Mishan Wroe, ’13, was about to say goodbye to one of her favorite professors, Aziz Huq, but stopped herself when she saw he was talking to Justice Ruth Bader Ginsburg. The Supreme Court justice had just finished a talk at the Law School and was catching up with Huq, who clerked for her in 2003 and 2004, at a reception in her honor in the Green Lounge.

Wroe didn’t think she should interrupt, but Dean Michael Schill caught her hesitation and gave her a verbal push: “You should go meet Justice Ginsburg.” So Wroe approached Ginsburg and Huq, and Huq quickly pulled her into the conversation, telling Ginsburg about the Domestic Violence Project that Wroe helped start last year. Ginsburg said she was impressed and complimented Wroe, who left the building a few minutes later with a big smile and a lifelong memory.

“She said it was great that I did that,” Wroe said, relaying Ginsburg’s reaction to the Domestic Violence Project, which offers pro bono legal aid to women who have endured violent relationships. “It’s pretty surreal to talk to her. She’s such a hero of mine.”

Many law students described that same feeling of seeing a hero in the flesh when Ginsburg visited on May 11 to speak alongside Professor Geoffrey Stone on “Roe v. Wade at 40.” Ginsburg, a longtime defender of women’s rights and reproductive rights, offered a thoughtful, nuanced view of why Roe, the landmark 1973 Supreme Court decision that affirmed a woman’s right to an abortion, was flawed. For Ginsburg, Roe was too far-reaching and too sweeping, and it gave anti-abortion rights activists a very tangible target to rally against in the four decades since.

“My criticism of Roe is that it seemed to have stopped the momentum on the side of change,” Ginsburg said. She would have preferred that abortion rights be secured more gradually, in a process that included state legislatures and the courts, she added. Ginsburg also was troubled that the focus in Roe was on a right to privacy, rather than women’s rights.

“Roe isn’t really about the woman’s choice, is it?” Ginsburg said. “It’s about the doctor’s freedom to practice … it wasn’t woman-centered, it was physician-centered.” Ginsburg’s comments criticizing Roe, unsurprising to anyone who has followed her nuanced, reasoned approaches to law, made national news in a slew of major outlets.

Stone, a longtime scholar of reproductive rights and constitutional law, and Ginsburg talked for 90 minutes...
before a capacity crowd in the Law School auditorium. The crowd was noisy and chattering before her arrival; as soon as Ginsburg was spotted walking down the aisle, it fell completely silent. She took the stage and offered a smile and a wave, prompting thunderous applause.

In his introduction for Ginsburg, Schill spoke of her ties to the Law School: her late husband, Martin, was a Visiting Professor; her son, James, attended the law school before starting a classical music record label; and, as mentioned, Huq was her clerk.

She is also a longtime friend of Stone. Both of them had front-row seats to Roe and other gender-related cases of the era. Stone was a clerk for Supreme Court Justice William Brennan during Roe and the first case Ginsburg argued before the Supreme Court, Frontiero v. Richardson (1973). In Frontiero, Ginsburg said that strict scrutiny should be applied to sex classifications just as it was to racial classifications. She could persuade only four justices to her side, but in the wake of Frontiero, the Court established a standard of intermediate scrutiny for constitutional issues of gender.

Two years before that, she wrote the brief in the 1971 Supreme Court case Reed v. Reed, which overturned an Idaho law granting men preference as estate administrators and extended the Constitution’s equal protection guarantee to women for the first time. Stone recalled watching Ginsburg’s oral argument in Frontiero, which he called “mesmerizing.” (It continues to inspire: Wroe, the starstruck student who met Ginsburg in the Green Lounge, said she listened to it as preparation for her moot court semifinals appearance, which earned an honorable mention.)

In her back-and-forth with Stone, Ginsburg offered many fascinating observations. She talked about what life was like for women in the “not-so-good old days,” when judges believed that laws restricting women from certain work, such as bartending or lawyering, were there to protect the fairer sex. Her goal as a litigator was to show judges that those rules marginalized women, rather than protecting them from harm. Back then, abortions were illegal but they were hardly unheard of, Ginsburg said. “Well-heeled” girls and women who wanted abortions had the option, because they could travel abroad. Less wealthy women had no such option.

“For most young women, the only way to deal with it was to marry him,” Ginsburg said. But then, “women began to think, why shouldn’t I be able to make this decision, this most important decision, for myself?”

Ginsburg talked about the case she wished would have been the first reproductive freedom case before the U.S. Supreme Court, Struck v. Secretary of Defense. In that case, Ginsburg represented Captain Susan Struck, who was serving in the Air Force in Vietnam when she became pregnant. The Air Force gave her two options: terminate her pregnancy or leave the Air Force. Struck wanted to keep the baby and her job, and Ginsburg took her case. The Supreme Court agreed to hear it, but the Air Force relented and allowed Struck to keep her job, rendering the issue moot.

“I wish that would’ve been the first case. I think the Court would’ve better understood that this is about women’s choice,” Ginsburg said.

In response to a student question about what would happen if Roe were overturned now, Ginsburg said the effect would largely be restricted to poor women in anti-choice states. Many states would never outlaw abortion, and wealthier women will always be able to travel to those states, she pointed out.

“If you have the sophistication and the money, you’re
going to have someplace in the United States where your choice can be exercised in a safe manner,” she said. “It would mean poor women have no choice. That doesn’t make sense as a policy.”

Brittany Gorin, ’15, asked Ginsburg what advice she has for young women taking up the mantle of the women’s rights movement. Ginsburg expressed disappointment that many young women shy away from the word “feminist” as if it is a foul word, and in the fact that young women aren’t pushing for the passage of the Equal Rights Amendment. She reminded the young women in the audience that, as Chicago Law students, they have many opportunities that most women do not have. They must work, she said, to ensure that all women have better opportunities.

“Now all the doors are open, but we haven’t come all the way,” Ginsburg said.

Afterward, Gorin said it was a thrill to ask Ginsburg a question, and that the justice’s message resonated with her. “I feel very fortunate to be privileged enough to be here, at the University of Chicago, where I get to hear a justice,” Gorin said. “We have a requirement upon us to help other people who aren’t as privileged as we are.”

Sara Haley, ’15, said she planned to use a practical tip shared by Ginsburg about writing briefs. During the talk, Stone acknowledged that he drafted Brennan’s plurality opinion in Frontiero by relying heavily on Ginsburg’s brief.

“That was always my aim,” Ginsburg responded. “When I wrote briefs I wanted to give the court something it could convert into an opinion.”

Keiko Rose, ’15, said she was inspired to listen to Ginsburg talk through complex legal ideas. “You see immediately why she’s as successful as she is, the way her brain works,” Rose said. “People like us—women law students—have so many opportunities because of people like Justice Ginsburg,” she said.

Video of Justice Ginsburg’s talk is available at http://www.law.uchicago.edu/video/ginsburg051113.