But applicants may be concerned about how to answer general questions about future plans. I think job candidates should remember that potential employers do not need (nor do they have any right) to know about your personal life, and instead focus your answer on your plans in terms of your career. What type of job path do you want to have, and what type of law are you interested in practicing? If an interviewer does start asking explicitly inappropriate questions, such as about your family situation, you could gently redirect your response back to your career plans. For example, you could respond in a professional manner: “My family situation does not impact my career aspirations, which include attaining partner at a well-respected firm in this area and becoming actively involved in our local and state bar associations.” Please do not hesitate to come back to the law school and let us know about the interview, and we will be happy to provide you with guidance in terms of addressing that specific situation. The law school may also be able to provide guidance to employers as well. We often work with employers to give them advice about recruiting, and many employers come to us and want to know how they can better recruit our law students. So if you encounter any inappropriate questions, please feel free to come talk to us about it. We can help all of our students and our graduates

navigate those situations. Thank you so much for that question. Kathryn, do you have anything to add?

Kathryn Rand: You know, I think that is a fantastic question. And although it is phrased in a way that might resonate particularly with women, I think all kinds of people run into questions that reveal the person or the employer that they're talking to are scrutinizing them in a certain way. That can be particularly problematic when it's a matter of race or gender. When Julia and I were applying for jobs in the 1990s, it happened all the time. And I'm truly saddened that it is still happening today. I will provide the advice I always tell students—and take this advice with a grain of salt, because I'm speaking as someone with my set of experiences and coming from my generation, and what feels right and authentic to you might be different than what I would advise you to do. When a student said to me something like "I was interviewing with a judge, and the judge came out and asked me, 'So you mentioned that you're engaged. What are your plans? Are you going to get married? Are you going to have kids?'"—That outright.

The advice I gave the student was to ask, do you want the job? Because if you want the job, then your response to that has to be something that doesn't alienate the person who asked. So we've got at least a couple of alternative situations on the table. One is that judge wants to know if you're going to get pregnant, because if you're going to get pregnant, that judge is not going to hire you. So one way not to alienate him could be to say, I'm so excited to be engaged, but really what I'm most excited about is working for you; I'm so thrilled with the opportunity that I might be able to work in your courtroom, and so on. And the alternative is that the judge was just making small talk in a really offensive and inartful way. And you could call them out and say "Hey you know that's an illegal question right, judge?", but that might not be what gets you the job. And if you don't want the job, then you can say whatever you want to the judge, I suppose. But you know the truth is that all of us—women, people of color, LGBTQ folks—all of us navigate a world that is not ideal. Even if we have rights under the law, that doesn't mean that the behaviors we see around us conform to the law consistently. So we all have to navigate our way through and think about individually what is authentic and true to us in how we handle these situations. But I do encourage you to think about outcomes. What is the outcome that is most important to you, and how can you achieve that outcome through how you handle the situation.

Julia Ernst: If I could add to that to a little bit more. This is not the question that was asked, but it's somewhat related to what we're talking about in terms of inappropriate conduct—just so our students and recent graduates can be aware. Hopefully this will never happen to you, but I have

been shocked numerous times by people who you think are intending to mentor you, and they will ask you to lunch, or coffee, or dinner under the guise of discussing school or work. And you think that it's a mentoring relationship, until they place their hand on your hand or give some other indication that they do not intend it to be a platonic relationship. So please do not be shocked when that happens. Try to think ahead of time about what you would do when anything like that happens, so you know how you want to respond.

This has happened to me several times. When I was a student in law school, an adjunct professor invited me to a restaurant to discuss my future legal plans. I was thrilled to learn more about his field of work and enthusiastically accepted. Then at the beginning of the meal, he put his hand on my hand, started asking about my personal life, and made it clear he wanted an amorous relationship. Even after I declined his advances and indicated I would like to talk about his career, he persisted. I did not know how to handle the situation and was mortified. I got up and walked out. I was shocked. I felt betrayed by his subterfuge and guilty that I had not seen it coming. I was also afraid he would say negative things about me to other professors in the law school, and that my entire legal career could be in jeopardy. I never told anyone.

Similar instances have happened several times throughout my legal career. Before I became engaged, I used to wear my class ring backward on the ring finger of my left hand, so it looked like a wedding band, which may have helped to a certain extent. Yet even after I was married and wearing my ring, such occurrences still transpired in professional settings. For example, when a lawyer I had recently met called to invite me for dinner, I made a subtle reference about coordinating with my husband's schedule to let him know I was married, to which he responded that was fine. Still sensing that his intentions may not be to have a purely business meeting, but not quite sure (and not wanting to offend him), I told him that both my husband and I would be happy to get together with him for dinner. At that point I was somewhat surprised that he acknowledged his intentions and retracted the invitation, asking me not to tell anyone he had made this overture. I was left feeling this business relationship had been tarnished—and was frustrated that this would not have happened to a man in my position, yet did because I was female.

So please just know that sometimes it might happen, and if it happens to you, it is not your fault. Each time, I was extremely embarrassed and ashamed, and I shouldn't have been. In fact, this is the first time I am I telling this to anyone other than my husband. So please do not be embarrassed or ashamed about it, if it happens to you. Be prepared to stick up for yourself, whether it's leaving the situation, or seeking help from others, or whatever is

appropriate. Hopefully unwanted advances in professional settings are becoming fewer and fewer, but know that this is still out there, as well as inappropriate questions that may come during interviews.

Kathryn, would you be interested in taking the next question?

Kathryn Rand: Sure, absolutely. I'm looking at the list and I'm going to choose this question: "Would Justice Ginsburg's legacy of minority representation on the court be fulfilled or denigrated by the appointment of a successor who is a member of a minority group but who would pursue regressive interpretations of the law toward minority rights?" I think that is a really intriguing and interesting question for us to struggle with, and so let me say at the outset, I plainly do not have "the right answer" to this question. I think this is an issue reasonable people can disagree about and that there are many valid opinions about this topic. But I would offer a couple of thoughts before I ask you to weigh in, if you want to Julia.

The couple of thoughts I would add are that Justice Ginsburg fought for gender equality, and she was a woman. She was inspired in large part, I think, because of her experiences as a woman and struggling—even as such an incredibly intelligent and talented attorney—to even find a job, for example, and many other instances of gender discrimination she herself had encountered. So I think that another justice with those kinds of experiences might still be motivated to push the law toward a more ideal jurisprudence of equality for all Americans. Now, that said, I also think that representation matters. Just the fact that we look a certain way, or that we are a certain gender, or that we have a certain sexual orientation—that doesn't dictate what we think nor our opinions on a range of subjects. We all have different opinions based on our personal experiences; often those are shaped by our race and our gender and other factors in our lives, but not always. So I guess the way that that I would think about this question is less about what do I want the Court to look like, and more about what direction do I think our constitutional law in particular should take. So for me, that would be the important piece. I think the legacy of what our Constitution means for all Americans—that might be more important than what the individual justices look like as people. But others may disagree with me. I'm sure that they do, and they obviously have valid reasons for doing so. Julia, do you want to add to that at all?

Julia Ernst: Sure, thank you. Before the program this evening, I took a glance at the representation of women on the bench, as well as racial and ethnic diversity, both at the state level and at the federal level. I think it's crucial for the judiciary, and for the government as a whole—including our legislative branch and our executive branch at all the different levels of government—to reflect the diversity in our country. According to the statistics we discussed earlier, we are not there yet. I think it's very important not only

to focus on the U.S. Supreme Court, but also for the public to be focused on what our government looks like at all levels and branches of government. I am not talking about quotas; I am talking about eliminating implicit and explicit biases inhibiting people from underrepresented groups from attaining these positions. I agree with you about the importance of the perception of validity, legitimacy, and respect that people have for our democratic system of government, including the judiciary. If the judiciary and the government are truly representative of the people, then the people will have a greater respect for the government.

As we discussed previously, the preamble to the U.S. Constitution emphasizes that the Constitution and the country were established for the benefit of “*We the people* of the United States.” This sweeping phrase embraces all people—it is not limited only to some people. Despite the fact that some founders were slaveholders, some were abolitionists, some believed in equality regardless of the color of one’s skin, and others believed in the value of equity. Why should the Supreme Court choose the most restrictive interpretation of the U.S. Constitution, when it could just as legitimately choose a more expansive interpretation that fulfills the moral values, such as the Golden Rule of caring for one’s neighbor no matter their differences—just as one cares for oneself and one’s own family, own racial group, and own religion? I think it will be very interesting over the coming years to see that progress is being made on all of these issues. I do believe progress will continue to be made on all of these issues, and we will have a fuller representation at all of these different levels.

Kathryn Rand: I think you’re right about that, Julia. I think that history definitely teaches us that the more inclusive we are in our systems of government, the better our legal system becomes.

Julia Ernst: So, let’s turn to another fantastic inquiry here, which will be our final question: “It says, Justice Ginsburg worked fiercely and tirelessly for women’s rights and equality. She helped us make progress, but as you both acknowledged, we still have a long way to go. If you were to leave us with a call to action, a way to honor her legacy and continue advancing the cause, what would that call be? How can we ensure the legacy of Justice Ginsburg continues and progresses into the future?”

I would encourage everyone to continue learning about our nation’s historical and present-day injustices, as Justice Ginsburg underlined. She shined a spotlight on the past and current status of women, and I would encourage us to broaden that beam to illuminate the past and current status of *all* underrepresented and marginalized groups within our government and society and at all levels. We must all continue to educate ourselves about these issues, and then to move forward with action based on that knowledge. We

should also communicate this information to others, such as in our conversations with our families around the holiday table, in our conversations with friends, and our conversations with others. Here at the University of North Dakota, for example, hundreds of faculty, staff, and students are studying a book by Dr. Ibram X. Kendi called *How to Be an Antiracist*.¹⁶² One of the primary recommendations in this book encourages us to look closely at ourselves and to educate ourselves about structural ways in which various groups of people have been marginalized, and how such structural marginalization continues to this day. We need to start to understand all of the different types of invidious discrimination people face: gender-based discrimination; racial and ethnic discrimination; discrimination based on religion or belief, socio-economic class, sexual orientation, and gender identity; discrimination against people with disabilities, and all of the different types of insidious discrimination that keep marginalized people marginalized. We must educate ourselves with respect to all of those issues, learn from our history, and actively discover what we can do to move forward, then take the concrete steps to do so.

As one component of that call to action, I would encourage everyone to learn more about Justice Ginsburg and her life's work. I highly recommend Justice Ginsburg's book entitled *My Own Words*, edited by her biographers, Mary Hartnett and Wendy Williams, whom you saw in the *RBG* film. Both serve on the Board of Directors of the Women's Law and Public Policy Fellowship Program, so I was fortunate to get to know them during my time as the program's Executive Director. They are also working on an authorized biography of Justice Ginsburg,¹⁶³ which they expect to publish soon. I would urge everyone to read these books and learn about her legacy, and consider how we can take that legacy and move it forward, making progress toward a more perfect union in which Justice Ginsburg had so much faith. Kathryn, how would you answer that question?

Kathryn Rand: Wow—that is a great question to wrap things up with! So I'm going to go a little bit out on a limb and say that I think Justice Ginsburg's jurisprudence evolved. I think one of the important things she learned on the court was that, although she had focused on gender equality as a litigator, when she became a U.S. Supreme Court justice, she needed to broaden her focus. You can see that through some of the development in her opinion,

162. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* (2019).

163. *2008-2009 Women's Law and Public Policy Fellows*, *supra* note 159, at 9.

for example, her embrace of disability rights,¹⁶⁴ her evolution in jurisprudence in her Indian law decisions,¹⁶⁵ and so forth. The way we ensure the legacy of Justice Ginsburg is that at this point in our country, it's important for us to look beyond our own experiences. Tonight I have been talking a lot about Justice Ginsburg, and what her legacy means to me as someone who shares her gender, someone who is female. But I think if she were here, she'd remind me that I need to care about more than just people like me. I need to care about people whose experiences I don't know very much about, and I may never personally experience myself. I need to care about how people in our country are struggling for all kinds of reasons, whether that's related to who they are as a person, or their socioeconomic background, or other factors. The more we can open up and care about how people who are not like us are treated by the law and in our society, the more progress we will make. I think that's something that Justice Ginsburg would want us to continue to embrace as we honor her legacy.

Julia Ernst: I fully agree with you, Kathryn. One of the other ways in which people can maintain Justice Ginsburg's legacy is to lean in, to stretch yourself, to be courageous—both in terms of encouraging others, and also emboldening yourself—to be bold and take risks to help advance society and the law. Run for office. Put your name forward to become a judge, whether through appointment or election. Be persistent, even if you are not elected or appointed the first time. Consider multiple ways of perfecting the law. For example, as a lawyer, Ginsburg enhanced the law through her litigation strategy. On the bench, she wrote majority opinions advancing many civil rights issues. When she felt the court drifted in the wrong direction, she wrote dissenting opinions setting forth a roadmap for people to take in the future. She provided arguments litigators could make in subsequent cases to put the law back on track. She encouraged Congress to enact new statutes to correct the court's misinterpretation of existing statutes, such as the Lilly Ledbetter case regarding employment discrimination.¹⁶⁶ In that case, the lower court acknowledged Ledbetter had experienced discrimination for years in violation of Title VII of the Civil Rights Act of 1964, and the jury awarded back pay and damages. But the Supreme Court reversed, interpreting the statute in

164. See, e.g., Samuel R. Bagenstos, *Justice Ginsburg and the Judicial Role in Expanding "We the People": The Disability Rights Cases*, 104 COLUM. L. REV. 49, 49-59 (2004); Jackie Miller, *Drivers for Change in the Disability Rights Movement: Justice Ruth Bader Ginsburg's Legacy and the Case for Evidence-based Research*, HEALTHFORCE CTR. AT UCSF (Oct. 26, 2020), <https://healthforce.ucsf.edu/blog-article/other/drivers-change-disability-rights-movement-justice-ruth-bader-ginsburg-s-legacy>.

165. See, e.g., Camille Caldera, *Fact Check: Ruth Bader Ginsburg Had 'Mixed' Record On Tribal Law, Native American Sovereignty*, USA TODAY (Sep. 22, 2020), <https://www.usatoday.com/story/news/factcheck/2020/09/22/fact-check-ruth-bader-ginsburg-had-mixed-record-tribal-law/5853671002/>.

166. *Ledbetter v. Goodyear Tire and Rubber Company*, 550 U.S. 618 (2007).

a way that her claim was outside of the statute of limitations, although they, too, recognized the discrimination against her. Justice Ginsburg wrote a very strong dissent providing a roadmap for Congress to change the law, which it subsequently did, enacting the Lilly Ledbetter Fair Pay Act of 2009.¹⁶⁷ On that note, Kathryn, I see that we are drawing near to the end of our time. I will turn the floor back over to you for any parting thoughts.

Kathryn Rand: Well, Julia, you and I had a chance to chat over the weekend and get prepared for tonight. I know we didn't talk about it a lot, but we acknowledged that we were feeling emotional about the news of Justice Ginsburg's death. And it brought to mind some song lyrics. I don't know if people are familiar with the Superman song, but here's a variation on a lyric from the song that got stuck in my head. It goes something like this. . .

"And sometimes I despair the world will never see another like her."

And that, of course, is really the biggest concern I have when someone who has worked so hard for all of us departs this world. But then I look around, and I see people like my good friend, Julia, and I see our students, and I see our colleagues in the bar, on the bench, throughout campus. And I see so much potential, and I see so many people already working—already continuing the work of her legacy. All of us have that spark of notorious RBG she ignited in us. I'm just so thankful that so many of us—men, women, whatever we look like, whether or not we are trained in the law—are joining together and trying to improve our legal system and to improve our nation for all people. Julia, I turn the floor back to you, and with a big thank you for including me in this tribute—this has been wonderful!

Julia Ernst: That's a perfect way to end our conversation. Thank you so much, Kathryn, for joining me in this program. And thank you so much to our audience for your participation and for joining us in this tribute to Justice Ruth Bader Ginsburg this evening. We greatly appreciate your being here with us tonight. Thank you very much to everyone, and have a good evening!

Kathryn Rand: Good night, everyone!

167. Lilly Ledbetter Fair Pay Act of 2009 Pub. L. No. 111-2, 123 Stat. 5.

IX. APPENDIX

**RBG Screening and Discussion CLE Materials
Women Lawyers Section Program
2019 SBAND Annual Meeting**

Below are two publications for the CLE session on U.S. Supreme Court Justice Ruth Bader Ginsburg. For more information, please see the articles listed further below.

CLE Materials

Amy Leigh Campbell, *Raising the Bar: Ruth Bader Ginsburg and the ACLU Women's Rights Project*, 11 Tex. J. Women & L. 157 (2002).

Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff.

Additional Articles by Justice Ginsburg

Ruth Bader Ginsburg, *A Supreme Court: A Place for Women*, 32 Sw. U. L. Rev. 189 (2003).

Ruth Bader Ginsburg, *The Progression of Women in the Law*, 28 Val. U. L. Rev. 1161 (1994).

Ruth Bader Ginsburg; Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970's*, 1989 U. Chi. Legal F. 9 (1989).

Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 Tul. L. Rev. 451 (1977-1978).

Ruth Bader Ginsburg, *Gender and the Constitution*, 44 U. Cin. L. Rev. 1 (1975).

Ruth Bader Ginsburg, *The Need for the Equal Rights Amendment*, 59 A.B.A. J. 1013 (1973).

Ruth Bader Ginsburg, *Sex and Unequal Protection: Men and Women as Victims*, 11 J. Fam. L. 347 (1971).

Additional Articles about Justice Ginsburg's Work

Jennifer L. Brinkley, *Ruth Bader Ginsburg: Examining Her Path To The High Court Bench And Its Intersection With the ACLU*, 6 Lincoln Memorial U. L. Rev. 1 (2019).

Elizabeth Toohey, *Consistent Passion, Little Fanfare: RBG*, Queensborough Community College (2018).

Joan C. Williams, *Jumpstarting the Stalled Gender Revolution: Justice Ginsburg and Reconstructive Feminism*, 63 *Hastings L.J.* 1267 (2011).

Neil S. Siegel, Reva B. Siegel, *Struck By Stereotype: Ruth Bader Ginsburg On Pregnancy Discrimination As Sex Discrimination*, 59 *Duke L.J.* 771 (2010).

Melanie K. Morris, *Ruth Bader Ginsburg and Gender Equality: A Reassessment of Her Contribution*, 9 *Cardozo Women's L.J.* 1 (2002).