

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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PORTRAIT PRESENTATION CEREMONY

+ + + + +

THE HONORABLE LAURENCE H. SILBERMAN

+ + + + +

The ceremony commenced at 4:00 p.m., on November 8, 2002, in Courtroom 20 of the United States Courthouse, Third Street and Constitution Avenue, NW, Washington, D.C. The Honorable Douglas H. Ginsburg, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, presiding.

Hon. Douglas H. Ginsburg	Chief Judge, United States Court of Appeals for the District of Columbia Circuit
Hon. Harry T. Edwards	United States Court of Appeals for the District of Columbia Circuit
Hon. Merrick B. Garland	United States Court of Appeals for the District of Columbia Circuit
Hon. Karen LeCraft Henderson	United States Court of Appeals for the District of Columbia Circuit
Hon. Judith W. Rogers	United States Court of Appeals for the District of Columbia Circuit

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Hon. David B. Sentelle	United States Court of Appeals for the District of Columbia Circuit
Hon. Laurence H. Silberman	United States Court of Appeals for the District of Columbia Circuit
Hon. David S. Tatel	United States Court of Appeals for the District of Columbia Circuit
Hon. Stephen F. Williams	United States Court of Appeals for the District of Columbia Circuit

Speakers:

Hon. Antonin Scalia	Associate Justice, Supreme Court of the United States
Hon. Clarence Thomas	Associate Justice, Supreme Court of the United States
Hon. Patricia M. Wald	Former Judge, United States Court of Appeals for the District of Columbia Circuit
John F. Manning, Esq.	Professor of Law, Columbia University
Eugenie N. Barton, Esq.	Former Law Clerk to Judge Silberman
Stuart Levey, Esq.	Former Law Clerk to Judge Silberman
Hon. Ricky Silberman	Wife of Judge Silberman

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P-R-O-C-E-E-D-I-N-G-S

4:02 p.m.

BAILIFF OF THE COURT: Oyez, oyez, oyez,
all persons having business before the Honorable
United States Court of Appeals for the District of
Columbia Circuit are admonished to draw near and
give their attention, for the Court is now sitting.
God save the United States and this Honorable Court.

Be seated, Please.

JUDGE GINSBURG: Welcome to the
unveiling of the portrait of our colleague, the
Honorable Laurence H. Silberman. It is a great
personal pleasure for me to pay tribute to my friend
and colleague today.

Judge Silberman was nominated to a new
seat on this Court on September 11, 1985. He served
as a Circuit Judge from October 28 of that year
until November 1 of 2000, when he assumed senior
status.

Before coming to the bench, Judge
Silberman had a long and illustrious career serving
as, among other things, the Solicitor of Labor, the
United States Department of Labor; the Deputy
Attorney General of the United States; United States
Ambassador to Yugoslavia; a private practitioner in

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1 Hawaii and in California; and as a professor of law.
2 Judge Silberman now serves as an adjunct professor
3 of law at Georgetown Law Center, as well as
4 continuing to hear cases as a Senior Judge of this
5 Court.

6 On behalf of the Court, I am pleased to
7 welcome Judge Silberman and his family to this happy
8 occasion. I am pleased to welcome Judge Silberman's
9 and our many distinguished guests: my colleagues, of
10 course, on the Court of Appeals and on the District
11 Court, members of other courts, eminent members of
12 the bar, and Judge Silberman's friends and law
13 clerks.

14 I would particularly like to recognize
15 from the Supreme Court, in addition to Justice
16 Stephen Breyer, our three former colleagues:
17 Justices Antonin Scalia, Ruth Bader Ginsburg, and
18 Clarence Thomas, along with Secretary Donald
19 Rumsfeld, Secretary of Defense.

20 Deputy Attorney General Larry Thompson
21 is here, Solicitor General Ted Olson, and former
22 members of our bench, Judge Patricia Wald and Judge
23 Kenneth Starr.

24 Before we begin, I would be remiss if I
25 didn't pass along the regrets of Judge Raymond

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1 Randolph for not being on the bench today. He had a
2 longstanding commitment to speak at the Third
3 Circuit Judicial Conference, which just happened to
4 be in the Virgin Islands.

5 (Laughter.)

6 Before the unveiling of Judge
7 Silberman's portrait, which will be done by Judge
8 Silberman's wife, the Honorable Ricky Silberman,
9 known to virtually everyone here very well, there
10 will be several tributes to Judge Silberman.

11 Our first speaker today will be Justice
12 Antonin Scalia of the United States Supreme Court.
13 Justice Scalia served on this Court from 1982 until
14 1986, when he was elevated to the Supreme Court,
15 which has the privilege of sitting en banc all of
16 the time.

17 Nino, it is an honor to have you back.
18 Please.

19 JUSTICE SCALIA: Chief Judge Ginsburg,
20 and may it please the Court, I am happy to be back
21 before the Court that I used to sit on. Let me
22 abbreviate my remarks by acknowledging the presence
23 of all of the people whom you named already.

24 (Laughter.)

25 And, in addition, Ricky and the

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1 Silberman family.

2 I am very happy to take part in this
3 ceremony honoring Judge Laurence Silberman. I have
4 no closer friend in the world and have no
5 acquaintance who has made as deep and clear a mark
6 upon this town. A quick review of his resume
7 displays at once the diversity of his abilities,
8 from Executive Vice President of one of the
9 country's major banks to Under Secretary of Labor,
10 from partner in a major law firm to Ambassador of
11 the United States to Yugoslavia, from Deputy
12 Attorney General of the United States to Judge of
13 the United States Court of Appeals for the District
14 of Columbia Circuit.

15 I first met Judge Silberman during the
16 political administrator phase of his career. He was
17 Deputy to Attorney General William Saxby and hired
18 me to be head of the Office of Legal Counsel in the
19 darkest and most besieged days of the American
20 Presidency.

21 At that time he had a governmentwide
22 reputation as a hard-nosed and politically-astute
23 executive. What many did not know, but what I had
24 occasion to observe firsthand serving with him in
25 the Justice Department, was that he had an

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1 absolutely first-rate analytical legal mind and even
2 enjoyed thinking about abstract legal questions.
3 When he came to be appointed to the D.C. Circuit, I
4 fancy that I was one of the very few who knew not
5 only that he would be terrific at the job, but that
6 he would thoroughly enjoy it.

7 I have not had my law clerks check out
8 how frequently I have voted the other way from Judge
9 Silberman (laughter) in cases of his that have come
10 before the Supreme Court. It cannot be very often,
11 which I think speaks very well for both of us
12 (laughter), though some will think precisely the
13 opposite (laughter).

14 The one case I do recall, however, and
15 one which he, in his characteristically tenacious
16 fashion, occasionally, and I may say unsuccessfully,
17 seeks to chide me with, involved his insistence upon
18 adjudicating the meaning of a statute that perhaps
19 did not exist (laughter), Congress seemingly having
20 repealed it. Judge Silberman would not consider the
21 predicate question of whether the statute before him
22 even existed because the parties had not raised the
23 issue.

24 (Laughter.)

25 This is a true story, you know.

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1 (Laughter.)

2 Even that lapse from sweet reason
3 (laughter) had a certain admirable quality to it,
4 however, resting as it did upon Judge Silberman's
5 firm conviction that courts had no business snooping
6 around where they had not been invited.

7 (Laughter.)

8 Over the years, Judge Silberman has been
9 to me not just a good friend, but a valued advisor.
10 He was the counsel whom I consulted on matters
11 legal, ethical, and political during the
12 confirmation process for both of my judicial
13 appointments. I trust his legal judgment almost as
14 much as my own (laughter), and his political
15 judgment much more so.

16 His portrait well deserves to be hung in
17 this Court, and in a few other places around town as
18 well, not just for his ability, but for his ardor.
19 There is one thing Larry Silberman has never been.
20 Even his worst enemy -- I assume just for the sake
21 of argument that he has enemies -- has never accused
22 of him of being wishy-washy.

23 (Laughter.)

24 And it is that quality of his above all
25 that I salute today. Larry Silberman is a man who

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1 has cared deeply and passionately about every
2 enterprise in which he has been involved, and those
3 of us who have served with him will never forget the
4 inspiration he has provided.

5 (Applause.)

6 JUDGE GINSBURG: Thank you, Justice
7 Scalia.

8 I know from Larry's own mouth that his
9 enemies are well chosen. He said Marshall Tito did
10 not like him.

11 (Laughter.)

12 But that was only because Larry spoke
13 the truth.

14 (Laughter.)

15 Our next speaker is Justice Clarence
16 Thomas. Justice Thomas served on this Court in 1990
17 and 1991, when he was nominated to the Supreme
18 Court. As you can tell, we have quite a
19 distinguished group of alumni here.

20 We are very pleased to have you back
21 with us today, Clarence.

22 JUSTICE THOMAS: Chief Judge Ginsburg,
23 members of the Court, Silberman family, Ricky,
24 friends, law clerks, colleagues, I am honored to be
25 here on this wonderful occasion to honor my friend

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1 and colleague, Judge Larry Silberman, and I am
2 pleased to see so many of his colleagues, present
3 and former, here today, including my present
4 colleagues Justice Scalia and Justices Ginsburg and
5 Breyer.

6 Judge Silberman had the earliest and
7 deepest influence on me as a judge. During my all-
8 too-brief tenure here at the District of Columbia
9 Circuit, he was always there with words of advice
10 and counsel, never pushing or insisting, just always
11 available.

12 When I came to this Court in March of
13 1990, he offered me only one piece of unsolicited
14 advice. He advised that, before I consider any
15 case, I should determine what my role as a judge is
16 in that case. That advice has been the centerpiece
17 of my tenure on the bench.

18 Although I came to know Judge Silberman
19 professionally when we both served as judges on this
20 Court, I have never forgotten that he was also a man
21 of many achievements. His calling as a judge came
22 only after he had already led a career that most
23 would have rightfully considered full.

24 He started his career in public service
25 as an appellate attorney with the National Labor

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1 Relations Board. It is there, no doubt, that Judge
2 Silberman first learned to love the administrative
3 state.

4 (Laughter.)

5 He then moved to the Labor Department,
6 becoming Solicitor, and then Under Secretary. Then
7 at the ripe old age of 39, and looking much as he
8 does today (laughter), Judge Silberman became Deputy
9 Attorney General, taking the helm of a Department
10 reeling from the unfolding Watergate investigation.
11 In this position, he helped restore the Nation's
12 confidence in the Justice Department. We can only
13 imagine what might have happened to that Department
14 and the rule of law if a man of lesser abilities or
15 possessing insufficient virtues had assumed that job
16 at such a critical time.

17 Judge Silberman's career in the law was
18 paralleled by an active role in foreign affairs and
19 national security. After his service as Deputy
20 Attorney General, Judge Silberman served as
21 Ambassador to Yugoslavia, then seen as one of the
22 most important embassy assignments.

23 He advised the Reagan campaign on
24 foreign affairs and he served during the first
25 Reagan Administration on the General Advisory

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1 Committee on Arms Control and Disarmament.
2 Throughout it all, Judge Silberman was a forceful
3 voice on editorial pages of our national newspapers
4 and in journals urging a tougher policy toward the
5 Soviet Union and its allies. It is fair to say that
6 Judge Silberman was one of the key thinkers who
7 contributed to the Reagan Administration's policies
8 that produced the Nation's triumph over
9 international communism and the end of the Cold War.

10 Even as Judge Silberman helped restore
11 the rule of law at home, he was also helping to
12 create the conditions for its spread abroad. Judge
13 Silberman's experiences as a public servant, when
14 combined with his fine grasp of the law, made him
15 one of the Nation's leading figures on the Federal
16 bench. His opinions demonstrate an understanding of
17 the actual workings of government and a keen
18 analytical mind. I would like to mention just two
19 such opinions, one from his early years on the
20 bench, one from the later years.

21 In *In Re: Sealed Case*, Judge Silberman
22 wrote that the independent counsel law violated the
23 Constitution by interfering with the President's
24 executive powers and the delicate balance created by
25 the separation of powers. As a former Deputy

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1 Attorney General, perhaps no one at the time
2 understood better than he the inherent dangers posed
3 when the prosecutorial function is unaccountable to
4 the political process. Unfortunately, the Supreme
5 Court disagreed with him in *Morrison v. Olson*.

6 More recently, in *Campbell v. Clinton*,
7 Judge Silberman wrote that a lawsuit brought by
8 Members of Congress challenging the
9 constitutionality of the war in Kosovo was non-
10 justiciable. Observing that Congress had many ways
11 to stop executive war-making, Judge Silberman
12 observed that the Federal Courts had no role in
13 adjudicating a struggle between the branches over
14 war and foreign policy.

15 As a former Ambassador and foreign
16 policy advisor, he understood that the political
17 branches must have flexibility, whether in
18 cooperation or in conflict, to manage foreign policy
19 and protect the national security.

20 It is popular these days to celebrate
21 the men and women, and rightfully so, who fought
22 World War II as the "greatest generation." But, I
23 think we should also consider ourselves fortunate
24 that during the Cold War men and women such as Larry
25 Silberman led our Nation and stood against evil.

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1 Confronted by a powerful enemy armed
2 with nuclear weapons and bent upon world domination,
3 they fought a war no less dangerous than World War
4 II, yet one that demanded at least as much patience,
5 endurance, and caution. They ensured that our
6 Nation would endure while simultaneously preserving
7 our fundamental liberties and freedoms. Our leaders
8 today have much to learn from Judge Silberman's
9 example, as they now confront an altogether
10 different, yet equally dangerous, enemy.

11 I now end where I could have just as
12 easily begun. Many in this room came to know Judge
13 Silberman in his current role as a judge or in one
14 of his many official positions, but I first met him
15 as the husband of Ricky Silberman (laughter), who is
16 no doubt the best part of his full and distinguished
17 life. If ever there was a marriage, indeed a
18 romance, in which two became one, it is theirs.

19 I first met Ricky Silberman in December
20 1980 and worked with her on a book recording our
21 efforts to promote alternative ways of thinking
22 about matters of race. Though the effort to
23 encourage more diversity of thought was doomed to
24 fail, providence would see to it that our friendship
25 was permanent.

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1 Ricky Silberman began her tenure as Vice
2 Chairman of EEOC almost 20 years ago, shortly after
3 I began my tenure as Chairman. I have few memories
4 of my own tenure there at EEOC without her at my
5 side, and certainly no good ones that do not include
6 her.

7 It was Ricky Silberman who counseled me
8 to talk to Judge Silberman when it was suggested
9 that I consider becoming a judge, a suggestion that
10 I viewed as slightly better than ludicrous. For
11 this advice and counsel, I am deeply indebted to
12 them, to both of them, and, I might add, I am also
13 indebted because of them.

14 In the good times they always invited me
15 to celebrate in their home, and in the bad times,
16 the dark days, they also gave my wife and me refuge
17 there in their home and in their hearts.

18 This beautiful portrait honors two lives
19 that have been lived as one, and this is a good
20 thing.

21 (Applause.)

22 JUDGE GINSBURG: Thank you, Justice
23 Thomas.

24 I would like now to welcome another
25 esteemed former colleague, the Honorable Patricia

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1 Wald. Judge Wald served on this Court from 1979 to
2 1999 and served as Chief Judge from 1986 to 1991.
3 Since leaving the D.C. Circuit, Judge Wald has
4 served as a member of the International Criminal
5 Tribunal for the Former Yugoslavia.

6 Judge Wald.

7 JUDGE WALD: Chief Judge Ginsburg,
8 members of my old Court, distinguished Justices,
9 distinguished guests, and especially Ricky and
10 members of the Silberman family, I am happy, indeed,
11 to be back inside this hallowed courtroom, albeit on
12 a different side of the bench and for such a fine
13 occasion as the unveiling of Judge Silberman.

14 After three years away, I realize more
15 clearly what a good life it was and is. There is no
16 scrambling for clients or funding. Your colleagues
17 forever keep you on your toes. The support staff is
18 fabulous, and no one, even your grammar school class
19 agent, can ask you to raise money.

20 (Laughter.)

21 Of course, judges do have their
22 differences about what the law is, and especially
23 about what those translucent 5-to-4 decisions of the
24 Supreme Court say it is (laughter), about where to
25 look for guidance -- to the legislative history, so

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1 immaculately drafted by anonymous lobbyists
2 (laughter), or to the inimitable words penned by
3 Alexander Hamilton to James Madison on a stagecoach
4 ride from Philadelphia to New York (laughter), about
5 the intended or unintended consequences of our
6 actions on consumers, investors, criminals, and that
7 rare figure that occasionally crosses our path, the
8 ordinary man or woman in the street.

9 Now Harry Edwards has written that these
10 "differences are less frequent and not so deep as
11 the press and scholars make them out." I'm a little
12 less sure of that, but I do believe that we have the
13 best chance of getting it right, or nearly so, when
14 the colleagues are smart, hard-working, reasonably
15 tolerant, or maybe not unreasonably intolerant, of
16 each other's views (laughter), and intent themselves
17 on producing what Justice Holmes called a "first-
18 rate piece of work."

19 Larry Silberman and I served together on
20 the Court for nearly 15 years. I would be less than
21 candid if I said the background music was always
22 melodious.

23 (Laughter.)

24 Being on a Court is somewhat like a
25 marriage, covering an emotional continuum from utter

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1 boredom to unutterable intensity.

2 (Laughter.)

3 With apologies to Judge Bork and Diane
4 Rehm, it might be characterized as, quote, "lurching
5 toward commitment" (laughter) -- commitment to a
6 common vision of fairness and justice.

7 Now Larry and I started out from
8 distinctly different vantage points, but I harbored
9 a certain clandestine admiration for his legal
10 skills, and I think he occasionally reciprocated.

11 (Laughter.)

12 Larry's work was always comprehensive,
13 he wrote stylishly, and his analyses and critiques
14 cut quickly to the heart of the matter, not
15 infrequently to the jugular.

16 (Laughter.)

17 When we disagreed, it was usually on
18 essence and not on cosmetics.

19 As the years went on, I guess it could
20 be said that we both mellowed, avoided unnecessary
21 collisions, and even looked conspicuously for areas
22 where we could agree, and, surprisingly, there were
23 a good number. That, of course, is what good
24 appellate judging is about, the unfettered exchange
25 of strong views on important subjects that political

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1 considerations in the legislature or timidity in the
2 executive sometimes make so difficult.

3 Every once in a while -- sorry, Larry --
4 he almost seemed like a soft touch.

5 (Laughter.)

6 In the last years before I left the
7 Court, Larry and I in the mornings held a sort of
8 mini-salon in Nancy Padgett's Law Library. He would
9 read *The Washington Times* at home, and *The*
10 *Washington Post*, *New York Times*, and *Wall Street*
11 *Journal* when he got to the office. I would read *The*
12 *Washington Post* at home and the others at work.
13 Then we would have a symposium on the day's affairs.

14 To be truthful, I miss those times.
15 Larry is funny. His wit can be acerbic, but often
16 he turns it on himself, and when he turns on the
17 charm, he can be almost irresistible -- almost.

18 (Laughter.)

19 And we did find more than a few
20 commonalities. The Walds bought a cabin in the
21 woods of West Virginia from the Silbermans, where
22 Larry, before he retreated back to the city, had
23 considerately installed a towering TV antenna that
24 brought in the Redskins on Sundays.

25 (Laughter.)

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1 Against all likelihood, two of our
2 clerks carried on a romantic courtship that
3 eventuated in marriage and a couple of kids, of what
4 ultimate political persuasion I wouldn't even hazard
5 a guess.

6 (Laughter.)

7 Neither of us ever claimed to have
8 converted the other, but we did work out a pretty
9 good bilateral entente. It didn't revolutionize the
10 Republic, but it certainly added spice to life on
11 this great Court.

12 Congratulations.

13 (Applause.)

14 JUDGE GINSBURG: Thank you very much,
15 Judge Wald.

16 John Manning is the Michael I. Sovern
17 Professor of Law at Columbia Law School and our next
18 speaker. Professor Manning first met Judge
19 Silberman in 1985, when then Mr. Manning was
20 clerking for Judge Robert Bork, and they have
21 remained great friends ever since.

22 John.

23 MR. MANNING: Thank you, Judge Ginsburg.
24 Members of the Court, Judge and Mrs. Silberman, the
25 Silberman family, and distinguished guests, it's

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1 wonderful to be here to celebrate this moment with
2 the Judge and Mrs. Silberman.

3 Because I teach administrative law and
4 Federal Courts, the temptation for me is to speak at
5 length about Judge Silberman's many contributions to
6 my field. Were I to do so, I would note that Judge
7 Silberman has been almost unique in his devotion to
8 the philosophy of judicial restraint. No one has
9 been more faithful to the idea that a judge must
10 keep in the very front, and not the back, of his or
11 her mind that appropriate role of the judiciary.

12 This philosophy expresses itself in
13 Judge Silberman's opinions, in a relentless focus
14 not only on big questions like standing and
15 justiciability, but also on small questions that
16 often get swept under the rug, like whether an issue
17 is, in fact, properly before the Court to decide.

18 (Laughter.)

19 Judge Silberman's discipline and insight
20 in policing the properly limited role of the Federal
21 Courts leaves quite an important and influential
22 legacy, one that I know he will continue to build in
23 his seniority.

24 But that's not what I am here for.
25 That's not what I am here to talk about. Rather, I

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1 am here to speak about the many young and formerly
2 young Washington lawyers who are fortunate enough to
3 count Judge Silberman as a friend and mentor. Now
4 this is a very large group. Its core is his law
5 clerks, but there is a broader group of which I am a
6 part, the non-clerk clerks.

7 Now some of us, like me, got to know the
8 Judge when they clerked on the D.C. Circuit and he
9 came into other chambers to shmooze with their
10 judges. Some of us met him I'm not sure quite how,
11 maybe through his law clerks or through his friends.
12 But we are a large and diverse group of men and
13 women. We are Republicans and we are Democrats, but
14 the one thing that we have in common is that we rely
15 on the Judge as our rabbi, our confessor, and our
16 friend. His advice to us is invaluable, and,
17 indeed, the only time we disregard Judge Silberman's
18 advice is when Mrs. Silberman countermands it.

19 (Laughter.)

20 So what has this got to do with Judge
21 Silberman's legacy? Just this: Judge Silberman has
22 tried to instill in a generation of Washington
23 lawyers a sense of honor, to make us gentlemen and
24 gentlewomen. Now what exactly does this mean?

25 Well, even though Judge Silberman is the

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1 Federal Judge about the least likely to make law, I
2 will now attempt to describe a restatement of what
3 might be called "Silberman's laws."

4 (Laughter.)

5 First, be loyal. Don't bad mouth the
6 people you work for. If you don't respect someone,
7 don't take a job from that person, as simple as
8 that.

9 Second, be modest. Make others look
10 good rather than yourself. Don't claim credit for
11 things you've accomplished even if you deserve it.

12 Third, be discrete. Hold close your own
13 confidences and, of course, the confidences of
14 others. Discretion is not only good for reputation,
15 but also good for your soul.

16 Fourth, be honest. Tell nothing but the
17 truth even when the truth redounds to your
18 detriment.

19 And, fifth, and most importantly, act
20 with integrity. Your principles are not matters of
21 convenience. They are tested only when it hurts.
22 It is too hard and too confusing to strategize about
23 where your personal advantage lies. So just do
24 what's right. In the end, your integrity is the one
25 thing that no one can take away from you.

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1 These values may seem self-evident, even
2 obvious, but they are too often fragile when
3 confronted with the exigencies of the moment. By
4 his counsel and his conduct, Judge Silberman has
5 taught countless young lawyers that honor is not
6 negotiable.

7 Judge, we will try to live by these
8 values, and we will try to pass them on to others.
9 We will always be grateful to you and to Mrs.
10 Silberman for teaching us the meaning of honor by
11 your example. Thank you very much.

12 (Applause.)

13 JUDGE GINSBURG: Thank you, Professor
14 Manning.

15 I would now like to introduce Eugenie N.
16 Barton, who served first as an intern in Judge
17 Silberman's chambers in 1988 and then as his law
18 clerk during the 1990 to 1991 term. Ms. Barton is
19 currently counsel to the Wireless Policy Division of
20 the Federal Communications Commission.

21 Welcome back.

22 MS. BARTON: Thank you. Judge Ginsburg,
23 may it please the Court, Judge Silberman, Mrs.
24 Silberman, and my fellow clerks, it is my privilege
25 to speak today as a member of a very special family,

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1 the family of the Judge's clerks. The Judge has
2 cared for us as a family, not only during our
3 clerkships, but as we have matured as lawyers and as
4 we have become parents ourselves. The Judge has
5 taken great interest in the safe delivery and
6 subsequent progress of his clerks' offsprings, whom
7 he calls his "grand-clerks."

8 (Laughter.)

9 It is now my pleasure to assist at
10 another delivery, the delivery of the Judge's
11 portrait to its place of honor in this Court. Of
12 course, like all clerks, I have my own favorite
13 memory, a story that distills for me the essential
14 qualities of the Judge both on and off the bench.

15 The incident occurred during the last
16 set of oral arguments of my clerkship. All was
17 going smoothly, the attorney seemed to be doing
18 quite well before the judges, when suddenly he said,
19 "This is really a simple case. No one has been hurt
20 here. No one has been harmed by this action."

21 I saw the Judge stiffen; his
22 constitutional antenna went up.

23 (Laughter.)

24 He said, "I was inclined to favor your
25 position, but now I begin to wonder how, if there is

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1 no injury, you have standing to bring this case
2 before the Court."

3 (Laughter.)

4 We watched as the startled attorney
5 turned white, stuttered, and then began to sway.
6 His knees buckled and he went down in a dead faint.

7 (Laughter.)

8 As the attorney went down, the Judge
9 leapt from the bench, his robe streaming behind him.
10 "Call 911. Get an ambulance," he said, as he bent
11 over the prostrate form.

12 (Laughter.)

13 As the man stirred, the Judge made sure
14 that he was all right. Imagine the attorney's
15 embarrassment at looking up to see Judge Silberman.

16 (Laughter.)

17 After a brief pause, oral argument
18 continued as the attorney found his standing both
19 literally and constitutionally.

20 (Laughter.)

21 For me, this incident symbolizes the
22 character of Judge Silberman on and off the bench.
23 On the bench he is conservative in the deepest
24 sense, conserving the role of the judicial branch to
25 determine real cases or controversies in which the

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1 litigants have suffered a legal injury. But off the
2 bench the Judge acts and will go generously to the
3 aid of any fellow who is down.

4 As a clerk, I was fortunate to share
5 with the Judge an interest in Shakespeare and a
6 belief in the primacy of Shakespeare's text. The
7 law was not my first career. Before going to law
8 school, I had been a Shakespeare scholar and
9 dramaturg with the Shakespeare Theater, but I was
10 out of step with the times because my interest in
11 the meaning of Shakespeare's text was no longer the
12 focus of the Shakespeare industry. Academics now
13 wrote about Shakespeare and whatever critical "ism"
14 served their own ends. The director's concept in
15 the theater often replaced Shakespeare's. Judge
16 Silberman had no patience with that approach to
17 Shakespeare. (Laughter.)

18 And he fought against and taught against
19 the analogous misappropriation of meaning in the
20 law. Judge Silberman was a teacher's teacher, my
21 teacher. He was the master at reading the plain
22 meaning of the words, of interpreting them in the
23 historical context of past decisions, and with due
24 regard to the constitutional roles of each branch of
25 government in determining meaning.

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1 I would like to conclude my remarks by
2 quoting an excerpt from one of the Judge's favorite
3 speeches from Shakespeare, Henry the Fifth's speech
4 to his outnumbered troops as they prepare for the
5 battle of Agincourt. This, the St. Crispian's Day
6 speech, is a speech about boldness and bravery,
7 about history and personal memory, about courage in
8 the face of tremendous odds. It is also a speech
9 about the rewards of doing one's duty. The king
10 musters his troops thus:

11 This day is called the feast of Crispian:
12 He that outlives this day, and comes safe home,
13 Will stand a tip-toe when the day is named,
14 And rouse him at the name of Crispian.
15 He that shall live this day, and see old age,
16 Will yearly on the vigil feast his neighbors,
17 And say 'To-morrow is Saint Crispian:'
18 Then will he strip his sleeve and show his scars.
19 And say 'These wounds I had on Crispin's day.'
20 Old men forget: yet all shall be forgot,
21 But he'll remember with advantages
22 What feats he did that day: then shall our names.
23 Familiar in his mouth as household words
24 Harry the king, Bedford and Exeter,
25 Warwick and Talbot, Salisbury and Gloucester,
26 Be in their flowing cups freshly remember'd.
27 This story shall the good man teach his son;
28 And Crispin Crispian shall ne'er go by,
29 From this day to the ending of the world,
30 But we in it shall be remember'd;
31 We few, we happy few, we band of brothers;
32 For he to-day that sheds his blood with me
33 Shall be my brother; be he ne'er so vile,
34 This day shall gentle his condition:
35 And gentlemen in England now a-bed
36 Shall think themselves accursed they were not here,
37 And hold their manhoods cheap whiles any speaks
38 That fought with us upon Saint Crispin's day.

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1 I think it is no accident that Judge
2 Silberman loves this speech, and I think it is a
3 fitting speech for this special day. It reminds
4 us about the special place in history that belongs
5 to those who serve their country with bravery and
6 honor, with no thought of the personal sacrifice
7 they make in that service.

8 It is the speech of a leader who
9 inspires others to harken to the call of service
10 to his country. These are the values that the
11 Judge has instilled in his clerks by his example
12 and his teaching.

13 In the Crispian's Day speech,
14 Shakespeare imagines the reunions in future years
15 of the happy few, the band of brothers who served
16 under Henry. We, too, as Judge Silberman's
17 clerks, each have special memories of our time
18 with the Judge. We share in a special bond of
19 fellowship that is part of Judge Silberman's
20 legacy. Judge Silberman is a lawyer's lawyer, a
21 judge's judge, and in my case a teacher's teacher.

22 The Judge took his job as a teacher
23 seriously. He shaped his clerks into better
24 lawyers, tougher thinkers, and upright men and
25 women. He taught us to argue vigorously for our

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1 views and to change them if we saw that they were
2 wrong.

3 We learned from the Judge's example
4 to step up to our own personal and professional
5 challenges. He taught us to do our duty.

6 As I look around me today, I see many
7 of my fellow clerks who are devoting their days
8 and nights to serving their country and upholding
9 its laws in very difficult times. I see others
10 whose primary job is dedication to their families.
11 They are all following the example Judge Silberman
12 set, the example of an honest and forthright man
13 who has done his duty as he has seen it.

14 As a judge, he has understood and
15 upheld the Founders' view of the proper
16 distribution of power and the limits of law. He
17 has upheld these limits so vigorously, I think,
18 because, like Shakespeare's Henry, the Judge knows
19 and understands the tough realities of politics
20 and power and the necessity of holding the rule of
21 law as a check to those forces.

22 In the Crispian's Day speech,
23 Shakespeare celebrated a great man and a great
24 moment, and the power of artists to create a
25 memory that will resonate as their legacy. It is

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1 fitting to dedicate Shakespeare's speech to the
2 Judge and to this portrait ceremony. The artist
3 who has given us Judge Silberman's portrait has
4 provided us with a lasting image to remind us of
5 the man and the values he has passed on in his
6 life and his work. They are his legacy to us.
7 That legacy will resonate in our memory and the
8 memories of those who will come after us. Thank
9 you.

10 (Applause.)

11 JUDGE GINSBURG: Thank you, Ms.
12 Barton.

13 Our next speaker is Stuart Levey,
14 another of Judge Silberman's law clerks. Mr.
15 Levey, who served during the 1989 to 1990 term, is
16 currently Associate Deputy Attorney General of the
17 United States. He will present the portrait,
18 which will be unveiled by Mrs. Silberman.

19 Mr. Levey.

20 MR. LEVEY: Chief Judge Ginsburg,
21 Judge Silberman, Mrs. Silberman, distinguished
22 guests, former clerks, it is a pleasure and an
23 honor to be part of this ceremony.

24 I will not presume to add to the
25 remarks that we have already heard from Justice

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1 Scalia and Justice Thomas, Judge Wald, John
2 Manning, Genie Barton about the Judge's career and
3 public service, his greatness as a judge, his
4 impact on the law, and his judicial philosophy.
5 They have all certainly expressed those sentiments
6 more eloquently and authoritatively than I could.

7 I'm also not really equipped as Genie
8 is to add to the cultural sophistication of this
9 event.

10 (Laughter.)

11 In fact, her literary references make
12 me cringe with embarrassment as I recall one
13 incident from my clerkship. One day I was coming
14 back from lunch with the Judge and we were riding
15 up the elevator, and he told me he was really
16 excited because he and Mrs. Silberman were going
17 to "Aida" that night. I promptly asked him, "Oh,
18 Judge, is that a new restaurant?"

19 (Laughter.)

20 That question, of course, delighted
21 the Judge because it let him launch into one of
22 his favorite topics, which was the inferiority of
23 my education compared to a Dartmouth education.

24 (Laughter.)

25 So I am going to stay modest here and

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1 just talk about what I am qualified to talk about,
2 which is what my relationship with the Judge has
3 meant to me. While it is presumptuous to speak
4 for a group of law clerks as distinguished as the
5 Judge's, I really believe that my feelings on this
6 topic are representative of the group.

7 For all the reasons you have already
8 heard, Judge Silberman is, without a doubt, the
9 finest professional mentor a new lawyer could ever
10 imagine. He imbues his clerks with respect and
11 enthusiasm for the law. He approached literally
12 every case with this infectious excitement about
13 trying to figure out the right answer and, equally
14 important, why that answer was right.

15 We all had this experience of
16 discussing and arguing, and sometimes even
17 yelling, with him in his chambers about how the
18 cases should be decided and why. As John
19 Manning's comments probably indicate, that
20 discussion was sometimes especially animated when
21 it concerned the possibility of not actually
22 reaching the merits of the case.

23 (Laughter.)

24 The Judge truly does believe in
25 judicial restraint and has imbued us all with a

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1 keen sense of what the proper role of the Court
2 is. In fact, his commitment is so strong that it
3 is rumored that he would buy lunch for any clerk
4 who persuaded him that the Court didn't have
5 jurisdiction for a reason not argued by the
6 parties.

7 (Laughter.)

8 I don't know if that's actually true.
9 It didn't occur during my year.

10 (Laughter.)

11 But it was precisely that interaction
12 in chambers that made the experience so
13 transforming for me. As I think Judge Wald's
14 comments indicated, it probably won't surprise you
15 to learn that in chambers he was equally blunt,
16 honest, and unfiltered.

17 (Laughter.)

18 I remember when I was first hired he
19 told me, "Stuart, as my law clerk, I expect you to
20 act as my lawyer, and I want you to tell me right
21 away if you think that I'm wrong about something."
22 And I think he really meant it, but in practice
23 what actually happened -- (laughter) -- was that
24 he certainly didn't hesitate to tell me when I was
25 wrong about something.

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1 (Laughter.)

2 And, ironically, that, in all
3 seriousness, was the best part of the job. The
4 Judge was willing to criticize me at least; I
5 won't speak for my co-clerks. He was willing to
6 criticize me, and so, therefore, you knew that
7 when he gave you positive feedback, it actually
8 meant something.

9 Most of all, you could tell just by
10 being with him that he cared not only about
11 getting the right answers in the cases, but about
12 turning us into better lawyers.

13 I knew even at the time how lucky I
14 was to have that experience. What I didn't
15 realize was that, while I would act as his lawyer
16 for one year, he would act as my lawyer for the
17 rest of my career.

18 The effort that the Judge puts into
19 his relationship with his law clerks and former
20 law clerks and "non-clerk clerks" is one of his
21 most remarkable qualities. He has more than 50
22 law clerks and many more adopted clerks, some of
23 whom are here. There are many, many different
24 personalities among the group. Yet, he has
25 managed to create and maintain a strong bond with

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1 virtually all of us.

2 It's been 12 years since I've clerked
3 for the Judge, and I cannot remember a single time
4 when he was too busy to take my call or to meet
5 with me. What's even more amazing is that never
6 once, after seeking his guidance, did I have a
7 feeling that by reaching out to him I had burdened
8 him in any way. In fact, quite the opposite.
9 There have even been times when the Judge has been
10 worried about me, and he has reached out to me to
11 see if there was anything he could do to help.

12 I think that all of us who clerked
13 for Judge Silberman or who have been touched by
14 him feel that he has given so much more to us,
15 both during our clerkships and after, than we
16 could ever give to him. That's why we're all so
17 pleased to be part of this ceremony and to present
18 this portrait in his honor.

19 I am told I am supposed to introduce
20 Ricky Silberman, but after the beautiful comments
21 that Justice Thomas made on that topic, I don't
22 think there's anything more to say other than to
23 turn over the ceremony to Mrs. Silberman for the
24 unveiling. Thank you.

25 (Applause.)

1 MRS. SILBERMAN: Thank you, Stuart,
2 and particularly to all of the clerk family for
3 giving me the honor of unveiling this splendid
4 portrait, which you today present to the Court.

5 I do so on behalf of the Silberman,
6 Balaban, and Otis family who proudly sit in the
7 front row. It's a wonderful day for all of us.
8 To have so many people here who have meant so much
9 in our lives, my heart is very full.

10 Listening to the friends and
11 colleagues and clerks brought back lots of
12 memories. Genie's St. Crispian's Day speech has
13 special meaning since Larry took me to see the
14 play 47 years ago on our second date.

15 (Laughter.)

16 And he does love it; you're
17 absolutely right.

18 But I also thought about another
19 quote from the Bard which I have over the years
20 tried, albeit not always successfully, to get him
21 to think about, and that is the words from Henry
22 the Fourth, Part 1, "the better part of valor is
23 discretion."

24 (Laughter.)

25 But, as I look back over the years, I

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1 realize that, had I been able to censor him and to
2 change him and to filter him when I wanted to, he
3 would not have been the man that I have loved for
4 47 years whose true valor, if not discretion,
5 whose devotion to principle, whose loyalty, humor,
6 steadfastness, and capacity for love have been so
7 wonderfully captured by Peter Egeli, as you will
8 now see.

9 It is just an extraordinary portrait,
10 and I want to thank Peter as I go over to unveil
11 it. Thank you all.

12 (Applause.)

13 JUDGE GINSBURG: On behalf of the
14 United States Court of Appeals for the District of
15 Columbia Circuit, I would like to thank all of
16 Judge Silberman's clerks for the gift of this
17 magnificent portrait, which we gratefully accept
18 and which will hold a place of prominence in our
19 courtroom downstairs for many, many years.

20 When I first came on the Court 16
21 years ago, Larry was the only judge that I knew
22 other than Judge McGowan, for whom I had clerked.
23 I got some advice from him very early on. He
24 said, "About this opinion-writing business,
25 remember that the only people who read our

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1 opinions are the winning lawyer, the losing
2 lawyer, and the winning lawyer's mother."

3 (Laughter.)

4 Yet, his opinions seemed to be
5 crafted with the utmost care and skill. About 10
6 years later he told me that he wrote them on a
7 yellow pad by hand, which explains much of it, but
8 I wasn't sure how literally to take that since he
9 also said he used a quill pen.

10 (Laughter.)

11 As Mr. Levey said, Judge Silberman
12 has taken an interest in every case, finds every
13 case challenging, interesting, and worth getting
14 to the bottom of. I think that's what has made
15 him such a wonderful colleague.

16 Judge Silberman, if you would like to
17 share some reflections with your friends and
18 colleagues, we'll give you two minutes.

19 (Laughter.)

20 (Applause.)

21 JUDGE SILBERMAN: Members of the
22 Court, Chief Judge Ginsburg, friends from the
23 Supreme Court, all four of them who came down -- I
24 appreciate it no end -- Nino, Clarence, and Pat,
25 my ex-colleagues who spoke, they are all three

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1 dear friends.

2 Nino is my oldest friend in town. We
3 go back a long way. It was he that actually
4 talked me into becoming a judge. I returned the
5 honor by talking Clarence into becoming a judge.

6 (Laughter.)

7 So, Nino, you are responsible for two
8 of us.

9 Pat, I was thinking about our
10 relationship on the Court, which has come to mean
11 so much to me. It is interesting that you said
12 something that I was prepared to say about us. We
13 never disagreed about anything petty or small.
14 There is not a petty bone in your body. I miss
15 you terribly, just as I don't miss Nino because,
16 when he left, I became more senior.

17 (Laughter.)

18 When Clarence left, I got his
19 furniture.

20 (Laughter.)

21 John, Genie, and Stuart, I can't
22 imagine looking in the mirror and finding a more
23 wonderful picture even if it were not totally
24 accurate.

25 (Laughter.)

1 I'm enormously appreciative.

2 When I was a banker 20 years ago, I
3 was amused by the legal term non-bank bank, which
4 has been alluded to by several speakers. To
5 borrow that convention today, today could be
6 described as a non-funeral funeral.

7 (Laughter.)

8 Everyone lies about the protagonist.

9 (Laughter.)

10 I'm grateful to all of you who have
11 come to witness this hanging.

12 (Laughter.)

13 You have seen the portrait. I,
14 frankly, dreaded sitting for hours without an
15 opportunity to cross examine counsel.

16 (Laughter.)

17 But it turned out to be a delightful
18 experience because Peter Egeli is so interesting.
19 He doesn't fit the expected profile of an artist.
20 He is an ex-Marine who loves hunting, fishing, and
21 boating. He, too, along with his lovely wife Stu,
22 recently bought a trawler. We had a lot to talk
23 about. It was he who gave me advice as to how to
24 navigate through Woods Hole last summer.

25 (Laughter.)

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1 I am particularly pleased that many
2 of my friends brought their spouses. If I do not
3 mention the spouses, even if they are also
4 friends, it is only because our time is limited.

5 This gathering included Bob Segal, my
6 oldest friend, going back to first grade. He went
7 to Harvard Law School ahead of me, and recently
8 stepped down as Chairman of a large Philadelphia
9 law firm. He was bigger than I was, and once when
10 we were kids he tried to strangle me.

11 (Laughter.)

12 He claimed he was provoked because I
13 hit him in the mouth with a stick, and he offers
14 to show the scar to prove it.

15 (Laughter.)

16 If it's true, my defense is that I
17 had not yet read Machiavelli.

18 (Laughter.)

19 Also here from out of town are my
20 Dartmouth contemporaries, Bill Tell and Tom
21 Schwarz, and a number of my law school classmates
22 from Washington, including another Federal Appeals
23 Court Judge, Tim Dyk, as well, of course, as my
24 colleague, Judge Williams, who is also a
25 classmate.

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1 Speaking of judges, I am pleased that
2 Chief Judge Wilkinson from the Fourth Circuit
3 seized once more the opportunity to rub shoulders
4 with Washingtonians.

5 (Laughter.)

6 Judge Plager of the Federal Circuit,
7 a colleague of Tim Dyk's, braved cross-town
8 traffic to come over, and Bill Lewis came down
9 from Connecticut without Redskins game tickets.

10 Welcome is the contingent from
11 Georgetown Law School, where I have taught for 15
12 years, led by Dean Judy Areen, including three of
13 my past teaching partners, Sally Katzen, Paul
14 Cappuccio, and Chris Landau.

15 There are a number of people here who
16 I served with in past Administrations, too many to
17 mention, but I am delighted to see them. I should
18 acknowledge four who I had the honor of swearing
19 in: Don Rumsfeld, who was here earlier and had to
20 leave but left his lovely wife, from the present
21 Defense Department; Frank Carlucci from a past
22 Defense Department; Bill Barr and Ted Olson from
23 past and present Justice Departments.

24 Most of you will recall that
25 wonderful dialog from "Harry Met Sally" when Harry

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1 explains that a man can't have a real friendship
2 with a woman because lust gets in the way. It is
3 similarly hard for anyone who has served in the
4 executive branch, particularly after going through
5 six confirmations, to have a true friendship with
6 a Senator or ex-Senator.

7 (Laughter.)

8 Homicidal rage gets in the way.

9 (Laughter.)

10 Nevertheless, both Governor Pete
11 Wilson and Ambassador Bill Brock are here, close
12 friends, perhaps because they went on to prominent
13 executive branch posts and scrubbed off the Senate
14 patina.

15 (Laughter.)

16 Besides ex-law partners, there are a
17 number of other Washington lawyers who apparently
18 did not dare to pass on the invitation.

19 (Laughter.)

20 They are, of course, welcome, as well
21 as all my non-lawyer friends, including neighbors
22 and fellow boaters. There remains my family, my
23 colleagues, and my clerks.

24 I wish to acknowledge my son Bob and
25 daughter-in-law Christina, my older daughter Kate

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1 and her husband Mike Balaban, my younger daughter
2 Annie and her husband Nathaniel Otis. I am very
3 proud of all three of my children in part for
4 their accomplishments; more importantly, for their
5 choice of spouses, and most of all for their co-
6 production of my eight grandchildren:

7 (Laughter.)

8 Katie Rose, Christopher, Rob, and
9 Jack Silberman; Jack, Hank, and Joey Balaban; and
10 the newest entry, Charlotte Otis.

11 That brings me to my wife Ricky. The
12 cliché, of course, that male honorees always say
13 is that everything that I have done or become I
14 owe to my wife. I always thought the proper
15 response from a wife should be, "If it were
16 entirely in my hands, you would have done much
17 better."

18 (Laughter.)

19 I owe Ricky a good deal more than the
20 cliché suggests. She gave me a life, a happy
21 life. I think the portrait reflects that.

22 When I met her at a Harvard dance in
23 the summer of 1955, I was introduced to her and
24 danced with her once and came back to the three
25 roommates who introduced me to her and told them I

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1 was going to marry her. They were astonished.
2 She doesn't really believe it. I'm still
3 astonished. But the explanation is that I have
4 been in love with her for almost 50 years because
5 I was in love with the idea of her before I met
6 her.

7 As some of you know who have heard me
8 muse on the subject, I have been somewhat
9 ambivalent about being a judge. That is so
10 because for a long time I have been troubled about
11 the overlegalization of American society, and
12 sometimes wonder at the value of my efforts.
13 Still, I have loved the actual work and have been
14 fortunate to have had the colleagues on this Court
15 that I have had, men and women of enormous talent
16 and great dedication.

17 The best part, however, of being a
18 Federal Appellate Judge has been the opportunity
19 to have spent time with a parade of
20 extraordinarily talented young men and women who
21 have shared my chambers, my work, and my thoughts.
22 It is they who are responsible for this gift to
23 the Court and for this ceremony. It is as big a
24 thrill as I ever had or ever will experience.

25 I wish I had the time to talk about

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1 all 48 of them. I can remember, virtually can
2 remember, every single one of their contributions
3 on every case. Even more clearly, I remember our
4 luncheons and our lunch conversations, often over
5 a glass of Chianti at AV's, sometimes with my
6 secretary Christine drinking too much Chianti.

7 (Laughter.)

8 I am grateful that almost always they
9 became friends with each other. I was once asked
10 why that happened. The answer is they had a
11 common enemy.

12 (Laughter.)

13 Nevertheless, most of them have
14 stayed close and have done me the great honor to
15 have occasionally consulted me about their career
16 and personal decisions. They have done
17 extraordinarily well, and of that I am also very
18 proud.

19 Thank you.

20 (Applause.)

21 JUDGE GINSBURG: Thank you, Judge
22 Silberman, for 17 years of service on this Court,
23 for your friendship and collegueship, and for the
24 17 more years you've promised us as a Senior
25 Judge.

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1 (Laughter.)

2 For those of you who couldn't see,
3 Judge Silberman's remarks were, in fact, written
4 out by hand on a pad.

5 (Laughter.)

6 In a moment the Court will be in
7 recess, and the members of the Court sitting on
8 the bench will then come down to greet the family
9 and view the portrait. During that time we ask
10 that all guests immediately proceed to the
11 reception on the fifth floor, and not enter the
12 well of the Court. The Silberman family will be
13 at the reception in just a moment.

14 We thank you again for joining us on
15 this happy occasion, and we look forward to seeing
16 you shortly at the reception.

17 We stand adjourned.

18 (Whereupon, the proceedings were
19 concluded at 5:07 p.m.)