

opinions in the lower courts. Justice Blackmun tried to create a consistent approach because the legislative and executive branches, as well as the states, were incapable of doing so.

It is not helpful, in my view, to characterize *Roe v. Wade* as “incorrectly” decided, as if there is some sort of formula or mode of reasoning that always leads to the correct result. Supreme Court decisions are the product of many factors, some of which are easy to discern, some of which require extensive analysis in long, boring articles. Originalists often disagree on issues, and there are many different brands of originalism – no one has a monopoly on the truth.

The reality is that when *Roe v. Wade* was decided it had the support of liberal and conservative, Democratic and Republican, Justices. In fact, four of the Justices in the majority were Republicans and three were Democrats. Justice Stewart, a Republican, had gone from dissenting in *Griswold* to siding with the majority in *Roe v. Wade*. Justice White, a Democrat, had gone from concurring in *Griswold* to dissenting in *Roe v. Wade*. Justice Powell, who was a conservative Republican, sided with the majority because he believed that women would seek abortions regardless of whether they were legal and he wanted them to be safe. There can be no doubt that the Justices who decided *Roe v. Wade* took the issue seriously and acted in good faith.

Over time, the composition of the Supreme Court has changed, and the current Court has the power to overturn *Roe v. Wade*, but just because it has the power, that does not mean it should exercise that power. It is fair to predict that, if *Roe v. Wade* is overturned, all hell will break loose. The supporters of *Roe v. Wade* feel as fervently about their position as its detractors.

Originalists are fond of making the argument that the proper way to create or eliminate a constitutional right is to amend the Constitution. At the present time, a constitutional right to abortion exists. If we follow originalist doctrine, the proper way to eliminate it is to amend the Constitution. While there is room for overruling decisions that are incorrect, I cannot think of any instance in which the Supreme Court has recognized a constitutional right and then taken it away. In *Plessy v. Ferguson*, the issue was whether the Fourteenth Amendment prohibited separate but equal, not whether there was a constitutional right to separate but equal (although some would argue that *Plessy* implicitly recognized a constitutional right to freedom of association).

When a right of any kind is created, people rely on it. One function of the law is to organize society in a manner that is consistent with people’s expectations. *Stare decisis* is one way of protecting people’s expectations. There can be no doubt that when the framers created the judicial branch of

government, they expected the courts to observe the principle of *stare decisis*, so maybe we can all agree that applying that principle to *Roe v. Wade* would be consistent with the framer’s intent (although I keep forgetting that, because those words do not appear in the Constitution, some originalists do not believe in *stare decisis*).

### **FBC News**

## **Reflections on the Council’s Supreme Court Admissions Trip**

**By Ellen V. Holloman**

In April 2019, it was my honor to be admitted to the bar of the Supreme Court of the United States. While that just by itself is a momentous occasion in the career of any lawyer, being admitted in the company of almost two dozen of my excellent fellow Federal Bar Council members made the experience even more auspicious and memorable. The Council also arranged for our group to meet privately with the Solicitor General and with Justice Ruth Bader Ginsburg, both of whom warmly welcomed us to practice before the Court. There are so many privileges and benefits of being a Federal Bar Council member, but perhaps the best is the opportunity to interact with the most skilled practitioners in our profession, in cordial

atmospheres and comfortable surroundings.

It may be surprising for some to learn that the application process for admission to the bar of the Supreme Court is actually quite uncomplicated: just two pages of personal, educational, and professional information, a certificate of good standing, and signature endorsements from

two other members of the bar. This fact certainly surprised me. When I was admitted to the bar of the State of New York, before electronic filing existed, I remember a detailed multi-page application that required several original signatures and affirmations, multiple letters of recommendation, my law school transcript and proof of my bar exam passage, plus a character

and fitness interview that seemed to take ages to schedule. I did all that while I was a first-year associate at Sullivan & Cromwell, when I was frankly (and needlessly) frightened of my secretary and had no idea how to ask for help.

By contrast, preparing my Supreme Court admission application took me all of five minutes and was a thoroughly affirming process: I received the enthusiastic support of the head of the Global Litigation Group at my firm, Cadwalader, Wickersham & Taft, LLP, hearty congratulations and a friendly hug from our managing attorney as she made arrangements to get my certificate of good standing, and joyous offers of support from my recommenders, two attorneys who have been guiding and mentoring me since even before the first day I was admitted to practice in New York.

As the admission date approached, I prepared myself for a solemn occasion. To my surprise, our trip was arranged less like a professional outing and more like a weekend with friends. Even before I arrived, I was delighted to see on the attendance sheet that I already knew several of the attorneys who also were being admitted from other Council functions or from simply practicing law for many years in New York. The night before the ceremony, we all gathered for cocktails with the Solicitor General before dinner. There was no podium or microphone. Instead, the Solicitor General strolled around with



The author outside the U.S. Supreme Court.

a big smile, shaking hands and introducing himself to everyone and asking about our practices. He spoke with us in detail about the inner workings of the Solicitor General's office and its relationship with the Court, and shared stories about the Justices and some of his active matters.

The next morning, we walked over to the courthouse in beautiful sunshine. When we arrived, we were promptly escorted to an elegant private conference room set up with a delicious breakfast feast, overlooking a hidden courtyard filled with spring flowers. The atmosphere was happy and convivial, with everyone's sense of excitement and anticipation growing. Over coffee and tea, I sat with other members and discussed the

progress that we have seen women make in the profession – how far we had come and how far we still have to go – and what we each are doing to contribute to that progress. The Clerk of the Supreme Court came to speak with us and informed us about the many privileges available to members of the bar, including access to the Court's library and reserved seating in the courtroom.

Finally, it was time. We arranged ourselves in alphabetical order and proceeded to the courtroom. It has been my good fortune to have submitted amicus briefs to the Court and to have attended arguments before, but I do not believe I will ever become accustomed to the courtroom. Every time, it is magnificent and awe inspiring,

adorned with flowing velvet curtains and the famous friezes depicting Moses, Confucius, and Muhammad, among many other great lawgivers of human history. The silence before the Court was called to order was palpable, and I know my heart was not the only one pounding.

As the Clerk called out "all rise" and the Justices filed in, I felt such joy and gratitude. Memories came in a rush, and I realized for the first time that it had been almost 20 years since I was first admitted to the bar in New York. After all the kerfuffle of the application process, I remember entering the stunning courtroom of the Appellate Division, First Department, on Madison Avenue, looking ahead at the justices sitting at the ornately



Photo courtesy of the U.S. Supreme Court.

carved bench, looking from side to side to see many friends and former classmates with our right hands held high, and looking back over my shoulder to see the face of my future husband, sitting in the gallery and glowing with pride as I became a lawyer. When our motion for admission was presented in the Supreme Court and my name was called, I rose and looked ahead at the Justices, around me at my colleagues and friends old and new, and then behind me at my husband, sitting back in the gallery and still smiling at me after all these years.

With the admissions motions complete, the Justices congratulated us and then rose and filed out. My last sight of the Justices leaving the bench was Justice Thomas lingering as the other Justices passed him and Justice Ginsburg approached, and

then offering her his arm as they made their way down the stairs together.

Afterwards, we reassembled in our conference room, shaking hands and laughing, and smiling for photographs. Justice Ginsburg came to address us, share advice, answer questions, and wish us good luck. Just as she leaving, she turned back and asked us “Did you notice? More women than men were admitted today.” Justice Ruth Bader Ginsburg, another of the great lawgivers, smiled as she made her way to her next appointment.

In the two years since I joined Cadwalader, which already have been filled with many happy and triumphant moments, this was an especially bright and shiny day, the fulfillment of a childhood dream and all the hopes and wishes of my family, those here and those gone, who came up from

slavery and rose out of the segregated South to become a hard-working and deeply loving American family. I am truly grateful to the Council – and especially to the tireless Anna Stowe DeNicola and Aja Stephens – for facilitating my admission, providing a seamless process from start to finish, and making beautiful memories for me.

## **FBC News**

### **The Judges Reception**

**By David B. Shanies**



On March 28, 2019, the Federal Bar Council held its annual Judges Reception at the Union League Club in Murray Hill. I was honored to host the reception with Rita M. Glavin of Seward & Kissel LLP. The Federal Bar Council, in keeping with this year’s theme of recognizing and celebrating women in the legal profession, chose to honor the women judges



At the Court with Justice Ginsburg. Photo courtesy of the U.S. Supreme Court.