

Justice for All

Ruth Bader Ginsburg's role on the Supreme Court.

by Eleni Canellos and
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ONE OF JUSTICE RUTH BADER GINSBURG'S former students tells a story which symbolizes the inspirational role that Ginsburg has played as an advocate for gender justice. Diane Zimmerman, Columbia Law School '76, describes a meeting of a prestigious institute of scientists. A female friend of hers who regularly attended the meetings found that no one responded when she raised her hand at meetings; she felt like her hand was invisible. However, when another woman at the meeting raised her hand, she was regularly called upon. During a conversation between the two women in the ladies' room, Zimmerman's friend asked how the woman managed to get called upon, to which the other woman responded that when she won the Nobel prize, her hand suddenly became "visible." Ruth Bader Ginsburg has won the equivalent of the Nobel Prize in her field; she has been appointed to the Supreme Court. Her hand has become visible and now she is working to ensure that other women's hands will not be ignored.

A dean at Harvard Law once asked Ginsburg, who was only one of nine women in her law school class, to justify the fact that she was taking up space where a qualified man could be. After transferring to Columbia Law School to be with her husband, Ginsburg more than justified the space she was taking up by graduating at the top of her class. Even with her impressive qualifications, she was not offered a job with a single law firm in the city of New York. Instead, with the help of one of her professors, she obtained a clerkship with a New York District Court judge.

When a faculty member at Rutgers University left to become the Dean at Howard University, Ginsburg was hired to replace him. She says that since they could not find a black candidate to replace him, "the next best thing was a woman." While at Rutgers,

Ginsburg was forced to hide her pregnancy so that she would not lose her chance for tenure. In 1972, after a short stay at Harvard, Ginsburg accepted a position at Columbia Law School as Columbia's first tenured female professor.

Professor Ginsburg then joined the ACLU Women's Rights Project and in the following years rose to prominence fighting for equal treatment of the sexes under the law. *Radwell v. Illinois*



Courtesy of the Columbia Spectator (1972) upheld the right of women to practice law in Illinois, thus smoothing the path of women's rights by ensuring equality in the public sector. In *Struck v. Secretary of Defense* (1972) Ginsburg argued that the Air Force's policy of dismissing officers who became pregnant amounted to sexual discrimination. The basis of her argument was that the rule "treated pregnancy far more harshly than it treated other temporary disabilities affecting men and women."

In other cases, Ginsburg expressed her belief that equality is reciprocal, applying to men as well as women. In *Weinberger v. Wiesenfeld* (1975), she represented a man who was denied social security benefits after his wife died. Although he was the primary caretaker of their child, these benefits were only offered to mothers. Ginsburg argued that this was actually discrimina-

tion against women, who paid as much as men for social security, but whose spouses were not able to collect after they died. Men, on the other hand, could be secure in the fact that their wives would benefit from their investment.

Justice Ginsburg has been criticized for not extending her beliefs about equality beyond gender issues. For instance, some have attacked her stand on the dismissal of a recent case dealing with a gay naval officer. Ginsburg joined Reagan appointees Bork and Scalia in declining to hear a gay sailor's Constitutional challenge to the military's ban on homosexuals. However, this decision is not in conflict with Ginsburg's views on equality, but rather it reflects her opposition to the use of the right of privacy as a defense for an issue, such as homosexuality or abortion.

Ginsburg's views on *Roe v. Wade* have come under much scrutiny recently. She has, in fact, criticized *Roe*, but feminists who take this as an indication of her opposition to reproductive freedom have not carefully analyzed her argument. Ginsburg focuses on the results of legislation, not solely on the immediate objectives. Thus, her criticism of *Roe* is that had the decision been based upon gender equality rather than on the harder concept of privacy it would have been a stronger argument. Under the privacy defense, the issue is whether or not the state has a right to prevent abortion. Ginsburg's argument would force consideration of the ability of poor women to have the same opportunities as more affluent women to obtain a medical service. Thus, it becomes less an issue of morality and more an issue of equal rights.

The theme of equality underlies many of Ginsburg's arguments, including those on affirmative action and sexual harassment. She aligns herself with Clarence Thomas on the issue of affirmative action. She favors limited assistance for the disadvantaged, but she dislikes the notion that women or minorities need an extra boost because they cannot make it on their own. It undermines women's and minorities' achievements to imply that they were due to because of tokenism rather than merit. On the issue

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Continued on page 22

problem when Medicaid costs double every 5.9 years. Conservatives need to accept this or else we will go through the 1980s again when the debt quadrupled.

Liberals, on the other hand need to learn great caution as to which, if any, new activities they seek to bring into the public sector. Speaking to the Governors in Tulsa on August 16, President Clinton stated his conviction that "what this nation really needs is ... fundamental and profound and relentless and continuing change." If he really thinks about government in those terms, I can only say that his is a different view from that of the chairman of the Senate Committee on Finance. On the other hand, the general thrust of his health care proposals seem to meet the criteria I have laid out.

In the meantime, especially here in New York, I dare to hope that we might try to recover the memory and the knack of doing things we used to do so well. It is now almost two years since President Bush signed the Intermodal Surface Transportation Efficiency Act, "ICE TEA" as it is known. That bill took me exactly 35 years to pass. I was in the Executive Chamber in Albany in 1956 when Congress created the National Chamber in Albany in 1956 when Congress created the National System of Interstate and Defense Highways. The administration of Thomas E. Dewey had designed and built the Thruway from a standing start in eight years- as a toll road. The Federal government would now build the same highway all across the nation — but as freeways which we would help pay for through an increased Federal gasoline tax. It seemed to me this would be devastating to New York; but I could find few who agreed (In the years since, we have lost a third of our Congressional delegation). But now I was able to commit the Federal government to repay us \$5.06 billion for the Thruway, along with a large allocation of the Highway Trust Fund and instructions to do pretty much anything we pleased with the money so long as it involves transportation. To say again, nearly two years have gone by. The money is disappearing in repaving contracts. This is not what I had in mind. We need to do something memorable to close out the century.

Can we not agree to divide the Thruway money into five portions of \$1 billion each for each of five regions in the state and do something memorable for everyone?

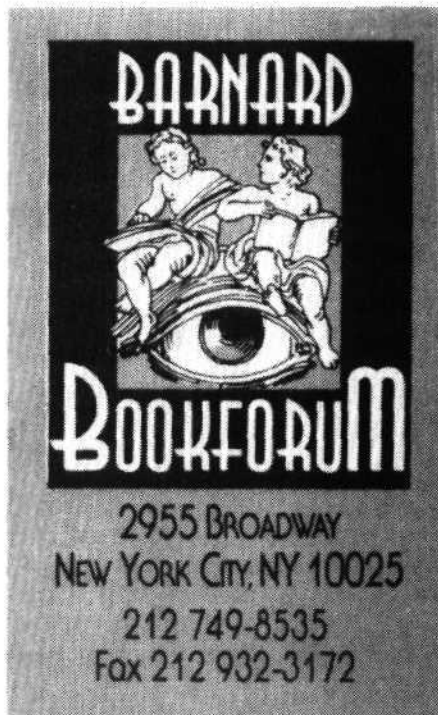
I know, for example, what I would do in New York City. I would recreate Pennsylvania Station in Charles McKim's great Post Office across 8th Avenue. On August 5, Mayor David N. Dinkins wrote me to say he wholeheartedly agrees.

As we have discussed, the demolition of McKim's Pennsylvania Station marked a low point in our City's architectural history. The opportunity is now at hand to rehabilitate the Farley Post Office Building and to restore Perm Station to its previous glory as a true gateway for New York City.

Thanks to the flexibility of ISTEPA, federal funds are available to build both an important intermodal transportation facility and to create a monument that will testify to our generation's interest in revitalized public spaces.

I would then build a magnetic levitation train system that would make the round trip to Kennedy over to LaGuardia and back, in say, 12 minutes. En route, travellers would get a glimpse of the Throg's Neck Bridge where maglev was thought up in 1961. They could then go back to their own countries having seen something new in the new world for a change.

Helvidius would like to thank the office of the Honorable Daniel Patrick Moynihan (D-NY) for providing us with the transcript of this speech.



Ginsburg

Continued from page 19

of sexual harassment, especially in the recent Harris case, Ginsburg focuses on the inherent inequality of the rule that women must prove they have been psychologically damaged by an incident. She believes that women survivors should be commended and not condemned. Just because they refuse to be victims does not mean that they should have to put up with harassment.

One can only speculate about Ruth Bader Ginsburg's future role on the Supreme Court. It seems likely that in most decisions she will not greatly alter the Court's balance since she tends to be moderate on issues like criminal law. However, on gender issues, civil rights, and civil liberties, she can be expected to be a voice for continuing progress. The most likely change in voting patterns on the Court should be in decisions about religion in the schools, an issue on which the Court generally divides 5-4, and upon which Ginsburg's predecessor, Byron White, generally voted conservatively. On most other issues, it is difficult to predict exactly how Ginsburg will vote. In the end, will Ruth Bader Ginsburg become a feminist heroine or a modest jurist? We believe that the answer is both.

You know, I'm not sitting here [as] some little woman standing by my man like Tammy Wynette. I am sitting here because I love him, and I respect him, and I honor what he's been through, and what we've been through together. And, you know, if that's not enough for people, then, heck, don't vote for him.

-Hillary Clinton.