

1 UNITED STATES COURT OF APPEALS
2 FOR THE DISTRICT OF COLUMBIA CIRCUIT
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5 Portrait Presentation Ceremony
6 Judge A. Raymond Randolph
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8

9 Friday, November 2, 2012

10 Washington, D.C.
11

12 PRESIDING:

13 THE HONORABLE DAVID B. SENTELLE
14

15 REMARKS:

16 THE HONORABLE CLARENCE THOMAS

17 THE HONORABLE FRANK H. EASTERBROOK

18 THE HONORABLE KAREN L. HENDERSON

19 JOHN J. CASSIDY

20 LEONARD A. LEO

21 THE HONORABLE A. RAYMOND RANDOLPH

22 REBECCA A. BEYNON
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APPEARANCES:

Chief Justice Roberts
Judge Griffith
Judge Garland
Judge Rogers
Judge Tatel
Judge Brown
Judge Kavanaugh
Judge Ginsburg
Judge Silberman
Judge Edwards
Judge Williams

UNVEILING OF PORTRAIT:

Cynthia L. Randolph
J. Trevor Randolph
Hon. Eileen J. O'Connor
Peter Egeli

P R O C E E D I N G S

1
2 THE CLERK: Oye, oye, oye, all persons having
3 business before the Honorable, the United States Court of
4 Appeals for the District of Columbia Circuit are admonished to
5 draw near and give their attention for the Court is now
6 sitting. God save the United States and this Honorable Court.
7 Be seated please.

8 JUDGE SENTELLE: Welcome everyone to the unveiling
9 of the portrait of our colleague the Honorable Arthur Raymond
10 Randolph. It is a great pleasure for me to pay tribute to
11 Judge Randolph and to celebrate his tenure on this bench.

12 Judge Randolph was confirmed by the Senate and
13 appointed to a seat on the United States Court of Appeals for
14 the District of Columbia Circuit in July of 1990. He assumed
15 senior status on November 1, 2008. Has it been that long?

16 (Laughter)

17 JUDGE SENTELLE: Judge Randolph is a graduate of
18 Drexel University and the University of Pennsylvania Law
19 School, where I must note he ranked first in his class all
20 three years. After graduating from law school he began his
21 illustrious career at the Second Circuit where he served as a
22 law clerk to the Honorable and legendary Henry J. Friendly.
23 He then went on to serve as an assistant to the Solicitor
24 General of the United States Department of Justice from 1970
25 to 1973, and from '75 to '77 as a Deputy Solicitor General.

1 From 1979 to 1980, Judge Randolph was special
2 counsel to the Ethics Committee of the U.S. House of
3 Representatives. He also served as a special assistant
4 attorney general for New Mexico, Utah and Montana. Before
5 coming to the bench Judge Randolph was a partner with the firm
6 of Pepper, Hamilton and Sheetz. I would be remiss if I did
7 not note that from 1971 to 1990, Judge Randolph argued 23
8 times in the United States Supreme Court, winning 20 of his
9 cases. Quite a record.

10 In addition to his judicial duties Judge Randolph
11 has taught courses in civil procedure, injunction and
12 constitutional law at Georgetown University Law Center and is
13 a distinguished professor of law at George Mason Law School
14 teaching first amendment law.

15 On behalf of the Court, I'm pleased to welcome today
16 Judge Randolph and his family to this happy occasion. I would
17 like particularly to recognize Judge Randolph's wife, the
18 Honorable Eileen Lee O'Connor, their son Trevor and his wife
19 Brandyn, their daughter Cynthia and her husband Andrew, and
20 grandsons Hunter, Austin and Loden. I would also like to
21 welcome Judge Randolph's and our many distinguished guests,
22 our colleagues on the Court of Appeals and the District Court,
23 judges of other courts, eminent members of the bar and Judge
24 Randolph's friends and law clerks.

25 I would particularly like to recognize from the

1 Supreme Court Judge Randolph's and our former colleague Chief
2 Justice John Roberts and our former colleagues and our
3 friends, Justice Clarence Thomas, Justice Antonin Scalia. I
4 got those in the wrong order because whoever got the book got
5 it wrong.

6 (Laughter)

7 JUDGE SENTELLE: And Justice Ruth Bader Ginsburg.
8 We also welcome Justice Samuel Alito who is not our colleague
9 on the court but our colleague in the courts.

10 For the unveiling of Judge Randolph's portrait,
11 which will be done by Judge Randolph's wife and children along
12 with the portrait artist Peter Egeli, there will be several
13 tributes to Judge Randolph. Our first speaker today will be
14 Justice Clarence Thomas of the United States Supreme Court.
15 Justice Thomas has served on the Supreme Court since October
16 1991. Prior to joining the Supreme Court, Justice Thomas was
17 our colleague here at the D.C. Circuit from 1990 to '91. It
18 is an honor to have you back with us here today. Justice
19 Thomas.

20 MR. THOMAS: Thank you Chief Judge Sentelle, members
21 of the Court, friends, family, colleagues. It's an honor to
22 be here. It's always a pleasure to be back at the D.C.
23 Circuit and it is truly an honor to play a small role in this
24 ceremony.

25 I have very, very fond memories of my time here.

1 And I especially treasure the friendships that I forged with
2 this wonderful group of judges, many of whom, of course, now
3 are senior judges. Notwithstanding all of the important cases
4 and issues that have passed through this building and have
5 been passed upon by this Court, it is the bonds of friendship
6 forged over time as we discharged our collective and
7 individual duties that endure and take the dominant place in
8 my memories of my time here.

9 My tenure here at the D.C. Circuit was much too
10 brief and unfortunately the time that Judge Randolph and I
11 served together was even briefer. He and Judge Karen
12 Henderson arrived in the summer of 1990, a few months after I
13 did. I attended their investitures in this room. I
14 immediately grew fond of them and cherished the thought of
15 spending a long career with these two outstanding judges. But
16 that was not to be for some reason.

17 (Laughter)

18 MR. THOMAS: But given the small size of the D.C.
19 Circuit and the luxury it has of being situated in one place
20 it is not hard to quickly get to know someone with whom you
21 work. And so I quickly got to know Ray and found him to be a
22 good man. He is pleasant and engaged. He tells a really good
23 story. Something reminiscent of so many wise and thoughtful
24 people I have met over the years. And, he distinguished
25 himself early on as an intense, critical and independent

1 thinker.

2 Ray and I had not crossed paths before our service
3 together on this Court. But I immediately knew that I liked
4 him when I heard from one of his law clerks that first year
5 how he conducted himself during the American Bar Association
6 rating process upon his nomination to the D.C. Circuit. Of
7 course, that was a process that I have grown to love.

8 (Laughter)

9 MR. THOMAS: As many of you know the ABA rates
10 nominees to the bench. Part of the review process involves an
11 interview with the ABA representative. During the course of
12 Ray's interview, so I was told, the representative noted that
13 others, unnamed, who had been asked about Ray (I'm going to
14 lose this sheet of paper here) asked for comments about Judge
15 Randolph had said that or then nominee Randolph had said that
16 he didn't suffer fools lightly.

17 (Laughter)

18 MR. THOMAS: Not missing a beat but with just the
19 right amount of humor and irreverence Ray replied, and I clean
20 this up, what dang fool told you that?

21 (Laughter)

22 MR. THOMAS: Demonstrating judicial temperament.

23 (Laughter)

24 MR. THOMAS: Somehow I suspect that answer did not
25 endear him to the raters. But that is classic Ray, weaving

1 together the crispness, wit, humor and candor that marks his
2 opinions. He's a brilliant man who enjoys learning new
3 things, science, history or an intricate legal problem or
4 issue. And one merely has to read his opinions to see that he
5 is a gifted, elegant writer.

6 I am told that he liked to play chess with his law
7 clerks and he has been known to play three at one time.

8 (Laughter)

9 MR. THOMAS: Routinely beating them often in very
10 few moves. Now there is some question whether the law clerks
11 intentionally lost out of self-interest.

12 (Laughter)

13 MR. THOMAS: Or perhaps self-preservation.

14 (Laughter)

15 MR. THOMAS: Now I note for the record since I know
16 this is recorded, that I personally do not harbor such doubts
17 or questions.

18 (Laughter)

19 MR. THOMAS: Judge Randolph loves his family. He
20 loves the law. He loves our country and understands what it
21 should stand for. He knows well that if we are to keep this
22 republic the rule of law must prevail and it must be right,
23 not in one case but in every case. The passion that drove Ray
24 to excel academically and athletically at challenging schools
25 and in the tough sport of wrestling also drove him to get the

1 law right. It is this passion and the recognition that the
2 law does not exist of isolation but rather as a critical part
3 of the fabric of our country that I saw in our early
4 conversations and our work together. And you can see that so
5 clearly from all of his work and his opinions on this Court.

6 I have been taught that a job well done is its own
7 reward. Yet, I still would like it remembered that some did
8 it better than others. And Ray is one of those who did it
9 better than others. When I attended these ceremonies in my
10 early years as a judge they were just nice ceremonies. I had
11 not journeyed with those good men and women being honored,
12 though I respected them and enjoyed getting to know them. But
13 Judge Randolph and I started this shared enterprise of judging
14 together as strangers. Now more than two decades into our
15 journey we sit here today as friends. So, unlike the early
16 years this ceremony today takes on a sincere and profound air
17 of a shared journey and of mutual affections.

18 And so Judge Randolph, it is an honor to be here
19 with you, your wonderful wife Lee and your family and friends
20 to celebrate the unveiling of your portrait. I am deeply
21 grateful for your service and your friendship, and I would
22 hope that in the years to come those who followed you here
23 will look at this portrait and know that this Judge, this good
24 man did his job, did it right and did it well. Thank you.

25 (Applause)

1 JUDGE SENTELLE: Slightly longer, but thank you
2 Justice Thomas. Thank you for coming and for your remarks.
3 It's a slightly longer lead in to our next speaker who is not
4 here. You may have read that there have been some unpleasant
5 events in air travel recently. Judge Frank Easterbrook, the
6 Chief Judge of U.S. Court of Appeals for the Seventh Circuit
7 was expected to be here and he expected to be here. The
8 airlines had different plans for him. So after some attempts,
9 we now have it lined up that he is to speak by telephone. If
10 he fails, if the hookup fails I have to read his remarks. So
11 I am very intensely hoping that this works.

12 (Laughter)

13 JUDGE SENTELLE: Chief Judge Easterbrook joined the
14 Seventh Circuit in 1985. He served as Chief Judge since 2006.
15 Welcome to the D.C. Circuit, Judge Easterbrook. Punch the
16 button and we'll listen.

17 JUDGE EASTERBROOK: Chief Justice, Chief Judge
18 Sentelle, ladies and gentlemen. I very much wanted to be in
19 D.C. among friends for Ray's painting. But after boarding
20 airplanes twice today only to have the flight cancelled for
21 mechanical reasons, that just hasn't worked out. So you'll
22 have to settle for my voice and I will have to settle for
23 memories rather than good company.

24 I met Ray Randolph in 1975 when he rejoined the
25 Solicitor General's Office after a gap of two years. From

1 1970 to '73 he had been an assistant with Solicitor General
2 Griswold. He returned as a Deputy to Solicitor General Bork.
3 His return was met with some skepticism in Washington. What
4 distinction did he bring to the office? The Washington Post
5 ran an article declaring that Solicitor General Bork fired
6 Archibald Cox the office no longer could attract a good staff.
7 The incoming Deputy Solicitor General Randolph was exhibit
8 one. Exhibits two and three were the new assistants who had
9 arrived in fall 1974 fresh from fellow clerkships. The SG's
10 Office, the Post told its readers, used to be able to hire
11 accomplished appellate advocates. Now all it could get was a
12 1969 graduate of Penn as a deputy and two novices as
13 assistants. Oh by the way, the two novices were Robert Wright
14 and me.

15 (Laughter)

16 JUDGE EASTERBROOK: Combine this with the previous
17 years undistinguished hires and you can see the depth into
18 which the office had fallen. The previous years
19 undistinguished hires were Paul Friedman and Danny Voth. Yes,
20 hard times indeed for the SG's office.

21 (Laughter)

22 JUDGE EASTERBROOK: Burdened by the likes of Bork,
23 Randolph, Friedman, Voth, Price and Easterbrook. Perhaps it's
24 just a coincidence that five of the six became federal judges
25 and the sixth a member of the cabinet. But the office at the

1 time was a collection of extraordinary people, and Ray
2 Randolph a star among them.

3 Ray and I worked together on many cases from Gregg
4 against Georgia which restored the constitutionality of
5 capital punishment after Thurmond, to Buckley against Valeo,
6 which settled all constitutional issues about the regulations.

7 (Laughter)

8 JUDGE EASTERBROOK: Oh, I'm sorry, did I say settle?
9 Well, it was 294 pages long, so that resolved those issues.
10 The Buckley in that case by the way was Senator James Buckley
11 later a member of this Court. Small world. Deputy Solicitor
12 General Randolph had a big problem preparing the Buckley
13 brief. His problem was that his brief designed to convey to
14 the justices to view the regulation of political speech
15 necessarily violates the First Amendment was going to be filed
16 the same day as another brief. Ray's was for the United
17 States' amicus curiae. The other brief was for the Federal
18 Election Commission as defendant.

19 Both briefs were to be signed by Attorney General
20 Levy and Solicitor General Bork, yet they would urge different
21 positions without being blatantly contradictory. That
22 requires more than a little finesse. Ray pulled it off
23 splendidly and several justices later complimented the office
24 on how helpful they found it. But I think this may have been
25 the last time that either Ray or I were accused of finesse.

1 (Laughter)

2 JUDGE EASTERBROOK: When he was not dealing with
3 grand constitutional issues, Ray's portfolio as Deputy
4 Solicitor General included natural resources. Some concerned
5 the environment while others concerned the government's
6 ownership. He argued many of these. The Justices
7 acknowledged Bob Bork as the premier orator at the time, but
8 they admired Ray's work as well. He achieved his goals by a
9 combination of humor and reduction to the absurd. I'll give
10 one example of each.

11 If the Federal Election Campaign Act is among the
12 more momentous acts of the 20th century, the Wild, Free
13 Roaming Horses and Burros Act is among the least.

14 (Laughter)

15 JUDGE EASTERBROOK: That statute protects feral
16 horses and burros on federal land. But those critters often
17 roam on to private land. A federal court declared the act
18 unconstitutional as an infringement of rancher's property
19 rights and the United States took the dispute to the Supreme
20 Court. Ray elected to argue the case himself. All questions
21 of constitutional theory to one side, it was inevitable some
22 justices would be interested in what ranchers did with the
23 animals that they shot or captured. Ray came prepared.

24 Justice Brennan asked the question. Here's what Ray
25 replied and I quote "well, they were used for dog food. They

1 could be used as fertilizer. They were used as pets and they
2 could be used for donkey basketball teams."

3 (Laughter)

4 JUDGE EASTERBROOK: The donkey basketball answer
5 went down in office lore.

6 (Laughter)

7 JUDGE EASTERBROOK: To this day I don't know where
8 Ray found that tidbit but he knew it, the justices were
9 impressed and the court ruled unanimously in Ray's favor.

10 (Laughter)

11 JUDGE EASTERBROOK: As for reduction to the absurd,
12 environmental groups who opposed the mining of coal on federal
13 land in Montana's outer river basin challenged the
14 environmental impact statement that the Department of the
15 Interior had prepared. The statement had analyzed the effect
16 of allowing mining on the land the U.S. had deeds to or was
17 contemplating leasing. The Court of Appeals found this
18 inadequate because in its view a different area, a more
19 natural one for analysis. The problem with that approach by
20 the Ninth Circuit natch, was that there are dozens or hundreds
21 of areas that could have been analyzed. No matter what
22 boundary Interior drew, Judges could say that they should have
23 done something else.

24 Well how best to demonstrate that to the court? Ray
25 did something that every appellate advocate is told not to do.

1 He showed up for oral argument in the Supreme Court with
2 demonstrative aids. He had the Department of Justice's
3 graphic staff prepare a map of the outer river basin plus a
4 series of acetate overlays. One showed the area, the
5 environmental impact statement had analyzed. Another showed
6 the area that the Ninth Circuit insisted a new area analyzed,
7 a third showed a possible area and there was a fourth, and a
8 fifth and a sixth, each of which had a logical claim to be the
9 best area. Ray had a large display on an easel with him and
10 he passed out small versions so that each justice could flip
11 along as he showed them why the Court of Appeals would put off
12 mining forever by allowing any district to be second guessed.
13 The approach worked, winning admiration and seven votes for
14 reversal.

15 Another of Ray's famous arguments came in United
16 States against Chadwick where Justice Blackman berated Ray for
17 taking an extreme position. Justice Blackman actually used
18 the word extreme four times. Like many cases presented by the
19 SG the goal in Chadwick was to win an important precedent not
20 just a victory over Chadwick. Ray kept at it in the face of
21 great resistance. He won the case but lost the larger point.
22 A decade later the court overruled Chadwick and adopted the
23 position that Justice Blackman had labeled extreme. The
24 author of the overruling decision, Justice Blackman.

25 (Laughter)

1 JUDGE EASTERBROOK: The winning line of argument,
2 the one Ray Randolph had presented in 1977.

3 I could keep this up all afternoon, but the time
4 has come to pass to other speakers who will cover other
5 aspects of Ray's distinguished career. Ray, my thanks for
6 confounding The Washington Post. You were a distinguished
7 advocate, a great colleague in the SG here and are today a
8 distinguished judge and a fine friend.

9 (Applause)

10 JUDGE SENTELLE: Thank you, Judge Easterbrook for
11 your remarks and for your heroic efforts to be here with us.
12 I would now like to take pleasure in introducing our esteemed
13 colleague, the Honorable Karen LeCraft Henderson. Judge
14 Henderson has served as one our colleagues on this Court
15 since 1990. Judge Henderson blazed the trail for Judge
16 Randolph. She received her commission a full eleven days
17 before he did. Judge Henderson.

18 JUDGE HENDERSON: Mr. Chief Justice, Chief Judge
19 Sentelle, Justice Scalia, Justice Thomas, Justice Ginsburg,
20 Justice Alito, Chief Judge Easterbrook wherever you are,
21 ladies and gentlemen. I'm indebted to Judge Randolph for
22 including me in the program today. But my debt to Judge
23 Randolph goes back more than 22 years for the cover he gave
24 me before we even met.

25 We were both nominated together to the court in the

1 spring of 1990 as you have heard. And The Washington Post
2 reported on it by quoting a former D.C. bar president who
3 said, my preference would be for people who come from the
4 D.C. bar. There is no need to import people. But he then
5 added that all important caveat, if the administration also
6 nominates a veteran D.C. lawyer, read Ray Robbins Randolph,
7 then we have made progress.

8 How does a lawyer become a judge? Often it's a
9 matter of being in the right place at the right time. Not so
10 for Judge Randolph. His appointment seems to have been
11 written in the stars. It began with his college wrestling
12 career which our late colleague Spottswood Robinson said made
13 him almost uniquely qualified to be a judge.

14 (Laughter)

15 JUDGE HENDERSON: Then after law school he became a
16 law clerk to the iconic Henry Friendly, as you've heard,
17 whose fame comes in no small part from his stable of super
18 performing former law clerks, two of whom are also here, the
19 Chief Justice of course and Judge Merrick Garland.

20 As if our auspicious beginning were not enough of a
21 preordination, he then had the opportunity that many of us
22 would have given almost anything to have, that is working for
23 several years with the Honorable Robert H. Bork whose
24 contributions and devotion to our beloved country have
25 inspired multiple generations. This is not to say that a

1 judicial career was any kind of a default profession for
2 Judge Randolph; far from it. He could have been a
3 professional golfer. He's an avid fly fisherman, a dedicated
4 naturalist and especially an accomplished artist. And I hope
5 his portraitist, Mr. Egeli has seen some of his water colors
6 in his chambers. They are beautiful.

7 I want to take a brief stroll down memory lane
8 these past 22 years. Our chambers were next door for 16
9 years. Being next door neighbors lets you share things that
10 might not seem like milestones at the time, but looking back
11 that's what they were. We both began with secretaries named
12 Judy. Judge Randolph's Judy, Judy Karper (phonetic sp.),
13 retired way too early. But Bonnie Hoffman (phonetic sp.) has
14 been his strong right arm ever since.

15 I remember in the mid 1990s Judge Randolph often
16 jogged on the mall. Then one day he ran with his then
17 teenage daughter Cynthia. Afterwards he remarked with
18 puzzlement, she almost beat me.

19 (Laughter)

20 JUDGE HENDERSON: But now she and her husband have
21 made him a doting grandfather. I remember his pride in his
22 son Trevor's golf trophies. He must have his dad's DNA. And
23 now Trevor and his wife have again given him and Lee two more
24 grandsons.

25 And speaking of Lee, I remember September 11th,

1 when Judge Randolph and I were in court. I handed him the
2 note that Judge Rogers had passed to me from her clerk that
3 said, and I can remember it verbatim, they bombed the
4 Pentagon, they bombed the Old Executive Office Building which
5 turned out to be a mistake thankfully. You can see the smoke
6 from Pennsylvania Avenue. And Judge Randolph rushing from
7 the courtroom to call main Justice and make sure that Lee,
8 who was in charge of the tax division at the time, was safe.

9 Judge Randolph served for five years on the
10 Judicial Conferences Committee on Judicial Conduct, three as
11 chairman. And that's not a token position. On a daily basis
12 he fielded calls from judges all over the country who wanted
13 to check their ethics. He got a phone call from me once when
14 I had the chance to throw out the first pitch at Camden
15 Yards. I thought I'd better check because the owner was a
16 lawyer and so I called him at home. And after I told him
17 what I planned to do there was silence. And then he said in
18 a growl, how did you get to do that?

19 (Laughter)

20 JUDGE HENDERSON: His membership on that committee
21 is just one example of his unflagging dedication to the
22 judiciary as an institution. When he took senior status our
23 court lost the input, at least a full time input of one of
24 its greatest institutional guardians. A word or two about
25 his courtroom style. Anyone who sat with him, argued before

1 him or just been in the courtroom when he's been on the bench
2 will be familiar with the scene I'm about to set.

3 He sits quietly and allows counsel to make the
4 first five minutes or so of his argument. Then he asks in a
5 benign voice that belies what's coming, counsel, are you
6 familiar with the Supreme Court decision X versus Y? Counsel
7 often is not. And then in that same quiet voice Judge
8 Randolph says, well it completely destroyed your argument.

9 (Laughter)

10 JUDGE HENDERSON: His voice is never raised.
11 There's no bullying tone. There's no gotcha look. He
12 engages counsel in a few minutes of discussion and then sits
13 back and you know that another Randolph arrow has hit its
14 mark. But to me his courtroom style demonstrates first, that
15 he's whip smart. That's a given. Second, his exhaustive
16 preparation, of course, but more than anything his
17 professionalism. He is all business and the business is
18 reaching the right decision. His focus is on getting that
19 decision right above all.

20 But he can also surprise you with what's on his
21 mind. In the early 1990s when the sentencing guidelines were
22 fairly new and mandatory we had a raft of drug cases
23 involving what was called the escalating street scene.
24 Invariably there was expert testimony from an NPD officer
25 about the typical drug bust. The transcripts began to

1 contain the name of only one officer, Detective X. One day
2 Judge Randolph unexpectedly began to cross-examine the AUSA.
3 I've sat on countless cases he said where Detective X has
4 testified as an expert drug officer. When was the last time
5 he made an arrest? When was he last on the street? For the
6 last five years by my calculation he's been in court. I
7 never saw another transcript where Detective X is mentioned.

8 (Laughter)

9 JUDGE HENDERSON: But it is his opinions that paint
10 the clearest picture of Judge Randolph. One of the first
11 ones back in 1990 involved the KKK who wanted to march from
12 the Washington Monument to Capitol Hill. He wrote, the KKK
13 needs more than a permit to march down Constitution Avenue.
14 It needs police protection and plenty of it. I thought then
15 and still do, he writes like John Wayne speaks.

16 (Laughter)

17 JUDGE HENDERSON: Consider his dissent a few years
18 later in U.S. Postal Service v. National Association of
19 Letter Carriers where the majority had ordered the post
20 office to disclose its employees' personal information to the
21 union. Judge Randolph wrote, ask and ye shall receive so
22 long as ye happen to be the National Association of Letter
23 Carriers asking for information about the private lives of
24 240,000 postal service employees, 60,000 of whom are not even
25 union members. It is no small wonder that my colleagues

1 sustained this wholesale invasion of privacy on the basis of
2 a regulation issued under, of all things, the Privacy Act.

3 Consider a couple of one liners regarding
4 administrative law, our Court's specialty, quote "no principle
5 of administrative law compels an agency to respond to
6 gibberish."

7 (Laughter)

8 JUDGE HENDERSON: Or this from a dissent in a case
9 applying a FOIA exception to a statute that was no longer in
10 effect. Quote "the statute has expired but its legislative
11 history is good law."

12 (Laughter)

13 JUDGE HENDERSON: Alice once encountered a
14 comparable phenomenon. Well, I've often seen a cat without a
15 grin she said, but a grin without a cat?

16 (Laughter)

17 JUDGE HENDERSON: That's the most curious thing I
18 ever saw in all my life.

19 And in case you think his dissents don't carry
20 weight, consider U.S. v. Crowder, an important criminal case
21 where the en banc court decided that the Government's 404(b)
22 bad acts evidence could be short circuited by the defendant's
23 stipulation. Judge Randolph wrote for the four dissenters
24 ending with this timeless caution. "We sit here in the peace
25 and quiet of appellate chambers unencumbered by the time

1 pressures of trials, assisted by a bevy of able law clerks
2 studying a written record of who said what, surrounded by
3 volumes of law books, computers close at hand. Before we
4 start devising the procedural rules for the conduct of trials
5 and the government's trial strategy, you ought to remember
6 that our rules will have to be administered in far different
7 setting without many of the advantages we appellate judges
8 enjoy."

9 Well the Supreme Court heard him; reversed our court
10 and remanded. And, of course, Judge Randolph wrote the
11 subsequent majority opinion. I wish there were time to
12 discuss some of his 400 plus majority opinions which have the
13 same directness as his dissents but with a slightly subtler
14 tone. Shakespeare could have been describing Judge Randolph's
15 opinion where he wrote, every man has his fault and honesty is
16 his. For me their hallmark is their allegiance to stare
17 decisis. When Judge Randolph and I went to law school we were
18 taught the older the case the better the authority. How or
19 why that changed I don't know but Judge Randolph, thankfully,
20 has not.

21 In the areas of criminal law, in the First Amendment
22 especially, and more recently the long war, as applied to our
23 war with stateless terrorists, his opinions in the long run
24 will endure. The best description of Judge Randolph's
25 jurisprudence, for me, comes from a personal memory. My late

1 father-in-law practiced law in the northwest corner of North
2 Carolina for several decades. And a great deal of his
3 practice involved land transactions and of course that mean
4 title searches. If you've ever searched a title it requires
5 precision and doggedness. And they said about him while he
6 was alive and still do, if you don't have to search a title
7 further back than Hope Henderson, because you know that title
8 is clear.

9 And when I pulled out a Randolph opinion I know that
10 authority is clear. It is also complete and correct. I close
11 with an allusion to that epic battle, excuse me, cattle drive
12 told in Lonesome Dove that the two former Texas Rangers,
13 Augustus McCrae and Woodrow Call made in the 1870s. It began
14 in the Texas border town of Lonesome Dove and ended over a
15 thousand miles north in Montana several months later. They
16 faced Indian attacks. They crossed snake infested rivers.
17 They encountered horse thieves, stampedes, lizards, droughts.
18 And when they made it Augustus summed up their journey which
19 had taken 800 pages to recount in just four words. He turned
20 to his old friend and said, Woodrow, quite a party.

21 (Laughter)

22 JUDGE HENDERSON: Judge Randolph, quite a party.

23 (Applause)

24 JUDGE SENTELLE: Thank you, Judge Henderson. Having
25 been one of at least three or four people present who saw that

1 first pitch thrown out at Camden Yards, the world may have
2 lost a great left-handed pitcher when she became a judge. The
3 next speaker will be John Cassidy who has been a close family
4 friend of the Randolphs for over 40 years serving as godfather
5 to Judge Randolph's children. On the professional front Mr.
6 Cassidy is a partner with the law firm of Baker Botts here in
7 Washington. In that capacity Mr. Cassidy has served as the
8 leading attorney and advisor for NASCAR, arranging for Justice
9 Thomas to be the starter for a Daytona 500.

10 That distinguishes you greatly for those of us from
11 North Carolina. Welcome Mr. Cassidy.

12 MR. CASSIDY: Thank you. He is indeed one of the
13 best fans NASCAR has ever had.

14 (Laughter)

15 MR. CASSIDY: Chief Justice Roberts, distinguished
16 Justices, Chief Judge Sentelle, the distinguished judges of
17 this and other courts, the Randolph family, former and current
18 law clerks, friends, it is an honor indeed to be a part of the
19 ceremony for the unveiling of Judge Randolph's portrait.

20 I will not presume to add to the remarks of Judge
21 Henderson, Justice Thomas or Judge Easterbrook with respect to
22 Judge Randolph's outstanding contribution to this bench.
23 Frankly, that would be indeed too hard an act to follow as
24 they have each spoken eloquently. Rather, I choose to address
25 on behalf of the Judge's many friends and colleagues some of

1 Judge Randolph's other achievements.

2 The very same qualities of character, intellect and
3 mental acuity that are at the heart of the previous speakers'
4 remarks have also brought the Judge substantial other
5 accomplishments throughout his life. These qualities and
6 achievements paint yet another portrait of Judge Randolph in
7 addition to the one that will be unveiled here today.

8 Judge Randolph, who is known among his colleagues,
9 and I believe already it's been referred to, his intensity
10 that he brings to everything that he undertakes. He brought
11 the same intensity to the private practice of law when he left
12 the Solicitor General's office to join a small firm that Jack
13 Miller, who is no longer with us, and I had formed in
14 Georgetown. Our firm became known as Miller, Cassidy, Larroca
15 and Lewin and we attracted a number of bright young attorneys
16 and more than a few of them were former clerks on the Supreme
17 Court, on this bench as well as other courts of appeals.

18 Judge Randolph was truly in his element and quickly
19 developed a fondness for litigation especially white collar
20 criminal litigation. And with the permission of the Judge,
21 one of his finest examples of prowess as defense counsel was
22 the representation that he and Jack Miller undertook of former
23 Attorney General Richard Kleindienst. They took this
24 representation and came up with what appears to be a very
25 simple solution but they managed to address a very serious

1 question. Mr. Kleindienst was under investigation by the
2 special prosecutor Leon Jaworski for testifying falsely at his
3 confirmation hearing before the Senate Judiciary Committee.

4 The year was 1974. We were in the midst of the
5 horror of the Watergate scandal. The special prosecutor
6 called over and asked that the Judge and Jack Miller come see
7 him, and they went to see him. And he sat with his staff and
8 he showed the Judge and Jack a draft indictment. A draft
9 indictment that charged Kleindienst with 60 counts of perjury.
10 Believe you me, that's a daunting charge for even the most
11 stout of heart.

12 Now before you can talk about perjury before a
13 Senate committee you must be able to prove there was a quorum
14 present. So when the Judge and Jack Miller returned to the
15 office the first thing they thought of was what if there was
16 not a quorum. And with that they started digging through the
17 files. Unfortunately, the transcript said that every single
18 member of the committee had been present during the testimony.
19 Undaunted the Judge and Miller said, well look, why don't we
20 make sure the transcript is correct. And they both had this
21 similar view of digging into records which really pays off.

22 The Judge checked with the reporters. They told him
23 that in preparing transcripts for the Senate Judiciary
24 Committee, the committee members were routinely marked as
25 present for the entire hearing so long as they showed up once

1 during the hearing, even if for one minute. The reporters
2 actually had no idea if a quorum had been present when
3 Kleindienst testified. The hearings in those days were
4 neither videotaped nor televised, so that was not a resource.

5 While that was encouraging, there was another
6 problem though. The Judge had learned that for many years the
7 Senate committees at the beginning of each session of Congress
8 had adopted a one man quorum rule. Did this defeat their
9 quorum defense? Just to be sure the Judge checked to
10 determine whether the Senate Judiciary Committee had adopted
11 the one man quorum rule for the session in question. To his
12 great surprise the Judge determined of all the Senate
13 committees in that session of Congress only one had forgotten
14 to properly adopt the one man quorum rule.

15 (Laughter)

16 MR. CASSIDY: And that committee was the Senate
17 Judiciary Committee. By statute all committee rules must be
18 published in the Congressional Record to become effective and
19 the committee had simply failed to publish that rule for that
20 session.

21 While an oversight, that meant that instead of a one
22 man quorum rule, which the prosecutor was relying upon, the
23 Senate general rule had to be applied, and that rule did not
24 provide for a quorum of one. So, Miller and the Judge went
25 back to see Mr. Jaworski and his staff who was fully expecting

1 that Miller and the Judge would offer a plea to one or two
2 counts of the 60 counts of perjury. Instead, the Judge and
3 Miller announced to all assembled that they had a complete
4 defense. There was no quorum.

5 Now that, you know, it sounds simple but the
6 simplicity of it absolutely worked. It's the kind of defense
7 a sophisticated legal mind like Judge Randolph's and a
8 practical legal mind that Jack Miller had would come up with.
9 And they made a wonderfully great and powerful team.

10 One of Miller's favorite mottos in the practice was,
11 anyone, anyone can go to the merits.

12 (Laughter)

13 MR. CASSIDY: And believe you me, this was a case
14 that you would not want to go the merits.

15 (Laughter)

16 MR. CASSIDY: As a result, the prosecutor accepted a
17 plea by Kleindienst to a misdemeanor charge of failing to
18 testify accurately. There is such a misdemeanor. It took a
19 while to find it. And he was fined \$100 and given a 30-day
20 suspended sentence. Now that is great lawyering and he was a
21 partner to it. And it's just one example of the zealous
22 effect of advocacy that Judge Randolph afforded his clients
23 when he was in the private practice.

24 The Judge has many and varied interests beyond the
25 law. Just as Judge Henderson said, he's mastered many things

1 using the same abilities and intensity that he does on this
2 bench and in the private practice of law. He is a masterful
3 painter of water colors and for those of you that do art,
4 water colors are very demanding. He's a wonderful cook.
5 While I understand Judge Sentelle is good at chili, this man
6 is very good at pasta and many other very challenging dishes.
7 He's a great gardener. He's terrific at golf; never given a
8 stroke a hole. But what I like the best is his ability at
9 trout fishing.

10 When the Judge who was only with us in our small
11 firm for a couple of years, but when he left and returned to
12 the Solicitor General's office as Deputy, Jack Miller and I
13 gave him a trout rod and a reel because he had been musing
14 about taking up trout fishing. I truly thought that he
15 thought that was somewhat judicial.

16 (Laughter)

17 MR. CASSIDY: He had his mind set. But in his own
18 way he rapidly took on to trout fishing and he became the
19 quintessential Isaac Walton, in a flash he explored every nook
20 and cranny of the beautiful limestone streams in Pennsylvania
21 and went on to fish some of the wonderful streams out west.
22 But he didn't stop there. He went further. He became a
23 virtual entomologist, studying insects and their habits
24 especially the ones that trout favored the most.

25 I once went over to the Judge's house and he was in

1 the back yard down on all fours looking at something in the
2 grass. So I kind of tiptoed up and I said, are you all right?

3 (Laughter)

4 MR. CASSIDY: And he said yes, I'm studying the
5 colonies of ants in my back yard. Now I immediately knew what
6 he was really doing. What he was really doing is studying the
7 habits of ants so he could tie a better trout fly and
8 replicate it in a very natural fashion. And a nice big brown
9 trout favors nothing more than to see an ant kind of swim by
10 on top of the water just above his hideout. And hence, the
11 reason for the study of ant colonies.

12 Last and most important of all, the Judge's love of
13 life has brought him and Lee a wonderful family. Their
14 children, Cynthia and Trevor, have provided them with lovely
15 grandchildren, Loden, Austin, Hunter, and as a result the
16 Judge has become a grandfather. If I know the Judge he will
17 become the grandfather of all grandfathers to his
18 grandchildren.

19 (Laughter)

20 MR. CASSIDY: In closing, from all your friends,
21 well done. Well done indeed. Now take some time to enjoy
22 your wonderful grandchildren and catch that big brown trout
23 with one of those ant trout flies that you have done.

24 (Applause)

25 JUDGE SENTELLE: Thank you, Mr. Cassidy. I'm now

1 pleased to introduce to Leonard Leo, Executive Vice President
2 of the Federalist Society for Law and Public Policy Studies.
3 Mr. Leo served as one of Judge Randolph's first law clerks
4 during the 1990-91 term. Welcome Mr. Leo.

5 MR. LEO: Thank you. Mr. Chief Justice, Justices of
6 the Supreme Court, Chief Judge Sentelle and may it please the
7 Court.

8 The Honorable A. Raymond Randolph, Deputy Solicitor
9 General of the United States under Robert Bork, argued 23
10 cases before the U.S. Supreme Court winning all but two. Key
11 defense lawyer in the Watergate hearing cases. Law clerk
12 himself to the great Henry Friendly. It is this imposing set
13 of achievements that race through my mind as Judge Randolph
14 and I began our very first meeting to review the cases for his
15 first round on the circuit.

16 There I was sitting on a small hardback chair in
17 front of a desk that seemed larger than my kitchen at the time
18 in a dark wood paneled office that was Judge Bork's before and
19 balancing a large stack of case files overstuffed with briefs.
20 Feeling as though I was living out a scene from the Paper
21 Chase, one other thought raced through my mind. Am I really
22 ready for all of this? And how could you fully be as a young,
23 inexperienced lawyer recently out of law school. We delved
24 into the first case. The Judge recites from memory an
25 argument on a page deep in the appellant's brief. I fumble

1 about trying to find the section. But the Judge has already
2 critiqued the point and rattled off a couple of Supreme Court
3 cases not cited in the brief.

4 We delve into the second case. The Judge asks, have
5 you reviewed the record below? As I reach for the joint
6 appendix the Judge continues, not just what the parties gave
7 us, the whole record. You need to pull the whole record from
8 the District Court. I am doomed.

9 (Laughter)

10 MR. LEO: That is all I could think.

11 (Laughter)

12 MR. LEO: But in the days and weeks that followed I
13 adapted. Out of the necessity of serving an extraordinarily
14 smart and articulate judge who rightly demanded much, I began
15 to learn how to be a real lawyer, a better communicator and a
16 more refined writer, although never as fine a writer as Judge
17 Randolph. I finally began learning the craft that law school
18 is supposed to prepare us for.

19 And as the fall turned to winter and the months
20 progressed, I learned something more. Judge Randolph is not
21 only a superb lawyer and judge, he is a very good man. Like a
22 father he pressed for excellence in us clerks out of a spirit
23 of charity not simply to produce work product. His colorful
24 and exciting stories often left me with a clear sense of his
25 commitment to integrity, honesty and perseverance. It is

1 abundantly clear that through his love of literature, science,
2 nature, photography, and water color painting, he sees beauty
3 in the world. That twinkle you would see in the Judge's eye
4 when he spoke of his wife Lee and his children Trevor and
5 Cynthia were the mark of a kind, devoted father and husband.
6 And his quiet solitary excursions of fly fishing and golfing,
7 though they certainly show his healthy spirit for mastering a
8 skill, are just as amply the mark of a man who knows there is
9 more to life in our nation's capital than being seen at
10 cocktail parties or being seated at the most coveted places at
11 fancy banquets and meals.

12 As we soon glance upon this portrait today and in
13 the future, we should remember that Judge Randolph has been a
14 great servant to our nation, but also God's good and faithful
15 servant. Thank you, Judge Randolph for helping your family of
16 clerks to strive for that too.

17 (Applause)

18 JUDGE SENTELLE: And now we'll hear from one more --
19 thank you, Leonard. Now we'll hear from one more of Judge
20 Randolph's clerks, Rebecca Beynon, a partner at Kellogg,
21 Huber, Hansen, Todd, Evans and Figel. Ms. Beynon served as
22 one of Judge Randolph's law clerks during the '94-'95 term and
23 on behalf of Judge Randolph's clerks she will present the
24 portrait. Ms. Beynon.

25 MS. BEYNON: Good afternoon, and may it please the

1 Court. I am so pleased to be here today to present Judge
2 Randolph's portrait on behalf of the law clerks to the Court.
3 I wanted to take just a few minutes to express on behalf of
4 the clerks what a tremendous privilege it was to begin our
5 careers under Judge Randolph's guidance.

6 I'm not going to dwell on his jurisprudence or
7 recite a list of his most important opinions. Instead I'd
8 like to take a few minutes to relate a few selected memories
9 shared by many clerks from that year of working for Judge
10 Randolph. I hope that these anecdotes will shed some light
11 and give some insight on to the way in which Judge Randolph
12 has helped us shape and mentor a generation of nearly 70 law
13 clerks.

14 I'd like to go back to day one of the clerkship. It
15 was late summer. Judy Karper, who ran the Judge's chambers
16 from 1990 until her retirement in 2005, sat us down and
17 provided us with what she described as the Judge's rules. We
18 thought we understood almost all of them. We were to prepare
19 bench memos, assemble materials in preparation for oral
20 argument, and assist the Judge in drafting opinions. But one
21 rule stood out from the others. It puzzled us immensely.
22 Judy firmly instructed us that the Judge required those male
23 clerks who chose to wear sandals at all times also to wear
24 socks.

25 (Laughter)

1 MS. BEYNON: We thought long and hard about what
2 might have prompted the Judge to think that guidance on clerk
3 footwear was necessary. After all, weren't the Randolph
4 clerks universally known for their unerring sense of style?

5 After getting to know the Judge and his low key
6 approach to office management a bit better, we were even more
7 baffled. For me this mystery remains unsolved.

8 (Laughter)

9 MS. BEYNON: Judge, would you clarify the origin of
10 this rule for us?

11 (Laughter)

12 MS. BEYNON: Did you really think that Birkenstock
13 sandals with socks set the appropriate tone for the Randolph
14 chambers?

15 (Laughter)

16 MS. BEYNON: Surely it's not possible Judy came up
17 with this rule on her own?

18 After our orientation we embarked on our work. We
19 quickly learned that we were quite clearly non-essential
20 employees. Judge Randolph is a brilliant thinker, a splendid
21 writer, and he was perfectly capable of doing the work of the
22 entire office on his own without help from any of us. Well, I
23 take that back. He actually did need help from time to time
24 in cite checking the few cases he didn't already have
25 memorized. Other than that, he pretty much knew everything he

1 needed to resolve the case.

2 He would scare us by tossing out case citations off
3 the top of his head saying things like you need to take a look
4 at Hicks case. You can see it at 480 U.S. 321. Our first
5 assignment was a challenge. We were to prepare bench memos
6 summarizing the cases we were assigned and setting out our
7 recommendations. Another of the Judge's rules, these memos
8 could be no more than one page long. As I think back on it
9 now I realize the Judge probably thought he was making things
10 easier on us, something along the lines of why in the heck
11 would I make these kids struggle to write long memos when I'm
12 not planning to read them in the first place?

13 (Laughter)

14 MS. BEYNON: But for us it was a demanding task.
15 First, we had to figure out how to condense the parties'
16 arguments, our recommendations and the facts into a few short
17 paragraphs. Second, while we were certainly very comfortable
18 dispensing with niceties like a to, from and subject line of
19 the memo, we had to give some serious thought as to the
20 smallest possible font size and margin width we could
21 reasonably submit to the Judge. I'm sorry to say for the more
22 recent clerks, the Judge has taken steps to obstruct these
23 efforts. I understand his rules now require all memos to be
24 prepared in Times New Roman 16.5.

25 (Laughter)

1 MS. BEYNON: As the Judge started hearing arguments
2 in the cases we met our next big hurdle, preparing that first
3 draft opinion for the Judge's review. We spent hours on those
4 drafts, checking all of the cases, getting everything as
5 perfect as we possibly could before submitting it to the
6 Judge. We then anxiously awaited his revisions. Over the
7 years the Judge has apparently learned a little expectation
8 management is in order. I understand he now provides the
9 following written warning to his law clerks at the outset of
10 the year: do not take offense if little of what you have
11 written appears in the final version.

12 (Laughter)

13 MS. BEYNON: But for my part I took a great deal of
14 comfort that much of what I had written actually did appear in
15 the final version. I also used the word the 37 times, the
16 word a 18 times and I referenced the court below as well.

17 (Laughter)

18 MS. BEYNON: As the year went on we settled in.
19 With Judge Randolph's guidance our drafts improved by leaps
20 and bounds. We actually started to see a few of the sentences
21 we had written appear in print. We internalized the Judge's
22 rules of writing. I still hear Judge Randolph's voice in my
23 mind whenever I read or write a brief. Don't use the phrase
24 the argument is misplaced. You can misplace a book but what
25 does it mean to misplace an argument?

1 (Laughter)

2 MS. BEYNON: Likewise he told us never write that an
3 argument is without merit. Thinking about this one now I'm
4 now quite sure why that one didn't work for the Judge. After
5 practicing for a while it actually seems to me that a great
6 many arguments are totally without merit.

7 (Laughter)

8 MS. BEYNON: And since I'm in private practice that
9 unfortunately includes of a few of my own.

10 That said, I've trusted the Judge on this one. I
11 haven't used the phrase without merit in any of the briefs
12 I've written since leaving chambers. And I'm positive that
13 holds true of the rest of his clerks. We also enjoyed the
14 experience of watching for what I called the Randolph zingers
15 at oral argument. The Judge loves to drill down into the
16 depths of the cases. He takes an extraordinary interest in
17 some of their, how shall I put this, their more obscure
18 details.

19 One case my year, a FERC case that the Judge found
20 fascinating for reasons I will leave to him to explain,
21 concerned whether the agency could require a West Virginia
22 town to pay for the gizzard shad fish killed by the town's
23 hydroelectric plant. Apart from the vital legal issues this
24 case presented, the Judge was fascinated by the portion of the
25 record that concerned, as I recall it, the effect of the power

1 plant on the mating cycle of the gizzard shad fish. He
2 discussed these points with the clerks before argument so we
3 knew what was coming, but not so the FERC attorney.

4 (Laughter)

5 MS. BEYNON: The look on that poor lawyer's face
6 when Judge Randolph asked him to turn to page 12,732 of the
7 joint appendix and explain the agency's position on the issue,
8 priceless.

9 (Laughter)

10 MS. BEYNON: As our clerkships wrapped up we left
11 knowing that Judge Randolph had shaped us into better writers,
12 better lawyers and tougher thinkers. There's a right
13 quotation that I think sums up much of Judge Randolph's
14 guidance to us. It's attributed to one of the Judge's
15 favorite authors, Samuel Johnson, and it goes like this. Read
16 over your compositions and wherever you meet with a passage
17 which you think is particularly fine, strike it out. Judge
18 Randolph asked us to bear this guidance in mind in writing for
19 him. We saw from his example that the best writing is simple,
20 down to earth and to the point. He taught us to approach
21 cases with curiosity and an open mind. He taught us to care
22 about getting the answers right. He taught how to think like
23 real lawyers and how to argue fairly and effectively. He
24 instilled in us a respect and enthusiasm for the law.

25 The excellence of his training is evident from the

1 look of where we clerks have ended up. Many of us are in
2 private practice. Several are in business and finance. A
3 number work at think tanks here in Washington and elsewhere.
4 Others are now professors. One is writing a novel. Many
5 serve in the federal and state governments and one is now
6 himself a federal judge. Though we wound up in very different
7 places we are all still using the skills that Judge Randolph
8 taught us beginning on day one of our clerkship.

9 After leaving chambers our relationships with the
10 Judge had grown and evolved. Our respect and admiration for
11 the Judge as a key intellect has continued unabated. We have
12 developed an equally strong sense of admiration for the Judge
13 as a person. It's been wonderful to see the happiness the
14 recent arrival of his two grandchildren have brought him and
15 his wife, Lee O'Connor. We always enjoy hearing about the
16 latest book he's read and it's a lot of fun to talk to him
17 about his many pastimes such as golf, fishing and photography.
18 And he's always equally ready to hear about us and our lives
19 and our careers. He's maintained a strong bond with all of
20 us.

21 Judge Randolph has given so much more to us both
22 during our clerkships and after than we could ever give to
23 him. That's why we're all so delighted to be here. Judge
24 Randolph, I'm honored to present on behalf of your clerks the
25 gift of your portrait to the Court of Appeals for the District

1 of Columbia Circuit.

2 (Applause)

3 JUDGE SENTELLE: And I now welcome Judge Randolph's
4 wife Lee O'Connor along with his children Cynthia and Trevor
5 Randolph, the artist Peter Egeli. I hope I'm not murdering
6 that name too badly. And I notice that we've been joined by
7 one of the grandchildren, Hunter, which is perfectly okay. In
8 fact, a good idea. The portrait may now be unveiled. It
9 looks good from here.

10 (Applause)

11 JUDGE SENTELLE: On behalf of the United States
12 Court of Appeals for the District of Columbia Circuit, I would
13 like to thank all of Judge Randolph's clerks for the gift of
14 this magnificent portrait. We gratefully accept the portrait
15 which will hold a place of prominence in our courtroom down on
16 the fifth floor. We'd like to also acknowledge and thank the
17 Historical Society of the District of Columbia Circuit which
18 under the leadership of Steven Pollock provided the
19 administrative assistance to the clerks in handling the
20 financial arrangements for the portrait project. And now,
21 Judge Randolph, we welcome you to share your reflections with
22 your friends and colleagues.

23 JUDGE RANDOLPH: Chief Justice Roberts, Chief Judge
24 Sentelle, justices of the Supreme Court, former law clerks,
25 friends, family and golfing buddies. Rather than opening the

1 way I just did, I was tempted to begin with the standard
2 opening for a Supreme Court argument, "Mr. Chief Justice and
3 may it please the Court." But I worried that if I started
4 that way before I got another word in Justice Ginsburg would
5 start asking me a question. And then the Chief Justice would
6 chime in and the next thing I know Justice Thomas and Justice
7 Alito and Justice Scalia would join in, and by that time my
8 red light would be on. Did I say Justice Thomas? I wouldn't
9 have to worry about that.

10 (Laughter)

11 JUDGE RANDOLPH: I don't think I've ever told you
12 this, Clarence, but people come up and ask what do you think
13 about a Justice that never asks a question? I would say, you
14 know I don't remember Justice Black ever asking many
15 questions. In fact, I remember only one question Justice
16 Black asked when I was in the SG's office in the early '70s.
17 He was sort of a bantam rooster and rocked back and forth in
18 his chair. And the attorney said, "as we discussed in our
19 brief case such and so." And I saw Justice Black lift the
20 brief up and he turned to the front, looking and looking. And
21 this is the question, he said "Passim, what's this passim?"

22 (Laughter)

23 JUDGE RANDOLPH: So when I got on the Court one of
24 the first things I proposed was abolishing "passive." If you
25 look at our local rules you'll see that passim is not allowed.

1 I commend that to the Supreme Court.

2 (Laughter)

3 JUDGE RANDOLPH: But anyway, I'm truly honored that
4 all of you are here. Hurricane Sandy, of course, made travel
5 difficult for those coming from out of town, particularly in
6 the New York, New Jersey area. Our son, Trevor and his wife
7 Brandyn live in New Jersey across from Manhattan and they lost
8 electricity. There's no gas up there, but they made it down
9 here somehow. And Cynthia also lives in San Francisco and
10 we're so glad that you and Andrew and Loden are here.

11 And I'm grateful beyond words really for the remarks
12 of you Justice Thomas and Chief Judge Easterbrook, Judge
13 Henderson, John Cassidy, Leonard and Rebecca. Each of them is
14 a good friend and has been a source of inspiration to me.

15 When I got sworn in in 1990 there were a couple
16 things I had to do right away. Every judge has to do this.
17 One was I had to buy a robe and I didn't know where to look.
18 Actually, I found this robe, this is my original robe and I
19 found it in a minister store in downtown Washington.

20 (Laughter)

21 JUDGE RANDOLPH: I don't know if that rubbed off or
22 not.

23 But anyway, Danny Friedman, a very good friend, a
24 former colleague in the SG's office who by then was a judge on
25 the federal circuit, called me up and offered some advice. He

1 said first of all, buy a light weight robe because it gets hot
2 out there. I said thank you very much, Danny, I really
3 appreciate that. And then second of all he said, when you go
4 into the robing room and you put your robe on and you begin to
5 walk out to the bench, take your wallet with you.

6 (Laughter)

7 JUDGE RANDOLPH: I've got my wallet. I hope you all
8 have yours.

9 (Laughter)

10 JUDGE RANDOLPH: So the next thing I had to do was
11 select my chambers and for sentimental reasons, as you've
12 heard, I chose Judge Bork's old chambers. And I'm sorry, I'm
13 very sorry Bob couldn't be with us here today. But Mary Ellen
14 is here and Bob and Mary Ellen celebrated their 30th wedding
15 anniversary just a couple days ago and I want to offer you our
16 congratulations.

17 (Applause)

18 JUDGE RANDOLPH: So after I picked out Bob's
19 chambers, a court officer started showing me around and asking
20 me what particular furnishings and equipment I needed. And I
21 told her that the one thing I absolutely needed was a speaker
22 phone. Now back then you had to order these things specially.
23 They didn't come as they do now. And I knew from years in
24 private practice I just couldn't get along without a speaker
25 phone. So the court officer said Judge, the only calls you're

1 likely to receive are from people inviting you to lunch. And
2 I knew I was in trouble immediately because I don't eat lunch.
3 So whenever the phone rang the call was always for either Judy
4 Carper or Bonnie Huffman. Judy retired as you've heard in
5 2005 and Bonnie has been with me for 22 years.

6 Judy, by the way, was my secret weapon as the clerks
7 before 2005 soon learned. They had no idea that before she
8 became a secretary her job was in the Solicitor General's
9 office reviewing and correcting the draft Supreme Court briefs
10 of the attorneys in the SG's office. Judy was in the SG's
11 office when Frank Easterbrook and I were there. So, for 15
12 years none of my law clerks could ever send me anything in
13 writing without it having gone through Judy. After Judy
14 retired, some of my former clerks told me that there was a
15 betting pool whether you could get something through Judy
16 without having a correction made on your work. And most of
17 the clerks lost the bet. Anyway, Bonnie is much more gentle.
18 And her efforts really helped to bring about today's events.

19 After I was on the court for awhile friends started
20 asking me the same question. How do you like being a judge?
21 And I remember a party Lee and I attended when a woman friend
22 of ours came up and she put the question to me. How do you
23 like it? And I had my standard answer, "it's got its good
24 points and it's got its bad points." And she reached out and
25 grabbed my arm in sympathy and said, "oh I know, the

1 isolation." I said "no, that's one of the good points."

2 (Laughter)

3 JUDGE RANDOLPH: Now I told that to Chief Justice
4 Rehnquist once. Lee was there. He said you shouldn't say
5 that, they'll think you're a "misogynist." I said
6 misanthrope? No, no, he said a misogynist. You told it to a
7 woman. But what I really meant by that, and all of you in
8 private practice can attest to this, is that the peace and
9 quiet of appellate chambers -- as I like to refer to it -- was
10 quite a relief after all those years of fielding phone calls,
11 rushing to meet deadlines, juggling dozens of matters at once
12 and keeping track of every minute of your time. And the worst
13 part of all, was sending out the bills at the end of each
14 month.

15 Speaking of deadlines, in the SG's office and in
16 private practice sometimes I had to file motions for extension
17 of time and when the court granted the motion, and they didn't
18 always, but it was almost as good as winning the case.

19 (Laughter)

20 JUDGE RANDOLPH: I felt like the hand of God has
21 just come down and touched me and given me more time on earth.
22 So, I'll let you in on a little secret. Ever since I've been
23 on this court I've never voted to deny a motion for an
24 extension of time.

25

1 (Laughter)

2 JUDGE RANDOLPH: That's a little exaggeration, but
3 it's close to the truth.

4 Even before I was nominated I wondered about whether
5 I was really cut out for the judiciary. The idea of a long
6 tenure as a judge didn't exactly appeal to me. So I called
7 Frank Easterbrook who was already on the Seventh Circuit. He
8 was reassuring. Frank reminded me that if I were confirmed
9 I'd be receiving a lifetime appointment, not a lifetime
10 sentence. I'm frankly amazed that I've hung around this long.
11 The reason, I know, is my law clerks. I've had 67 clerks and
12 more than 50 of them are here today, or were planning to be
13 here today. I don't know whether they all made it. As a
14 group, they represent the finest men and women I think this
15 country has to offer.

16 When I first arrived at the court I really didn't
17 have much idea about how to use law clerks. I had been a law
18 clerk and as you heard I was a law clerk to Henry Friendly,
19 and as the Chief Justice and Judge Garland and Judge Bryson
20 and Ruth Wedgewood -- all former Friendly clerks here today -
21 as they all can attest, Judge Friendly, like Judge
22 Easterbrook, wrote all his own opinions. And you often
23 wondered as a law clerk what am I doing here? What use do you
24 have for me?

25 By the way, Judge Friendly always had his eye out

1 for judges who didn't write their opinions. One time he had
2 finished reading a Justice Hugo Black opinion and he was heard
3 to say "either Hugo has started writing his opinions or he's
4 hired a crotchety old law clerk."

5 (Laughter)

6 JUDGE RANDOLPH: My former clerks have pursued
7 careers in law firms and government and teaching. Some have
8 become very successful in running businesses and
9 organizations. And one who is very kind to come here, Gregg
10 Costa recently became the newest Federal District Judge for
11 the Southern District of Texas. Congratulations, Gregg. I'm
12 really proud of you. What's even more astonishing is that
13 after Gregg clerked for me, he clerked for Chief Justice
14 Rehnquist and yet was nominated by President Obama.

15 (Laughter)

16 JUDGE RANDOLPH: The support of my clerks and their
17 generosity made this portrait possible and I'm, of course,
18 indebted to them. Rebecca Beynon deserves special mention
19 because she organized everything and really took the laboring
20 oar.

21 I do want to say a word about my lovely wonderful
22 wife. Lee is my best friend, most trusted advisor and it was
23 Lee who started this portrait business rolling, without
24 telling me by the way because she knew I would veto it if I
25 had an opportunity. After I bought my robe, I brought it home

1 and Lee embroidered the inside back of it in gold with my
2 initials. So, every time I put it on I think of Lee. I want
3 to mention one other court related present that Lee gave me,
4 very thoughtful. At the start of the Bush administration Lee
5 became the Assistant Attorney General in charge of the tax
6 division. And as a result, for seven years I was deprived of
7 sitting on government tax cases.

8 (Laughter)

9 JUDGE RANDOLPH: Thank you, dear. My apologies to
10 several of Lee's former deputies who are here.

11 Peter Egeli, of course, also had something to do
12 with today's ceremony. Lee and I had the great pleasure of
13 visiting Peter and his wife Stu at their home high on a hill
14 above the St. Mary's river. I must say that I enjoyed sitting
15 for my portrait more than I enjoyed sitting on some of the
16 cases I've heard.

17 (Laughter)

18 JUDGE RANDOLPH: As the light poured into Peter's
19 studio he painted and remarkably carried on very, very
20 interesting conversations. That he could do both at once and
21 do both so well was amazing to me. Another thing that
22 impressed me, Peter, was the time that you showed me that
23 combination 410 shotgun with a 22 caliber underneath it. I
24 grew up in a very rural neighborhood and one of the kids who
25 hunted with us had one of those. I think every kid wanted

1 one. We were all jealous.

2 The mother of a friend of mine considers herself
3 quite the art critic and whenever she sees a particularly fine
4 painting she says, "It's so beautiful. It's so wonderful. It
5 looks just like a photograph."

6 (Laughter)

7 JUDGE RANDOLPH: And whenever she sees a
8 particularly striking photograph she says, "It's wonderful.
9 It looks just like a painting."

10 (Laughter)

11 JUDGE RANDOLPH: Well, the portraits Peter has done
12 for the court, this one and three others hanging in our
13 courtroom now of Judge Bork, Judge Silberman and Judge
14 Williams, these paintings convey much more than any photograph
15 ever could. And that is why Peter is considered one of the
16 country's leading artists and why I was so fortunate to have
17 been one of his subjects. Now I think my red light is on so I
18 better sit down.

19 (Applause)

20 JUDGE SENTELLE: Thank you, Ray, for your remarks
21 and for your years of service and for your collegiality, your
22 ethical leadership, your wisdom, your contributions to this
23 Court and to this nation.

24 Ladies and gentlemen, in a moment the Court will be
25 in recess. The members of the Court sitting on the bench will

1 then come down to greet the family and to view the portrait.
2 During this time we ask that all guests immediately proceed to
3 the reception outside the courtroom here on the sixth floor.
4 Please do not enter the well of the courtroom. You will find
5 the Randolph family at the reception in just a moment. We
6 thank you again for joining us on this happy occasion and we
7 look forward to seeing you shortly at the reception. The
8 Court will be adjourned.

9 THE CLERK: Stand please. This Honorable Court is
10 now adjourned.

11 (Whereupon, at 5:31 p.m., the proceedings were
12 concluded.)

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DIGITALLY SIGNED CERTIFICATE

I certify that the foregoing is a correct transcription of the electronic sound recording of the proceedings in the above-entitled matter.

Donna J Escobar

November 12, 2012

Donna J. Escobar

Date

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