

Ruth Bader Ginsburg Expresses Regret for Criticizing Donald Trump

By Michael D. Shear

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WASHINGTON — Justice Ruth Bader Ginsburg’s indignant dissents from the bench have turned her into a heroine of the left, beloved for methodically skewering her conservative colleagues. On the internet, she has become the Notorious R.B.G.

But after being roundly criticized for a remarkable series of interviews in which she mocked Donald J. Trump, the presumptive Republican nominee for president, Justice Ginsburg on Thursday did something highly unusual for a member of the nation’s highest court: She admitted making a mistake.

“Judges should avoid commenting on a candidate for public office,” she wrote in a brief statement issued by the court, admitting her remarks were “ill advised” and expressing regret. “In the future I will be more circumspect.”

A revered figure at some of the nation’s most elite law schools since her appointment to the court in 1993, Justice Ginsburg, 83, flabbergasted many in the legal community when she called Mr. Trump a “faker,” and said she could not really imagine what it would be like if he became president.

Barry Friedman, a professor of law at New York University who describes himself as a friend of Justice Ginsburg's, said her comments were a stark example of a breach in the neutrality that justices must adhere to.

"The price you pay for being on the bench is that you withdraw from politics," Mr. Friedman said. "You need to be extremely circumspect."

Mark Tushnet, a law professor at Harvard, said Justice Ginsburg's comments reflected the divisive nature of today's politics, which had already affected the legislative and executive branches of government.

"Maybe this is an example of how hyperpolarization affects the court," he said.

In expressing her disdain for Mr. Trump, Justice Ginsburg was anything but circumspect, leading some to wonder whether, after 23 years at the court, she is looking toward a possible retirement after the presidential election.

Shana Knizhnik, the co-author of a biography titled "Notorious R.B.G.: The Life and Times of Ruth Bader Ginsburg," said the justice was well aware that her time on the bench would not last forever. But Ms. Knizhnik said she was still surprised by Justice Ginsburg's comments.

"She has always said she is going to do this job as long as she can do it full steam," Ms. Knizhnik said on Thursday. "But from an actuarial standpoint, she sees that there aren't going to be too many more elections during her tenure."

A legal advocate for most of her life, Justice Ginsburg made a name for herself when she represented the Women's Rights Project of the American Civil Liberties Union in several landmark cases before the court on issues including gender discrimination, equal protection and due process.

After serving on the United States Court of Appeals for the District of Columbia for more than a dozen years, Justice Ginsburg was elevated to the Supreme Court by President Bill Clinton in 1993, becoming the second woman to serve there. Though a stalwart of the court's liberal bloc, she was hardly a household name.

But that started to change in the last decade, as conservatives on the court more aggressively asserted their philosophy and Justice Ginsburg began reading fiery dissents.

In a 2007 case about discrimination in the workplace, she said the court “does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination.” In 2013, she said that “only an ostrich” would believe that race would not continue to be a factor in university admissions despite the court's ruling in an affirmative action case. In a religious liberty case the next year, Justice Ginsburg said the majority on the court had endorsed a radical overhaul of corporate rights.

Her dissent in that case, involving whether Hobby Lobby, the arts and crafts store chain, must provide insurance coverage for contraception to its employees, went viral on the internet, spawning Facebook memes and even a tribute song on YouTube. Ms. Knizhnik's Tumblr site, Notorious R.B.G., sells T-shirts, coffee mugs, iPhone cases and tote bags with Justice Ginsburg's face on them.

Ms. Knizhnik said the internet offered a caricature that exaggerated the liberal philosophy of Justice Ginsburg, who had formed a close personal bond with Justice Antonin Scalia, the court's most outspoken conservative before his death this year.

“The idea that she is this hyperpartisan is not true, even though certain people in political life paint her that way,” Ms. Knizhnik said. “She is very much about disagreeing agreeably.”

That may have been why her sharp-edged comments about Mr. Trump took her allies and critics by surprise. Mr. Trump lashed out at Justice Ginsburg after her comments, and she was criticized in editorials and by legal ethics experts.

“I think it’s highly inappropriate that a United States Supreme Court judge gets involved in a political campaign, frankly,” Mr. Trump said on Tuesday. “I think it’s a disgrace to the court, and I think she should apologize to the court. I couldn’t believe it when I saw it.”

He later called on Justice Ginsburg to resign, something she did not respond to in her statement.

Legal scholars said they could not remember a time that a sitting justice expressed regret publicly for something he or she said, though many justices have been known to socialize with political figures or to privately express their political preferences, only to have them reported in the media.

Justice Scalia went hunting with Dick Cheney, the former vice president, even as he participated in cases involving Mr. Cheney’s activities in government. On the night in 2000 when news networks initially reported that Al Gore had won the presidential election, Justice Sandra Day O’Connor was said to have told friends at a dinner party that it was terrible news.

Mr. Tushnet said the idea of what was acceptable political activity for a Supreme Court justice had evolved over time. In the early 1900s, it was not uncommon, he said, for justices to openly express their desire to run for

president. Charles Evans Hughes resigned his seat on the court in 1916 to run for the White House.

But norms have changed, Mr. Tushnet said. Now, Americans expect the justices to keep their opinions largely to themselves.

“My guess is that similar things occur today, but they are behind the scenes,” Mr. Tushnet said. “What’s different about this was that it was in front, on the record.”

Mr. Friedman said Americans should not be naïve by thinking that the justices do not have opinions. But he also criticized the current members of the court for being too willing to attend conferences with partisan leanings or too eager to grant interviews when they have a book to sell.

“This comment comes as a part of the culture of the justices being public figures instead of paying greater attention to the black robes they wear,” he said. “It is still their job to operate from a position of neutrality.”

A correction was made on July 14, 2016: An earlier version of this article stated incorrectly the year in which Justice Antonin Scalia apologized to reporters after a deputy federal marshal ordered them to destroy recordings of a half-hour speech by Justice Scalia at a Mississippi high school. It was 2004, not 2014.

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