

SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW

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School of Law

United States Supreme Court

JUSTICE RUTH BADER GINSBURG

Interviewed by Dean John B. Attanasio





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JUSTICE RUTH BADER GINSBURG

*August 29–30, 2011: Jurist-in-Residence
at SMU Dedman School of Law*

By Mark Curriden



Natalie Cooley was preparing for her Texas Pretrial Procedure class. Steve Udick was checking his messages. Both were excited about the opportunity to see U.S. Supreme Court Justice Ruth Bader Ginsburg, who was speaking that day at a luncheon at SMU Dedman School of Law.

At 11 a.m., an email from Rebekah Bell, Assistant Director for Special Events in the Dean's suite, simultaneously popped into their inboxes.

"Plan to sit at the head table for lunch."

"I had to read it twice just to make sure I was seeing it right," said Udick, a 3L and president of the SMU Law Review Association.

Cooley, also a 3L and editor-in-chief of the *SMU Law Review*, said it took a minute for the email's message to sink in. "Then it hit me, 'I'm sitting next to Justice Ginsburg at lunch,'" said Cooley. "How many third-year law students get to say that?"

For two days at the end of August, Justice Ginsburg educated, entertained, and inspired students, faculty, alumni, and friends of the Dedman School of Law. The 107th Justice to the Supreme Court of the United States taught two law classes, lunched with students and faculty, and spoke to nearly 2,000 area lawyers, judges, SMU alumni, and guests at the inaugural Louise B. Raggio Endowed Lecture Series.

The August 29–30 visit by Justice Ginsburg, who was the second woman in history to be appointed to the Supreme Court of the United States, was an extraordinary kickoff to the 2011 fall term at the law school, where classes had started just a week earlier.

"Anytime a Supreme Court Justice visits the law school and speaks is a tremendous honor and privilege," said Dean John Attanasio. "But to have Justice Ginsburg spend two full

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days on our campus, teaching classes, meeting with students, lunching with our faculty – that is extraordinary. We are so thankful to Justice Ginsburg for making such a commitment of her time.”

Justice Ginsburg kicked off her visit to SMU Dedman with a private, informal lunch with the law school's faculty at the Godwin Gruber Lawyer's Inn at Carr Collins Hall. Immediately following the lunch, the Justice spoke to two combined Civil Procedure classes taught by Professors William Dorsaneo and Beth Thornburg. More than 200 students packed into Karcher Auditorium.

“Civil Procedure is my favorite subject,” Justice Ginsburg told the students. “I taught it for seventeen years. In fact, I feel sometimes like I'm still trying to teach it.”

Justice Ginsburg spent a significant portion of her hour-long lecture discussing the importance of dissenting opinions. And she gave the students a rare peek into the internal workings of the Supreme Court. For example, she said that many drafts of the opinions circulate among the Justices before they

are finalized. She pointed to the Virginia Military Institute gender discrimination case in 1996 as an example.

“I was assigned to write the majority opinion,” she told the students. “My final draft was much better than my first, second, and third drafts – thanks to Justice Scalia's dissenting drafts. It was a game of ping-pong for a while. In my eighteen years, I've never had an opinion come out exactly as I would have it if I were queen.

“Sometimes, a dissent becomes so powerful that it distracts enough votes that the majority no longer has the votes it needs,” she said.

Justice Ginsburg pointed to one instance in which she started writing a dissent for two but ended up writing a majority for six. “That has happened only once,” she said, “but hope springs eternal.”

Justice Ginsburg said that there are many reasons why Justices should dissent. At the top of the list, she said, was to “appeal to the intelligence of a future day.” She said dissenting Justices can use their opinions to challenge



A crowd of nearly 2,000 gathered at SMU's McFarlin Auditorium for the inaugural Louise Ballerstedt Raggio '52 Endowed Lecture Series featuring Justice Ruth Bader Ginsburg.

LOUISE BALLERSTEDT RAGGIO '52 ENDOWED LECTURE SERIES

The Raggio Endowed Lecture Series, established by Ms. Raggio's friends and family, honors and celebrates her tremendous accomplishments in advancing the legal rights of women in Texas and across the country. SMU Dedman School of Law is the proud new home of this lecture series.



Congress to change the law, as she noted happened in the 2007 case of Lily Ledbetter, who sued her employer for gender discrimination. The Supreme Court ruled that Ledbetter waited too long to file her claims under federal law. In her dissent, Justice Ginsburg said the Court's interpretation of Title VII filing deadlines "could not be what Congress intended."

"I ended my dissent by saying that the ball is now in Congress' court," said Justice Ginsburg. She then noted that in 2009, Congress passed the Lily Ledbetter Fair Pay Act, which directly addressed Justice Ginsburg's concerns and corrected the law.

The students, who had about twenty minutes of Q&A time at the end of the lecture, said they were amazed at the privilege of having Justice Ginsburg teach their class.

"I have already been bragging that I asked a Supreme Court Justice a question," said Matt Moran. "And I'm just a 1L."

The showcase event of Justice Ginsburg's visit occurred Monday evening, August 29. Nearly 2,000 people packed into Southern Methodist University's historic McFarlin Auditorium as the Dedman School of Law hosted the Louise B. Raggio Endowed Lecture Series, which was founded by Ms. Raggio's family and friends to honor and celebrate the woman frequently referred to as the "Mother of Family Law in Texas."

The showcase event of Justice Ginsburg's visit occurred Monday evening, August 29.

Ms. Raggio died in January 2011 at the age of 91. Nationally known as a pioneer in marital property and family law, she was the only woman in her class when she graduated from SMU Dedman Law School in 1952. Initially unable to find a job, Ms. Raggio was the first female assistant district attorney in Dallas County. She had substantial influence in the passage of the Texas Marital Property Act of 1967, which gave married women legal rights to own their own property. Ms. Raggio was the recipient of the SMU Dedman School of Law Distinguished Alumni Award in 1992.

The evening began with a request from Justice Ginsburg to make a few comments honoring the legendary Texas lawyer, whose family was seated on the front row.

"When Dean Attanasio invited me to be with you as the Louise B. Raggio lecturer, I decided to become more familiar with this woman," the Justice told the audience. "What a treat that has been for me. I knew a bit about her from her being awarded the Margaret Brent Award from the American Bar Association."

Justice Ginsburg, who graduated top of her class at Columbia Law School in 1959, said she had the library at the



Supreme Court collect dozens of articles written by Ms. Raggio and about Ms. Raggio and her efforts to protect equal rights for women and men under the law.

“I read Louise Raggio’s autobiography, *Texas Tornado*, written in 2003. I was captivated by her story, though I would not call her *Tornado*, but *Bright Star of Texas*,” Justice Ginsburg said. “We were born fourteen years apart, but I discovered we had a good deal in common. Both of us were parents when we entered law school. I had just one child in my law school years, and that was considered a curiosity. Louise had two sons, ages six and two, and a third son was born before she earned her law degree. Neither Louise Raggio nor I received any offers of employment when we first sought to practice law.

“A woman need not forgo a family to achieve prominence in the law,” Justice Ginsburg continued, pointing to former Supreme Court Justice O’Connor, who is a mother of three, and Judge Patricia Wald of the U.S. Court of Appeals for the D.C. Circuit, who is a mother of five. “I am honored to be here as the Louise B. Raggio Lecturer.”

For the next hour, SMU Dedman Law Dean John B. Attanasio and Justice Ginsburg, seated in comfortable high-back blue leather chairs, entertained the crowd with a fascinating Q&A.

Dean Attanasio started the conversation by reminding the Justice that, despite being born and raised in Brooklyn, she’s no “stranger to Dallas.” Prior to law school, Justice Ginsburg’s husband, Martin, was stationed at Fort Sill Army Base in Lawton, Oklahoma.

“Coming from New York City, Lawton, Oklahoma was not exactly a thriving place,” she responded. “Almost every weekend we came to Dallas. Among my fondest memories, Margot Jones had a theater in the round. The Metropolitan Opera came to the State Fair every year. We would come, stay three nights in a row, and see every opera that we could. Then we also have fond memories of

having lunch in the Zodiac Room at Neiman Marcus. Models would come by and say, ‘Isn’t it lovely. It’s only \$1,000 in such-and-such room.’”

As the audience gave a knowing laugh, Dean Attanasio assured the Justice that prices in the Zodiac Room have not declined in the years since. At the Dean’s urging, Justice Ginsburg then discussed her early years in law school.

Justice Ginsburg pointed out that Harvard Law School, where she began her legal education, only started accepting women in 1950. Her first year was 1956. She was one of nine women in a class of 500. Classes were confined to two buildings on campus.

“Harvard was still not totally equipped to handle the nine of us,” she told the audience. “Only one of the buildings had a women’s bathroom. So, if you felt the urge and you were in the wrong building, especially if it were exam time, you made a mad dash. We never thought to complain about it. We just accepted it as the way things were.”

Justice Ginsburg said her family was supportive of her going to law school, even if they didn’t fully understand it. “At first, my mother-in-law would tell friends that Ruth is going to law school so she can understand Marty’s work,” she said, the crowd laughing. Justice Ginsburg’s husband, Martin, was recognized internationally as a great tax lawyer. He died in 2010.

The Justice also told a story about her first term at Harvard Law. She had a babysitter who watched Jane, her 14-month-old daughter, from 8 a.m. to 4 p.m. The Justice said she would take an hour or so break from her studies at 4 p.m. to take Jane to the park to play. When Jane went to sleep, Justice Ginsburg said, she would go back to the books.

“I was studying for a practice exam, which I took very seriously, at the dining room table and Jane creeps into the room with a mouth full of moth balls,” she said. “I stored my sweaters that way in



a bottom drawer, which is something you should never do, where a child could reach. Off we went to the Cambridge City Hospital where her stomach was pumped. Fortunately, she hadn't ingested anything.

"But that put things into perspective for me. The practice exams didn't seem all that important anymore."

Justice Ginsburg said her dream as a young law graduate was to clerk for Judge Learned Hand of the U.S. Court of Appeals for the Second Circuit. But Judge Hand, she said, wouldn't think of it.

"Judge Learned Hand was probably the greatest judge of my lifetime, but he would not consider women as law clerks because, he said, women would inhibit his language," she said, sparking a huge laugh from the crowd.

Justice Ginsburg said she and others sometimes rode home after work in the same car as Judge Hand.

"He said words I had never before heard," she said, again sparking laughter. "I said, 'Judge Hand, I don't seem to inhibit your speech at all.' He said, 'Young lady, it is because you are sitting behind me and I cannot see you.'"

Through a series of questions by Dean Attanasio, Justice Ginsburg walked the audience through her career. They discussed her two decades as a law professor, first at Rutgers University and then becoming the first female tenured law professor at Columbia. It was during those years that she joined forces with the American Civil Liberties Union and was instrumental in creating the Women's Rights Project. As the project's chief litigator, she argued and briefed several landmark cases before the Supreme Court – cases that advocated the equal citizenship status for women and men under the U.S. Constitution.

When Dean Attanasio mentioned that Justice Ginsburg has been referred to as the "Thurgood Marshall of women's rights," she quickly responded:

"To say I was anything like Thurgood

Marshall is a great exaggeration. First, my life was never in danger as his was. Second, the NAACP was the only show in town. There was no one else willing to represent the plaintiffs in his cases."

In 1980, President Jimmy Carter appointed Ginsburg to the U.S. Court of Appeals for the D.C. Circuit. The Justice pointed out that only one woman had served as a federal appellate judge to that point, but that President Carter added eleven women during his four years in the Oval Office.

In 1993, Supreme Court Justice Byron White announced he was retiring. President Clinton nominated Judge Ginsburg. Some of the President's staff feared that conservative senators would make an issue of her ACLU connections during the confirmation hearings. But her ACLU ties never came up, she said, because conservative Utah Senator Orrin Hatch was one of her biggest supporters. The U.S. Senate confirmed Justice Ginsburg 96-3.

"Today, my ACLU connection would disqualify me," she said. "I wish we could wave a magic wand and go back to those days when the confirmation process was truly bipartisan."

Justice Ginsburg said death penalty cases continue to be the toughest part of her job.

"Those who know our jurisprudence in the area know it is very, very dense," she said. "We have steadily, throughout the year, last minute, 11th hour applications for a stay. The Justice for the circuit – Justice Scalia for the Fifth Circuit – writes a memo about what's involved and then the rest of us weigh in. We treat those 11th hour applications like a firing squad. No one Justice has the final say. We all have to vote on it, no matter where we are in the world. I've been called in the middle of the night in Paris to vote on a stay application."

Justice Ginsburg also took a few minutes to applaud Dean Attanasio for his work in promoting the rule of law around the globe. She noted that she

and the Dean had been together at a conference in Luxembourg in 2010 and in various spots around the world during the past decade in an effort to help courts and political leaders in those countries better understand the rule of law as it is applied in the U.S.

The Louise B. Raggio Lecture ended as it began – with a standing ovation thanking Justice Ginsburg for her visit.

The next day, August 30, SMU Dedman students were treated to two more events featuring Justice Ginsburg. At noon, more than sixty students and local members of the federal judiciary lunched with the Justice in Karcher Auditorium in Storey Hall.

Natalie Cooley, the *SMU Law Review* editor, attended the Raggio Lecture and also sat at the head table with the Justice, Judge Patrick Higginbotham of the U.S. Court of Appeals for the Fifth Circuit, Chief U.S. District Judge Sidney Fitzwater of the Northern District of Texas, Dean Attanasio, and a couple of fellow students.

"It was a law nerd's celebrity dream table," said Cooley, who plans to be a litigator. "It was an incredibly humbling experience."

Justice Ginsburg told the group that the Justices start all of their gatherings – be it oral arguments or conferences to discuss pending matters – with each Justice shaking hands with all the other Justices.

"That is thirty-six handshakes, if you are counting," she said.

The Justice said six to eight Justices regularly eat together in the Supreme Court's dining room, where the discussion ranges from the performance of lawyers at oral argument to the opera. Every once in a while, she said, an invited guest, such as former Secretary of State Condoleezza Rice and Israeli Supreme Court Chief Justice Aharon Barak, join them for lunch. This year, the Justice is recommending that new International Monetary Fund Chief Christine Lagarde be their special guest.

Ms. Cooley said Justice Ginsburg was as gracious and eloquent while eating as she was during her presentations.

“At the table, she would pause and think about the answer. She thought about the words she was speaking,” said Cooley. “The most touching was when she spoke about her late husband and how he didn’t have any of his law degrees on his wall but had a certificate about him hitting a hole-in-one in golf.”

Steven Udick asked the Justice about the annual Christmas show where the clerks sing carols.

“She also told us that once a year, the clerks do a skit where they impersonate the Justices. She said some of the Justices were easier to impersonate,” said Udick. “The whole time, I sat there thinking about just how incredibly lucky we students were to sit at the table with a Supreme Court Justice, a federal circuit judge, and the chief judge of the district court, and listen to them discuss various issues.”

Justice Ginsburg concluded her two-day visit to SMU Dedman School of Law by teaching Judge Patrick Higginbotham’s Constitutional Law II class. The class received a special treat when billionaire businessman Ross Perot, the founder of EDS, entered the room to join the students in listening to the lecture. Mr. Perot and Justice Ginsburg are long-time friends, as the Justice’s late husband, Martin Ginsburg, was a well-known tax lawyer who frequently represented Mr. Perot in various business matters.

“Justice Ginsburg stands as a colossal figure in our nation’s legal history, especially regarding women’s rights,” Judge Higginbotham told a room of about 200 students, faculty, and invited guests. “Equal protection being expanded to gender didn’t happen by accident. It happened because she is an extraordinary lawyer. And you will see her tracks throughout this class.”

For thirty minutes, Justice Ginsburg walked the students through the 2010-11 term and the key decisions the Court

announced. She said that while she misses Justice O’Connor’s leadership and friendship, it has been wonderful to have two additional women on the Court. Justices Sotomayor and Kagan give Justice Scalia a “run for his money” when it comes to asking the most questions.

During the Q&A portion of the class, Justice Ginsburg was asked what she looks for in a law clerk.

“I look for someone with a good record in law school,” she responded. “I have the ability to wait for someone who has clerked for another judge and have that judge refer the clerk to me. I put a premium on good writing. And compatibility is important. If a law clerk is not respectful to my secretary, I don’t have anything to do with them.”

The final question from a student was simple: Back when you were in law school, did you ever think of or have the goal of being a Supreme Court Justice?

“When I was finishing law school, I didn’t think at all about being a judge,” Justice Ginsburg replied. “I just hoped to have a job.”

The lessons learned by the hundreds of students who heard Justice Ginsburg during her two-day visit to the Dedman Law School cannot be measured. Most students said she inspired them. Others said they loved the stories she told providing insight about the inner-workings of the Supreme Court. And many were impressed by the Justice’s attention to detail as she recited the facts from dozens of cases she had argued as a lawyer and decided as a Justice on the nation’s highest court.

For each student, the knowledge and experience was personal.

“It was fascinating to watch her speak. She takes time to think about her answer,” said Sarah Lopano, a 3L and managing editor of the *Journal of Air Law Commerce*. “So many people just spit out an answer automatically. But you can see her actually thinking about the question and then formulating an



answer. She gave thought about the best way to say things.”

“I was so impressed that SMU had Justice Ginsburg to come to the law school for two full days and that students got to meet with her,” said Lopano. “It is a memory I will never forget.” ■