

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PORTRAIT PRESENTATION CEREMONY:

RUTH BADER GINSBURG

+ + + + +

FRIDAY,

NOVEMBER 3, 2000

+ + + + +

The ceremony took place at 4:00 p.m. in the Ceremonial Courtroom of the United States Courthouse, 3rd Street and Constitution Avenue, N.W., Washington, D.C.

PRESENT:

Chief Judge Edwards, Judges Buckley, Garland, Ginsburg, Henderson, Randolph, Rogers, Sentelle, Silberman, Tatel and Williams

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C-O-N-T-E-N-T-S

Opening Remarks

The Honorable Harry T. Edwards,
Chief Judge, U.S. Court of Appeals

The Honorable Antonin Scalia,
Associate Justice, Supreme Court of the
United States

Deborah Jones Merritt,
Director, The John Glenn Institute for
Public Service and Public Policy

Kathleen Peratis, Former Director,
ACLU Women's Rights Project

Professor Herma Hill Kay, Professor of
Law, University of California at Berkeley

Chief Judge Edwards

Albert F. Cacoza, Jr.

The Honorable Ruth Bader Ginsburg,
Associate Justice, Supreme Court of the
United States

Closing Remarks

Chief Judge Edwards

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

(4:09 P.M.)

CLERK 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.

CHIEF JUDGE EDWARDS: The Court of Appeals rarely has occasion to "hang" a member of the Supreme Court, either literally or figuratively. Today, we have such an occasion and it is one that we relish. The subject of our hanging is our esteemed former colleague and friend, Ruth Bader Ginsburg; and the object of our hanging is, of course, her portrait which will, from this day forward, grace the walls of our courtroom.

Justice Ginsburg received her B.A. from Cornell University, attended Harvard Law School, and received her LL.B from Columbia Law School. She served as a law clerk to the Honorable Edmund L. Palmieri, judge of the United States District Court for the Southern District of New York, from 1959 to 1961. From 1961 to 1963, she was a research associate

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1 and then associate director of the Columbia Law School
2 Project on International Procedure. She was a
3 professor of law at Rutgers University School of Law
4 from 1963 to 1972, and Columbia Law School from 1972
5 to 1980. She was appointed a judge of the United
6 States Court of Appeals for the District of Columbia
7 Circuit in 1980. And after serving as a member of
8 this court for 13 years, President Clinton nominated
9 her as an Associate Justice of the Supreme Court; and
10 she took her seat on the Supreme Court on August 10,
11 1993.

12 We are so pleased to host this homecoming
13 event for Justice Ginsburg today. And it is an honor
14 for me, on behalf of the court, to welcome her, along
15 with her husband, Professor Martin Ginsburg; her niece
16 Mindy Ginsburg and husband Greg Elias; her cousin Beth
17 Hess and husband Steve Hess; and her many former law
18 clerks and countless friends. Unfortunately, the
19 Justice's daughter Jane and son James and their
20 respective families are out of the country and unable
21 to be with us today. They have sent their best wishes
22 and lots of love, however, which I have been
23 instructed to convey to "Mom" and "Grandma."

24 We also extend our gratitude and warmest
25 greetings to the members of the Supreme Court, all of

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1 whom are here today to pay tribute to their colleague.
2 Chief Justice Rehnquist, Justice Stevens, Justice
3 O'Connor, Justice Scalia, Justice Kennedy, Justice
4 Souter, Justice Thomas and Justice Breyer, thank you
5 for joining with us today.

6 Welcome also to our former colleague,
7 Judge Kenneth Starr who, along with Justice Scalia,
8 Justice Thomas, Justice Ginsburg, are returning "home"
9 today.

10 Finally, my warmest greetings to the
11 judges who are here today from other federal courts
12 and from the District of Columbia courts, and also to
13 the many other distinguished guests who are here today
14 to honor Justice Ginsburg.

15 Before the unveiling of the portrait,
16 there will be several tributes to Justice Ginsburg
17 offered by notable friends and colleagues.

18 The first speaker is the Honorable Antonin
19 Scalia, Associate Justice of the Supreme Court of the
20 United States. Justice Scalia received his A.B. from
21 Georgetown University and the University of Fribourg,
22 Switzerland, and his LL.B from Harvard Law School. He
23 was in private practice in Cleveland, Ohio from 1961
24 to 1967, a professor of law at the University of
25 Virginia from 1967 to 1971, and a professor of law at

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1 the University of Chicago from 1977 to 1982. He was
2 also Assistant Attorney General for the Office of
3 Legal Counsel from 1974 to 1977. He was appointed
4 judge of the United States Court of Appeals for the
5 District of Columbia Circuit in 1982. President
6 Reagan then nominated him as an Associate Justice of
7 the Supreme Court, and he took his seat on the Court
8 on September 26, 1986. We welcome our former
9 colleague and friend, Justice Scalia.

10 JUSTICE SCALIA: Judge Edwards and judges
11 of the United States Court of Appeals for the District
12 of Columbia Circuit; Chief Justice Rehnquist and
13 Justices of the Supreme Court; Chief Judge Johnson and
14 judges of the United States District Court for the
15 District of Columbia; and ladies and gentlemen:

16 I am honored to have been invited by
17 Justice Ginsburg to say a few words on this happy
18 occasion. And, you may well ask, why me? Apart from
19 Chief Judge Edwards, who gets on the program almost ex
20 officio, as it were, you will observe that I am the
21 only speaker representing the unfair sex.

22 (Laughter.)

23 And though I cannot speak for Harry,
24 though I have my suspicions, certainly I cannot be
25 portrayed as the sort of sensitive male, in touch with

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1 his feminine side, that is popular in the women's
2 movement with which Ruth has been so prominently
3 associated. Indeed, to Ruth's disappointment, I have
4 not even resigned myself to the use of shifting
5 genders -- or even to saying "he or she" every time.

6 Perhaps I am here because I am one of
7 Ruth's best friends -- an unlikely alliance, I know,
8 and one that I carefully suppressed when she was one
9 of the candidates for appointment to the Supreme
10 Court. (Laughter.) But Ruth has many good friends,
11 on and off my court, so that alone cannot explain it.
12 I conclude that the reason I am here, apart from
13 serving as a foil, is that I have been a colleague of
14 Ruth's longer than anyone else, at both levels of that
15 aspect of her life for which she will be most
16 prominently remembered. She would be worthy of long
17 remembrance, of course, in many fields to which she
18 has devoted her talents: As a prominent scholar at
19 Rutgers and later Columbia; as an accomplished public-
20 interest litigator; as a trailblazer in the field of
21 women's rights; as the wife of the only man, living or
22 dead, who could make the Internal Revenue Code funny,
23 a task even more difficult though perhaps more
24 worthwhile than making it coherent; and, of course, as
25 the mother of Jane and James, two fine and

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1 accomplished children who are making their own marks
2 in their chosen fields.

3 But, like it or not, Ruth Bader Ginsburg
4 will most prominently be remembered as a judge -- as
5 a member of this distinguished court for 13 years and
6 as the 107th appointee to the Supreme Court of the
7 United States. It has been my privilege to serve on
8 both benches with Ruth longer than anyone else. Chief
9 Judge Edwards served with her longer overall, but only
10 on this court. She was my colleague for four years
11 here and has been my colleague for seven years on the
12 Supreme Court.

13 So I will say a few words about Ruth Bader
14 Ginsburg as a colleague. By my tastes she is the best
15 sort of colleague -- short of one who agrees with you
16 all the time, which I soon discovered does not exist.

17 (Laughter.)

18 She is, of course, exceptionally smart,
19 very hard working and compulsively thorough. But her
20 distinctive value as a colleague consists of something
21 else. I sometimes tell the story of my encounter,
22 during one of my early years on this court, with the
23 redoubtable Ed Tamm.

24 When I first joined the D.C. Circuit, I
25 tended to treat the proposed opinions authored by my

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1 colleagues as I had been accustomed to treating the
2 proposed law review articles circulated by my academic
3 colleagues at the University of Chicago. That is to
4 say, I would not just suggest a correction of what
5 seemed to me mistakes or misstatements; I would also
6 offer what seemed to me helpful suggestions for
7 improvement. One day, Ed Tamm invited me up to his
8 office on some pretext or other -- I forget what it
9 was. Ed, of course, had been a district judge before
10 being appointed to this court, and so had acquired
11 some of the "my opinion is my opinion" frame of mind
12 for which district judges are renowned. When our
13 conversation was over, he stood up from his desk,
14 walked over to his judicial commission hanging on the
15 wall, peered at it thoughtfully and said, "You know,
16 Nino, I've read this commission over and over again,
17 and nowhere does it say I have authority to edit other
18 judges' opinions." (Laughter.) Well, of course, I
19 took the hint -- if you can consider that a hint --
20 and I only suggested changes in Ed's work thereafter
21 when he seemed to be overruling *Marbury v. Madison*.

22 But I never dealt that way with Ruth's
23 opinions, nor she with mine. She always suggested not
24 only those changes that were necessary, but those that
25 would strengthen the opinion. Though perhaps we

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1 should not let this secret leak out, I am sure that
2 over the years none of my colleagues has improved my
3 opinions to the degree that Ruth has. There is
4 something to be said for Ed Tamm's approach, which was
5 also, some of my colleagues will recall, the approach
6 of Byron White. But Ruth's notion of the collegiality
7 of the appellate bench is closer to my own, and
8 explains, apart from her endearing personality, why I
9 so much value her as a colleague.

10 I do not want to leave the impression that
11 Justice Ginsburg's perception of appellate judging is,
12 apart from the substance of the matter, precisely the
13 same as mine. To the extent they differ, however, I
14 must admit that her perception makes her a more
15 amiable colleague. As she has written in scholarly
16 articles, she reserves her dissents to significant
17 issues; I have never joined any part of an opinion I
18 thought was wrong. And, of course, in her dissents,
19 she is always firm but never sharp. She may be right.
20 (Laughter.) And if I have the good fortune to serve
21 with her for many more years, perhaps she can add that
22 to the many other things she has taught me -- though
23 I doubt it.

24 In any case, I am pleased and honored to
25 participate in this tribute to a good friend and to a

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1 judge who is not only excellent herself but who makes
2 other judges better.

3 (Applause.)

4 CHIEF JUDGE EDWARDS: Thank you Justice
5 Scalia. Our next speaker is Professor Deborah Jones
6 Merritt, who was a student in then-Professor
7 Ginsburg's Columbia Law School constitutional law
8 class in 1979. In 1980, Professor Merritt was the
9 first law clerk hired by Justice Ginsburg after she
10 was appointed to the Court of Appeals. Professor
11 Merritt presently holds the John Deaver Drinko/Baker
12 and Hostetler Chair in Law at The Ohio State
13 University and serves as the director of the John
14 Glenn Institute for Public Service and Public Policy.
15 Welcome, Professor Merritt.

16 PROFESSOR MERRITT: Thank you, Chief Judge
17 Edwards. I will incorporate by reference Justice
18 Scalia's acknowledgment of this very distinguished
19 audience. And before I begin my tribute to Justice
20 Ginsburg, I want to thank Albert Cacozza on behalf of
21 all the Ginsburg law clerks. Al is the one who had
22 the inspiration to commission this portrait and did
23 most of the work to bring the project to fruition.
24 Just as we would not be here today without Justice
25 Ginsburg, we would not be here without Al, so thank

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1 you very much, Al.

2 And now for Justice Ginsburg. Speaking in
3 honor of Justice Ginsburg must be one of the easiest
4 assignments I have ever received. Much easier
5 certainly than answering her constitutional law exam,
6 easier than emulating her flawless prose in opinion
7 drafts, and easier than keeping up with her almost
8 universal knowledge of the law. The only challenge is
9 trying to capture fully the tremendous love and
10 admiration felt by more than 60 law clerks gathered in
11 this room or beaming their good wishes from around the
12 country.

13 Twenty years ago, some of us gathered in
14 this very building to witness Justice Ginsburg's
15 formal installation as a judge on the United States
16 Court of Appeals for the District of Columbia Circuit.
17 In what is now a full generation of jurisprudence,
18 Justice Ginsburg has set a virtually unmatched
19 standard of wisdom, principled decisionmaking,
20 integrity, and crystalline prose. She has also shown
21 a complete generation of law clerks her humanity, her
22 caring, and her commitment to mentoring us, not only
23 during our clerkship year but throughout our careers.
24 For that, this portrait serves as only a very small
25 token of our appreciation.

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1 I want to highlight very quickly three
2 characteristics of Justice Ginsburg that are well
3 known to her clerks, as well as to most of you in this
4 room.

5 The first is her remarkable decisionmaking
6 style. There are some people who see the trees, who
7 focus on the detail in every picture. And there are
8 some people who see the forest, who have the vision to
9 grasp the entire picture. Good judges, I think,
10 combine both of these traits: the essence of our
11 judicial system is to use the trees, the individual
12 cases, to generate the forest, our terrain of justice.

13 Ruth Bader Ginsburg is so remarkable
14 because she not only combines these two qualities, she
15 excels at both of them. She sees not just trees but
16 branches, twigs, leaves, buds, and even roots. She is
17 able to delve into the facts of every case, as well as
18 into the doctrinal intricacies and even the footnotes
19 to all of those legal tangles. At the same time, she
20 never loses sight of the forest and of the fields
21 beyond.

22 Justice Ginsburg's great talent as a
23 jurist is to tend the small sprouts of law with
24 painstaking care and skill, nurturing every leaf and
25 flower, while knowing all the time how each modest

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1 bloom will enhance the entire garden and create new
2 vistas beyond. That is what has made her such a great
3 judge on both the Court of Appeals and the Supreme
4 Court.

5 Justice Ginsburg's second well known
6 attribute is her accomplished writing style. She
7 cares deeply about language and about clarity. She
8 uses words to discipline thought, to convey truth, and
9 to keep it simple. She eschews bombastic statements,
10 flowery prose, argumentative text, and muddled
11 reasoning. She has achieved a gracefulness in her
12 writing that accentuates her equally refined
13 reasoning. This elegance will preserve her legacy,
14 both through her own words and opinions and through
15 the many dozen law clerks who have tried so hard to
16 follow her example.

17 Finally, those of us who have worked with
18 Justice Ginsburg know that she cherishes people as
19 much as she treasures the law. Certainly she loves
20 the law with a passion. I cannot think of another
21 person who is so enlivened by the complexities of law,
22 who can discuss legal issues with such avid attention,
23 or who knows so well so many different areas of law.
24 Justice Ginsburg draws life and strength from legal
25 principles in the same way most of us draw sustenance

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1 from food, water, and sleep.

2 But for Ruth Bader Ginsburg those
3 principles are not just sterile concepts -- and legal
4 debates are far from abstract logic games. Justice
5 Ginsburg knows that legal rules affect people and she
6 cares very deeply about how those rules shape people's
7 lives.

8 This quiet, but deep, compassion for
9 people is the characteristic that best defines Justice
10 Ginsburg and that we admire most about her. It is
11 also the trait that binds Ruth Bader Ginsburg most
12 strongly to what is now 21 sets of law clerks -- the
13 fact that she cares so deeply about our lives.

14 In making this tribute to Justice
15 Ginsburg, it is impossible not to mention Marty
16 Ginsburg as well. We all know how important Marty is
17 to the Justice, but he is also vital to us. To
18 current and former clerks he is a boundless source of
19 energy, a second mentor, the one who calls the Justice
20 to entreat her to end the workday and come home, the
21 best chef we know, and a pioneer not just of the dual
22 career couple, but of the dual career individual. In
23 Marty's case that means never less than two careers at
24 the same time.

25 In closing, I know that I speak for the

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1 full family of Ginsburg clerks when I say, Justice, we
2 love you, we admire you, we thank you, and we hope for
3 20 more years of Ginsburg clerks. You have touched
4 lives throughout the world with your ideas and your
5 jurisprudence, but you have touched most deeply the
6 lives closest to you.

7 Thank you all.

8 (Applause.)

9 CHIEF JUDGE EDWARDS: Thank you Professor
10 Merritt. I would now like to welcome Kathleen
11 Peratis, who has been Justice Ginsburg's good friend
12 and colleague for more than a quarter century. She is
13 the former director of the ACLU Women's Rights Project
14 and the former president of the New York Civil
15 Liberties Union. Ms. Peratis is the current chair of
16 the Women's Rights Division of the Human Rights Watch.
17 Ms. Peratis, it is a pleasure to have you with us
18 today.

19 MS. PERATIS: Distinguished ladies and
20 gentlemen, I also incorporate the more formal
21 salutation.

22 I once heard someone say of Doris Day I
23 knew her before she was a virgin. (Laughter.) Well
24 I knew Ruth Ginsburg before she was an icon, when she
25 was a mother of young children and an ambitious young

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1 professional.

2 I first met her at a 1973 conference of a
3 brand new species -- feminist litigators. Shortly
4 after that meeting I joined the staff of the ACLU,
5 succeeding Ruth as director of the Women's Rights
6 Project along with my colleague Susan Ross who is
7 sitting in the back of the courtroom.

8 Working with Ruth during the middle chunk
9 of the 1970s, I had the opportunity to know her as a
10 mentor, as a colleague and as an advocate. In
11 retrospect, I now understand an additional strand I
12 didn't know then. Ruth as a Jew. I would like to say
13 a few words about each of these.

14 When I joined the staff of the ACLU, Ruth
15 was already an awesome presence on the women's rights
16 front. I didn't then know much of her personal life.
17 One of the first things I learned from our mutual
18 friend, Mel Wulf, who had waited tables at her summer
19 camp, was that she had been a popular, baton-twirling
20 teenager. I must admit the baton was not much in
21 evidence at the ACLU.

22 By the time she came into my life during
23 the extended period between the baton and the gavel,
24 she'd earned a reputation for seriousness. As Leon
25 Wieseltier has said in describing the pleasures of a

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1 conversation with her, there are no words that are not
2 preceded by thoughts. Not even, I might add, her
3 answer to the question how are you? Many of us have
4 experienced the inevitable pause after asking this
5 question while she ponders her response.

6 But serious does not mean dour and our
7 workplace was home to a real sisterhood. We whom she
8 mentored quickly learned that her reserve was merely
9 that. It was not chill, nor was it lack of interest
10 in us as human beings. She'd speak easily with us
11 about the villains of the government, the bench, the
12 bar, and even the feminist community who put stumbling
13 blocks in our way. She gave us parties for the
14 special events of our lives -- of course, Marty
15 cooked. Ruth admitted early on that everything she
16 cooked tasted like dinosaur.

17 I know exactly what a former law clerk
18 meant when she wrote, "We did not understand what an
19 utterly remarkable workplace she created for us, a
20 place where we could bring both our analytical and
21 emotional lives in fullness. It was an introduction
22 to law that we will never outgrow."

23 But there was more. It was not only an
24 all-female staff, it was a law office environment that
25 was utterly unique. Two of us, including me, the

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1 other was Susan Ross, took our babies to the office
2 every day and we nursed them and changed them even in
3 the midst of all that goes on in a busy law practice.
4 Roger Baldwin once admitted to me that he did not feel
5 he should enter our sanctum sanctorum unless
6 specifically invited. I, of course, told him he was
7 welcome any time.

8 Adversaries, unnerved by the babies,
9 complained about our lack professionalism, but Ruth
10 and the hierarchy at the ACLU backed us up -- not
11 least I suspect because this busy law practice was a
12 very successful one.

13 In addition, we were imbued with a sense
14 of superiority that flowed from Ruth's preeminence in
15 our long winning streak. We were in the papers, or so
16 it seemed, every day. When we threatened a law suit
17 we struck fear. Everyone took our calls. It was
18 heady stuff and we loved it and we reveled in it, we
19 daughters of Ruth.

20 What was Ruth like as an advocate? She
21 herself has described the ideal of the female lawyer.
22 Tough yet tender, wanting to win but not vindictive,
23 cautiously optimistic with the sense to settle for
24 victories that do not leave one's opponents bloodied
25 and bowed. Willing to be a link in a chain that is

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1 strong yet pliable. Actually, that somewhat idealizes
2 the reality. We were, in fact, quite pleased when we
3 left our opponents bloodied. (Laughter.) And I don't
4 recall any admonitions from tough yet tender Ruth.

5 I was not yet on the staff of the Women's
6 Rights Project when Ruth and Mel won the *Reed* case in
7 1971, in which the Supreme Court struck down as
8 unconstitutional its first gender classification, but
9 I was there for most of the rest, every winner
10 carefully chosen by Ruth so as to woo justice one step
11 at a time rather than attempt to take it by storm.

12 The main plaintiffs were often males but
13 this did not mean we were challenging sex
14 discrimination against men. In fact, there was never
15 any question that these cases were about the value of
16 women as workers and the working value of the women.

17 I learned only later that Ruth may have
18 cribbed her strategy from the Bible. In the Book of
19 Numbers there is the story of the five daughters of
20 Zelophehad. They were their father's only children
21 and upon his death his property was to pass to a
22 distant male heir. The daughters brought their very
23 carefully drafted summons and complaint to Moses. But
24 Moses was not known as a reliable feminist, and so
25 they did not allege that they were the victims of sex

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1 discrimination. Instead, they argued that their
2 father was the victim, in that he would incur an
3 injustice if his property was lost to his family
4 merely because he had only daughters and no sons.
5 Moses consulted God and God's ruling was: The
6 daughters inherit.

7 But Paula Wiesenfeld, Sharon Frontiero and
8 Hannah Goldfarb had a tougher challenge than the
9 daughters of Zelophehad. Moses had to deal only with
10 God; Ruth Ginsburg had to deal with the Supreme Court
11 of the United States.

12 Although the cases Ruth chose were clearly
13 on behalf of women, they were on behalf of a certain
14 type of woman -- the woman who did not fit the
15 stereotype. We did not frontally challenge the system
16 that rendered the stereotypical woman as second class
17 and subordinate. We understood what we were doing.
18 Ruth herself in her early Women and the Law course
19 material analyzed the part played by law in keeping
20 women in their place. But we were reformers, not
21 revolutionaries and we worked inside the system, which
22 perfectly matched Ruth's temperament and our own.

23 One area that presented thorny issues and
24 some gallows humor for us conventional ACLU equality
25 feminists was, predictably, that realm in which

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1 equality was all but impossible -- pregnancy, abortion
2 and childbirth.

3 Some of our most amusing lines were
4 inspired by the Supreme Court. In the *Aiello* case,
5 the Court found that discriminating against pregnant
6 employees did not constitute sex discrimination. This
7 holding became my favorite illustration for the
8 definition of a legal mind. If you can think of
9 something that is inextricably related to something
10 else without thinking of the something else, you have
11 a legal mind.

12 Another personal favorite. In the midst
13 of the ERA and abortion struggles, Phyllis Boring of
14 Rutgers memorably noted, "I have nightmare visions of
15 the fertilized egg being named a legal person before
16 female adults are."

17 Finally, I would like to say a word about
18 Ruth as a Jew, a dimension I have come to understand
19 and appreciate in the last several years. For one
20 thing, I see the contrast between her activism as an
21 advocate and her moderation as a jurist as influenced
22 by her understanding of Jewish traditions. The model
23 of her activism is the prophet, the one who is the
24 outsider who sees and describes society's brokenness,
25 whose warnings of impending doom are meant to awaken

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1 listeners and inspire them to change their ways and
2 avert the doom.

3 Ruth's own experience sensitized her to
4 the brokenness, the fractures of our planet and our
5 society, the gap between promise and fulfillment,
6 between rhetoric and reality. She acutely felt
7 herself to be an outsider. She often described the
8 sex and pregnancy discrimination she herself
9 experienced. She also possesses the secret weapon of
10 the very best prophets -- she knows how to tell a
11 story, which she did in every case she ever litigated.

12 Her passionate commitment to Tikkun Olam,
13 mending the fractures of the world, is much in
14 evidence. She has noted that the traditional
15 commandment from Deuteronomy -- justice, justice shalt
16 thou pursue -- is posted in her chambers and is the
17 emblem of her faith in the power of the law as a
18 protector of the poor, the downtrodden and the
19 oppressed.

20 Her moderation as a jurist, however, is
21 modeled on a different part of the tradition. One
22 former law clerk said she had Talmudic reverence and
23 respect for the process of the law. Ruth herself has
24 said, in a line that could have come out of the Talmud
25 itself, "Accept for yourself the role of teacher,

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1 engage in constant dialogue, constant persuasion."

2 She is a convener of majorities, an
3 advocate of collegiality, and has a very high inter-
4 agreement rate on the Supreme Court. When she does
5 part company with her colleagues, she does so in the
6 Talmudic spirit of utter respect for the seriousness
7 and merit of both sides -- an approach characterized
8 in the Talmud as "these and these both are the words
9 of the living God."

10 We at the ACLU were convinced that Ruth
11 would be the first woman on the Supreme Court. In
12 fact, when Justice O'Connor was named, my elder
13 daughter then aged four whom I had middle named after
14 Ruth, looked at me in amazement and demanded what
15 happened? Thank God my credibility was redeemed
16 several years later when President Clinton, of all
17 people, made an honest woman of me.

18 (Laughter.)

19 Thank God for that and thank Ruth Ginsburg
20 for remaining, for all these years of turmoil and
21 triumph, so constant an inspiration to so many of us,
22 so steady an example of all that is right and good
23 and, yes, noble, in our ongoing pursuit of justice.
24 Thank you.

25 (Applause.)

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1 CHIEF JUDGE EDWARDS: Thank you, Ms.
2 Peratis. Our next distinguished speaker is Professor
3 Herma Hill Kay. Professor Kay recently completed an
4 eight-year term as Dean of the Law School at the
5 University of California at Berkeley, Boalt Hall,
6 where she currently holds the Barbara Nachtrieb
7 Armstrong Chair in Law. Professor Kay and then-
8 Professor Ginsburg were co-authors of a path-marking
9 casebook on sex-based discrimination first published
10 in 1974. They have remained good friends for many
11 years and I'm happy to welcome Professor Kay.

12 PROFESSOR KAY: Thank you, Chief Judge
13 Edwards, distinguished members of the federal
14 judiciary, ladies and gentlemen. My remarks are
15 entitled, "The Face of a Justice."

16 It is an honor and pleasure to be here to
17 celebrate Justice Ginsburg on the occasion of the
18 presentation of her portrait commissioned by her law
19 clerks. Such an occasion is often referred to as an
20 "unveiling" of the portrait; but in a deeper sense,
21 the portrait itself is an unveiling of the subject's
22 likeness as seen by the artist. So today we will see
23 the face of a Justice -- a very special Justice to
24 those of us gathered here, and to all her many
25 admirers outside this room.

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1 As we all know, Justice Ginsburg was a
2 professor of law before President Carter named her to
3 the U.S. Court of Appeals for the D.C. Circuit in
4 1980. One of the chief activities of her former
5 colleagues, particularly those who are specialists in
6 constitutional law, is unveiling the judicial
7 countenances of members of the bench through an
8 analysis of their written opinions. I thought it
9 appropriate on this occasion to consult with some of
10 my colleagues at Berkeley in an effort to unveil the
11 face of Justice Ginsburg as she has chosen to reveal
12 it through her work on this court and the United
13 States Supreme Court. I asked them to give me the
14 names of one or two of her opinions that they consider
15 exceptional in their own areas, together with a few
16 sentences outlining the basis for that selection.

17 Their responses were fascinating. I
18 discovered that Justice Ginsburg's opinion for the
19 Supreme Court in the *VMI* case -- which, given my own
20 interests, I think of as a sex discrimination case --
21 is put at the top of the list by colleagues in other
22 fields as well. Thus, Professor Rachel Moran claimed
23 it as the "clear winner" in her field of education
24 law, noting that "Justice Ginsburg chronicles the
25 history of sex segregation in education, sets a high

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1 standard of review for scrutinizing claims that sex
2 segregation is pedagogically necessary, and makes
3 clear that women must be treated as individuals rather
4 than as generic members of a group when the State
5 makes educational decisions." She added that "[t]he
6 case has created a stir over whether there is any room
7 left for single-sex schools; Justice Ginsburg's
8 opinion forces people to examine the received wisdom
9 about the benefits of these schools very carefully.
10 I'm sure that's just what she had in mind."

11 Professor Jesse Choper who preceded me as
12 Dean, speaking from the perspective of a
13 constitutional law scholar, also had high praise for
14 *VMI*. He pointed out that, although Justice Ginsburg
15 typically does not write what he calls "flashy"
16 opinions, *VMI* is remarkable because "she slipped in
17 that new test, and she still kept six Justices."

18 I'm sure it will surprise no one to hear
19 that *VMI* is also one of my favorite opinions in the
20 area of sex discrimination, particularly because the
21 words "intermediate scrutiny" do not appear anywhere
22 in the opinion, and because the new test it fashions
23 gives the Court a reliable framework for resolving
24 future claims of inequality in contexts outside
25 conventional equal protection analysis.

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1 Professor Paul Mishkin chose a 1996
2 federal jurisdiction case, *Gasperini v. Center for the*
3 *Humanities*, which posed a Seventh Amendment problem
4 affecting the *Erie-Hanna* line of diversity cases, in
5 which the Court upheld a New York statute empowering
6 appellate courts to review the size of jury verdicts
7 and to order new trials only if such orders are
8 confined to cases of abuse of discretion. He observed
9 that Justice Ginsburg's opinion for the 5-4 majority
10 "set forth a subtle and nuanced analysis of the
11 problem and its several difficult issues," concluding
12 that, while the opinion has drawn both scholarly
13 criticism as well as praise, "she reached the right
14 result and supported it by fine judicial
15 craftsmanship."

16 Professor Charles Weisselberg told me
17 that, while Justice Ginsburg has not been particularly
18 active in his area of criminal procedure and habeas
19 corpus law, she authored one recent opinion that he
20 admires. Writing for a unanimous court in *Florida v.*
21 *J.L.*, she rejected the claim that a "bare-bones"
22 anonymous tip about a person carrying a concealed gun
23 established sufficient cause for a "stop and frisk" by
24 the police. He commented, "I admire the opinion
25 because it is clear and, especially, because she

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1 rejects the state's argument for a firearms exception
2 to the Fourth Amendment."

3 Among Justice Ginsburg's contributions to
4 another of my own fields, the conflict of laws, I find
5 her 1998 opinion for the Court in *Baker v. General*
6 *Motors* especially noteworthy. She there held that a
7 Michigan court's injunction prohibiting a former
8 employee from testifying as a witness against his
9 employer in tort litigation was not entitled to Full
10 Faith and Credit in subsequent litigation brought in
11 another state by plaintiffs not parties to the
12 Michigan suit. Taking the occasion to review and
13 reaffirm several of the Court's leading cases on Full
14 Faith and Credit to judgments, Justice Ginsburg
15 accorded GM's attempt to exclude the testimony all the
16 weight it deserved by observing succinctly that
17 "[r]ecognition under Full Faith and Credit is owed to
18 dispositions Michigan has authority to order." Yes,
19 Ruth, this opinion will be included in the new edition
20 of our casebook.

21 A few colleagues mentioned some of Justice
22 Ginsburg's dissenting opinions as particularly
23 significant. For example, Professor John Yoo found her
24 1995 dissent in an affirmative action case, *Adarand*
25 *Constructors v. Pena*, notable for its discussion of

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1 the role of precedent. She there concluded that she
2 saw the majority decision "as one that allows our
3 precedent to evolve, still to be informed by and
4 responsive to changing conditions."

5 I would cite as outstanding her cogent
6 1998 decision in *Miller v. Albright*, which highlighted
7 the dangers of accepting for constitutional purposes
8 the conventional family law assumptions concerning the
9 respective responsibilities of mothers and fathers
10 toward children born out of wedlock. Her careful
11 historical analysis of Congressional legislation on
12 the transmission of citizenship from parent to child
13 may prove crucial in this term as the Court revisits
14 in *Nguyen v. I.N.S.*, the validity of the current line
15 drawn between the ability of unmarried mothers and
16 unmarried fathers to confer citizenship upon their
17 children born overseas.

18 Of course, I could continue indefinitely
19 to expand this list of Justice Ginsburg's outstanding
20 opinions. In the interest of time, however, I will
21 give the last word to my colleague, Jesse Choper,
22 whose close and penetrating analysis of the work of
23 the Supreme Court Justices is well known. He pointed
24 out that while Justice Ginsburg was a member of this
25 court, she was known for her relatively narrow

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1 opinions. She tended not to go beyond what was
2 absolutely necessary to decide the issue at hand.
3 While she continues to be sparing in the scope of her
4 decisions as a Supreme Court Justice (and here Choper
5 mentions her very narrow opinion in *Chandler v.*
6 *Miller*, holding that Georgia's requirement that
7 candidates for state office pass a drug test did not
8 fit within "the closely guarded category of
9 constitutionally permissible suspiciousless
10 searches"), she is much more likely now to be
11 expansive in dealing with new issues.

12 He gave as an example her 1996 opinion in
13 *M.L.B. v. S.L.J.* in which the Court expanded the right
14 to obtain records for appeal without regard for
15 ability to pay court fees, originally granted in
16 criminal cases, to include civil cases where the
17 appellant's parental rights may be terminated. Still,
18 he noted that Justice Ginsburg characteristically
19 speaks in a quiet, but decisive voice, and sometimes
20 is content merely to make plain the basis for her vote
21 to join another Justice's opinion without writing
22 separately herself. Thus, in *Washington v.*
23 *Glucksberg*, the "right to die" case, she stated only
24 that she concurred in the Court's judgments
25 "substantially for the reasons stated" in a brief

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1 concurring opinion in which Justice O'Connor intimated
2 her own willingness to accord a right to die to "a
3 patient who is suffering from a terminal illness and
4 who is experiencing great pain..."

5 Choper counts Justice Ginsburg and Justice
6 Stevens as the present Court's most reliable liberal
7 jurists, pointing to their consistent support for
8 individual rights versus government regulation; the
9 use of national power versus states' rights; and
10 expansive versus restricted federal court
11 jurisdiction.

12 In my own view, the face of this Justice,
13 as revealed through her words, is suffused with the
14 understanding that the Constitution protects
15 individual effort, facilitates individual opportunity,
16 and celebrates individual achievement. If I were to
17 pick one sentence from her opinions that best conveys
18 that understanding, it would be this one from her
19 eloquent dissent in *Adarand*: "Bias both conscious and
20 unconscious, reflecting traditional and unexamined
21 habits of thought, keeps up barriers that must come
22 down if equal opportunity and nondiscrimination are
23 ever genuinely to become this country's law and
24 practice."

25 The presence on the United States Supreme

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1 Court of a Justice with that understanding of the
2 constitutional mandate, who speaks in precise and
3 measured tones, whose words are grounded in a deep
4 knowledge of the Court's precedents as well as a keen
5 understanding of our people's thirst for fairness and
6 respect as the foundation of their legal system, goes
7 far toward assuring us that the judicial branch of our
8 government is in good hands. That this Justice is
9 also imbued with a generous spirit toward her many
10 friends, colleagues and co-workers is ample cause for
11 personal gratitude and affection.

12 (Applause.)

13 CHIEF JUDGE EDWARDS: Thank you, Professor
14 Kay.

15 It's an honor for me to pay tribute to my
16 dear friend and colleague, the Honorable Ruth Bader
17 Ginsburg. Justice Ginsburg and I were both appointed
18 and confirmed as members of the United States Court of
19 Appeals for the D.C. Circuit in 1980. I first met
20 Ruth in 1977, when I was the chairperson of the Rules
21 and Credentials Committee for the National Commission
22 on the Observance of International Woman's Year.

23 The Commission had a huge conference that
24 year in Houston, Texas, with delegates from every
25 state, national leaders in the women's movement, and

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1 preeminent international figures. The arrangements
2 were unbelievably difficult and the security was
3 extremely tight. As I recall, when then-Professor
4 Ruth Bader Ginsburg arrived, along with Eleanor Holmes
5 Norton, I believe, she did not have the proper
6 credentials; so, of course, we denied her entry to the
7 conference. I know that Ruth eventually gained access
8 to the conference but I cannot remember whether it was
9 because she sweet talked me or threatened me.

10 In any event, Ruth apparently forgave me
11 for that mishap and we later became very close
12 friends. And I cherish our friendship, not just
13 because it is sealed by bonds of loyalty, trust and
14 mutual caring. I also truly admire my friend's
15 profound intelligence, uncommon savvy and unique
16 judgment and wisdom; her capacity to be a giant in her
17 professional work and yet lead a balanced life,
18 remaining faithful to family and friends; and her
19 steadfast determination always to be guided by
20 principles, not mere whim or personal ideology, in her
21 professional work.

22 Our lives have intersected in funny,
23 serious and profound ways over the years: we've worked
24 together as appellate judges on countless cases,
25 rarely disagreeing; we have golfed together; we've

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1 shared dinner parties with our spouses; we've gone to
2 the opera together; we've gone shopping together in
3 Scotland while attending a conference there; we've
4 shared law clerks; we've talked endlessly about the
5 trials and successes of our children and
6 grandchildren; and we have shared common perspectives
7 on the role of a judge and life in general.

8 When Pamela and I decided to get married
9 this past February, Ruth was the friend to whom we
10 turned to preside over our wedding. Pamela now adores
11 Ruth as much as I do.

12 Last spring, Justice Ginsburg's law clerks
13 asked me to speak at her law clerks' reunion
14 celebration. When I received the invitation to this
15 affair, I wondered how Pamela and I could manage it
16 because we had plans to celebrate a reunion with my
17 own law clerks during the same weekend. I told Pamela
18 that I "admired" Ruth so much that I would terribly
19 disappointed to say "no" to the invitation. She
20 laughed, then told me that my affection for Ruth was
21 much more than "admiration," so I'd find a way to say
22 "yes" to the invitation. She was right, of course,
23 but I was curious to know what Pamela meant. She
24 laughed again, which made me nervous. I was then
25 reminded by my wife that I had asked Ruth to preside

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1 over our wedding before I had asked Pamela to marry
2 me.

3 (Laughter.)

4 "Did I really do that?" I asked. "Yes,"
5 she replied. I winced. I was further reminded by my
6 wife that I kissed the Justice but not the bride at
7 our wedding ceremony. I took offense at this
8 suggestion, at least until Pamela produced our wedding
9 album in which I could find no photo of the groom
10 kissing the bride but I could find a photo of the
11 judge kissing the Justice. "Oh well," I said. "Not
12 to worry, darling" was my wife's reply. "I applaud
13 you for having the good sense to count Ruth as one of
14 your cherished friends. She's wonderful."

15 When I accepted that invitation to speak
16 at Justice Ginsburg's law clerks' reunion celebration,
17 I asked one of the reunion coordinators what I was
18 expected to say. She suggested that I "just tell a
19 few jokes about the justice." "Are you crazy?" I
20 asked. "How about me coming and watching you tell a
21 few jokes about the Justice?" "Listen," I said,
22 "nobody but Marty tells jokes about Ruth, and when I
23 last looked in the mirror, I was not Marty Ginsburg."

24 A lot of people see only one side of
25 Justice Ginsburg: the serious, legal scholar and

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1 jurist. There is much more, however. Those of us who
2 have been close to Ruth over the years have gained
3 immeasurably from observing her sterling efforts as a
4 teacher, scholar, civil rights advocate, jurist,
5 spouse, mother, grandmother and friend. First and
6 foremost, she is resolutely principled in all that she
7 does, always guided by reasoned judgment.

8 As an appellate jurist, for example, she
9 has faithfully adhered to precedent and procedural
10 rules. Indeed, her principal decisionmaking refutes
11 fanciful claims that "legal realism" rules the
12 judiciary. And it reinforces the legitimacy and
13 integrity of our system of justice at a time when many
14 people misunderstand the judiciary and mistakenly
15 assume that judicial decisions are nothing more than
16 personal ideological statements of the judges assigned
17 to hear a case.

18 Justice Ginsburg is also formidable in her
19 enormous capacity for work. Her preparation is
20 meticulous and on more than a few occasions I have
21 seen her disarm a misguided attorney in oral argument
22 or persuade a doubting colleague in a judicial
23 conference based on her thorough and detailed
24 knowledge of both the record and the law.

25 She outdid herself last term, however. As

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1 you may recall, she endured major surgery and post-
2 surgery treatments after the Supreme Court term had
3 started in October 1999; yet, she managed to prepare
4 all of her cases and carry a full fare of judicial
5 opinion-writing assignments. Rest assured that was no
6 mean feat, and she did it without fanfare.

7 There's another very important side to
8 Justice Ginsburg that has marked her work as a jurist:
9 she cares deeply about her colleagues and the
10 judiciary as an institution. I remember during our
11 early years together on the D.C. Circuit -- when the
12 members of the court were far less collegial than we
13 are today -- Ruth refused to be drawn into ideological
14 bickering. I watched her in admiration, and her
15 attitude about how judges ought to work together had
16 a profound effect on me. When I succeeded to the
17 chief judgeship, I was determined to promote a
18 collegial model for our court, in part because of what
19 I had seen in Judge Ginsburg.

20 Ruth is a fiercely loyal friend, and she
21 gives unselfishly. Early in our careers on the D.C.
22 Circuit, the Ginsburg and Edwards families were
23 invited, along with other categories of public
24 officials, to join a prominent country club in the
25 Washington, D.C. area. Since golf was a passion for

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1 all of us, both families joined the club. After we
2 had been members for a time, the club's rules suddenly
3 were changed so as to make it impossible for my family
4 to retain membership. When the Ginsburgs found out
5 what happened, they immediately resigned their
6 membership in protest. Club officials were mortified
7 and sought to placate the Ginsburgs; but my friends
8 were absolutely firm in saying that they would never
9 return to the club unless we did, and of course we had
10 no intention of returning, even when the club sought
11 to make amends. In that simple incident, I saw so
12 many facets of Ruth Bader Ginsburg: her vision of
13 equality as an integrationist ideal; her unwillingness
14 to countenance foolishness; and her caring and loyalty
15 as a friend.

16 In years ahead, when judges, lawyers and
17 members of the public sit in our courtroom and view
18 the portrait of Ruth Bader Ginsburg, they will be
19 reminded of her work as a great civil rights advocate,
20 legal practitioner, teacher, scholar and jurist. They
21 will recall that her legal work resulted in major
22 changes in society for the betterment of humankind.
23 They will recollect that her work as a jurist --
24 founded on intelligence, principled decisionmaking and
25 collegial processes -- helped to restore and protect

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1 the integrity of our systems of justice. And they
2 will surmise that, because of her monumental efforts,
3 her legacy for future generations always will be
4 enormous. This portrait that we unveil today will
5 truly grace our walls because it will forever remain
6 a symbol of the best that our legal system has to
7 offer as we strive to ensure justice for all in our
8 society.

9 (Applause.)

10 I'd now like to introduce Albert Cacoza,
11 one of Justice Ginsburg's former law clerks and a
12 partner in the Washington D.C. law firm of Bennett,
13 Turner & Coleman, who will present the portrait on
14 behalf of all the law clerks. The portrait will then
15 be unveiled by Justice Ginsburg's best friend,
16 Professor Martin Ginsburg, along with Simmie Knox, the
17 artist who painted the portrait. We will then hear
18 from Justice Ginsburg.

19 MR. CACOZZA: Chief Judge Edwards, members
20 of the court, members of the federal judiciary, ladies
21 and gentlemen. Before I make this presentation I
22 would like to offer a few notes of thanks to the
23 people who were responsible for helping this project
24 come to fruition.

25 First, I want to acknowledge Chief Judge

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1 Edwards, you and your office, particularly Ms. Tracy
2 Hauser, and the D.C. Circuit Executive's Office led by
3 Ms. Jill Sayenga and Ms. Maureen Grant. I thank you
4 for responding quickly to every question that came up
5 and helping handle every detail of this ceremony
6 flawlessly.

7 I also want to thank the Historical
8 Society of the D.C. Circuit, led by the president of
9 that society, Mr. Daniel Gribbon, and his able
10 assistant Ms. Carla Balourdos, for taking on a major
11 administrative role in making this project happen.

12 Then, of course, there are the
13 incomparable Linda O'Donnell and Cathy Vaughn.
14 Everyone who has clerked for Justice Ginsburg knows
15 that whenever the law clerks come up with a
16 brainstorm, Linda and Cathy do all the work to make it
17 a reality -- and this project was no exception.

18 Now, I would like to ask Martin Ginsburg,
19 Justice Ginsburg's husband, and Simmie Knox, the
20 artist, to go to the portrait for the unveiling.

21 On behalf of all her law clerks, both
22 those of us who clerked for her on the Court of
23 Appeals and those who clerked for her on the Supreme
24 Court, I am very pleased and very proud to present to
25 this court a portrait of Justice Ruth Bader Ginsburg.

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1 (Applause.)

2 CHIEF JUDGE EDWARDS: I trust that's a
3 note of affirmation. We can't see it. Is it great?

4 (Laughter.)

5 Thank you, Mr. Cacozza. I would also like
6 to thank Mr. Knox and all of Justice Ginsburg's
7 clerks. On behalf of the U.S. Court of Appeals for
8 the D.C. Circuit, I gratefully accept this portrait.
9 Justice Ginsburg, we would be honored to hear from
10 you.

11 JUSTICE GINSBURG: My dear colleagues,
12 friends, all good people assembled here.

13 Thank you for being with me this bright
14 day, which took a large conspiracy to bring about.

15 Portrait unveilings are repeat events in
16 this town and many have commented on the experience.
17 My favorite portrait story comes from Warren
18 Christopher, whose portrait was added to the
19 collection of State Department heads about a year and
20 a half ago. Christopher said that he found it "a
21 strange experience. At the same time," he added, "to
22 anyone who has served in Washington, D.C., there is
23 something oddly familiar about it. First, you are
24 painted in a corner, then you are hung out to dry, and
25 then, you are framed."

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1 The experience has not been that way for
2 me. I have enjoyed these proceedings throughout,
3 thanks to the co-conspirators in this room.

4 My appreciation beyond measure to Justice
5 Scalia, Professor Merritt, Kathleen Peratis, Professor
6 Herma Hill Kay, and Chief Judge Edwards for their
7 remarks. As Judge Mikva said on the presentation of
8 his portrait some two weeks ago, pre-posthumous
9 eulogies are the very best kind.

10 The conductor of the portrait conspiracy
11 is Albert Cacozza, my 1982-1983 term law clerk. The
12 portrait was his idea. Next to Marty, my husband and
13 best friend close on to a half century, Al may be my
14 most constant booster. He enlisted the aid of many
15 members of my law clerk family, as he did some seven
16 and a half years ago at the time of my nomination to
17 the Supreme Court. Grazie, Al. My abiding affection
18 stays with you, and with the large clerks legion for
19 indispensable aid these 20 years and more in the ever
20 exhilarating, though often exhausting work of federal
21 judging.

22 Vital to my support team, first at the
23 D.C. Circuit and continuing at the Supreme Court, as
24 Al has just mentioned, are my savvy, sympathique,
25 caring secretaries, Linda O'Donnell and Cathy Vaughn.

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1 Linda and Cathy had a major part in this production.

2 Lines from Gilbert and Sullivan's "Trial
3 by Jury" run through my head in response to today's
4 celebration. Explaining how he came to be a judge his
5 honor sings: "It was managed by a job and a good job
6 too." A very good job was done by so many to keep me
7 in shape to ride with the waves, never more so than
8 last year.

9 A simply super job was done by portrait
10 artist Simmie Knox. On June 9, 1989, I attended a
11 portrait presentation ceremony in this courtroom. On
12 that occasion, the portrait of Spottswood W. Robinson,
13 III, was unveiled. Captivated by the likeness, I asked
14 LaVerne, Spotts' secretary, for the artist's card. I
15 kept it in a special place from that day until Al
16 called last spring to ask if I had a particular artist
17 in mind for this portrait. I took out the card, and
18 said Yes. His name is Simmie Knox. And now, voila,
19 c'est moi. He has created a portrait that is me,
20 don't you agree.

21 (Applause.)

22 I look forward to greeting you at the
23 reception.

24 CHIEF JUDGE EDWARDS: Thank you, Justice
25 Ginsburg. The court will now be in recess. The

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1 members of the court sitting on the bench will first
2 come down to greet the family and to view the
3 portrait. Justice Ginsburg will then greet her guests
4 at the reception that is to follow on the fifth floor.
5 We thank you all for being part of this wonderful
6 occasion. We stand adjourned.

7 CLERK OF THE COURT: This honorable court
8 now stands adjourned until Monday morning at nine
9 thirty.

10 (Whereupon, the proceedings went off the
11 record at 5:10 p.m.)

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