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The Picture

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THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

THE PICTURE

I have a picture of Justice Ginsburg in my office. But not the picture you're picturing. Mine features neither the jauntily tipped crown¹ nor the dark dissent collar.² It is instead an old black-and-white taken after a law-school moot court. And although this may sound unlikely to anyone reading *The Journal* today, Justice Ginsburg was not the most famous person in the group.

I see the picture every day, in the sense that I would notice if anything on that wall—the usual lawyerly assortment of licenses, certificates, and photos that no decorator would ever hang—was missing. Yet I seldom pay attention to the individual components of the arrangement because it has been together for more than thirty years. On most days, it's all just part of the wallpaper.

But I once took the picture down for a closer look after I came home from a conference at which I had noticed a familiar name in the program. To my surprise, Judge Feinberg remembered me when I introduced myself between sessions and immediately waved someone else over. “You know that picture on the wall of my chambers?” he asked her, explaining how he and I had ended up in it some twenty years before. He grinned. I grinned. And then I shook the newcomer's hand and confessed that I had the picture on my wall too.

Even my conversation with Judge Feinberg was more than a decade behind me when I took the picture down again this fall. Justice Ginsburg was coming with Nina Totenberg of NPR to

1. See, e.g., IRIN CARMON & SHANA KNIZHNIK, NOTORIOUS RBG: THE LIFE AND TIMES OF RUTH BADER GINSBURG (2015) (using Adam Johnson's crowned Justice as its cover illustration).

2. See, e.g., *RBG's Jabots Are Much More Than an Accessory*, CNN VIDEOS (Aug. 21, 2018), <https://www.cnn.com/videos/tv/2018/08/21/rbg-film-collars.cnn> (displaying the dissent collar at 00:50 on the scrubber bar).

speak in Little Rock, and knowing that I would see the Justice only from afar because thousands had registered for seats,³ I took a moment to look back toward law school instead of ahead to the evening's event. Alone in my office, seeing the younger version of myself standing with Judge Feinberg, then-Judge Ginsburg, and Justice O'Connor, it occurred to me that because the principals in that oral argument were mostly women—two on the three-judge bench and two more among the four student advocates—it might have been a first in the competition's long history. I like to think it was.

Historic first or not, arguing before that bench was a milestone for me. Yet I know that none of the little girls I saw in the audience for the Justice's talk in Little Rock will need to mark an event like it in their own lives. Ruth Bader Ginsburg's work as scholar, as lawyer, and as judge and Justice has added to American law—and so to American life—an understanding that the “full citizenship stature”⁴ once reserved solely for men is at last open to women as well.

THE ISSUE

This issue, which begins with Judge Davidson's poignant tribute to his mentor, covers a broad range of topics. Judge Lipez addresses the trend discernible in the Supreme Court's recent church/state decisions and endorses a different approach. Professors Bennardo and Chew add a report on their groundbreaking study of citation stickiness. And Dr. Tracol explains the importance of the agency boards of appeal to the

3. See, e.g., *Five Inspiring Quotes from Justice Ruth Bader Ginsburg's Lecture in Little Rock, Arkansas*, CLINTON FOUND. (Sept. 9, 2019), <https://stories.clintonfoundation.org/five-inspiring-quotes-from-justice-ruth-bader-ginsburgs-lecture-in-little-rockarkansas-5b034176e485> (reporting that Justice Ginsburg and Ms. Totenberg “spoke to a crowd of more than 13,000 people at an event hosted by the Clinton Presidential Center and Clinton School of Public Service”).

4. *United States v. Va.*, 518 U.S. 515, 542 n.12 (1996) (recognizing that speculation about women's requiring different treatment than programs designed for men can provide—extra “nurturing and support,” for example—has “attended, and impeded, women's progress toward full citizenship stature throughout our Nation's history”); see *also id.* at 532 (pointing out that “neither federal nor state government acts compatibly with the equal protection principle when a law or official policy denies to women, simply because they are women, full citizenship stature—equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities” (citations omitted)).

European Union's appellate process. Surely there is something here to pique the interest of every *Journal* reader.

NBM
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