

# More than Just Notorious: The Remarkable Ruth Bader Ginsburg

On October 1, 2018, the United States Supreme Court began its 2018-2019 term. Although Chief Justice John Roberts, as is customary, occupied the center chair, the center of much of the nation's attention was on Associate Justice Ruth Bader Ginsburg. And not necessarily for any reason having to do with the workings of the Court.



Rudy Carmenaty

Putting aside the notable example of William O. Douglas, Supreme Court justices are usually unrecognizable as public figures. Ruth Bader Ginsburg, however, has proven to be the exception. Twenty-five years after Justice Ginsburg joined the Court, few would

have guessed that she would become a cultural icon. Distinguished jurist, yes, by all means. Thoughtful champion of women's equality, without a moment's hesitation. One of the handful of justices to be mentioned alongside Holmes and Brandeis, certainly possible.

But the "Notorious RBG," as she has come to be known, has become a fixture in the popular imagination. She has been the subject of numerous print profiles, is frequently interviewed on television, and is a hit on the lecture circuit. A devoted aficionado of the opera, she performed a speaking role on the opening night of the Washington National Opera's production of Donizetti's *The Daughter of the Regiment*.<sup>1</sup> The Justice is as ubiquitous as she is brilliant.

Earlier this year a documentary on her life, *RBG*, premiered at the Sundance Film Festival to effusive reviews and grossed nearly \$14 million at the box-office.<sup>2</sup> *On the Basis of Sex*, a feature film starring Felicity Jones as a young Ruth Bader Ginsburg, is scheduled to be released on Christmas day. And if that were not enough, there is Kate McKinnon's lively impression of her on Saturday Night Live or the Justice herself demonstrating her exercise regimen to late-night television host Stephen Colbert.

When it comes to the written word, one could fill a bookshelf with titles ranging from learned legal studies of her jurisprudence to children's coloring books. Her own tome, *My Own Words*, a collection of her writings and speeches, was a New York Times Best Seller. A new comprehensive biography, *Ruth Bader Ginsburg: A Life*, by Jane Sherron de Hart, was just published by Knopf. But it was *Notorious RBG: The Life and Times of Ruth Bader Ginsburg* by Irin Carmon and Shana Knizhnik, that truly marked her arrival on the cultural landscape. An eclectic hagiography, the book grew out of a Tumblr of the same name created by Ms. Knizhnik.

T-shirts, memes, bobble heads, lapel pins, coffee mugs, and even tattoos are all emblazoned with the Justice's likeness. The slogan "You can't spell truth without Ruth" is everywhere and on just about everything imaginable.<sup>3</sup> For the more sophisticated among us, there



Associate Justice Ruth Bader Ginsburg with Rudy Carmenaty at Columbia Law School honoring the 10th anniversary of her investiture to the U.S. Supreme Court, 2003.

is a "Ruth Bader Ginger" Cocktail.<sup>4</sup> FCTRY, a toy manufacturer in her native Brooklyn, is marketing an RBG action figure for \$19.99 complete with wire-rimmed glasses, gavel, and her ever-present jabot.<sup>5</sup>

And, speaking of jabots, the colorful lace collars that adorn her black robes have become a subject of particular fascination. With her extensive collection of these jabots, the Justice has turned a fashion accessory into a political statement by wearing specific jabots when announcing majority or dissenting opinions from the bench.<sup>6</sup> Little wonder that in 2012 *Glamour Magazine* named her one of their "Women of the Year."<sup>7</sup>

At first glance, she is the most unlikely of media sensations. She radiates an intelligence and a dignity that seem from a bygone era. Yet it is this same soft-spoken quality that strikes a chord with contemporary audiences. When asked how she feels about having her name linked with the rapper The Notorious B.I.G., she delightfully observed that since they were both born and bred in Brooklyn, they had a lot in common.<sup>8</sup>

Justice Ginsburg's unlikely rise to pop culture phenomenon can be attributed to many factors. Some of them are rooted in her much-deserved reputation as a trailblazer. Her story demonstrates not only the capabilities of an exceptionally gifted individual, but, of equal importance, the advancement of women in our profession, as well as American society as a whole.

Although Justice Ginsburg graduated first in her class from Columbia Law School in 1959, no law firm in Manhattan would offer her a job. Justice Felix Frankfurter refused to hire her—or any woman—as a law clerk. Ultimately, Judge Edmund L. Palmieri from the Southern District of New York was persuaded to offer her a clerkship, although she was a mother with a child at home. That child was her daughter, Jane Ginsburg, who today is a noted law professor at Columbia.

Undaunted by the rampant sexism of the day, hers has been a career for the ages. She first carved out a place for her-

self in the 1960s as an academic, adding luster to the law faculties at Rutgers and Columbia. Not confining her talents to the classroom, she co-founded the Women's Rights Project at the American Civil Liberties Union in the 1970s. She argued six gender-discrimination cases before the Supreme Court, winning all but one.<sup>9</sup> By the time President Clinton appointed her in 1993, she was being favorably compared to Thurgood Marshall.<sup>10</sup>

Part of her appeal lies in her engaging personal life which is filled with both heartbreak and happiness. The daughter of Jewish immigrants from Flatbush, her mother died from cancer the day before she graduated from high school. Celia Bader would always be an inspiration to her daughter, as would the Justice's "life's partner," the renowned tax attorney Martin Ginsburg.<sup>11</sup> Married for more than half a century, theirs was an enviable union of equals that was decades ahead of its time. Marty, who was known for his good cheer and cooking, was her fiercest supporter.

On the Court, she has been a thoughtful voice who speaks as forcefully as she does elegantly. Her opinions are marked by their lucidity, their reasoning, and their ability to speak directly to the human consequences of the issues before the Court. An opinion from Justice Ginsburg is characterized by high-end legal analysis expressed in clear, concise language that lawyer and layman alike can appreciate.

Perhaps her majority opinion in *United States v. Virginia* can serve as the shining example of her work as a federal judge.<sup>12</sup> In this 1996 decision, the Virginia Military Institute, the last all-male state-funded college in the country, was forced to accept women cadets whom it had previously denied admission. Applying the Fourteenth Amendment's Equal Protection Clause, the Court invalidated all laws, both federal and state, which, in Justice Ginsburg's telling prose, deny "women, simply because they are women, full citizenship status—equal opportunity to aspire, achieve, participate in and con-

tribute to society based upon their individual talents and capacities."<sup>13</sup>

The legal principle announced by this case rested on the bedrock of the half-dozen cases she had litigated during the 1970s. Her decision even cites the first case she had ever argued before the high court in 1973: *Frontiero v. Richardson*.<sup>14</sup>

Another element of her appeal rests with her affectionate comradery with the late Antonin Scalia. A judicial odd couple, she is a liberal Democrat and he was a conservative Republican. She is Jewish and he was Catholic. She believes the Constitution adapts to changing times and he was an originalist. Yet both shared a passion for opera and a gift for friendship that had nothing to do with either partisan politics or ideology.

After Justice Sandra Day O'Connor retired, Justice Ginsburg was the sole woman on the Court until the appointment of Sonya Sotomayor. With the delicate balance of the long-serving Rehnquist court gone, Justice Ginsburg entered a new phase of her tenure. She found herself frequently dissenting from the majority. The pragmatism and caution that often characterized her writings previously, as both a litigator and as a judge, gave way.<sup>15</sup>

It was in dissent and often in cases decided 5 to 4, that Justice Ginsburg began to emerge as a social media superstar. More than mere rallying cries for disappointed liberals, these dissenting opinions began to take on a life of their own. The decision in *Ledbetter v. Goodyear Tire & Rubber Co.* stands as a case in point.<sup>16</sup>

At issue in *Ledbetter* was whether the 180-day statute of limitations in an equal-pay lawsuit begins to toll when the employer makes a discriminatory compensation decision or the date of the plaintiff's most recent paycheck.<sup>17</sup> Justice Ginsburg had intimate knowledge of such matters: when she was a law professor at Rutgers, she was paid less than her male counterparts because she had a husband who was a partner at a New York law firm.<sup>18</sup>

Justice Ginsburg saw the majority's decision as a "cramped" interpretation of Title VII of the 1964 Civil Rights Act, "incompatible with the statute's broad remedial purpose."<sup>19</sup> She stated that her colleagues either were not comprehending or being indifferent to "the insidious way in which women can be victims of pay discrimination."<sup>20</sup> She concluded her written dissent by forcefully noting that "the ball is in Congress' court.... [T]he Legislature may act to correct this Court's parsimonious reading of Title VII."<sup>21</sup>

That was in 2007. Two years later, Congress amended the 1964 Civil Rights Act with the Lilly Ledbetter Fair Pay Act, which automatically resets the 180-day statute of limitations "each time wages, benefits, or other compensation is paid."<sup>22</sup>

Beyond the law, her dissents also launched her legend. A new generation of law students found themselves in the writings of this opera-loving octogenarian jurist who was old enough to be their grandmother. Embraced by

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tech-savvy millennials, the newly christened “Notorious RBG” came to life. Ruth Bader Ginsburg began to exercise an influence that extended far beyond the staid, bound volumes containing the United States Reports.

It is safe to say that no justice has been the subject of more popular interest and, yes, adulation. When she makes a public misstep, as she did during the 2016 presidential campaign, her sincere acknowledgment of the error was accepted with good grace and the recognition that an icon is also mortal.

The pop culture trappings that surround the Justice pale in comparison to the substance that the woman represents. Hers is one of the rare instances where the reality far exceeds the imagery. Never afraid to speak her mind or to take a stand, her life thus far has been exceptionally well-lived, and rich in achievements, not just accolades.

And herein lies the greatest single reason for all the public fascination, even for conservatives who are at odds with her judicial philosophy. After all, if Justice Scalia and Justice Ginsburg can become the best of friends, then there is hope for us all in these polarized times. Political differences aside, her story resonates because she is an authentic human being who through her life's work has made a tangible difference in the life of the nation. And she did so with an appealing combination of intellect, elegance, and commitment.

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1. Anne Midgette, *Ruth Bader Ginsburg's Opera Debut Brings Relevance To WNO*, Washington Post (November 13, 2016) [www.washingtonpost.com](http://www.washingtonpost.com).
2. Box Office Mojo at [www.boxofficemojo.com](http://www.boxofficemojo.com).
3. Irin Carmon and Shana Knizhnik, *Notorious RBG: The Life and Times of Ruth Bader Ginsburg* 6 (1st ed. 2015).
4. Ronnie Fein, *Ruth Bader Ginger Cocktail* (April 16, 2015) [www.ronniefein.com](http://www.ronniefein.com), the recipe for the cocktail is

- 4-6 ice cubes
- 3 ounces dark rum
- 1 ounce ginger liqueur or brandy
- 2 teaspoons orange juice
- 2-3 pinches ground cardamom
- 2 slices of orange
- 2 mint leaves, slightly crushed

Place two to three ice cubes in each of two glasses. Combined the rum, brandy, orange juice, and cardamom in a lidded container. Shake vigorously and pour equal amounts into the glasses. Slightly twist the orange slices to extract a few drops of orange juice into the liquid, then place a slice on the rim of each glass. Place one slightly crushed mint leaf in each glass, stir and serve.

5. Angele Morris, *RBG Action Figure Launched Through Copious Crowdfunding*, New York Law Journal, August 10, 2018, p. 2.
6. Emily McClure, *All of Ruth Bader Ginsburg's Jabots, From Her Statement-Making Collar to Her Sassy Beaded Accessories*, Bustle (May 6, 2015) [www.bustle.com](http://www.bustle.com).
7. Debra Cassens Weiss, *Ginsburg Named One of Glamour Magazine's Women of the Year*, ABA Journal (November 12, 2012) [www.abajournal.com](http://www.abajournal.com).
8. *RBG* (2018), a film directed and produced by Betsy West and Julie Cohen.

9. Library at Washington & Lee University School of Law, *Ruth Bader Ginsburg: A Reading List Arguments Before the Supreme Court*, updated January 24, 2017, <https://libguides.wlu.edu>.
10. Ruth Bader Ginsburg with Mary Harnett and Wendy W. Williams, *My Own Words*, 116 (1st ed. 2016).
11. *Id.*
12. *United States v. Virginia*, 518 U.S. 515 (1996)
13. *Id.* at 532.
14. *Frontiero v. Richardson*, 411 U.S. 618 (1973).
15. Paul Richter, *Clinton Picks Moderate Judge Ruth Bader Ginsburg For High Court: Judiciary: President Calls The Former Women's Rights Activist A Healer And Consensus Builder. Her Nomination Is Expected To Win Easy Approval*, Los Angeles Times (June 15, 1993) [article.latimes.com](http://article.latimes.com).
16. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

17. Johanna L. Grossman, *The Lilly Ledbetter Fair Pay Act of 2009: President Obama's First Signed Bill Restores Essential Protection Against Pay Discrimination*, (February 13, 2009) [supreme.findlaw.com](http://supreme.findlaw.com).
18. Irin Carmon and Shana Knizhnik, *Notorious RBG: The Life and Times of Ruth Bader Ginsburg* 47 (1st ed. 2015).
19. *Ledbetter*, 550 U.S. at 661 (Ginsburg, J. dissenting).
20. Bench Announcement in *Ledbetter v. Goodyear Tire & Rubber Co.*, Tuesday, 29, 2007, contained *My Own Words*, 287.
21. *Ledbetter*, 50 at 661 (Ginsburg, J. dissenting)
22. Johanna L. Grossman, *The Lilly Ledbetter Fair Pay Act of 2009: President Obama's First Signed Bill Restores Essential Protection Against Pay Discrimination*, (February 13, 2009) [supreme.findlaw.com](http://supreme.findlaw.com).