

President Ramo:

Justice Ginsburg suggested that we have a conversation. Although we've been friends for some time, and I was trying to remember the first time I think I interviewed you was maybe at Lincoln Center many years ago, and my partners made fun of me because I probably spent 500,000 billable hours reading everything you had ever written, just in case you should ask me something about which you had written.

However there are some things about your career I think that all of us would be interested in, especially at this Meeting of The American Law Institute. We were lucky enough to have you on the ALI Council from 1978 until September of 1993, when you left us for much better real estate at the United States Supreme Court.

During that time, you also served as an Adviser on the Complex Litigation Project; on Restatement Second, Judgments. I wonder if there was any impact as you sit on the Court that all those years on the Council and working with the ALI might have.

Justice Ginsburg: I might start with the very first opinion announced in the Court's current term. It contained five references to the Restatement Second of Judgments. Last term, 12 decisions referred to ALI products.

Of all the legal institutions with which I have had an affiliation, I prize the ALI as most valuable. As I see it, the ALI's prime mission is to try to ensure that the law stays in tune with the society law exists (or should exist) to serve.

President Ramo: Well, that is so interesting and appreciated by all of us, and in case you wonder, we count all of the cites in the Court. (*Laughter*)

We're at a hyperpolitical time in our history, as you know, Justice Ginsburg. Much is made of the political divisions and the political pedigrees of Justices on the United States Supreme Court and on all courts.

To use an example from Shakespeare and the opera that follows, although more about opera later, one would think in reading the press that the Justices on the Court were Capulets and Montagues, and the Capulets stayed Capulets, and the Montagues stayed Montagues, and never the twain shall meet.

The fact of the matter is that as I looked, the statistics of the current term belie that characterization. Last term, you voted 78 percent of the time with the Chief Justice, 84 percent of the time with Justice Kennedy, 73 percent of the time with Justice Alito, and 62 percent of the time with Justice Thomas. And as we saw just yesterday in one of the North Carolina gerrymandering cases, you can never tell exactly how the Court is going to line up from time to time.

I'm curious to know if you observe any changing of views as Justices sit on the Court for a while. And separate from that, what is your perception about the impact of politics on elected judges, if you feel comfortable talking about that?

Justice Ginsburg: I see we have at least one member of the press in close range. (*Laughter*) [Linda Greenhouse was seated at a table close to the stage.]

Agreement is rather boring. Disagreement is more engaging. That's perhaps why the press seldom features the high level of agreement among all of the Justices.

Did you ask do Justices change?

President Ramo: Over time.

Justice Ginsburg: Yes, some do. The old Chief is an example. In the 1970s, when I argued gender-equality cases before the Court, I could count on then-Justice Rehnquist to be in dissent. Now, fast forward to the Court over which Chief Justice Rehnquist presided. *Miranda*, the famous *Miranda* decision, was criticized roundly by the Chief in a number of opinions. But when the question was put to the Court: Should *Miranda* be overruled? The Chief

wrote the opinion saying, no, *Miranda* is now part of the culture, and the warnings it requires are working.

Or even more startling, the constitutionality of the Family Medical and Leave Act came before the Court. That legislation was written with the working woman in mind. The Chief wrote the opinion upholding the Act. When I brought the opinion home to show it to Marty, my husband, he asked, “Ruth, did you write it?” (*Laughter*)

So as we live, we can learn. You asked about elected judges?

President Ramo: Yes, I did.

Justice Ginsburg: Federal judges are truly blessed because we hold our offices during good behavior. When I go abroad, a question I’m often asked is: You say the judiciary in the United States is genuinely independent. How can that be when your judges stand for election? That’s a hard question to answer.

I’ll refer to the old Chief again, who said the day a judge decides cases based on what the home crowd wants, that is the day he or she should resign from office. If you must answer to the public for decisions the public might not like, I think that’s inhibiting. One of the two projects my dear colleague Sandra Day O’Connor has devoted time to since she left the Court is the effort to persuade states to appoint rather than elect judges.

President Ramo: I know that’s been a passion of Justice O’Connor’s for a long time. (*Applause*)

Well, in a slightly related way, Justice, I have to tell you that I—you know how I feel about you and how much I revere you. But I had a moment of irritation. (*Laughter*)

When I read your book, which I’ll talk about in a second, and there was a picture of you on your elliptical glider. (*Laughter*)

My husband, the cardiologist, saw the picture and said, “Ruth Bader Ginsburg works out. What’s wrong with you?” (*Applause*)

So the reason I noticed the picture is because the caption is that you were watching the news while you were on your elliptical machine. Contrary to popular belief, I know that no one on the Court lives in a bubble. You have children and friends and happily a free press, which I assume many members of the Court read or see from time to time.

And we have clear examples of Supreme Court decisions in which it seems clear that cultural changes or the press of the events of the day seem to make some difference. *Brown v. Board of Education* is a case in which I know the Chief worked very hard because of what was going on in the country to make sure that there was a unanimous opinion.

The Virginia Military Institute case seems to me to be something that represented a changed understanding of what social norms were.

Justice Ginsburg: To my delight, the old Chief concurred in the judgment. He didn't join my opinion, but he did concur in the judgment.

President Ramo: Well, you were very persuasive, I thought, in that case, personally. (*Laughter*)

And one could argue that *Bush v. Gore* was born out of the turmoil of those days. Can you comment at all about what, if anything, of the things that go on outside the courtroom influences your decisions inside? Or do you try to make sure that it doesn't impact you at all?

Justice Ginsburg: Let me go back to the beginning of your question. I meet with my personal trainer twice a week. (*Applause*)

President Ramo: And I thought we were friends.

Justice Ginsburg: We meet in the small gym on the Court's ground floor. We train at an hour most people would not choose for physical exercise, 7:00 to 8:00 p.m., so I can watch the News Hour while exercising. A book scheduled for fall publication, written by my trainer, describes and illustrates my exercise routine.

President Ramo: Oh, no! That's it. (*Laughter*) (*Applause*)

Justice Ginsburg: I've seen the cover, and I like it. (*Laughter*)

You mentioned *Brown v. Board* and Chief Justice Warren's attempt to get all of the Justices to sign onto one opinion. No Justice in the history of our country strived for unanimity more than the great Chief Justice Marshall. During his long tenure, 34 years, he participated in over 1000 decisions. He wrote over 500 of them, and in all but a few, he persuaded all his colleagues to join so there would be one opinion for the Court and no separate writings. I don't think any other Chief comes close to that record or will.

You also asked are we affected by what's going on in the world? Of course, we are. But as a great legal scholar, Paul Freund, once said, "Judges should not be influenced by the weather of the day, but inevitably, they will be influenced by the climate of the era." (*Applause*)

Justice Ginsburg: That's how I explain why, in the '70s, I won case after case before the Burger Court, urging the equal citizenship stature of men and women. Yet in Warren Court days, there was no movement in that direction. In 1961, the Court heard the case of a woman, Gwendolyn Hoyt, who had an abusive, philandering husband. They had an altercation. She hit him over the head with a baseball bat, and that was the end of the altercation (*laughter*) and the beginning of the murder prosecution. Hillsborough County, Florida, where she lived, didn't put women on the jury rolls. Gwendolyn Hoyt thought her all-male jury wasn't drawn from a fair cross-section of the community. The Court upheld the Florida law on the ground that women are the center of home and family life, so they shouldn't be distracted by calls for jury duty.

Something happened between the '60s and '70s. The climate of the era, I think, influenced the Court more powerfully than any advocate's argument.

President Ramo: As a follow-up to that, everybody who knows me knows how proud I am of being from New Mexico, and one of the reasons I'm very proud of that is that we have a New Mexico state Equal Rights Amendment. Obviously, the effort to have the national constitutional amendment failed, and my constitutional-law professor, Phil Kurland, and I used to have a bit of a back and forth because he really thought it wasn't necessary and that the Fourteenth Amendment covered everything.

What do you think has been the impact, if any, on the failure of having an Equal Rights Amendment nationally?

Justice Ginsburg: It was three states short of ratification. I think there will be an effort to revive the Amendment. One question you might have asked Professor Phil Kurland, the Fourteenth Amendment says "No State." But what of federal laws and executive orders? In the Fifth Amendment, which restricts federal action, there's no equal-protection provision.

In any case, Martha Griffiths, a strong proponent of the Equal Rights Amendment, told Congress: "There was never a time when we could not have achieved all that should be done to establish that women are citizens of equal stature with men, there was never a time that could not have been done by interpretation of the Constitution."

We have come almost to the point where the Court is using the equality principle to accomplish what an Equal Rights Amendment would have done. But there's an important void. Suppose you were to ask the framers of the Fourteenth Amendment, did they think that Amendment would make women equal citizens? The likely answer, of course not. Many states, at the time of the Fourteenth Amendment, still lacked Married Women's Property Acts. In those states, women couldn't contract, couldn't sue and be sued or own property in their own name.

For people who are uncomfortable about straying too far from what the Founding Fathers might have thought, the Equal Rights Amendment surely should be the preferred route. I'm a proponent of the ERA for another reason. Even if we could reach almost the same results under the equal-protection principle, every constitution in the world written since the end of World War II has an equal-rights provision, a statement that men and women are equal before the law.

I would like to be able to take out my pocket Constitution and show my grandchildren that the equal citizenship stature of women and men is a fundamental principle of our society. That's why I think (*applause*) I think we should have an Equal Rights Amendment. A member of Congress from New York tells me revival of the ERA is definitely within the realm of the possible.

President Ramo: Justice Ginsburg, your wonderful book, *My Own Words*, which is so fascinating to me, in part because of the very early age at which you started writing impressive things, but it has an entire chapter on dissents. I wonder what you view as the importance of dissents in a particular

case, and also what is the meaning of a decision to read a dissent from the bench, which both you and your colleagues do rarely, but from time to time?

Justice Ginsburg: Perhaps three times a year, not more. You will read a dissent from the bench if you think not only did the Court get it wrong, its error was egregious. (*Laughter*) That's why I read the Lilly Ledbetter dissent from the bench. (*Applause*)

When one writes that kind of dissent, an immediate audience is in mind, and that audience is Congress. For example, in the 1970s, the Supreme Court held, both under Title VII and under the equal-protection principle, that discrimination on the basis of pregnancy is not discrimination on the basis of sex. Congress, in short order, passed a bill that was the soul of simplicity, it simply said: Discrimination on the basis of pregnancy is discrimination on the basis of sex. (*Applause*)

In the Lilly Ledbetter dissent, my last line was: The ball is now in Congress' court to correct the error into which my colleagues have fallen. (*Laughter*) That bill, too, like the Pregnancy Discrimination Act, passed with overwhelming majorities in both houses.

President Ramo: Thanks in some part, I think, to your dissent.

Justice Ginsburg: If it's a question of constitutional interpretation, of course, Congress can't fix it. So then you're writing for a later time. We have a long tradition in this country of Justices writing for a later time. In the most dreadful decision the Court ever handed down, the *Dred Scott* decision, there is a fine dissent by Justice Curtis. Or think of the first Justice John Marshall Harlan, who dissented in the Civil-Rights Cases and in *Plessy v. Ferguson*. Or later in time, around the First World War years, Brandeis and Holmes wrote free-speech dissents that eventually inspired majority opinions.

A dissenter is heartened by remembering that those dissents, written for two or three Justices, are today the law of the land. (*Applause*)

President Ramo: Well, Justice Ginsburg, now let me get to something really important—opera. (*Laughter*)

We are so proud that you come to the Santa Fe Opera every year. I am always astonished again when I know that you know all of the libretto, all of the singers, everything that is going on. You're a great, passionate follower of opera, but also you're a scholar of opera.

So my children would tell you that on Saturday mornings, as we drove through Albuquerque to soccer games and other places, I had the opera on, and one of their favorite parts—maybe it was their favorite part—was the opera quiz.

So I have a question to ask you. (*Laughter*)

If you were to turn one Supreme Court case into an opera (*laughter*) what would it be? Who would be your composer of choice? And this is maybe

the hardest of all, and if it's a case with you in it, who would sing your role? (*Laughter*)

Justice Ginsburg: Let's start with the composer. Mozart first, but Verdi and Puccini would be fine. The singer would be Renée Fleming.

President Ramo: Ahh. (*Applause*)

Justice Ginsburg: The opera, well, I can think of one. Anna Nicole Smith's case. (*Laughter*)

But there is already an opera telling her story. It played in London. So let me tell you about an opera buffa that had its world premiere two years ago in Castleton, Virginia, and will have its second production this summer in Cooperstown, New York, at the Glimmerglass Festival. This opera buffa is called *Scalia/Ginsburg*. (*Applause*)

It was written by Derrick Wang, a very talented musician who attended law school after getting advanced degrees in music. Taking a constitutional-law course, he read these dueling opinions, by Scalia and Ginsburg. Wang thought our relationship could be portrayed in a comic opera. Two samples from *Scalia/Ginsburg*. It starts with Justice Scalia's rage aria. (*Laughter*)

Handelian in style, Scalia's aria begins, "The Justices are blind. How can they possibly spout this? The Constitution says absolutely nothing about this." (*Laughter*) Then I come onstage and tell him he's "searching for bright-line solutions to problems that don't have easy answers. But the great thing about our Constitution is that, like our society, it can evolve." (*Applause*)

The plot is roughly based on *The Magic Flute* with one character borrowed from *Don Giovanni*, the Commentatore. The Commentatore has locked Justice Scalia in a dark room as punishment for excessive dissenting. (*Laughter*) I enter through a glass ceiling (*laughter*) and do so to help him get out of the dark room. The Commentatore is astonished. He asks, "Why would you want to help him? He's your enemy." I reply, "He's not my enemy. He's my good friend."

Then, we sing a duet explaining, "We are different, we are one. Different in the way we approach legal text, yet one in our reverence for the institution we serve and for the Constitution." (*Applause*)

President Ramo: So one last question before we give you dinner, Justice Ginsburg. Although I brought with me my Constitution in case, God forbid, you ask me something (*laughter*) and I have to look at it. This has been an unusual time in our country, and each of us who are lawyers takes an oath, before we get our license, to support and protect the United States Constitution. Our license to practice gives us certain privileges like the confidentiality we have between each of us and our clients.

But it also, in my view, gives us special responsibilities. While antipathy to lawyers goes back a long way, attacking the institutions of the American

justice system, and especially attacking the courts, seems fresh and concerns and actually wounds me deeply.

As we conclude tonight, I want to know what you expect each of us as lawyers and as U.S. citizens, in this moment in American history, to do to respond to those attacks.

Justice Ginsburg: I have a special answer to that question, Roberta. But to respond, I must use the podium.

What would I tell lawyers? I would tell them to follow Roberta Ramo's lead. (*Applause*)

When Roberta graduated from the University of Chicago Law School in 1967, she was one of six women in a class of 130. No jobs in the law were available to her, but just eight years later, she had become a star among New Mexico lawyers.

She gained prominence in law-practice management, coauthoring in 1975 the American Bar Association's top-selling book on that subject. She chaired her state bar's Section of Business, Banking, and Corporations. She cofounded the ABA's Law Practice Management Section. And she became a partner in New Mexico's largest law firm, Modrall Spering. In 1995, she made history, as you all know, becoming the first woman to achieve the presidency of the American Bar Association. (*Applause*)

Roberta was called at that time "the e-mail president" because of her efforts to help lawyers become comfortable with technology. She used her ABA office to advance causes she cared about deeply. She pressed for survival of the Legal Services Corporation. She promoted the ABA's national Commission on Domestic Violence, and she spoke for the Association in opposing measures that would diminish the force of the First Amendment, among them, proposed constitutional amendments to prohibit flag burning and to permit school prayer. She also used her bully pulpit to promote affirmative action, judicial independence, gender equality, and public understanding of the law.

One could anticipate her community-oriented engagement when she was at the helm of the ABA. Her very first appearance in court while she was still a law student was on behalf of civil-rights protesters she sought to spring from jail. In her home state, she had served on the boards of numerous civic and professional organizations, including the Board of Regents of the University of New Mexico, which she chaired as president, 1991 to 1993, the Executive Committee of the Greater Albuquerque Chamber of Commerce, the Board of the New Mexico Symphony Orchestra, and the New Mexico Board of Finance.

Long before the word "flextime" was coined, Roberta arranged her law practice to ensure adequate time for family joys and demands. Her partner in life, husband, cardiologist, medical columnist, and TV good-health educator, Dr. Barry Ramo, described their marriage this way: "The beauty of our relationship is that it has been very nurturing and at the same time one that allows

both of us to grow individually.” Roberta added— (*Applause*) She added to that description of their mutually supportive union the ability to make each other laugh.

Diner avec la famille chez Roberta and Barry was a preserved tradition. Absent interference of an urgent matter, parents and children, Joshua and Jennifer, would dine together. Dr. Barry reports that Roberta has been an avid cook since age 12, and can create elegant gourmet dinners in small time while he sets the table and attends to other menial, unskilled tasks. (*Laughter*)

No surprise then that Roberta made family values a leitmotif of her ABA presidency and that she sees a satisfying work–life balance not as a women’s issue, but as something all humans should strive to achieve. Her specialties in law practice were said to be real estate, probate, health law, law-office management, and juggling. (*Laughter*)

Roberta’s acceptance of the ALI presidency in 2008 was a double first— first woman to hold that office and first person to lead both the ABA and the ALI. (*Applause*) As everyone in this room knows, she has been the very model of a modern ALI President. (*Laughter*)

Among honors galore, in 2015, Roberta received the ABA Medal, the association’s highest award. She is an honorary member of the bar of England and Wales, and of Gray’s Inn, also the recipient of several honorary degrees. For her excellence in arbitration and mediation, she is listed in *The Best Lawyers in America*.

She continues to serve her community as Board Chair of Think New Mexico, a nonpartisan think tank, and on the Boards of the Santa Fe Opera and Albuquerque Economic Development. Together with her husband, in 2004, she established the Ramo Lecture on International Justice at the University of New Mexico School of Law.

There is much I haven’t mentioned, including Roberta’s service as co-chair of the U.S. Senate-appointed committee to make recommendations regarding the governance of the U.S. Olympic Committee and the impressive careers of her children, son Joshua and daughter Jennifer. But the hour is late. So I will leave off by inviting all of you to join me in a rousing cheer to Roberta for all the good she has done. Brava, Roberta. (*Applause*)

President Ramo: The honor of my life, Ruth. Thank you.

Justice Ginsburg: And may I add one thing more. (*Applause*) We all anticipate many encores, in the years to come. (*Applause*)