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Introduction of Justice Ruth Bader Ginsburg

Burt Neuborne†

It would be an honor and a great personal pleasure for me to introduce Justice Ruth Bader Ginsburg to you as a majestic figure in American law, who, in her combined 26 years on the federal bench—13 years on the D.C. Circuit; 13 years on the United States Supreme Court—has written an indelible body of closely reasoned, analytically precise, humane and thoughtful opinions ranging across the spectrum of constitutional law and federal procedure. I look forward to doing just that during the symposia that will undoubtedly be held in many places (hopefully in warm climates), to celebrate her 15th year on the Court. But I am not going to do that today.

Instead, in this special setting honoring Justice Brennan’s legacy and the 10th anniversary of the Brennan Center, I want to take us all back 35 years (we should all be so lucky) to Justice Brennan’s heyday, to an earlier incarnation of Justice Ginsburg as the passionate litigating academic in her mid-thirties who altered the course of American law as the Director of the Women’s Rights Project of the American Civil Liberties Union. During the late ‘60s and early ‘70s, Ruth Bader Ginsburg and I overlapped for several years at the ACLU. This is how I remember her.

I remember the superb amicus brief that she wrote in 1969 for the ACLU in Reed v. Reed,¹ the case that began the dismantling of legally-codified gender stereotyping that had imprisoned women for centuries. The sweep of the argument was predictably thoughtful and well-reasoned. But what I really remember about that brief is the romanticism and passion of the cover—with two mysterious co-counsel that I could not place on the legal team: two women named Pauli Murray and Dorothy Kenyon. They were two women who had

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¹ 404 U.S. 71 (1971) (holding that an Idaho statute which preferred males to equally qualified females to administer estates was in violation of the Equal Protection Clause of the Fourteenth Amendment).
fought inside the ACLU for women's rights in earlier eras when no one was ready to listen. Ruth Ginsburg listed them both as co-counsel on her brief in the first great gender equality case of the modern era to honor their part in the never-ending intergenerational struggle for justice.

I remember the rectangular yellow "Women Working" sign—the first one that I had ever seen—that marked off the work space of the Women's Rights project in the rabbit-warren of offices that in those days made up the ACLU headquarters on the 20th floor of 156 Fifth Avenue. I particularly remember Justice Ginsburg as an island of calm and purposeful dedication, working steadily at her desk amidst the less than orderly atmosphere.

I remember defending Ruth Ginsburg against criticism by a few ACLU Board members that she was insufficiently feminist because so many of her test-case clients were men—a brilliant tactical judgment on her part that attacked gender stereotyping in a way calculated to catch the attention of an overwhelmingly male judiciary.

I remember the extraordinary flow of Supreme Court test cases launched by the Women's Rights project, conceived, executed and argued by Justice Ginsburg in the mid-seventies—cases like Frontiero v. Richardson and Weinberger v. Wiesenfeld—that swept away gender stereotyping once and for all. It is not just anyone who gets to build a body of precedent as a test case lawyer, and then, subsequently, write the Supreme Court decision in United States v. Virginia—that cements the precedent into an irresistible force for change.

But most of all, I remember Ruth Ginsburg as a vibrant and brilliant young lawyer who had graduated first in her class from Columbia; who is the only person to have been a member of both the Harvard and Columbia Law Reviews; who was turned down for a clerkship by Felix Frankfurter because he was not ready to hire a woman; who did not get a single job offer from a New York firm when she graduated from Columbia because she had three strikes against her—she was a woman; a mother; and a Jew; who endured the humiliation of being paid less than her comparable male colleagues at Rutgers—but who refused to be defeated by gender bias. Instead, with the extraordinary help and support of her husband, Marty Ginsburg—one of the premier tax lawyers of his generation—she converted her enormous talent and determination into a successful academic career, and a superb performance as an ACLU test case lawyer, where she brought down the blight of gender stereotyping that had almost thwarted her career, and that stood as an obstacle

2. 411 U.S. 677 (1973) (holding that classifications based upon gender are inherently suspect and are subject to strict scrutiny).
3. 420 U.S. 636 (1975) (holding that a provision of the social security law that awarded benefits to widows but not to widowers responsible for dependent children was unconstitutional).
4. 518 U.S. 515 (1996) (holding that a citizen-soldier program excluding women at the Virginia Military Institute was in violation of the equal protection clause).
to so many other talented women.

I have spent a good part of my career trying to live up to the Ruth Bader Ginsburg that I remember from back in 1972. It is a delight and a source of pride for me to welcome the present-day Justice Ruth Bader Ginsburg to NYU to help celebrate Justice Brennan’s magnificent legacy.