

Master of Influence:

The “Notorious R.G.B.” Used Persuasion to Advance Equality

By Terri A. Brady
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In September 2019, I squeezed into the last available seat among an overflow audience to listen to Katherine Baicker, the Dean of the University of Chicago Harris School of Public Policy, interview Justice Ruth Bader Ginsburg.¹ Justice Ginsburg was at the University of Chicago to receive the Harris Dean’s Award for being an exceptional leader and an example for the next generation of policy leaders and scholars.

To many in the long line of people waiting and hoping to enter, she was the “Notorious RBG.” To me, she was a brilliant legal scholar and judge, a fellow graduate of Columbia Law School, and someone with whom I shared the experience of being asked: “how do you feel about taking a man’s place in law school?”

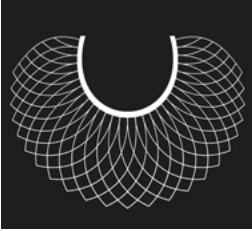
Ruth Bader Ginsburg was an influential leader. She became influential by being a successful advocate both as an attorney, and a well-regarded judge, for hot-button issues like gender equality. She transformed opinions. She persuaded individuals and governments to change policies and laws. Ginsburg accomplished these changes by being strategic, patient and a master of persuasion.

Justice Ginsburg applied three persuasion tools frequently and effectively.



- **Framing issues** by presenting them in a convincing way to her targeted audiences;
- **Building relationships** with people and organizations, including potential opponents; and
- **Using the power of questions** and questioning to direct attention and guide thinking.

Justice Ginsburg applied these three instruments primarily through writing. Leaders who want to sway opinions and change behaviors would do well to study Justice Ginsburg’s techniques and follow her example. Let’s dig into her three techniques individually.



Persuasion Tool 1 Frame Effectively

Framing is a way of structuring or presenting a problem that influences reasoning and choice. As Daniel Kahneman's research² showed, humans are remarkably sensitive to word choice in narratives because we use mental shortcuts—frames—to view the world and to accelerate our decision-making. How we say something to audiences often matters more than what we say.

In *The Art of Woo*³, authors G. Richard Shell and Mario Moussa describe framing as "respecting the beliefs" and "finding a common language" with audiences. Persuasive communicators "tune into the audience's channel." In doing so, however, they often encounter beliefs that are hidden barriers to considering persuasive arguments. Justice Ginsburg encountered entrenched beliefs when she challenged gender discrimination. She chose her initial cases to appeal to judges and legislators in the 1960s and 1970s who were (in her words) "overwhelmingly white, well-heeled, older males," with a romantically paternalistic view of women:⁴

"...[M]ost men of that age, they could understand race discrimination, but sex discrimination? They thought of themselves as good fathers and as good husbands, and if women are treated differently, the different treatment is benignly in women's favor. To get them to understand that this supposed pedestal was all too often a cage for women—that was my mission in the cases in the '70s. To get them to understand that these so-called protections for women were limiting their opportunities."⁵



To counter such entrenched beliefs, *The Art of Woo*'s authors suggest framing ideas as consistent with "an *underlying value that runs deeper* than the [entrenched] belief you have collided with."⁶ Justice Ginsburg accomplished this repositioning by linking her gender discrimination arguments with the underlying value of "fairness." As a law professor, Ginsburg pursued cases where rigid gender-based classifications harmed men. For example, she represented Charles Moritz in a tax case where he challenged an IRS provision allowing single women, but not men, a tax deduction for the cost of caring for an elderly dependent.

In the *Moritz* case this arbitrary and irrational gender-based classification produced an *unfair* result. In Justice Ginsburg's words:

"Our mission was to educate, along with the public, decisionmakers in the nation's legislatures and courts. We tried to convince them that something was wrong with their perception of the world....We sought to spark judges' and lawmakers' understanding that their own daughters and granddaughters could be disadvantaged by the way things were."⁷

She reiterated the same idea forty years after the *Moritz* case in a 2009 interview: "You needed to persuade men that this was right for society, that it was *right* for their daughters and granddaughters."⁸

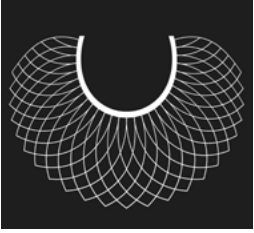
Effective advocates often "reframe" arguments to persuade audiences. Noted rhetoric expert Jay Heinrichs discussed the importance of reframing issues "to move them to more favorable ground." In his book *Thank You for Arguing*, Heinrichs writes:

"Reframing entails refusing to accept the opponent's definition of what the issue is about, and then substituting your own. You define the issue in your terms."⁹

Justice Ginsburg substituted the word "gender" for "sex" in her discrimination advocacy work. While she credits the assistant who typed her briefs for this particular idea, Justice Ginsburg's retelling of the story is noteworthy: "[gender] has a neutral sound and it will ward off distracting associations."¹⁰ She understood the power of changing one word of the narrative, crediting her college professor for this insight:

"Words could paint pictures, I learned from [Professor Nabokov]. Choosing the right word, and the right word order, he illustrated, could make an enormous difference in conveying an image or an idea."¹¹

In sum, words matter and so does framing.



Persuasion Tool 2 Build Relationships

Justice Ginsburg actively built relationships with other advocates, including colleagues with differing views of the law. This proved to be a smart strategy. *The Art of Woo* authors argue that:

"Managing relationships is a fundamental skill...Relationships give people a level of trust and confidence in each other, facilitating communication and making it easier to cooperate."¹²

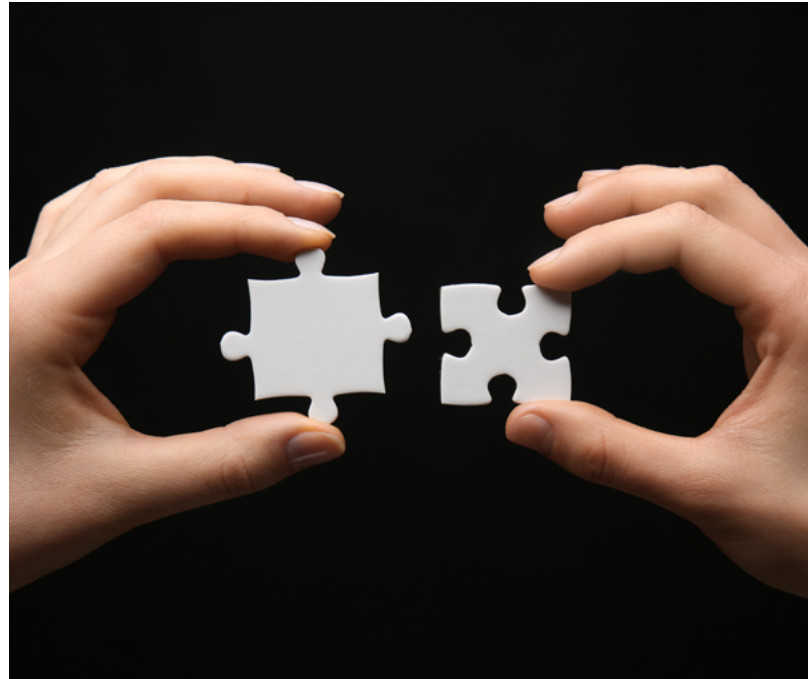
As a litigator, lawyer Ginsburg connected with like-minded organizations to expand her impact. For example, she established enduring relationships with the ACLU, because it was an "association in which men and women were working together for gender equality."¹³ The ACLU had affiliates in almost every state, provided resources and cases, and spurred other organizations to support her work. As Ginsburg observed in her Harris interview with Dean Baicker, "It's very hard to do anything as a loner, but if you get together with like-minded people, you can be a force for change."¹⁴

As a judge, Ginsburg built individual relationships with colleagues, including her legendary friendship with Justice Antonin Scalia, who frequently disagreed with her judicial philosophy. This approach is consistent with persuasion expert Robert Cialdini's advice that "liking" is a persuasion lever because we "prefer to say yes to the requests of someone we know and like."¹⁵ During her interview with Dean Baicker, Ginsburg emphasized the importance of "collegiality" at the Supreme Court, arguing that the Court could not do its job unless the judges worked well together.

In her book *My Own Words*, Ginsburg wrote extensively about her relationship with Justice Scalia, noting that they found "common ground" in their love of opera, as well as their mutual respect for the Constitution, the US Judiciary, and the Supreme Court. Due to their enduring friendship, Justice Scalia shared his dissents with her before he circulated them to the other justices. In the *Virginia Military Institute* case, for example, he told Ginsburg "I want to give you as much time as I can to answer [the dissent]."¹⁶ She noted the persuasive effect:

"My final draft was more persuasive thanks to Justice Scalia's searing criticism. Indeed, whenever I wrote for the Court and received a Scalia dissent, the majority opinion ultimately released improved on my initial circulation."¹⁷

Collegiality and collaboration increase influence, but according to executive coach Whitney Johnson, working well together also strengthens professional development and career effectiveness.

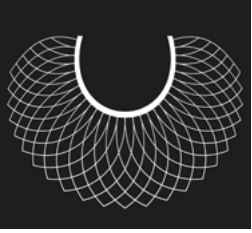


Johnson writes: "...there is a biological imperative at work. As we connect and collaborate, give and take, we are evolving, emerging stronger and more capable."¹⁸

Justice Ginsburg credits many people for helping her become a better advocate. These include her "activist women law students" who pivoted the focus of her legal scholarship, and her father-in-law, who encouraged her to attend law school while raising a child.¹⁹

From a practical perspective, being "likable" not only helps us thrive in jobs, but also helps us find jobs. In her book, Justice Ginsburg explained the role her own likability played in her nomination to the Supreme Court. During her interview with President Clinton, she felt there was "an immediate and strong rapport."²⁰ President Clinton said that he liked her sense of humor, which he considered important for her to endure and have a positive impact on the Court. Justice Ginsburg later learned that as he was ruminating over his choice, Clinton asked Justice Scalia who he would prefer to be stranded on an island with, Larry Tribe or Mario Cuomo. Ginsburg relates that Scalia "answered quickly and distinctly: Ruth Bader Ginsburg."²¹ Within days, the President chose her to fill the Court's open seat.

In sum, effective persuaders should connect in order to convince.



Persuasion Tool 3

Ask Questions

Justice Ginsburg always asked questions. She did this not only to learn information, but also to manage impressions, build relationships and convey perspective. Asking questions can be a powerful method for framing arguments.

Legal scholars and judicial commentators consider Justice Ginsburg to have been one of the most active and precise questioners on the Supreme Court bench. Researchers who analyzed and counted the Court's questions for scholarly articles have confirmed this point.²²

Justice Ginsburg designed her questions to guide or nudge advocates away from unproductive arguments, as well as to be a tool for persuading other judges. In a 1999 law review article she noted:

*"Judges pose testing questions . . . to let counsel know what troubles the court, or at least the questioner, about the case or the issue on which counsel is holding forth. Sometimes we ask questions with persuasion of our colleagues in mind, in an effort to assist counsel to strengthen a position."*²³

In 2016 she repeated the idea that sometimes "a Justice asks a question with persuasion of a colleague in mind."²⁴ Ginsburg recommended advocates be agile and "alert to opportunities to use a question as a springboard to advance a key point."²⁵ As practiced by Justice Ginsburg, persuasion was a dynamic enterprise.

This type of verbal agility requires another persuasion skill—active listening. Justice Ginsburg addressed this point frequently in her writings and speeches. Writing about Supreme Court conferences, she opined that the justice who speaks last has an opportunity to "adjust their statements to take account of views expressed earlier by others [if they are] well prepared and a *good listener*."²⁶ Justice Ginsburg often expressed admiration for active listening skills in others. In describing Gloria Steinem as "skilled in the art of persuasion," Ginsburg observed: "...when Gloria is the center of attention, she holds no megaphone; 'she's almost always listening.'"²⁷

Behavioral science research reveals the underlying advantages of asking questions strategically. According to a recent HBR article "questioning is a uniquely powerful tool" that "improves interpersonal bonding."²⁸ A 2017 study published in the *Journal of Personality and Social Psychology* found that "people who ask more questions...are better liked by their conversation partners."²⁹

The 2017 study also found that asking "follow-up" questions is particularly effective for increasing "interpersonal liking." This is not surprising because such questions "convey better listening, understanding, validation and care."³⁰ In other words, going deeper on a line of inquiry can create a stronger bond, which allows us to be more persuasive. Wise job seekers should heed this advice.

In sum, by asking strategic questions and listening actively persuaders position themselves to exert more influence.



CONCLUSION

Ginsburg's use of framing, building relationships and asking questions meant she was always "in dialogue" with others.³¹ She understood the "importance of knowing the audience,"³² and as *The Art of Woo* authors prescribed, "tuning into the audience's channel." As a lawyer advocating for gender equality, she used these persuasion tools to "capture public attention" to "accelerate the pace of change."³³

In her judicial career, Ginsburg used her written dissents to exert both short-term and long-term influence. Sometimes she advocated "immediate action from the political branches of government" and, at other times, she appealed "to the intelligence of a future day."³⁴

She cites the *Lilly Ledbetter* case as an example of her desire to persuade Congress to take immediate legislative action. Despite the fact that Lilly Ledbetter was being paid less than men for the same work, the Court ruled that she had filed her claim too late. Ginsburg argued in her dissent that the ruling ignored real-world employment practices because there had been no way for Ledbetter to know about the pay discrepancy. A persuaded Congress responded shortly after the Court's decision with Ginsburg's dissent. They passed the Lilly Ledbetter Fair Pay Act.³⁵

The *Shelby County v. Holder* decision, which struck down a provision of the Voting Rights Act and therefore involved constitutional interpretation, prompted Ginsburg to write a dissent appealing "to the intelligence of a future day."³⁶ The majority opinion declared a procedure which required states to "pre-clear" proposed changes to voting requirements, to be "antiquated and unconstitutional in light of significantly improved" conditions. Justice Ginsburg wrote a

thirty-seven-page dissent with a memorable quote that stands persuasively on its own: "Throwing out preclearance...is like throwing away your umbrella in a rainstorm because you are not getting wet."³⁷ This practical and powerful language will likely reappear in a future Court decision.

Ruth Bader Ginsburg wrote that an "effective judge" strives "to persuade and not to pontificate."³⁸ She acknowledged that at times this required her to take the long-term view of influencing, sometimes adopting a "measured" approach.³⁹ As she said in her interview with Dean Baicker, "if you look at things over the long haul, we have come a long way from what it once was."⁴⁰

I am particularly fond of Justice Ginsburg's majority opinion in *United States v. Virginia*, which she described as one of the most personally satisfying opinions she had delivered in her career on the bench.⁴¹ The Court ruled that the Virginia Military Institute must admit and train women as leaders. Justice Ginsburg said this about the decision:

"VMI was about a state that invested heavily in a college designed to produce business and civic leaders, that for generations succeeded admirably in the endeavor, and that strictly limited this unparalleled opportunity to men. I regard the VMI case as the culmination of the 1970s endeavor to open doors so that women could aspire and achieve without artificial constraints."⁴²

As a master of influence, the "Notorious RBG" pushed the American legal system to become a more equitable one. She inspired generations of women leaders. Justice Ginsburg certainly inspired me. Not bad for a woman who took a man's place in law school.

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SOURCES

1. <https://harris.uchicago.edu/news-events/news/justice-ruth-bader-ginsburg-reflects-supreme-courts-unchanging-collegiality>
2. Daniel Kahneman, *Thinking Fast and Slow* (New York, Farrar, Straus and Giroux, 2011).
3. G. Richard Shell and Mario Moussa, *The Art of Woo* (New York, Penguin Group, 2007).
4. Ruth Bader Ginsburg, *My Own Words* (New York, Simon & Schuster, 2016), 157.
5. <https://www.elle.com/culture/career-politics/interviews/a14788/supreme-court-justice-ruth-bader-ginsburg/>
6. *The Art of Woo*, 131-134.
7. *My Own Words*, 157-158.
8. https://kb.osu.edu/bitstream/handle/1811/71376/OSLJ_V70N4_0805.pdf
9. Jay Heinrichs, *Thank You for Arguing: What Aristotle, Lincoln and Homer Simpson Can Teach Us About the Art of Persuasion* (New York, Penguin Random House, 20017), 120.
10. https://kb.osu.edu/bitstream/handle/1811/71376/OSLJ_V70N4_0805.pdf
11. <https://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html>
12. *The Art of Woo*, 90.
13. https://kb.osu.edu/bitstream/handle/1811/71376/OSLJ_V70N4_0805.pdf; See also *My Own Words*, 114-116.
14. <https://harris.uchicago.edu/news-events/news/justice-ruth-bader-ginsburg-reflects-supreme-courts-unchanging-collegiality>
15. Robert B. Cialdini, *Influence: The Psychology of Persuasion* (New York, HarperCollins, 1984), 167.
16. *My Own Words*, 39.
17. *My Own Words*, 40, 281.
18. <https://hbr.org/2013/03/for-a-career-that-lasts-build>
19. *My Own Words*, 113, Preface.
20. *My Own Words*, 169-171.
21. *My Own Words*, 40.
22. See, e.g., Sarah Levien Shullman, *The Journal of Appellate Practice and Process*, Vol. 6, Issue 2, Article 6 and Cynthia K. Conlon and Julie M. Karaba, *Northwestern Journal of Law & Social Policy*, Vol. 8, Issue 2, Article 3.

23. <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=3532&context=sclr>
24. *My Own Words*, 210.
25. *My Own Words*, 209.
26. *My Own Words*, 211.
27. *My Own Words*, 94-95.
28. <https://hbr.org/2018/05/the-surprising-power-of-questions>
29. https://www.hbs.edu/faculty/Publication%20Files/Huang%20et%20al%202017_6945bc5e-3b3e-4c0a-addr-254c9e603c60.pdf
30. https://www.hbs.edu/faculty/Publication%20Files/Huang%20et%20al%202017_6945bc5e-3b3e-4c0a-addr-254c9e603c60.pdf
31. *My Own Words*, 239, 196.
32. *My Own Words*, 157.
33. *My Own Words*, 157.
34. *My Own Words*, 284.
35. *My Own Words*, 284-285. In the Columbia Journal of Gender and Law Justice Ginsburg notes that “[t]he audience to which my dissent appealed was Congress. https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5910&context=fss_papers
36. *My Own Words*, 284.
37. *My Own Words*, 292.
38. *My Own Words*, 229.
39. *My Own Words*, 264.
40. <https://harris.uchicago.edu/news-events/news/justice-ruth-bader-ginsburg-reflects-supreme-courts-unchanging-collegiality>
41. *My Own Words*, 150.
42. *My Own Words*, 163.