

# Her Black Coffee Always Brewed Strong'

We clerked for Ruth Bader Ginsburg. In her career and at home, she lived a life that reflected her vision of equality.

By **Abbe R. Gluck and Gillian E. Metzger**

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There was our justice, Ruth Bader Ginsburg: “At the end of the day, the government is throwing to the wind the women’s entitlement. ...” She was forcefully intervening at oral argument in the last months of her life, in a case about access to contraception under the Affordable Care Act. Her dissent, issued in July, condemned the majority for leaving potentially half a million women to “fend for themselves.”

It was her last opinion about gender equality after a lifetime of advocacy and leadership on the court. She was keenly aware, as she always was, of how the law affects real women in real life. And as always, nothing could stop her from speaking up.

We clerked for Justice Ginsburg in the 1997 and 2003 terms. She was a role model for us in law and in life; how to work, how to write, how to advocate, how to partner, how to mentor. She was already famous when we clerked for her. But that she later became a feminist icon in her octogenarian years for millions of little girls around the world is nothing short of extraordinary.

This didn’t happen through loudness of voice, harshness of words or a biting cynicism about the world. It was through a remarkable legal intellect, an incomparable work ethic and a powerful vision of what justice and equal treatment for men and women mean in reality. Her once-radical vision of gender equality penetrated the law in countless areas, not just reproductive rights but also workplace discrimination, class-action law, criminal procedure — in every aspect of how women interact with the world. And she lived that vision through every aspect of her personal life, too.

Justice Ginsburg was the last justice on the court to have spent time before the bench as a legal advocate for equality. (Justice Thurgood Marshall was the last before her.) Today we take for granted her vision of gender equality. But we should never forget that it was not until 1971 that the U.S. Supreme Court ruled for the first time that the Constitution prohibits discrimination based on sex. That was Justice Ginsburg’s case — *Reed v. Reed*, which challenged the rule that men were the preferred administrators of estates of deceased persons, and that gave a grieving mother the right to administer the estate of the son she lost.

For Justice Ginsburg, equality did not mean special — she would say “pedestal” — treatment for women. Equality meant the *same* treatment for women and men. Stories from her childhood — as when she complained it was unfair that boys had wood shop while girls had sewing — are renowned. As an advocate, her litigation strategy zeroed in on that radical vision and realized it for all of us.

She often used male instead of female plaintiffs to show sex discrimination prevents all people from realizing their full potential. Why shouldn’t a man, for example, receive the same Social Security benefits a woman would receive, so he could stay home to care for his child after his spouse died? She successfully brought that question to the court in the 1975 case *Weinberger v. Weisenfeld*. She has said in interviews: “The aim was to break down the stereotypical view of men’s roles and women’s roles.”

Over the next 45 years, Justice Ginsburg would extend that vision into every corner of American life. In 1996, she wrote a pathbreaking opinion striking down Virginia’s provision of single-sex public education for men only (at a military institute), giving us both the law and the vocabulary to describe her vision. She eschewed the term “women’s rights.” Instead, equal protection demanded that *both* women and men be given “full citizenship stature — equal opportunity to aspire, achieve, participate in and contribute to society.”

Then there were the dissents — they had an extraordinary impact even before she became the leader of the court’s liberal wing and gained the moniker “notorious R.B.G.” In 2006, with Justice Sandra Day O’Connor’s retirement, Justice Ginsburg became the only woman on the court. She spoke ever louder. In a case upholding a federal ban on late-term abortions, Justice Ginsburg’s dissent attacked the majority for its paternalistic concern that women could not be trusted to make decisions they would not regret: “The Court invokes an anti-abortion shibboleth for which it concededly has no reliable evidence,” she wrote. “This way of thinking reflects ancient notions about women’s place in the family and under the Constitution — ideas that have long since been discredited.”

In a criminal procedure case about a strip search of a 13-year-old girl for ibuprofen, the justice reacted to a male colleague’s asking why stripping in the gym was “a major thing.” Shaking out one’s bra and underwear and then being forced to sit in the hallway for two hours, she said, was not mere locker-room play. It was an “abuse of authority.”

In a 2007 equal pay case, Justice Ginsburg — herself a victim of early-career workplace discrimination — chided her colleagues for deciding that a woman who does not file a claim immediately can never file at all. This ignored the actual “characteristics of pay discrimination.” “Small initial discrepancies,” she wrote, “may not be seen as meat for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves.”

In a 2011 employment discrimination class action, she faulted colleagues for overlooking how “subjective decision making can be a vehicle for discrimination.” She referenced a favorite example from a favorite pastime: Orchestras with blind auditions hire more women.

The magnitude of her legal legacy cannot be overstated. But her impact was even greater because she modeled for us and for women and girls around the world how to live a life that reflected her legal vision. She demanded a lot from her law clerks, but demanded even more from herself. She was the hardest working, most deliberate person either one of us has ever worked for. She taught us to be strong and to stand behind our work. She gave countless women and men opportunities and support in the life of the law. She got to know all of our children. Her famous faxes came across the channels at all hours of the night. Her black coffee always brewed strong.

In her home life, she modeled to us how to translate the radical legal change she worked to the personal. She and her husband, Martin, were insistently equal co-partners in marriage and parenting and had a marriage for the ages.

Her commitments were always the same and grew ever louder. Even at the very end, she reminded us how much more work there is left to do.

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