

Ruth Bader Ginsburg: Her Career and Contributions Before She Became Known as “the Notorious RBG” and the Great Dissenter



Ruth Bader Ginsburg in the early 1970's as an ACLU Lawyer and Law Professor

1950-54: Attends Cornell University, graduates in 1954. Met Martin Ginsburg, a sophomore, on a blind date in the fall of her freshman year; they were married 10 days after her college graduation. She said that Marty was the first man she had ever met who cared that she had a brain.

1954-56: Accompanies Marty to Fort Sill, Oklahoma, where he fulfills military ROTC commitment; she worked as a claims examiner for the Social Security Administration, and had their first child, Jane. She was demoted and her pay cut when she became pregnant; she considered herself fortunate that she wasn't terminated, because that was usually what happened to women at that time.

1956: enters Harvard Law School, joining Marty. She is 1 of only 9 women students in class of 500 – and she has a one year old child. She was selected to the Harvard Law Review and was near or at the top of her class.

1958: Marty graduates from HLS, and accepts job with major NYC law firm. Ruth asks permission from Harvard to complete her third year in law school at Columbia as visiting student and still receive her degree from Harvard. Harvard Law Dean Erwin Griswold denies this request even though it had been granted to male students in the past. So Ruth enters Columbia as a third year transfer student (1 of 12 women in her class); elected to Columbia Law Review.

1958: Ruth gets her law degree from Columbia; graduates tied for first in her class. Her Con Law and Federal Courts professor Gerald Gunther persuades U.S. Dist. Ct. SDNY Judge Palmieri (a Columbia Alumnus who looked to Professor Gunther for clerkship recommendations) to hire her as law clerk.

1959-1961: Law Clerk to Judge Palmieri

1961-63: Research Associate at Columbia Law School: After finishing her federal clerkship, despite her stellar credentials, no law firms would hire her – she says she faced the triple whammy of being Jewish, Female, and a Mother of a young child. One of her Columbia Professors, Hans Smit, hired her as a research associate on a project researching international procedural law – she focused on Sweden. Her time in Sweden exposed her to a society whose policies provided far more support for work/life balance, working parents, and children. This experience showed her that more women and family supportive policies were possible, and enhanced her views, formed from her personal experience, about how gender role stereotypes about women as mothers first and foremost, harmed both men and women and contributed to the social and legal subordination of women.

1963-1972: Professor at Rutgers Newark Law School.

In addition to teaching Civil Procedure and Con Law, she developed and taught one of the first sex discrimination and the law courses in the U.S. She was inspired by the intersectional feminist work of Pauli Murray, a leading black civil rights lawyer, and Dorothy Kenyon, a civil rights and labor rights lawyer who worked with the NAACP and ACLU; Murray and Kenyon theorized that the principles developed under the 14th Amendment to extend civil rights to blacks could be used for women as well, and they litigated one of the first federal court cases finding that sex discrimination violated the equal protection clause – a 1966 5th Circuit case holding that women had an equal right to serve on juries.

Ginsburg and her female colleagues experienced sex discrimination at Rutgers; they sued the University and overturned a policy paying them less than their male colleagues because they had male “breadwinners” supporting their families. Ginsburg also felt it prudent, while still an untenured faculty member, to conceal her second pregnancy, until after her contract was renewed.

While a full time faculty member at Rutgers, Ginsburg started working with the ACLU, persuading them to contribute to cases challenging facially sex discriminatory laws as violations of Equal Protection.

1971: ***Reed v. Reed***, Ginsburg’s first U.S. Supreme Court brief for the ACLU, which came in as co-counsel in the U.S. Supreme Court to assist local Idaho attorney. Ginsburg and Mel Wulf, ACLU Legal Director, co-authored the brief. On behalf of a mother who sought to administer the estate of her teenage son who had committed suicide while in the custody of his father -- her estranged husband, *Reed* challenged under the 14th Amendment’s Equal Protection Clause an Idaho law that automatically preferred fathers over mothers as estate administrators. The Court unanimously struck down the law as making an arbitrary distinction with no rational basis. *Reed* was the first Supreme Court case ever to strike down a statute on the basis of sex discrimination. Although the Ginsburg brief had argued both that Idaho’s preference was arbitrary, and that gender-based classifications should be subjected to the same strict scrutiny as race-based classifications, the Court chose the “small guarded step” forward of striking down the statute under rational basis review. But Ginsburg realized that *Reed* nonetheless opened the door for pursuing other cases challenging sex-based statutory distinctions.

1972: Columbia Law School offers her a tenured faculty position, and she becomes the first tenured woman law professor at Columbia. She offers the first sex discrimination law class at Columbia.

1972: She persuades ACLU Legal Director Mel Wulf to establish the ACLU Women’s Rights Project, to focus on gender discrimination cases. She becomes Director and counsel – all while also serving as a full time professor at Columbia.

Throughout the 1970's she becomes widely recognized as the leading women's rights/sex equality litigator in the U.S. Either as lead counsel or author of influential amicus briefs, she contributes to most of the gender equality cases in the U.S. Supreme Court. She wrote that her "line of work in the 1970's" was "moving the law in the direction of recognizing women's equal citizenship stature." Preface at xiii to "Ruth Bader Ginsburg: My Own Words," with Mary Hartnett and Wendy W. Williams (Simon & Schuster 2016)

1973: ***Frontiero v. Richardson***, Ginsburg's first oral argument before the U.S. Supreme Court. This case challenged a military housing and health care benefits policy that automatically assumed female wives of male service members were dependent on their husbands, but afforded no such presumption to male husbands of female service members. *Frontiero's* lawyers had declined to argue in their opening brief that sex-based distinctions should be subject to strict scrutiny as suspect classifications. Ginsburg's amicus brief for the ACLU forcefully made this argument and laid out the long history of legal discrimination against women – and her brief convinced *Frontiero's* counsel to turn the reply brief and oral argument over to Ginsburg. Her ACLU co-counsel Brenda Feigen recalls the brief as "brilliant," "muscular and spare" -- "She told the story of sex discrimination — how it had been and how it had to end."

Ginsburg's *Frontiero* briefs and oral argument laid out her view that sex-based classifications were based on stereotypes about the supposed nature of and proper roles for women and men, and that far from being "benign" or protective of women, laws that incorporate gender-based stereotypes harm both women and men:

For women who do not want to exercise options that do not fit within stereotypical notions of what is proper for a female, women who do not want to be "protected" but do want to develop their individual potential without artificial constraints, classifications reinforcing traditional male-female roles are hardly "benign." Where, as in the instant case, a wife and husband deviate from the norm – the wife is the family breadwinner, the husband "dependent" in the sense that the wife supplies more than half the support for the marital unit – "benign" legislative judgments serve as constant reminders that, in the view of predominantly or all-male decision-making bodies, life should not be arranged this way. Reply Brief in *Frontiero*.

Strong echoes of this argument can be found in her majority opinion for the Court in the VMI case, *United States v. Virginia*, where she finally got to implement her theory of gender discrimination as based on subordinating sex role stereotypes into U.S. constitutional law.

The Supreme Court struck down the gender-based benefits scheme in *Frontiero* by an 8-1 vote (Rehnquist, J., dissenting). A 4 Justice plurality, in an opinion written by Justice Brennan, said that sex-based classifications should be treated as "suspect" just as race-based distinctions are, and adopted strict scrutiny. The other Justices in the majority considered the statute to be arbitrary under *Reed*, and said it was not necessary to adopt strict scrutiny. This is the closest the Supreme Court has come, to this day, to subjecting sex-based classifications to strict scrutiny under the Equal Protection Clause.

1972-1980: While both a full-time law professor at Columbia and the Director of the ACLU Women's Rights Project, Ginsburg was involved, either as merits counsel or as author of amicus briefs, in 34 cases before the U.S. Supreme Court challenging various statutes and regulatory policies as illegitimate sex-based discrimination. She won 5 of the 6 cases she argued before the Court.

She developed a carefully thought out “brick by brick” litigation strategy designed to highlight the harm of legal schemes based on gender stereotypes, and eventually to move the law towards treating sex-based classifications as “suspect” and subject to strict scrutiny – a task, she said, she never expected to win in “one fell swoop.” She hoped that by striking down the statutory schemes she selected for challenge, legislatures would receive guidance and realize the need to change their laws without being forced to do so by the courts.

Many of her cases were brought on behalf of male plaintiffs – men who defied conventional masculine gender roles by being primary caretakers for their children, or for elderly parents, etc. She reasoned that the all -male judiciary would be better able to grasp the harms of discrimination based on gender role stereotypes that negatively affected men’s economic well- being.

Her favorite Supreme Court legal victory: *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975). Steven Wiesenfeld’s wife was the principal family breadwinner, working as a teacher and paying social security taxes. She died in childbirth, leaving Wiesenfeld as a widower caring for an infant child. The Social Security law at that time gave a woman worker’s survivor’s benefits only to her children, and not to her male spouse, so Steven’s application for survivor’s benefits was denied – benefits to which his wife would have been entitled had he passed away. A unanimous Supreme Court overturned this law, ruling that it was illogical and actually harmed the governmental interest in assuring that a surviving spouse could adequately care for the children – and that the gender of the surviving spouse had no logical connection to that parent’s desire and ability to care for the children.

Her most disappointing Supreme Court loss (although she was only an amicus, not merits counsel): *Geduldig v. Aiello*, 417 U.S. 484 (1974): the Court upheld the exclusion of pregnancy from a California workplace temporary disability insurance program, infamously holding that pregnancy discrimination was not a form of sex-based discrimination, because a classification based on pregnancy creates classes of “pregnant persons,” and “non-pregnant persons,” -- and the latter group includes both men and women.

1980: Appointed to U.S. Court of Appeals for the D.C. Circuit by President Carter. Confirmed by Senate, and resigns from Columbia Law School faculty to assume the federal bench for the rest of her life.

1993: Appointed to U.S. Supreme Court by President Clinton. Confirmed by Senate in a 96-3 vote.

2007: The year she gained the reputation as the “great dissenter.” In what was at the time a rare occurrence, she read aloud from the bench a summarized version of her landmark dissent in the Lilly Ledbetter case – *Ledbetter v. Goodyear Tire & Rubber Co.* She wore a specially selected jabot with her robe – inaugurating what became the cultural phenomenon of the “dissent collars.” Her spare, to the point, and everyday language in her oral dissent – showing her lived understanding of how sex discrimination actually works in the real world, and the insidious way its deleterious effects build up incrementally over time – captured media attention, Congressional attention, and vaulted her into cultural icon status.

She continued to follow this practice of reading aloud from the bench, decked out in special collar, the dissents she considered especially important and significant, and in which she considered the majority

opinion “especially misguided” – including in the cases featured in this event, such as *Gonzales v. Carhart*, and *Shelby County v. Holder*.

Justice Ginsburg’s thoughts on the role and importance of dissenting opinions:

1. The “in house” effect – a powerful draft dissent, when circulated amongst the Justices, can sometimes change votes, or, can inspire the majority opinion writer to sharpen and improve their opinion in response to the dissent. She notes her opinion in *U.S. v. Virginia* was “ever so much better” thanks to Justice Scalia sharing with her in advance his “attention grabbing” dissent
2. They can be intended to serve as urgent pleas for action to Congress, and to bolster public opinion in favor of Congress making a statutory correction – e.g. her *Ledbetter* dissent
3. They can be intended to serve as “appeals to the intelligence of a later day.” Ginsburg lists her dissent in *Shelby County v. Holder* as of that variety.