RBG’s Secret Weapon
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RBG’s Secret Weapon

By Ann Farmer

A former producer/director for Court TV and reporter/contributor to The New York Times, Ann Farmer currently writes for various magazines about subjects ranging from law to pop culture. She’s based in Brooklyn, New York.

While attending the funeral for his uncle Martin D. Ginsburg almost nine years ago, Daniel Stiepleman had an idea. The eulogy described the uncommonly supportive marriage that Martin, a tax law expert, had with his wife, Supreme Court Justice Ruth Bader Ginsburg—an alliance that spun from the household to the courtroom. Stiepleman mused, “Wouldn’t it be great to make a film about these two equal marriage partners?” His next thought was, “What an asshole I am. Here I am at my uncle’s funeral mining his life for material.”

The idea nonetheless wouldn’t go away. So after a year, he broached it to Justice Ginsburg. His aunt’s response: “That’s how you think you want to spend your time?”

It was. Stiepleman spent the next several years working on what became his first professional screenplay, On the Basis of Sex, which had its theatrical release in December 2018. As evident from the reviews and box office response, the film appeals not only to the justice’s considerable fan base—prompted by her groundbreaking work advancing gender equality and women’s rights—but it also enlightens viewers on how her life and legacy are inextricably intertwined with her husband’s. Martin not only believed in his wife; he did his share (and likely more) of the cooking and tending to their kids while encouraging her to continue taking aim at discriminatory laws.

In other words, the film demonstrates the power and beauty of a truly equal partnership. “You can’t write Ruth without Marty,” Stiepleman points out. “There is no way either could do what they did without the other.”

On the Basis of Sex also provides viewers with a sort of prequel to RBG, the Oscar-nominated documentary about the 85-year-old justice that was released in May 2018. While it is highly unusual—and likely unprecedented—for a woman judge to be the topic of two biographical films premiering the same year, that’s exactly what happened.

Produced and directed by Betsy West and Julie Cohen, RBG chronicles many of Justice Ginsburg’s most famous legal battles. As the co-founding director of the American Civil Liberties Union Women’s Rights Project, she successfully argued five of six gender discrimination cases before the U.S. Supreme Court. Nominated to the U.S. Court of Appeals for the D.C. Circuit in 1980, followed by a seat on the High Court in 1993, she continues to rule on behalf of gender equality and civil rights, sometimes necessarily through forceful dissents. RBG, in addition, playfully toys with the fame and adulation that have recently surrounded her as more young women in particular have taken note of her trailblazing career. Her fans have bestowed on her the “Notorious RBG” moniker. They’ve stamped her face and lacy collars on T-shirts. Memes, emojis, tattoos, and bobbleheads abound.

Stiepleman, on the other hand, wanted to focus his screenplay on an earlier chapter in Ginsburg’s
life and career, emphasizing her law school years, her auspicious marriage, and the first gender discrimination suit that she argued in court. This film, he says, is about a young lawyer who is “trying to find her voice.”

When he began working on the film, Stiepleman notes that Ginsburg “was not the cultural phenomenon she’s become.” Writing on spec with high hopes of garnering interest from producers, he recalls mentioning his concept to others. “They’d say, ‘The problem is no one knows who Ruth Bader Ginsburg is,’” he chuckles.

Wanting to show the obstacles that Ginsburg faced early on as an aspiring woman lawyer, Stiepelman begins *On the Basis of Sex*, directed by Mimi Leder, with Ginsburg (played by British actress Felicity Jones) entering Harvard Law School in 1956. She’s seen walking up the steps of the school for the first time in her blue suit and seamed stockings, one of nine female students in a class of more than 500. The next day the women are invited to a dinner where Dean Erwin Griswold (played by Sam Waterston) asks them to engage in a round robin, reciting their names and why they are occupying a place at Harvard “that could have gone to a man.”

Two hours later, the film concludes with Ginsburg, now almost 40, getting her chance to present an oral argument in court for the first time. Representing the plaintiff in an appeal of the 1972 tax discrimination case *Moritz v. Commissioner of Internal Revenue*, it is also the only time that she and her husband argued in court together. Martin presented the tax side. Ginsburg argued the unconstitutionality of the code. (Ironically, former Dean Griswold had become the U.S. solicitor general and was seated at the opposing counsel table.)

It was Martin, not Ginsburg, who stumbled across the little-known tax case that concerned an up-to-$600 tax deduction available only to women, widowers, or a husband with dependents and whose wife is incapacitated or institutionalized. Charles Moritz was a bachelor who had never married but cared for his invalid mother. The Tax Court had already ruled against Moritz. But the Ginsburgs recognized that, if won on appeal, his case could lay a foundation for future arguments concerning sex-based discrimination.

Stiepleman says when he finished the first draft of the film and managed to get it into the hands of producer Robert Cort, “He, without blinking, understood why it was an important story.” Other potential directors and financiers, however, thought that the husband was unrealistically supportive. “Change that and let’s get it made,” they told him. Stiepleman responded, “No, that’s what this movie is about. We’re not going to change that.”

The film and TV industry has always embraced clichés about lawyers. Women lawyers, or “lady lawyers” as they were originally dubbed, have gone through an evolution of tropes over the years. In early depictions, they were almost always portrayed in relation to their husbands and children, or lack thereof. Ric Sheffield, a professor at Kenyon College in Gambier, Ohio, who wrote the study *A Social History of Women Lawyers in Popular Culture*, determined that Fay Wray played one of the earliest women lawyers in the 1933 film *Ann Carver’s Profession*, which tells the story of how her legal career almost wrecks her home life, “reinforcing the notion that the legal profession is particularly ill-suited to women,” Sheffield wrote.

Obviously that has changed. The more recent women TV lawyer characters like Patty Hewes (*Damages*), Annalise Keating (*How to Get Away with Murder*), and Alicia Florrick (*The Good Wife*) demonstrate as much ability and chutzpah as the guys.
The tropes surrounding male lawyer characters, meanwhile, have traditionally been more concerned with their legal flash—not whether they are achieving a good work-life balance. Did Jack McCoy (Law and Order) ever sweat bullets over getting home in time to pick up the kids?

Martin Ginsburg, on the other hand, as he’s portrayed in this film by actor Armie Hammer and in his actual life, sidesteps those media clichés. He’s seen for what he was: a highly-regarded tax lawyer and a nurturing father and husband. There is an oft-told and telling quote attributed to him: “My wife doesn’t give me any advice about cooking and I don’t give her any advice about the law.” Stiepleman says, “In a lot of ways, Marty is the more revolutionary character.”

For the record, the supportiveness went both ways. For instance, in the film and in real life, when the Ginsburgs were simultaneously attending Harvard Law School, Martin was diagnosed with testicular cancer. While he recuperated, Ginsburg sat in on his courses on his behalf, taking notes for him and typing up his papers. Their children also appear to have no complaints. Stiepleman says that he once asked his cousin Jane Ginsburg, the couple’s firstborn (portrayed by actress Cailee Spaeny), if she ever felt neglected. She told him, “I would have killed to feel neglected.”

Ginsburg also busts through the lawyerly stereotypes. Possessing a fierce intelligence and capable of blistering dissents, she exudes a refinement in her comportment that is unique to her. And it’s not just her love of fanciful jabots (the variety of collars she ties over her robes). Her voice is soft and melodious even when making a tough point. “Felicity taught me about her voice,” Stiepleman recalls. He says Jones studied her voice and came to realize that Ginsburg would cover up her Brooklyn accent in court. “But when she got emotional,” Stiepleman notes, “it would come through.”

Stiepleman says his aunt’s particular courtroom tactic was to be persuasive—not by destroying the opposition as is customary on legal procedurals—but by convincing the judges of the merits of her argument. “The way she carried herself. The way she dressed. It was to make herself as unthreatening as possible,” Stiepleman says, so that others could more easily put aside their defenses and preconceptions and listen to her with an open mind.

As he was writing the screenplay, Stiepleman shared early drafts with Ginsburg. One of her notes encouraged him to clarify that other feminist lawyers were on the scene ahead of her. “I just don’t want people to think that I created this area of law,” she said—hence, the film’s inclusion of Dorothy Kenyon (played by Kathy Bates), a New York lawyer, judge, feminist, and activist in support of civil liberties and women’s equality.

Ginsburg also influenced the courtroom drama that comes at the end of the film by impressing upon Stiepleman the importance she placed on preparation. “On TV it all comes down to the oral arguments,” she told him. “But the brief is crucial. The brief matters,” which meant that Stiepleman had to get up to speed on things like the difference between an equal protection clause and an equal protection principle.

Once a final cut was completed, Stiepleman invited his aunt and cousin Jane to a private screening that included the producer, director, and Ginsburg’s staff. Just as the film ended, Stiepleman was aghast to observe Ginsburg storming out of the theater. He says everyone’s eyes immediately turned to him. Stiepleman asked his cousin if everything was okay. “She said, ‘Yes, she just had to go to the bathroom.’”

Ginsburg, in fact, loved the film, Stiepleman notes. She liked how it highlighted her marriage. She appreciated all the attention to detail. When they recreated the family photos that adorn her desk using
the actors, she loved how the production took pains to dress the actors in the same clothes and pose them the same way as the family and friends in the original photographs.

Ginsburg reportedly did not agree with one shot, when her character is seen momentarily hesitating before starting her oral argument in Moritz. “I didn’t stumble,” she is quoted as saying after a showing of the film.

She also told Stiepleman that the film matched her recollections of that period in her life—when the feminist movement was taking hold. “It felt joyous,” she noted. “It felt like the world was changing. And we were at the forefront of that change.”
Connecting Law with Art—and Vice Versa

By Amy Noe Dudas

Amy Noe Dudas is an attorney in Richmond, Indiana, and is president of the Indiana Bar Foundation. She is active on the boards of the Richmond Symphony Orchestra and Wayne County Foundation and is married to Andy, with whom she operates the Dudas Inspiration Venue for the Arts (DIVA).

When I was five years old, my family went to see Close Encounters of the Third Kind. And when we got home, I picked out the notes from the score perfectly on the piano, prompting my bewildered parents to beg the local piano teacher to take me on before she felt I was old enough to get anything out of lessons. I was creative (weird?) from an early age and marched to the beat of a different drummer. This was before nerds were cool.

I left music behind when I went to college but soon discovered theater, spending my time outside of class and study climbing high around the catwalks learning to design stage lighting and wearing black backstage while learning to stage manage and direct.

Then I became a lawyer. In that world, “reasonableness” is a perfectly normal way to measure a standard of care and not an utterly subjective touchstone. The rules are the rules, no exceptions, only subject to interpretation based on a strict set of standards. Writing must be concise, logical, and direct. The more formulaic and template-adhering a pleading is, the better. I became a robot, cranking out logical subject-verb-adjective-object arguments on forms that looked like everyone else’s, right down to the 12-point Times New Roman font using cryptic symbols, antiquated language, and redundant phrasing.

After about eight years of infallible logic and analytical precision, I realized what was missing. Practicing law had squeezed the creativity right out of me. After all, when a lawyer is described as “creative,” the connotation is not often positive. And I let my creativity be stifled—for a while. But not for long.

I began stalking (not, of course, as the term is legally defined) the music director of a local community theater musical production so I could play in the pit orchestra. (It worked.) Experiencing my artistic side again, after such a long gap, made me crave more opportunities. And what I realized is that I had gained skills as a lawyer that can be described inartfully as “getting-it-done-ability.” So I led the way in forming a volunteer community orchestra so local avocational musicians, including me, would have a regular opportunity to practice and perform. Ten years later, the organization is flourishing and offers free violin lessons to area elementary school students. And I still play in it.

I have continued my participation in theater pit orchestras and have recently graduated to music director. In the past few years, my husband and I have co-directed two theater productions and recently formed the Dudas Inspiration Venue for the Arts (DIVA, in this world of acronyms), a nonprofit dedicated to making the arts accessible to everyone, regardless of ability, income, or resources. (For more information, go to www.imadiva.org.) To help fund the venue, we started an improv troupe (using grant-writing skills I would not have perfected but for the law degree) offering monthly (nearly always sold out) performances.

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Although becoming a by-the-book, template-testing, logic-loving lawyer motivated me to run screaming for creative avenues, that precision-driven profession gave me the skills to not only cultivate my right brain, but also to support the growth and flourishing of my own artistic ventures. Creativity has, in turn, seeped into my law practice, giving me more patience, empathy, and productivity. And I’ve switched to 12-point Garamond.

Being a lawyer has made me a better artist. And being an artist has certainly made me a better lawyer. It turns out that a seemingly unrelated interest may not be so unrelated after all.
In her acceptance speech at the 2018 Margaret Brent Women Lawyers of Achievement Awards ceremony, honoree Patricia Kruse Gillette spoke about Dorothy in *The Wizard of Oz*, who, as a strong woman leader, took a group with disparate goals, united them in a mission, led them down the road they needed to go, and navigated many challenges along the way—with all of them ultimately achieving their goals. One can hardly imagine a more diverse group than a lion, a straw man, a tin man, and a young woman. Yet, not only did each of them contribute strengths to the team effort, each of them also learned to overcome his or her own weaknesses and bring out the strengths in others.

When Dorothy first arrives in the Emerald City, she rings the doorbell and is informed by the gatekeeper that the bell is out of order and she must knock (even though the “out of order” sign is nowhere to be seen). When she knocks, she is told that nobody gets in to see the Wizard. She persists, explaining that Glinda sent her. In a classic example of prove-it-again bias, the gatekeeper demands evidence that Glinda sent Dorothy and is at last satisfied when Dorothy displays the ruby slippers.

*The Wizard of Oz* was released 80 years ago. Since then, women lawyers have made substantial progress in getting through the doors of the legal profession. Long gone are the days when law graduate Sandra Day O’Connor, at the top of her Stanford Law School class, could not get a job in a private firm as a lawyer. But it is also the case that women lawyers continue to face barriers beyond the entry level, all the way up to the senior level, at most places that employ lawyers. A key factor is the extent to which leaders in an organization understand, appreciate, and advance gender diversity as a core organizational value.

The Commission on Women in the Profession’s new *Men in the Mix* initiative will conduct a national series of focus groups, to be held in 2019 and into 2020, to address these core questions: Why do men help (or not help) in advancing their women colleagues in the legal profession? What can we do to incentivize senior male leaders to help their women colleagues advance? In a series of group sessions, men and women will first discuss their answers in gender-identical groups and then share their views in gender-mixed conversations. The Dorothys of the legal profession will hear directly from the gatekeepers about the steps to take to engage in door-opening conversations. And the gatekeepers will hear directly from the Dorothys about how they experience barriers to advancement. The Commission anticipates that the results will give actionable advice to law firm leaders and women lawyers about engaging male colleagues in new strategies for leveling the playing field.

The Commission has a long history of sponsoring research projects to learn about a problem and frame data-based solutions. We have that same expectation for our *Men in the Mix* program—that it will shed light on the value of men taking the lead on sponsoring the advancement of women, both for the men who do so and the women who work with them.
Ultimately, in all settings in which lawyers work, enhanced gender diversity at the highest levels will provide better decisions, better business results, and a more congenial workplace. We look forward to presenting the results of the *Men in the Mix* study and arming ourselves with great strategies to open the doors to successful careers for men and women in the legal profession.
The Commission on Women in the Profession is proud to announce the recipients of the 29th Annual Margaret Brent Women Lawyers of Achievement Awards. The award was established in 1991 to recognize and celebrate the accomplishments of women lawyers. This award annually honors up to five outstanding women lawyers who have achieved professional excellence within their area of specialty and have actively paved the way to success for other women lawyers. These women demonstrate excellence in a variety of professional settings and personify excellence on either the national, regional, or local level. The honorees will receive the award at a luncheon during the ABA Annual Meeting in San Francisco, California, on Sunday, August 11, 2019.

- **Raquel Aldana**; associate vice chancellor for Academic Diversity, professor of law; University of California, Davis; Davis, CA

- **Michelle Banks**; senior advisor and executive coach; BarkerGilmore, LLC; San Francisco, CA

- **Kelly M. Dermody**; office managing partner (San Francisco) and employment practice group chairperson; Lieff, Cabraser, Heimann & Bernstein, LLP; San Francisco, CA

- **Hon. Judith McConnell**; administrative presiding justice, Court of Appeal; Fourth Appellate District; San Diego, CA

- **Julie A. Su**; labor secretary; California Labor and Workforce Development Agency; Sacramento, CA

Information about how to support the Commission and its 2019 Margaret Brent Luncheon can be found at https://www.americanbar.org/groups/diversity/women/margaret-brent-awards.
The Commission co-sponsored a program for law students, *Grit: The Latest Research and Practical Strategies*, at George Washington University Law School on February 27. The students heard from successful women in government procurement law and learned strategies for building successful careers as lawyers. The program opened with remarks from researcher and Grit Project Committee Co-Chair Milana Hogan, followed by roundtable discussions of scenarios found in the Grit Project Toolkit (www.ambar.org/grit). Each student roundtable was led by a woman lawyer who provided real-life examples of managing the challenges students encounter in law school and in the legal profession.

The speakers included Dominique Casimir, partner, Arnold & Porter; Milana Hogan, chief professional development officer, Sullivan & Cromwell; Linda Maramba, senior litigation counsel, Northrop Grumman; Kara Sacilotto, partner, Wiley Rein; Judge Jeri Somers, chair, Civilian Board of Contract Appeals; and Maria Swaby, suspension and debarment and agency protest official, U.S. General Services Administration.