

REMEMBERING THE LIFE AND LEGACY OF LAURENCE H. SILBERMAN

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Exactly 25 years ago this year, I walked into Judge Silberman’s chambers to begin my clerkship. Like all of his law clerks, I stood in awe of his accomplishments. The accolades offered since his unexpected death have highlighted many of those: Judge Silberman was a high-ranking official in the Department of Justice, a high-ranking official in the Department of Labor, ambassador to Yugoslavia, co-chair of the Robb-Silberman Commission, and a recipient of the Presidential Medal of Freedom. And we wouldn’t be here this evening if the Judge hadn’t also served for nearly 30 years as a teacher, a job that he loved—maybe almost as much as judging.

The Wall Street Journal called Judge Silberman one of the all-time giants of the bench. They’re right. But for the moment, I’m not going to talk about his professional accomplishments. Borrowing from David Brooks, I’m going to talk about his “eulogy virtues” rather than his “resume virtues.” After all, that’s what’s important: the man who Larry Silberman was, rather than the things that Larry Silberman did. His career gave him a multitude of opportunities to show what he was made of. I have only a brief time to speak, so this isn’t going to be a comprehensive list of his wonderful traits. I’ll just hit a few of the highlights.

First is honor. The Judge often spoke about the importance of honor, and he had that in spades. A few examples: The Judge was fired as Undersecretary of Labor for two offenses—refusing to fix cases in the Labor Department for Chuck Colson and hiring a Black regional director over the objection of the Nixon White House. Another well-known incident: As Acting Attorney General, it fell to him to review the notorious Hoover files—dossiers of dirt that Hoover compiled on public figures for purposes of blackmail. Judge Silberman described it as a stomach-turning task, and he was utterly appalled by Hoover’s abuse of power. The files contained juicy information, and knowing it weighed heavily on him. It would’ve been tempting to share the information, if only to get it off of his chest. But he did not betray his professional duty of confidentiality. He took those secrets to the grave.

Another character trait is guts. It’s an understatement to say that the Judge was willing to express an unpopular opinion; indeed, he was doing that up until the very end. Just a month before he died, the Judge celebrated Constitution Day at Dartmouth with a lecture criticizing the *en vogue* practice of suppressing controversial speech on college campuses. Another example: Early in his tenure on the D.C. Circuit, he joined other relatively new judges in a vote to take several panel decisions en banc. That caused significant tension on the court, and a more senior

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colleague—whose judicial philosophy differed from Judge Silberman’s—criticized the rash of en bancs as uncollegial. Rather than digging in his heels, Judge Silberman reconsidered his position. He sent a memo changing his vote, which resulted in de-en bancing four of the cases. That came at a personal cost: Most notably, it ruptured his friendship with Robert Bork. But Judge Silberman thought it was the right thing to do, and he did it. I have heard his D.C. Circuit colleagues say that Judge Silberman’s memo helped set a tone of presumptive respect for panel decisions that went a long way toward preserving good relations on that court.

The third quality is one that I have trouble putting a name on. Some might call it bipartisanship, but that’s not really a character trait. So I’m going to say it this way: Judge Silberman’s mix of humility and confidence enabled him to work with, and love, those whose ideological commitments differed from his own. A man who lacked confidence in his positions might prefer to hunker down in an echo chamber for fear that he wouldn’t be able to survive a debate. That was not the Judge. He relished an argument. From clerk hiring to professional interactions, he welcomed a diversity of opinions. And, as the en banc episode shows, he was both open to persuasion and humble enough to change his mind. He welcomed the same diversity in his friendships. That is exemplified by his funeral service, during which both Dick Cheney, a Republican, and Merrick Garland, a Democrat, spoke. It was simultaneously beautiful and moving to see that the Judge’s closest friends were chosen without regard to whether they shared his political or ideological beliefs. Indeed, that was true of love too. When he told me that he was marrying Tricia, he said, “Now, she’s a Democrat, but that won’t get in the way.” If only we all had the same motto about political differences.

Good judgment. Here, I’m not talking about his body of judicial work—I’m talking about his ability to judge character. He was extremely skilled at sizing people up, and he could do it quickly. It took him one dance with Ricky, his first wife, to decide that he would marry her. They were happily married until her death. He asked Tricia to marry him on their second date, and their happy marriage lasted until his death. He could judge friends quickly too. He met Justice Scalia when he interviewed him for a job at Justice and, in the judge’s words “had such admiration and affection for him instantly that I . . . offered him the job.” And so began a lifelong friendship.

That leads me to loyalty. As I know that every Silberman clerk would attest, the Judge was intensely loyal. This isn’t a town in which loyalty is necessarily prized. The Judge, however, never wavered in his fidelity to clerks and friends. Speaking personally, I was so grateful to have the Judge sitting behind me at my Seventh Circuit confirmation hearing. (My hearings for the Supreme Court were closed because of the pandemic, or he would have been there too.) My Seventh Circuit hearing was my first experience as a political punching bag. When it was over, I walked out into the hall, shell-shocked. Judge Silberman, on the other hand, was exhilarated. That kind of thing got his adrenaline going, and he wanted to go over it—in the crowded hallway—blow by blow. He was so excited that I didn’t have the heart to tell him that I needed a moment to catch my breath. But he was a cheerleader, and when I felt beaten up, he gave me the boost that I needed.

Larry Silberman was a patriot. He was a man of integrity and strength. He could be fierce, as the lawyers who appeared before him discovered. But he was also affectionate and funny. Loyal

to the end, he won the undying loyalty of his clerks in return. I love him and miss him—as so many others do too. I will turn it over to the panel of former clerks for further reflections on his mentorship. Thank you for the opportunity to express my respect, gratitude, and love for a truly great man.