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## Remarks of Ruth Bader Ginsburg, March 11, 2004, CUNY School of Law

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**REMARKS OF RUTH BADER GINSBURG**  
**MARCH 11, 2004**  
**CUNY SCHOOL OF LAW**

*Dean Kristin Booth Glen welcomed Supreme Court Justice Ruth Bader Ginsburg to the City University of New York School of Law on March 11, 2004 in celebration of the Law School's Twentieth Anniversary. The Dean introduced Justice Ginsburg by comparing the history of the school to experiences in Justice Ginsburg's life, including the fact that she was a working mother when she attended law school. Following the Dean's remarks, children from CUNY Law's child care center welcomed Justice Ginsburg by presenting her with a bouquet of flowers.*

JUSTICE GINSBURG: Your dean, Kris Glen, is certainly right about the children's welcome. I have never experienced anything like it.

I will disclose to you something really not a secret. It is that if I could have any talent God could give me, I would be a great diva. I would be perhaps Renata Tebaldi or Beverly Sills. But being a monotone, a sparrow, not a robin according to my grade school teachers, I settled for the next best thing. My job is endlessly challenging; it is also a most secure position. If I behave well, the Constitution says, I can retain my office.

May I say something about this audience of students. I became what I think of as an equal rights advocate largely because of my students. I am all the more attracted to CUNY's student body because people who enroll here chose to be public interest lawyers. I was, one might say, tugged into equal rights advocacy by students who wanted a course in Women in the Law, and by women who trickled into the ACLU's office in New Jersey, complaining about things that had never been complained about before: Like losing a job as a schoolteacher when one's pregnancy began to show, or not being able to get health insurance for your family if you are a woman because family coverage was available only to men.

My public service responded to clients brave enough to think that the injustices they suffered could be corrected through lawful processes, and to my students who wanted to know about the burgeoning women's movement. The combination or coming together of those pressures made me a public interest lawyer.

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There is also something special about the complexion of CUNY's student body. The dean referred to the swearing-in ceremony at the Supreme Court. It is indeed something spirit lifting, as this audience is. I look out into the courtroom on the days we have group admissions and think to myself, there is probably no other country in the world where you would see such an audience. People of every ethnic background, men and women. The assemblage reflects the best of the U.S.A.'s traditions.

Well, now, I don't want to hold you over the time planned for the reception, so let me commence my remarks.

I will start with the famous plea of Abigail Adams to her husband, John, to remember the ladies in framing the nation's, the new nation's, laws. I am taking a cue from Abigail, and am also bearing in mind that March is Women's History Month. I will speak of two great women, and relate two sets of little known accounts of how those women figured in the history of the U.S. Supreme Court.

One set is drawn from a memoir written in the years 1911 to 1916, a manuscript unpublished until 2002. The memoir's author is Malvina Harlan. She was the wife of the first Justice John Marshall Harlan, whose tenure on the Supreme Court ran from 1877 until his death in 1911. The other set features a great lady from Mississippi, Burnita Shelton Matthews. She was the first woman ever to serve on a U.S. District Court. I will start with Judge Matthews and the historic episode in which she played the lead role.

Burnita Shelton was born in 1894 in a rural county in Mississippi and was raised there along with her four brothers. She became a court watcher at an early age. She regularly accompanied her father, who was clerk of the county's chancery court, and she would sit in on trials. She wanted to become a lawyer, but her father, probably believing that a woman couldn't make a living in the law, strongly opposed that career choice. She bowed to his preference and enrolled in the Cincinnati Conservatory of Music, where she gained a teaching certificate. She then returned to Mississippi, still hopeful of becoming a lawyer, but in those days there was no law school in that state that would admit women. She continued to teach music in grade school and to give piano lessons to support herself.

Then, in 1917, she married Percy Matthews. He was a recent graduate of the Chicago Kent Law School. Not long after their marriage, Percy enlisted and served in World War I as a pilot. Post war, he stayed in the service and became a permanent member of

the Army Judge Advocate General Corps. They remained married for fifty-two years, until his death in 1969, but Burnita decided that she did not want to be a camp follower. She preferred a life of her own, so they lived apart for much of their marriage and they had no children.

After Percy departed for the war and during the height of the women's suffrage movement, Burnita moved to Washington, D.C. attracted by the prospects of law school admission there. Her father, ultimately understanding his daughter's unflagging will to become a lawyer, relented and offered to pay her law school tuition, but by then Burnita was accustomed to independence and so resolved to pay her own way.

She attended law classes at night at National University, which is now George Washington University, and she held down a day job at the Veterans Administration. She earned an LLB in 1919 and the next year, a master of patent law degree. On weekends she picketed the White House. Later she recalled: "You could go to the front of the White House and you could carry a banner, but if you spoke you were arrested for speaking without a permit. So, if the press or anyone else asked me why I was there, I didn't answer." The banner she carried urging votes for women declared her purpose and no arrest record impeded her admission to the bar.

When she graduated from law school, no law firm in the District of Columbia would hire her, and even the Veterans Administration, where she had diligently worked while a law student, declined to consider her for a position as a lawyer, simply and solely because she was a woman. Burnita wasted no time on anger, resentment, or self-pity. She knew that those emotions sap strength and do no good. Instead, she devoted her energy to building a practice of her own. Believing that the 19th Amendment was incomplete, Burnita became counsel to the National Woman's Party, a job she did *pro bono* while developing her successful law practice.

The Woman's Party was the more radical wing of the women's suffrage movement. Its members wanted to assure that women achieved not just the vote, gained in 1920. They urged the passage of an Equal Rights Amendment aimed to secure women's full citizenship stature. The Party first proposed an ERA in 1923 and renewed the proposal almost every year thereafter.

The Woman's Party also urged legislators to repeal so-called protective labor laws that applied only to women, and other laws that restricted women's opportunities. Burnita wrote of that endeavor in the American Bar Association Journal in the mid-1920s:

“It is, of course, disappointing to women that men of the legal profession are unable to see equality as equity when applied as between men and women,” she commented, “but then it is not surprising when one remembers that this defective vision, this regard of discrimination as protection, is traditional.” Burnita helped change that tradition.

Now, to the historic episode.

The D.C. bar knew Burnita Shelton Matthews as a skilled practitioner in the field of eminent domain. In 1927, the Federal Government condemned the National Woman’s Party headquarters near the Capitol. Matthews’ representation of the Woman’s Party and adjacent property owners led to the largest condemnation award the United States had yet paid. The Government put the condemned land to defensible use. Demolition of the Woman’s Party headquarters made way for the Supreme Court’s current building.

The Woman’s Party used the compensation it received to purchase the historic Sewall-Belmont House, situated on Constitution Avenue and Second Street, just one block down from the Supreme Court. That house is still home to the Woman’s Party. It is used nowadays for various receptions, many of them celebrating women’s achievements. Just now they are planning a celebration of Billie Jean King.

The archives maintained by the Supreme Court Curator’s Office contain detailed notes on the condemnation of the Supreme Court site, notes that reveal what I am about to tell you. Chief Justice Taft was the propelling force behind the building project. He complained in a June 1927 note to Justice Van Devanter: “The Woman’s Party would never consent to a reasonable price. They want to include as an element the historical associations of that ramshackle old house of theirs.”

The house was erected in 1815 after the burning of the Capitol in the War of 1812. It served as temporary quarters for Congress and later, during the Civil War, as a jail for Confederate prisoners.

In November 1928 correspondence, Taft continued to complain. He reported that “the pace of the condemnation proceedings was dreadfully slow and most exasperating.” Of the Woman’s Party headquarters he deplored: “It’s just a broken down old building that ought to be removed, but the women, insisting on its historical interest, are most unprincipled. They are attempting to use every method possible to squeeze up the amount they are to derive from the Government.”

Through it all, Burnita remained unperturbed. A low point for the Government was reached at trial. The Department of Justice undertook to diminish the value of the Woman's Party property. To that end, the Government offered the expert testimony of two architectural engineers. The experts testified that in their well-informed opinion, the house was a post-Civil War construction, built in 1869 after the demolition of the original 1815 structure.

The Government's ploy did not work. Burnita's exhaustive preparation carried the day and won the case. She introduced reams of evidence to show that the 1815 building had never been demolished and still occupied the property. Her evidence included the testimony of a member of the Society of Oldest Inhabitants, a very elderly gentleman, located the night before the close of the Woman's Party's case.

Most devastating to the Government's position was a photograph of one Mrs. Greenlowe, a daring Confederate spy, taken against a wall of the still existing building when it was used as a Civil War jail. So much for the Justice Department's contention that the building was constructed after the Civil War in 1869. In all, Burnita gained \$400,000 for her clients, a large sum even now, an enormous one three-quarters of a century ago.

In 1949, after a nationwide lobbying effort and a personal plea from India Edwards, the savvy head of the Women's Division of the Democratic National Committee, President Truman appointed Burnita Shelton Matthews to the U.S. District Court for the District of Columbia. Her colleagues on the bench were initially less than welcoming. They assigned her the most technical, least rewarding matters. One District of Columbia jurist was reported to have commented, "Mrs. Matthews would be a good judge, but there is one thing wrong. She's a woman." The President was of a different mind. "This was one appointment about which I had no misgivings," Truman said, "only genuine satisfaction."

Judge Matthews' secure hand in managing each case identified the great lady from Mississippi much more than the fine lace collar and the lace cuffs on her robe or her petite size. She was slender and about my height. A soft Mississippi-accented voice gave little indication of her bright mind and iron will. At a time when women at the bar faced many closed doors, Judge Matthews signaled her confidence in women lawyers by hiring only women as law clerks. And they turned out, as you might expect, to be the very best.

After nearly twenty years on the District Court, Judge Mat-

thews took senior status in 1968, but for a decade more she sat regularly on Court of Appeals panels. She died in 1988 at the age of ninety-three, and it was my great good fortune, when I was appointed to the D.C. Circuit in 1980, to meet and converse with this truly brave human. Her eyesight was failing, and she had difficulty hearing, but her spirit remained indomitable. She was one of those people who fit Mahatma Gandhi's description of what it takes to open doors, in her case, to a once silenced majority, and to advance human rights. "First, they ignore you," Gandhi said, "then they laugh at you, then they fight you, and then you win."

Travel back with me now further in time as I speak of a project started some years ago. I was collecting information in 1997 for a lecture to be presented to the Supreme Court Historical Society. The topic was the lives of wives of Supreme Court Justices.

The Library of Congress called to my attention a memoir lodged among the papers of the first Justice John Harlan, an unpublished manuscript written by the Justice's wife. Members of the Harlan family and the Justice's biographer were well acquainted with the manuscript, but it had attracted no public attention.

The manuscript's author, born Malvina Shanklin, lived from 1839 until 1916, but she dated her memoir, which is titled *Memories of a Long Life*, from 1854—the year she met John Marshall Harlan. She was then 15—until 1911, the year he died. The manuscript contained well-told anecdotes and keen insights about the Harlan family, politics in Indiana, Kentucky, and Washington D.C. in pre- and post-Civil War days, religion, and, of course, the Supreme Court.

I was drawn to Malvina's *Memories* as a chronicle of the times as seen by a brave woman of the era. I thought others would find the manuscript as appealing as I did. For many months I tried to interest a university or a commercial press in Malvina's *Memories* to no avail. When I was about to give up on further efforts to find a publisher, the Supreme Court Historical Society rescued the project.

The Society devoted the entire summer 2001 issue of its journal to Malvina's *Memories*. Pre-publication in the Society's journal, the manuscript was carefully annotated and helpfully introduced by historian and University of Cincinnati law professor, Linda Przybyszewski, author of an engaging biography of Malvina's husband, titled *The Republic According to John Marshall Harlan*. The Historical Society acquired and placed throughout the issue a number of attractive photographs. On the cover they placed the portrait of

Malvina, age seventeen, and John, age twenty-three, on their wedding day in 1856.

To call attention to the Society's publication, I sought advice from the *New York Times* Supreme Court reporter Linda Greenhouse. Linda is still with us this afternoon. Great to have you here, Linda, because I am about to describe what a major player you were in this episode. I asked Linda if the *Times* might do a book review of the Supreme Court Historical Society journal issue devoted to Malvina's *Memories*. Linda told me that the *Times* was not likely to review a periodical issue, but she said perhaps something could be done. She would think about it. And as those who heard her speak today and regular readers of her *Times* reports know, she is a powerfully good thinker.

In August 2001, the *New York Times* ran two feature stories about Malvina's *Memories*. On page one of a Sunday edition, the *Times* ran the wedding photograph and described the memoir. A follow-up story the next week included several quotations from the manuscript. Among them were memories related to the Civil War.

The first quotation concerned Malvina's decision to marry John, a slave-owning Kentuckian. Malvina, who lived her first seventeen years in Indiana, wrote: "All my kindred were strongly opposed to slavery, the peculiar institution of the South. Indeed, an uncle on my mother's side, with whom I was a great favorite, was such an out and out abolitionist, I think before he came to know my husband he would rather have seen me in my grave than have me marry a Southern man and go to live in the South."

Although Kentucky was a slave State, it remained loyal to the Union. On John Marshall Harlan's decision to join the Union army five years after their marriage, when two children were part of the family, Malvina recalled, in a manner politically correct for that time:

"That night he paced the floor until dawn. His duty to his wife and little ones and his duty to his country wrestling within him in bitter conflict. He came to my bed and, sitting beside me, he said he would leave the matter entirely to me; that he felt his first duty was to me and his children. I asked what he would do if he had neither wife nor children. He said at once, with great earnestness, 'I would go to the help of my country.'

I knew what his spirit was and that to feel himself a shirker in the hour of his country's need would make him most unhappy. Summoning all the courage I could muster, I said, 'You must do as

you would do if you had neither wife nor children. I could not stand between you and your duty to the country and be happy.’”

Decades later, in 1903, Civil War stories were still retold. Malvina wrote of a dinner party that year: “There were, perhaps, a dozen people at the table. My husband being in the best of spirits began to tell the company some of his experiences in the Civil War. He was describing a hurried march in which he and his regiment made their way through Tennessee and Kentucky in pursuit of the daring Confederate raider, John Morgan. He came to a point in his story where he and the advance guard of the pursuing Union army had nearly overtaken the rear guard of Morgan’s men, who had just crossed from the opposite shore.

Suddenly, Judge Lurton, a guest at the dinner, laid down his knife and fork, leaned back in his chair, his face aglow with surprise and wonder, and called out to my husband in a voice of great excitement, ‘Harlan, is it possible I am just finding out who it was that tried to shoot me on that never-to-be-forgotten day?’

In a tone of equal surprise my husband said, ‘Lurton, do you mean to tell me that you were with Morgan on that raid? Now, I know why I did not catch up with him, and I thank God I didn’t hit you that day.’

The whole company was thrilled by the dramatic sequel to my husband’s story. . . . [T]here were those two men—one from Kentucky, the other from Tennessee—once on opposite sides in a fratricidal war, now fellow citizens of this one and united country, serving together as judges on the federal bench.” Judge Lurton, at the time of the dinner party, was seated on the Court of Appeals for the Sixth Circuit. Seven years later, in 1909, he was appointed to the U.S. Supreme Court and served his first two years on the Court together with Justice Harlan.

Indicating the power of the press and the good thinking of Linda Greenhouse, the *New York Times* coverage of Malvina’s *Memoirs* garnered the attention of several publishers. Random House made the offer most attractive to Justice Harlan’s heirs and the Supreme Court Historical Society. The Modern Library edition was in bookshops in the spring of 2002, in good time for Mother’s Day that year. Malvina’s memoir was well received. One reviewer commented that reading it was like engaging with a fine conversationalist and encountering a gifted storyteller. To give you a better sense of the work, I will relate just a few further passages from the history Malvina recorded.

In the Supreme Court’s early 19th Century days, when the

great Chief Justice John Marshall led the Court—the jurist whose name John Marshall Harlan’s parents, with foresight, gave their son—the Justices lived together in one boarding house or another whenever the Court was in session. They left their wives behind. By the time of John Harlan’s appointment in 1877, boarding house days for Supreme Court Justices were long over, and a Supreme Court appointment meant a move to Washington, D.C. for all in the Justice’s immediate family. It also meant an unpaid job for the Justice’s wife.

Malvina Harlan wrote of the at-home Monday receptions Supreme Court wives were expected to host. The callers came in numbers. Malvina reported she might receive 200 or even 300 visitors at an at-home Monday reception. She recalled that these events were more fancy than plain. Tables would be spread with refreshing salads for the weight watchers and rich cakes for the more indulgent. Musicians were engaged so the young people might dance a waltz or two while the older folk looked on. At-home Mondays held by wives of Justices continued until Charles Evans Hughes’ Chief Justiceship in the 1930’s.

In 1856, when the seventeen-year-old Malvina Harlan left her parents’ home to begin married life, her mother counseled: “You love this man well enough to marry him. Remember now, that his home is your home, his people your people, his interests your interests. You must have no other.”

Malvina valued that advice, but she did not follow it in all respects. She continued to pursue her own interests in music, and she eventually stayed abroad on her own when her husband returned to the United States to attend the Court’s term. Of her decision to visit Italy with a few friends, she wrote: “This exhibition of independence was so new and surprising to my daughters that they called my Italian trip, ‘mother’s revolt.’”

In the main, however, like most women of her age and station, her ambition was her husband’s success. She sought to be helpmate to, and not independent from, John Marshall Harlan. She took particular pride in his nickname for her, “Old Woman.” She thought it showed that he looked upon her as having the judgment and experience that only years can bring.

When John became a Supreme Court Justice, Malvina developed a friendship with the First Lady, Lucy Hayes, nicknamed “Lemonade Lucy” for her avid temperance. This friendship yielded the Harlans more than an occasional invitation to the White House.

At White House evenings, the Supreme Court wives did not always stand solidly, or at least silently, behind their men. Malvina Harlan tells of a dinner at which Chief Justice Wade endured some teasing by his wife, Mrs. Wade, and the First Lady, for having squelched Belva Lockwood's 1870's application to be admitted to practice before the Supreme Court. Lockwood was persistent. She eventually gained admission to the Court's bar in 1879. She was the first woman ever to do so, but that occurred only after an Act of Congress required the Court to relent. Belva Lockwood's case, I think, is a striking illustration that the legislature is sometimes more sensitive to individual rights and the winds of change than the Court is.

Malvina reported an episode, my very favorite, showing that Supreme Court wives attended to more than the social side of a Justice's life. Justice Harlan was a collector of objects connected with American history. He had retrieved for his collection from the Supreme Court Marshal's Office the inkstand that Chief Justice Taney used when he penned the 1857 *Dred Scott* decision. That decision held that no person descended from a slave could ever become a United States citizen, and that the majestic Due Process Clause safeguarded one person's right to hold another human in bondage. It was a decision with which Harlan, as a Justice, strongly disagreed, an opinion overturned by the Civil War and the 14th Amendment.

Chivalrous gentleman that he was, Harlan promised to deliver the Taney inkstand to a woman he met at a reception, who claimed a family relationship to Chief Justice Taney. Malvina thought the promise unwise, so she hid the inkstand away among her own special things and Justice Harlan was obliged to report to the purported Taney relative that the item had been mislaid.

In the months immediately following that incident, the Supreme Court heard argument in the so-called *Civil Rights Cases*, which yielded an 1883 judgment striking down the Civil Rights Act of 1875, an Act Congress had passed to advance equal treatment without regard to race in various public accommodations. Justice Harlan alone resolved to dissent, as he did thirteen years later in *Plessy v. Ferguson*, the 1896 decision that launched the separate-but-equal doctrine. Harlan labored over his dissenting opinion for months, but his thoughts refused to flow easily. He seemed, Malvina wrote in her memoir, trapped in a quagmire of logic, precedent, and law. It is a trap I know very well.

Malvina, as I earlier mentioned, grew up in a free state and in

a family strongly opposed to slavery. She very much wanted her husband to finish writing that dissent. On a Sunday morning, when the Justice was attending church services, Malvina retrieved the Taney inkstand from its hiding place, gave the object a good cleaning and polishing, and filled it with ink. Then, removing all other inkwells from her husband's study table, she put the historic inkstand directly before his pad of paper. When Justice Harlan came home, Malvina told him he would find a bit of inspiration on his study table.

Malvina's memoir next relates: "The memory of the historic part that Taney's inkstand had played in the *Dred Scott* decision, in temporarily tightening the shackles of slavery . . . in the antebellum days, seemed, that morning, to act like magic in clarifying [her] husband's thoughts in regard to the law that had been intended . . . to protect the recently emancipated slaves from the enjoyment of civil rights. His pen fairly flew on that day and . . . he soon finished his dissent."

The life of Supreme Court spouses has changed greatly since Malvina Shanklin Harlan's days. Spouses do not receive at-home callers on Monday, or on any day. They pursue careers and interests of their own. Adding diversity to the group, two of them are men. Spouses are seated in a special section of the courtroom, just opposite the section for the press where Linda Greenhouse sits. And the spouses lunch together three times a year, rotating cooking responsibility. One member favored as a co-caterer is my husband, super chef, also Georgetown University Law Center tax professor, Martin Ginsburg. The lunches are held in a ground-floor space once designated the Ladies Dining Room, but in the 1997 term, at Justice O'Connor's suggestion, fittingly renamed the Natalie Cornell Rehnquist Dining Room. Even while she was battling what proved to be a fatal cancer, Nan Rehnquist took charge of the renovation of that room.

Our Chief Justice commented in an address at American University some years ago: "Change is the law of life and the judiciary will have to change to meet the challenges we will face in the future." Change yields new traditions. A most positive one I think is the new tradition we are creating by the way the Justices and their partners at work and in life relate to, care about, and genuinely respect each other. I like to think Malvina Harlan, although she did not count herself what she called a "New Woman," would say: "That's just fine."

You have been a very good and patient audience. I thank you for your attention.

[Applause]

AUDIENCE MEMBER: What are one or two of the most important legal issues that you believe the United States Supreme Court faces today in the light of the new political climate in the United States without, obviously, commenting on the merits of any of them?

JUSTICE GINSBURG: I would like to amend the question slightly to say: "What are the most important issues the people of the United States are facing today?" Every day the question of the balance between liberty and security is before us. I have said on that subject that people, the people of the United States, take great pride in our heritage; that we love liberty and cherish freedom; and that we have not given way to security concerns to the extent some other countries have. Will we be able to preserve that spirit given the current challenges? If the people don't care about preserving their liberty and are overwhelmed by security concerns, there is no court that can change that sad development.

But I am confident that it won't happen in the United States, because the people do care. The courts, you know, are reactive institutions. We don't create the controversies that come to us, we respond to the problems emerging in the society the courts exist to serve. The Supreme Court will respond to these challenges, but there must be people out there to bring them and support them.

I was asked to identify two areas. Second on my list would be science and technology. Mind-boggling developments are occurring. Some hold great promise for the health and longevity of all of us; some threaten our well being. How we will deal with those developments, the part courts will play in controversies stemming from those developments, I would count that as the second prime area.

DEAN GLEN: Now, do we have another question?

AUDIENCE MEMBER: Justice Ginsburg, could you comment about the French government's attempt to restrict the clothing and the wearing of any religious medals in the public school environment and contrast it to what our Court has said about First Amendment rights and give us your observations and thoughts about what's happening in that respect?

JUSTICE GINSBURG: I don't know any more than you do from reading the papers about the French situation. But as I understand the case, it is a law the President, Jacques Chirac, pro-

posed banning religious symbols in the public schools unless they're discreet. There is no ban on crosses or stars of David if they are not conspicuous. In the case attracting attention, the religious symbol is a head scarf that a girl sought to wear. The law would apply to skullcaps as well.

The French have a tradition of rigid separation of church and state. People are citizens of France, and it doesn't matter whether you are Muslim, Jewish, or whatever, you are a citizen of France. There is an attitude that French citizenship, the French language, come first. Whether there will be some modification in the French view because of France's membership in the European Union, and the French participation in the European Convention on Human Rights, we don't know. One of the interesting things about our times, once very few countries in the world allowed courts to engage in judicial review for constitutionality. But since World War II there have been many players in that league and Europe has been prominent among those players.

There is, as I mentioned, the European Convention on Human Rights. The court that interprets that document sits in Strasbourg, and the European Court of Justice, which is the High Court for the European Union, sits in Luxembourg. That court also confronts human rights questions.

So, France is not alone in dealing with this controversy. I don't know how far it will go. It may be that the French will make an accommodation on their own so the matter doesn't go to the European tribunal, one can't say at this point. I can only explain, to the extent I understand it, this strong tradition of French nationality as one's primary identity. If you dress in an un-French way, that detracts from the notion that we are all French.

AUDIENCE MEMBER: This is a real general question, but what do you find persuasive when somebody is before you during oral arguments?

JUSTICE GINSBURG: Not a prepared spiel, not a set lecture. I think the most effective advocate is the one who is sensitive to what's on the Court's mind. Such an advocate takes the questions and rides with them, and then may use a question as a jumping-off place for a point the lawyer wants to make.

Our court nowadays is very lively, perhaps too lively. Each side has a precious half hour, and I know how a lawyer feels when a Justice's question goes on and on and on, consuming time the lawyer would like to have. But receptivity to questions, sensitivity to what is troubling the Court or Justice is the most important skill for

an oral advocate. That involves quite a different skill than the one, if we compare France again, where the lawyer, at the end of the case, makes an elegant pleading before the tribunal. If you have ever seen a French lawyer's robe, it has long and wide sleeves, so that when counsel gestures like this, the raised sleeve will be there to heighten the dramatic effect. We proceed differently. When a court sits in silence, you may have no idea whether or not an argument is registering with the judges.

As to the written component of appellate argument, my counsel would be take as your vantage point the judge who is going to decide your case. Don't slant things so that the judge knows she can't trust what you say in your brief. Don't include citations to a case that, when the judge reaches for the book on the shelf, she sees, well, it didn't say exactly that. If you are honest with the Court, you will fare better, you will attract more attention than if you try to slant things unduly in your client's favor.

AUDIENCE MEMBER: What motivated and inspired you in overcoming the obstacles you encountered in law school?

JUSTICE GINSBURG: I was one of the rare women law students in those not-so-good old days who genuinely liked law school. I took it as a challenge. I came home the first day of law school and said to my husband, if all of the people are as smart as the man who spoke in class today, I will never make it in this place. The man who spoke brilliantly turned out to be Anthony Lewis, a journalist then at Harvard for a year on a very prestigious fellowship. He was in my first-year civil procedure class. I made him my standard or model. I aimed to volunteer answers as intelligent as his. I think he would have won the contest, but I was not far behind.

It is important to maintain your sense of humor. And, as I said when I spoke of Burnita Shelton Matthews, avoid anger, resentment, or feeling sorry for yourself. Take put downs as a challenge to overcome, an opportunity to educate someone who is biased or indifferent.

I retain many memories of my first year in law school. In those days, to take one vivid memory, we had classes on Saturday morning. One Saturday, I brought along a weekend guest, a friend from my husband's Army days. She attended my contracts class. It is doubtful she graduated from high school; she certainly didn't attend college. My professor posed a hypothetical. He pointed to her and said: "You, you answer the question." She responded that she was not a law student. He returned: "That's all right. Any fool can answer that question." I stood up at that point and said: "Ms. So

and so is my guest; she is not a law student. She is here to observe the class. I will answer the question.” The professor remarked that all in the class knew Mrs. Ginsburg was a killjoy.

One of the most daunting challenges, there was in all of that Harvard Law School campus only one bathroom for the women students. It was downstairs in Austin Hall, dripping with peeling asbestos and very hot. When the Harvard Law School decided to admit women in 1950, that was their principal concern, how much would it cost to provide that one uncomfortable women’s bathroom? They didn’t make space in the dormitories for women. Women could find a place to live in town, but they did have to have a bathroom.

You know how pressured law school exams can be. Imagine you are taking an exam in Langdell Hall, some distance away from the bathroom. Nature calls and you must dash to the other building . . .

AUDIENCE MEMBER: Good evening, your Honor. I have a specific question regarding the case last year that the Court decided, the *Chavez v. Martinez* case in which an individual was interrogated by the police after he had been gravely injured. He was on the way to the hospital and he was interrogated. I was gratified to see that you dissented in that case because the majority held there was no Fifth Amendment violation.

I’m curious about that balance. If you would comment on coercive interrogation with respect to someone against whom later charges will not be brought, and the balance between the police power versus that liberty interest.

Thank you.

JUSTICE GINSBURG: The Court wrote a decision specific to the Fifth Amendment protection against self-incrimination. The Court read the Clause literally. It affords protection against coerced testimony. The Court said nobody was trying to extract testimony for use at trial against Chavez. They didn’t charge him with any crime. So the Fifth Amendment was never violated. It is violated, the Court held, only when testimony is introduced in court.

I suggested that the Fifth Amendment reflected a larger concern, and I hope someday a majority will see it that way. I took my lead from a former dean of the Harvard Law School, Dean Erwin Griswold. In the 1950s, when the country was in the throws of a Red Scare, when people were finding communists in every closet, Dean Griswold stood up for the Fifth Amendment. He spoke at the City Bar Association. He presented a great series of lectures. The

tone he set in those lectures about the importance of the Fifth Amendment motivated the dissent I wrote in the *Chavez* case.

To take the other side, the view that some of my colleagues took, there was nothing wrong with interrogating this man. He had been shot in an altercation with the police. He was blinded, wounded painfully in his gut, and his legs were paralyzed. The officer got into the ambulance with him, and started asking questions.

The officer's version: "I was polite, I was trying to get a dying declaration. There had been a shooting, and I needed to have the evidence, and this man might not be around to supply the evidence." So some of my colleagues saw the episode as nothing more than a good-faith attempt to get a dying declaration.

AUDIENCE MEMBER: Justice Ginsburg, you have participated in a lot of really important and ground-breaking opinions and dissents. Do you have a favorite or one that you are most proud of?

JUSTICE GINSBURG: That question is like asking a grandmother which grandchild is her favorite.

I can say that the Virginia Military Institute case was very satisfying because I regard it —

[Applause]

JUSTICE GINSBURG: — well, it seemed to me the culmination of the litigation in which I was engaged in the 1970s.

I think it is important to look at what the Court does at least as much as what the Court says. I have never been enamored of three-tiered or four-pronged formulas.

AUDIENCE MEMBER: Do you believe that we will see a case invalidating the death penalty on the basis of the Eighth Amendment in our lifetimes?

JUSTICE GINSBURG: On a question like that, you are as competent to judge as I am. But I would like to underscore what I said earlier. If people don't care, it won't happen. If people do care, and there are many lawyers who do, I hope their ranks will grow, change will become possible.

I had a very uplifting experience just yesterday. There was a case a while ago, a death penalty case. It wasn't a major case at all. It involved a man who committed a dreadful murder at age eighteen. The sentencing jury returned a death verdict. The defendant complained that the jurors were never informed that if they returned a life sentence, it would mean life without parole. The charge that the judge gave led the jurors to think that if they didn't

impose the death penalty, this man might someday get out of prison and be a risk to public safety.

Defense counsel argued that for the jury to make a properly informed judgment between life and death, the jurors should know that if they chose life, there would be no parole eligibility. The judge's charge had left that matter completely fuzzy. We held that the jury making a life or death decision must be told what life means.

The lawyer who represented that man wrote to me and reported: "I thought you would like to know how Mr. Schaffer's case turned out. He was retried. (Sentencing is a separate trial in death cases. There was never any contest about his guilt.) The judge gave a very clear charge; he told the jury that a life sentence means life with no possibility of parole. The new jury came in for life."

It was a beautiful letter, one I truly treasure. Defense counsel expressed his satisfaction with the result. He wanted the Justice who wrote the opinion to know about the satisfactory ending.

AUDIENCE MEMBER: I was wondering what are the major factors you take into account when deciding to grant a case certiorari?

JUSTICE GINSBURG: By far, the main reason for granting a petition for certiorari is what we call a "circuit split," or it could be a split among state courts. That means the law of the United States is being interpreted differently in different parts of the country. Our job is to keep the law of the United States more or less uniform. When there is disagreement on what the federal law is, Congress can clarify the law if the meaning of a statute is in question, or the Supreme Court can give a definitive interpretation either of the Constitution or a statute. Our main job is to keep the law of the United States more or less uniform.

Our law clerks, when they write memos about petitions for certiorari, will tell us the nature of the split. Is it a shallow split? Is it a deep split? A deep split has the best chance of being granted review.

The Court doesn't think of itself as what people call an error-correction instance. If it tried to serve as a super appellate court over the federal system, or even the state systems, we would be out of business. We simply couldn't manage the workload. So, we trust state systems, and the two tiers in the federal system, to do the everyday job of judging cases fairly. Ordinarily, we will step in only when the law needs clarification.

AUDIENCE MEMBER: My question is: What's your opinion

on whether language should be recognized as a protected right, particularly where individuals are losing their jobs because they don't speak English, students are dropping out of school because they're not getting a proper education?

JUSTICE GINSBURG: That's the kind of question that not only can but has come before the Court, so I am reluctant to say anything in public.

All I can say is we have a neighbor to the north that we often don't pay enough attention to, and that's Canada, a country that historically, in some parts, has been sharply divided along language lines. A deliberate effort is ongoing to make Canada a truly bilingual country. The adjustment is harder for the anglophiles than for the French speakers. Any sign, any presentation from Canada nowadays, even labels in the supermarket, everything is in both French and in English. Canada's position is: "We have two language heritages, both important. We want not only the children, say, of the French speakers to know French, we want the children of English speaking parents to speak French as well. Each group should know the other's language." I think that the notion of learning the language of your neighbor is vitally important, healthier than clinging only to your own language.

DEAN GLEN: I'm sure the Canadian students here were delighted.

AUDIENCE MEMBER: I was wondering, in an ideal world what you would think the—what standard of review you think should be applied to equal protection cases? And given the need for advocates to fit their equal protection arguments into the existing framework, what do you think are effective strategies for doing that?

JUSTICE GINSBURG: Well, as I began to say before, I'm not a great fan of the tiers, the notion that the Court deals with equal protection cases mechanically reasoning first, we must decide whether this case attracts rational basis review, intermediate scrutiny, or strict scrutiny. It doesn't really work that way. The labels are often rationalizations for results reached on other grounds. But there is, I think, an underlying principle in all of the Court's equal protection jurisprudence. It has been developed over the years. It certainly wasn't there full bloom at the beginning. It is the idea of essential human dignity, that we are all people entitled to respect from our Government as persons of full human stature, and must not be treated as lesser creatures. The idea of respect for the dig-

nity of each human is, I think, essentially what the Equal Protection Clause is about.

In some places that started out in the business of judicial review for constitutionality at a much later time than we did, that principle is explicitly recognized. That's true of the Supreme Court of Israel, for example. The notion of essential human dignity is the driving force behind what we place under the heading of equal protection.

With human dignity as the essential idea, I think we are on firmer ground than if we simply tried to plug cases into rational basis, intermediate scrutiny, and strict scrutiny cubbyholes.

AUDIENCE MEMBER: Justice Ginsburg, can you comment about your faith in particular, and how it's shaped your views on life in general, and if you could share how your faith played a role, if it did, during your battle with cancer?

JUSTICE GINSBURG: I am very proud of my heritage. I am not an observant Jew in the sense that I go to synagogue regularly; I don't. But if you want to know how I feel about my heritage, you can look at a comment in a recent issue of the *Jewish Daily Forward*. The *Forward* is celebrating the 350th anniversary of Jewish presence in the United States. I expressed what I thought about my Jewish heritage in a piece for that series.

During my battle with cancer, what saved me beyond anything, I will confess, is work. I was told that by my dear colleague, Sandra Day O'Connor, who had breast cancer some twenty years ago. Nine days after her surgery, she was on the bench listening to arguments. She told me that I should not miss a sitting if I could help it; that I should schedule my chemotherapy on a Friday so by Monday I would be over it. She told me to do whatever I could manage. Try to exercise as soon as you can, she counseled. If there are certain parts that won't move, then just move on to something else.

Yes, there were distractions, as Dean Glen knows, annoyances that I had to get over because I had an opinion to write or a brief to fathom.

Work, more than anything else, carried me through that year. I didn't dwell on my physical discomfort. I regarded it as a nuisance I had to live with. The important thing was understanding this case or making this opinion comprehensible.

So, I regarded work as my savior, and a family that rallied around me. My husband was determined that I not miss the first Monday of the Term. It came just a few weeks after my surgery. I didn't believe I could do it. My son and daughter came from New

York and Chicago to stay with us. They all helped me to make it that memorable morning. And there was something—I don't know what power to attribute it to, but the days before I was running back and forth to the bathroom constantly. I didn't see how I was going to sit on that bench for two solid hours. But, as it turned out, there were no urgent calls. I sat there listening to the arguments, just as I would any other sitting day. There was some magic or some super power that made that happen.

DEAN GLEN: I want to thank you again on behalf of everyone in this extraordinary law school community: The students, the staff, the faculty, the alumni who are here, some of the dignitaries who are here, forgive me for not announcing you, but we thought the time was best spent hearing from Justice Ginsburg.

You have made this a truly memorable birthday for us and we thank you with all of our hearts.

[Applause]