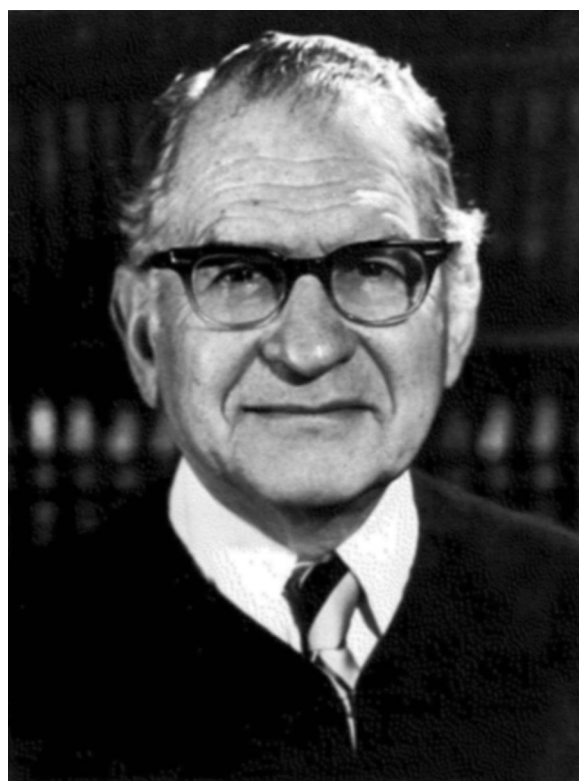


Supreme Court of New Jersey

Memorial Remarks
for
JUSTICE
SIDNEY M. SCHREIBER

Trenton, New Jersey
June 14, 2011



JUSTICE SIDNEY M. SCHREIBER

Proceeding

JUSTICE SIDNEY M. SCHREIBER MEMORIAL REMARKS

June 14, 2011

**Remarks of the Honorable Stuart Rabner
Chief Justice, Supreme Court of New Jersey**

Welcome everyone. The Court is convening today to honor and remember the life and career of Justice Sidney M. Schreiber. We are pleased to be able to welcome Ruth Schreiber, her grandson, Jonathan Powers, and other family, friends, former law clerks, and law partners.

In addition to that illustrious group, seven former Justices of the Supreme Court, as well as Chiefs Poritz and Zazzali, are here. We are also especially pleased to be able to welcome Anne Patterson to the courtroom today and look forward to seeing you here on a regular basis in the very near future. Your collective presence is but one sign of Justice Schreiber's lasting influence on this Court and its members, and on the entire legal community.

This afternoon, we will have a chance to hear from a number of people who will share their warm memories of Justice Schreiber. I am confident they will speak about his service on the Court for nearly a decade and his exemplary role in the legal community throughout his career.

I'd like to offer just a few words about his contributions to the Judiciary after leaving the bench. I am told that he read every opinion that the Court issued and was not shy about sharing his thoughts with the authors of those opinions. Justice Long reminds us that he was known for sending notes with words of praise to

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the author of an opinion. I have also heard from others that he shared other thoughts with authors as well.

Beyond keeping an eye on the Court itself, Justice Schreiber served as a discreet counselor to five Governors by helping vet their prospective nominees to the Superior Court. The small unofficial group that he led was known as the “wise men” — today I think we would call it the “wise people” — but the term aptly fit Justice Schreiber. He devoted countless hours to this task over the course of more than fifteen years with one aim in mind: to identify and pass along the very best people to serve in the Judiciary. And, no doubt, many people in this room survived the scrutiny of Justice Schreiber at one point or another in their careers. His efforts reflected a continuing dedication to the Judiciary and to the high standards of excellence that he maintained throughout his life. Our Judiciary today is stronger thanks to his efforts.

We are now fortunate to be able to hear from three special guests. First, I would like to call on the Honorable Stewart Pollock, retired Associate Justice of the Court, who will speak on behalf of the current and former members of the Court.

Remarks of the Honorable Stewart G. Pollack, Associate Justice (Retired), Supreme Court of New Jersey

We meet today to celebrate the life of Justice Sidney Schreiber. With Justice Schreiber, there is much to celebrate. As Justice Long said when Sid died at age 94 on August 5, 2009, “he was the gold standard.”

When people spend as much time together as do the members of the Supreme Court, it is inevitable that the Justices will learn something about the personal lives of each other. One recollection about Sidney and Ruth is that when Sidney was courting her, she understandably had some other beaux. Unsurprisingly, Sid brought the same focus to his love life that he did to the law. What Ruth and her other admirers did not realize was that as

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Sid saw it, Ruth had only one choice. Fortunately, Ruth found Sid as persuasive as did the Court.

For myself, I add simply that I miss Sid Schreiber. For a decade after I left the Court, Sid and I were colleagues at Riker Danzig. I miss sitting with him at the weekly partners' lunches, where he would explain the benefits of investing in municipal bonds. I miss meeting him in the hallway and talking over unusual issues in arbitrations. Most of all I miss his smile.

I sometimes thought that Sid enjoyed playing the role of cantankerous curmudgeon. He could not suppress, however, his basic goodness. When he shredded the briefs that associates submitted to him, it was not to hurt them, but to get things right. A typically dry, or even acerbic, comment would generally be followed by a smile reflecting his uncontrollable kindness.

Justice Schreiber distinguished himself throughout his legal career. Raised in Elizabeth, he graduated in 1936 Phi Beta Kappa from Yale University and in 1939 from Yale Law School where he was on the Yale Law Journal.

Admitted to the bar in 1940, his experience as a practitioner was broad. He was an attorney for the United States Railroad Board and for the Securities and Exchange Commission. With the outbreak of World War II, he enlisted in the Army. From 1943-1946, he worked in the Judge Advocate General's office, engaged in war-crime review. After the war, he entered private practice, where he was the lead partner in his firm. He was a "lawyer's lawyer" and, among other things, became a highly respected public utilities lawyer.

Sidney Schreiber argued 59 reported opinions, 51 in the state courts and 8 in the federal courts. I could never figure out why he was constantly citing Chief Justice Weintraub's definition of duty in *Goldberg v. Housing Authority of Newark*, 38 N.J. 578 (1962), until I noticed that in a 4-3 decision Sid had argued successfully for the defendant. Among the matters in which he appeared are

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several landmark appeals, including *Henningsen v. Bloomfield Motors*, 32 N.J. 358 (1960), in which he appeared on behalf of Chrysler Corporation.

If I were to summarize Sidney Schreiber in one word, that word would be “integrity.” Webster instructs that “integrity” has two essential meanings. The first is “adherence to moral and ethical principles; soundness of moral character; honesty.” The second is “the state of being whole, entire, or undiminished.”

Justice Schreiber personified both definitions.

No one exceeded him in fidelity to the record, close analysis of the facts, and respect for the law, whether judicial precedent, statute, or the state or federal constitution. No member of the Court was more committed to the legitimacy of our opinions. Integrity is manifest in every word he wrote and in every decision he made.

Adapting the law to current needs is standard fare for a court of last resort. Justice Schreiber was as committed as much as any other member of the Court to fashioning a body of law that met the needs of the time. But the methodology was as important to him as was the result.

What about the second part of integrity, the part about being “whole” or “entire”? With Justice Schreiber, what you saw is what you got. The public and private person were one.

During Justice Schreiber’s years as an Associate Justice, the Court faced one of the most controversial cases in its history: *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158 (1983), known generally as *Mt. Laurel II*.

In addition to raising numerous challenging issues, *Mt. Laurel II* also gave rise to one of my most cherished memories of Justice Schreiber.

The case was argued twice, the first time for three consecutive entire days. Over two years transpired between the original argument and the issuance of the

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opinion. The Court discussed the case at conference after conference, including special conferences held during the summer months. The pattern was for Chief Justice Wilentz to lead the discussion, followed by recitations of the other members.

At one such conference in the summer of 1982, Chief Justice Wilentz's secretary entered the conference room and placed a note in front of Justice Schreiber. As the Chief Justice paced back and forth at the head of the conference table, expounding on some part of *Mt. Laurel II*, Sid quietly picked up his papers, placed them in his brief case, and headed for the door. The Chief Justice was astonished. The rest of us were bemused and bewildered.

As Sid placed his hand on the doorknob, the Chief Justice stopped in mid-flight, turned toward him, and asked, "Will someone tell me what's going on?"

Calmly, but with unmistakable resolve, Sid replied, "I've just received word that my daughter gave birth to my grandson. You people can talk as long as you want. I'm leaving."

My other favorite story concerns Justice Schreiber's reappointment at the end of his first seven years. Sid originally was appointed to the Superior Court by Governor Cahill in 1972. Governor Byrne appointed him to the Supreme Court in 1975. When Sid came up for reappointment, the administration had changed, and the Governor was Thomas H. Kean. Governor Kean invited Justice Schreiber for an interview. As the story goes, at the end of the interview, Governor Kean asked, "Is there anything I can do to improve the Court?" Sid's reply was, "Get rid of the other six."

On the Wilentz Court, the work of the Associate Justices fell into four broad categories: oral argument, court conferences, administrative responsibilities, and opinion writing.

At oral argument, Justice Schreiber challenged not only the arguments offered by counsel, but the assumptions underlying those arguments. Who else

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would start questions on a free exercise of religion case with the question, “What is religion?” or begin interrogation of counsel on an insurance policy coverage case with the inquiry, “What is a contract?” It may have been small consolation to counsel, but he treated his colleagues no better.

I became sufficiently fascinated with Sid’s comments at court conferences to record some of them together with rough translations learned through experience. A frequent Schreiber comment was, “I hope you guys know what you’re doing,” which roughly translated meant, “I can’t believe any of the six of you ever went to law school.” Another frequent comment was “My understanding of the law is a little bit different.” What Sid was really thinking was, “Don’t you people ever read the cases?” Then there was the ominous statement, “I would invite you to consider what I have to say.” What he was really thinking was, “If you stick with that result, I’ll lower the boom in a dissent.”

And dissent he did. Sid wrote 131 majority opinions, but he also wrote 91 dissents.

Invariably, Justice Schreiber’s dissents forced the author of the majority opinion to reconsider not only that opinion’s result and reasoning, but its underlying assumptions.

One example that comes to mind is *Crowe v. De Gioia*, 90 N.J. 126 (1982), in which the Court extended the right of palimony. The appeal had focused on the substantive right to relief. In his draft dissent, Justice Schreiber addressed not only that issue, but the plaintiff’s right to preliminary relief under traditional equitable principles. That, in turn, forced me, as the author of the majority opinion, to summarize those principles in the majority opinion. As a consequence for every time *Crowe v. De Gioia* is cited for the right to palimony, it is cited hundreds of times for the standards of preliminary injunctive relief. Even in dissent, Justice Schreiber made the Court look good.

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Sid also participated in the administrative life of the Court, chairing committees on Budget and Procedure and Civil Case Management and Procedures.

On retirement, he chaired the Court's Advisory Committee on Judicial Conduct. He also served several Governors on the judicial selection panel for the selection of Superior Court Judges. In addition, he was for many years, the vice-chairman of the editorial board of the New Jersey Law Journal.

A judicial opinion is an extension of the judge, a window into his or her mind and soul. Justice Schreiber's opinions, like the man himself, were scholarly and well-reasoned. I trust the other members our Court will forgive me when I say that I thought Justice Schreiber was the best lawyer on the Court.

An examination of his opinions reveals the hand of a master craftsman. For a close analysis of the record, superb legal scholarship, a respect for the relative roles of the Judiciary and the Legislature, and the provision of guidance to the lower courts and public one could not hope to find a better opinion than *In The Matter of Conroy*, 98 N.J. 321 (1985). The issue was "the circumstances under which life-sustaining treatment may be withheld or withdrawn from incompetent, institutionalized, elderly patients with severe and permanent mental and physical impairments and a limited life expectancy."

The opinion recognized the right of nursing home patients to terminate medical treatment when the patient provides an explicit directive, such as a living will, or trustworthy evidence exists of the patient's preferences. It also recognized in limited circumstances, treatment could be terminated apart from an expression of the patient's preferences through a best interest test that involved a weighing of the benefits and burdens of the patient's life.

Justice Schreiber's mastery of products liability law is manifest in his unanimous opinion in *Feldman v.*

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Lederle Laboratories, 97 N.J. 429 (1984), which rejected the argument that prescription drugs were unavoidably unsafe and held that the doctrine of strict liability may apply to the sale of prescription drugs.

If I were to pick just one opinion to show Justice Schreiber's skill in opinion writing, it would be *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984), which dealt generally with the application of the public trust doctrine to the public access to beachfront along the New Jersey Shore. Justice Schreiber traced the origin of the public trust doctrine to Roman law, under which the public had access to the sea and could use the seashore for fishing. Previously, the Court had applied the doctrine to municipally owned dry sand beaches landward of the high water mark. *Matthews* extended the doctrine to cover the dry sand area owned by a property owners association.

As Sid said, when interviewed by the Star Ledger in 2008, "I shaped the law. That was a great experience."

In honoring Justice Schreiber, I cannot help but think of the anticipated arrival of another Riker Danzig lawyer on the Supreme Court, Anne Patterson. Anne has been nominated as an Associate Justice, and the Senate Judiciary Committee has approved her nomination. If confirmed by the full Senate, Anne will be the second woman from Riker Danzig to serve on the Court. The first was Justice Marie Garibaldi, who was the first woman ever to serve on the Court. I have no doubt that if Sidney were alive today he would join Justice Garibaldi and me in wishing Anne well in obtaining Senate confirmation and in enjoying life on the Court as much as we did.

That transition from one generation of Justices to another recalls Tennyson's lines from the *Idylls of the King*:

The old order changeth, yielding place to the new,
And God fulfills himself in many ways,
Lest one good custom should corrupt the world.

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For those of us who served with Justice Schreiber, our time on the Court has come and gone. Justice Schreiber's place in the thin black line of the Judiciary remains secure. As he said, he "shaped the law." And he did so with grace, dedication and integrity. No one could ask for more.

CHIEF JUSTICE RABNER: Thank you, Justice. That may have been an unusual spot in the courtroom for you to speak, but you acquitted yourself beautifully. We will next hear from the Honorable Mitchel Ostrer, a judge of the Superior Court and a former law clerk of Justice Schreiber.

Remarks of the Honorable Mitchel E. Ostrer, J. S. C. Law Clerk 1979

Mr. Chief Justice; present and retired members of the Court and the Judiciary; family members, friends, and colleagues of Justice Schreiber. It is an honor to speak to you today on behalf of law clerks of Justice Schreiber.

I was able to confer with a few of my fellow clerks, to compare and, as we say, refresh recollections.

Justice Schreiber was, in every sense of the word, a model lawyer and jurist. He taught us by example.

His accomplishments in the law were impressive; and his knowledge of the law was legendary. But, his intellect was matched by exceptional modesty. He did not display on his office walls evidence of his many professional and personal accomplishments.

I recall that the only certificate that hung on his wall was the one that declared that he had stumped Bill Mazer, who had a popular radio sports quiz show at the time.

He used to lament that he wasn't as sharp as he used to be. He was 65 during our year and sharper than we would ever hope to be.

He would talk to us with reverence about the greats of our State Supreme Court — Vanderbilt, Weintraub,

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and Jacobs — but would never have thought to include himself among them, but he was most definitely a part of that great tradition.

We still recall how the Justice would ask us to find a case that was relevant to a particular issue that he was working on. He would say something like, “There’s a case I want you to find. I don’t remember the name, but it stands for such and such a proposition. It was written by Weintraub.” And, this was before the widespread use of Lexis and Westlaw. Charles Honart, Joe Godles and I would dive into the New Jersey Digest; and the hardbound Shepards, eventually finding a Weintraub opinion that stood for the such and such proposition. We’d present it to the Justice, he’d read it, shake his head and say, “No, no, this isn’t it,” and give us another detail about the case, sending us back to the shelves. Eventually, we would find the opinion that the Justice had in mind. It was always there.

Courtesy, civility and patience were always a part of his being. He never raised his voice. Never showed anger.

We all saw evidence of Justice Schreiber’s friendship with Justice Morris Pashman. One might say that during their joint service on the Court, they occupied opposite ends of the spectrum. They strongly disagreed about a great many cases. But, they were friends nonetheless. We could tell that the Justice enjoyed his conversations with his colleague. “Master Morris” Justice Schreiber would call him. Justice Schreiber taught us that one could disagree about the law without being disagreeable.

I recall one instance where Justice Schreiber heard an emergent application for a stay in a landlord-tenant case. The application was brought by a pro se tenant. Justice Schreiber was to hear argument in chambers. Since we spent most of our days in the library, he invited us to observe oral argument. I long ago forgot the issues of the case or the skills of the lawyer. But, what remains with me to this day is the patience and respect that the Justice afforded the pro se litigant; and the time and attention that he gave to what someone else might have

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called a small case for a Justice who dealt with such big issues as school funding, land use, and personal liberties. But it was not a small case in any sense to the parties. And Justice Schreiber taught us that.

His work ethic and his diligence set an example for us all. At the end of each day, we would take boxes of appellate records down to his car. That was his night-time reading.

He sat at his desk with his legal pad and his sharpened pencils and wrote out his opinions in sinuous long hand. In his opinions, Justice Schreiber spoke in his own voice and no one else's.

Joe recalls the Justice saying that writing an opinion was like giving birth. We got the point. And we feel the same way every time we struggle to get something right, to avoid fuzzy thinking, and to strive to be as clear and as precise as he was.

At the end of one day, Justice Schreiber watched Charles as he stuffed his book bag with various briefs and other work that he intended to tackle on his long train rides between Newark and Philadelphia. The Justice said simply, "If you want to accomplish something at night, take home one thing and one thing only and you will complete it." Of course, for the Justice, that one thing was the entire appellate record in a case.

We did not have a hand in petitions for certification. He reserved that to himself. As Jim Laskey recalls, Justice Schreiber explained that no lawyer who had placed his last best hope in a petition to the Supreme Court would want his fate decided by a couple of twenty-two-year-olds.

Justice Schreiber was a prodigious worker. We had to work hard to keep up. We clerked during the late 1970s and early 1980s. Some would say that was the golden age of rock n roll. But, during our clerkship, we all developed an appreciation for the opera. Because when the Justice and Mrs. Schreiber had opera tickets, he left early and so could we.

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After our clerkships, there were no organized reunions. But, Justice Schreiber was always pleased to see us, in Florida or in New Jersey, to catch up on our careers, to give advice, to be friends.

I am forever grateful for the support and guidance Justice Schreiber gave to me, as I shared with him my aspirations to serve on the bench.

I recall when we discussed the judicial appointment process, he explained once that his selection to the bench was distinctly non-political. He told me that he couldn't get himself elected dog-catcher. Fortunately for all of us, that never got in his way.

When I became a judge, Justice Schreiber kindly spoke at my swearing in. And in that speech, he gave me some important advice. He told me to keep a checklist on the bench, to make sure that I kept track of all that I needed to do. Joe recalled that the Justice also kept a checklist on his desk in chambers.

In his speech, the Justice told the story of his first trial after becoming a Superior Court judge. It was a civil action in Hudson County arising out of an assault. The case lasted a few days, and during that time, the Justice worked long and hard on his jury charge. He said that he wanted it to be just right; he was eager to deliver it. After the lawyers rested, in his eagerness, the Justice launched right into his jury instructions. About halfway through, it dawned on him that he had neglected to let the lawyers sum up.

He stopped. He looked right at the lawyers, I'm sure with his pleasant smile, and he asked, "Counsel, I assume you have not waived your summation?" Of course, they had not. He promptly suspended his charge for the lawyers' summations.

In his story, the Justice imparted two lessons. First, when you make a mistake, as we all do, acknowledge it, and deal with it, hopefully with as much grace as he did.

Second lesson, keep a checklist. And I've done that ever since, which is yet another reminder of the Justice.

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He left a lasting imprint on the law of our State. But, he also left a permanent mark on a small group of young lawyers who were privileged to serve as his clerks. We received so much more than we could give. The lessons we learned enrich us to this day.

Thank you.

CHIEF JUSTICE RABNER: Thank you, Judge Ostrer. And according to the checklist that Donna Anepete prepared for me, we have one more speaker. Our next speaker is a familiar face on the eighth floor of the Hughes Justice Complex. Jonathan Powers has been assisting the Court this term in Trenton as a clerk and we know that his grandfather would be extremely proud of his superb work product and industry that is in keeping with the Schreiber name.

Remarks of Jonathan Powers, Esquire Grandson

My grandfather wasn't only a fantastic lawyer and an amazing judge, he was also an incredible all around person. To everyone else he was Justice Schreiber, or Sidney, but to me, he was always just grandpa. He had an undying work ethic, drive, and determination, and was still modest, patient and kind. He was a role model for all. He was also deeply loving and always met me every time I saw him with a big hug and his infectious smile. He was the best and most loving husband, father, uncle, and grandfather you could ever hope for.

In order to best understand my grandfather, I think it is important to know where he came from. Sidney was born the younger son of a tailor in Elizabeth, New Jersey in 1914. He was an incredibly sharp boy who adored his older brother Joseph. Now, his older brother's greatest dream was to go to Yale and become a famous lawyer. Sadly, Joseph tragically died at the age of 11 and was never able to achieve all of his goals. So instead, my grandfather seemed to do his best to fulfill Joseph's dream and to make his whole family proud.

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My grandfather was always a smart guy and was nearly the top of his class in high school. And, at the end of school he applied to only one university. You guessed it — Yale. Now in those days you found out about university admissions after the school year was over, and despite being nearly top of the class, and the fact that Yale admitted a number of less qualified students, they left out my grandfather. He went to his high school guidance counselor who was stunned, but the counselor went ahead and called Rutgers who accepted him over the phone.

So Sidney went to Rutgers, but certainly didn't give up on his dream. He was ever patient and determined to achieve his goals. Instead of going off to New Haven as he'd hoped, he lived at home and ran a dry-cleaning business out of his father's tailor shop to pay for his first year of school. And, after receiving straight A's, Yale finally corrected their mistake and accepted him. Not only did he go to Yale for the remainder of his undergrad degree, but he was also accepted there for law school. He didn't give in in the face of adversity. He worked as hard as he could and he made his dreams happen.

But the dream went farther. He wasn't content with just going to Yale and becoming a lawyer. He wanted to be the best at his profession, and he certainly reached the pinnacle of his field. Through hard work, a brilliant mind, and an unmatched determination he did incredible things over a six-decade long career. He started his own firm, became a trial court judge and eventually a Supreme Court Justice.

This is just one example of the incredible inspiration my grandfather was. He was living proof that with hard work and determination you really can make your dreams come true.

And he certainly didn't stop working when he retired from the bench, far from it. After he reached the mandatory retirement age, he spent over two decades working just as tirelessly at Riker Danzig in Morristown. Until he became really ill near the end of his life, it seemed like absolutely nothing could slow him down.

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Even though my grandfather worked tirelessly in the law his entire life, he didn't let that work come at the expense of his family. He was a dedicated father and a devoted husband who was always there for whatever my grandmother or mother might have needed. And once I came along, well, he became the most loving and dotting grandfather you can imagine. I certainly can't think of a birthday or special occasion he ever missed. I never had any doubt as to how deeply he loved me and that he would do anything for me. He loved his work and it was important, but it was always clear that it came second to the most important thing in his life, his family.

My fondest memories of my grandfather aren't of him in a black robe, but in a cardigan, sitting in the den of his house in Elizabeth, watching golf with me on sleepy Sunday afternoons. When I would, inevitably, get bored of the golf, he would shuffle off to the pile of slip decisions in his office, choose one, and tell me to read it so we could discuss it, and boy would we discuss it. He never talked down to me, and always had all the patience in the world answering my many questions and helping me understand what was going on. We would pore over every in and out of the case, all the legal theories, and whatever the other justices thought. Somehow, he always seemed to choose a case where there was a dissent. It was through these afternoons that he slowly shared with me his great love of the law. It might have frustrated me at times; I might have wondered why some of the seemingly pointless facts mattered, but eventually I began to realize what he was teaching me, and it has helped to prepare me for my career better than any law school class ever could have.

It was not only through what my grandfather overtly taught me that I've grown, but also the example he set. Even if it was little things, like how much better those strawberries and raspberries tasted when you picked them yourself. As I said, he was the best role model anybody could ever hope for. He seemed to have every admirable trait I could think of, and while I'm sure he

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must have done something wrong in his life, I'm not sure any of us were aware what it might have been.

Growing up in my family, all of the children hoped to achieve even a fraction of the greatness my grandfather did and knew we could never be nearly as dignified. He was simply great at everything in his life (well, maybe not golfing, but he loved it all the same).

Though he was brilliant, successful and driven, my grandfather was still one of the most humble, modest, and gentle men you would ever meet. He did not flaunt his office or accomplishments. He never wanted to talk about himself; he only wanted to hear about others.

He was truly the patriarch of our family, someone that everyone knew you could always go to for advice, kind words, or just if you needed someone to listen. He was honest, hardworking, driven, kind and caring and achieved all of his goals he set for himself.

Sidney commanded respect, and it was a respect that he deserved after spending years as someone we could only hope to aspire to and I'm proud to have him as a grandfather.

CHIEF JUSTICE RABNER: Jonathan, thank you for those heartfelt words of tribute. Thank you all for attending and participating in this memorial proceeding. The Court is now going to recess to the conference area in the back, and we invite all of you to join us there. Court is adjourned.

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