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ESSAYS

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Back in my days as a litigator, I often faced the same pre-argument dilemma: Do I invite my family or not? Plainly I would want them all there at the conclusion of a flawless performance, but what if things didn't go so well? What if I was trapped by a question from the Court, or shown up by the adversary? Embarrassing enough in a roomful of strangers. But why heighten the risk, and pressure, by bringing family?

Baldt v. Tabet was an exception. Though we had lost on summary judgment, the trial had gone well before United States District Judge Charles Tenney,[1] and I felt sufficiently confident about our client's prospects on appeal to spread the word as the date for oral argument in the Second Circuit neared. The client, my husband, my in-laws, and countless others accompanied me on that sunny and beautiful June 26, 1975, as I made my way down to Foley Square in lower Manhattan.

I cannot honestly say today—a full three decades later—that I was surprised to find retired United States Supreme Court Justice Tom Clark presiding. Surely I must have known in

* Chief Judge of the State of New York; Chief Judge of the Court of Appeals.

1. *Baldt Corp. v. Tabet Mfg. Co., Inc.*, 412 F. Supp. 249 (S.D.N.Y. 1974), *aff'd*, 517 F.2d 1395 (2d Cir. 1975) (table).

advance that he would be on my panel. But most definitely I did not know that he would be so lively, so engaging, so entertaining. As he tore into my adversary, dismembering his arguments, I had fifteen minutes of exquisite pleasure/pain—pleasure witnessing the skillful demolition of my adversary's case, pain at the prospect that the panel was merely warming up for the next round: me. Definitely a mistake to have issued all those invitations.

As my bowed and bloodied adversary took his seat, I gathered up my papers, and my courage, and moved to the lectern. Justice Clark, however, was busily chatting with his colleagues—first one side, then the other. I had just spoken the words, "May it please the Court" when he interrupted. "Counsel," he said, "it will not be necessary to hear further argument. We have decided to affirm."[2]

Wait a minute! No fair! Can I be heard on this? What about my meticulous preparation? What about my fifteen-minute presentation? What about my hand-picked audience?

In the end, I have come to believe that this was my best oral argument ever, brief and to the point: "May it please the Court. Thank you, Your Honor."

My client and family thought I was great.

2. I'm pleased to learn that the Second Circuit long ago discontinued the practice of announcing a decision at argument. Memo. from Karen Greve Milton, Cir. Exec., U.S. Ct. of App. for the 2d Cir., to Judith S. Kaye, Chief Judge, St. of N.Y., *History Inquiry about the Second Circuit* (July 21, 2005) (noting that the practice stopped "in the early 1980's" and referring to Wilfred Feinberg, *Unique Customs and Practices of the Second Circuit*, 14 Hofstra L. Rev. 297, 317 (1986)) (copy on file with Journal of Appellate Practice and Process). It's hard on "sore winners" to be sure, but far worse for the other side.