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Dedication of the Arthur J. Goldberg Memorial Courtroom, 29 J. Marshall J. Computer & Info. L. 405 (2012)

Hon. Antonin Scalia

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**DEDICATION OF THE
ARTHUR J. GOLDBERG MEMORIAL
COURTROOM**

FRIDAY, SEPTEMBER 28, 2012

ARTHUR J. GOLDBERG MEMORIAL COURTROOM

FOURTH FLOOR

REPORT OF PROCEEDINGS

AT THE DEDICATION OF

THE ARTHUR J. GOLDBERG MEMORIAL COURTROOM

FOURTH FLOOR

AT THE JOHN MARSHALL LAW SCHOOL

ON THE 28TH DAY OF SEPTEMBER, 2012, AT 12:00 P.M.

PROFESSOR RUEBNER: Good afternoon, I'm Ralph Ruebner, Associate Dean for Academic Affairs, and I welcome all of you here today to this very, very special occasion. It is my distinct pleasure to welcome you and to let you know that we have just concluded a two-day seminar, a symposium on The Development of Privacy Law from Justice Brandeis to Today, which is the 20th Belle R. and Joseph H. Braun Memorial Symposium. We have had with us scholars and leaders in the privacy field to bring their insights to our students, to the faculty, to our judiciary and to members of the legal community. My thanks to all of you for your participation. The culminating address of this symposium will be given by Justice Scalia this afternoon at a special convocation.

We are about to dedicate this very impressive courtroom in memory of Arthur J. Goldberg, who in his earlier years was a full-time member of this faculty, the years were 1938 to 1942. And after a very distinguished career in the military during the Second World War, he returned to Chicago and was an adjunct professor through the 1950s.

His tenure at The John Marshall Law School is a point of great pride for all of us, and we are really privileged to honor his memory here today. Before we proceed, I would like to ask all of you to turn off your cellphones if you have them.

At this time I would like to introduce John Corkery, Dean of The John Marshall Law School, who will serve as your host for the dedication of the courtroom.

Dean Corkery.

(Applause.)

PROFESSOR CORKERY: Well, thank you so much, Ralph.

Justice Scalia, members of the Goldberg family, trustees, faculty and guests: I'm delighted to welcome you today to this event that celebrates the life and career of Arthur J. Goldberg.

Many of you today have come through the new entrance on State Street and this, and the improvements on the second floor, are the result of a building and expansion program that's been underway here for the last several years.

Now, in addition to those significant changes, we also are making strides in our program offerings and professional development clinic and other areas.

Here at John Marshall we've had a strong legacy of graduating well-prepared practice-ready lawyers, who, when they leave here, are ready to make a difference in the lives of their clients and in the legal community.

To give you some idea of what our representation in the legal community is, and especially among judges, we have more than 230

graduates serving on the bench across the State of Illinois. And there are about, give or take a few, 800 judges in the state of Illinois. So we're very well represented on the judiciary.

Many of our alumni serve our city, state and nation as prosecutors, defenders, law partners, advocates and judges, and they make a difference every day in the lives of the people that they serve. And we are also very, very proud of them.

At this time it is my great pleasure to introduce Leonard F. Amari, a distinguished alumnus and President of the Board of Trustees of The John Marshall Law School.

(Applause.)

MR. AMARI: Thank you, Dean Corkery. And let me add my welcome to Justice Scalia and the members of the Goldberg family.

On behalf of The John Marshall Law School Board of Trustees I would like to thank all those involved in this project. This courtroom is the result of extraordinary vision, support and leadership and a great effort on the part of our administrators, faculty, alumni and friends who graciously shared their time, resources and talents to make this possible.

Many of our alumni and faculty may recall that it wasn't just a few short years ago that this space was a collection of classrooms and offices. Today it is an outstanding example, a vision in leadership, and a point of pride for our alumni, students and faculty. This is a state-of-the-art courtroom equipped with the latest technology. It is a place our students prepare for competition, gather for lectures, and host events and competitions that prepare them to approach the field of law with confidence, skill and pride.

On behalf of the Board of Trustees, many of which are here today, I would like to extend our deep appreciation for the leadership, vision and support and hard work that resulted in this beautiful room. I thank all of you for your participation today. Thank you.

(Applause.)

PROFESSOR CORKERY: Thank you so much, Leonard. And let me add my thanks to the trustees for their support of this project and for their vision which has led to these new facilities for us all here at John Marshall.

We are here today to honor the life and work of Arthur J. Goldberg. Arthur Goldberg was born in Chicago, the youngest of eight children. As was often the case at the Turn of the Century, children worked odd jobs to help support family and put food on the table, and Justice Goldberg was no different, although he was known as Arthur then, not Justice.

His biography tells us that his favorite job as a young man was selling coffee to Cubs fans at Wrigley Field. By age sixteen he had graduated from local high school and was determined to study law. And at nineteen he graduated magna cum laude from Northwestern, receiving a Bachelor of Science in Law. And then in 1930 he received a JSD, *Juris Scientiae Doctor*, from Northwestern.

In July of 1931, he married Dorothy Kargans, an art student at Northwestern, and they had two children, Barbara, who is with us today, and Robert.

At the beginning of Justice Goldberg's legal career, the United States was in the midst of a Great Depression, somewhat similar to where we are now, but not quite as great, I think. And Justice Goldberg saw the impact of this economic turmoil on the working class of the country.

In 1933, after time with other firms in the city, he opened his own practice. And at thirty-eight, on behalf of the Congress of Industrial Organizations, the CIO, Arthur Goldberg represented the Chicago newspaper employees striking for higher wages and better working conditions. And it is perhaps appropriate on this day to reflect that just two or three days ago the NFL referees settled their strike with the National Football League owners. And I think I can say, you know, there are a lot of political divisions in this country, but I have seen no issue on which everyone from all sides was united as much as the one to get those striking referees back on the field. So there are some things we can all agree on.

While building his practice and his family, Arthur Goldberg contributed to the legal community in another way. He joined our faculty at The John Marshall Law School, serving as a member from 1938 to 1942, returning over the years as an adjunct faculty member, and touching countless lives here during the '30s and '40s.

As the United States began to come out of the Great Depression, the world and the country found ourselves at war, and Justice Goldberg found himself in the army, the United States Army, where he served as a major and a captain.

After the war, he continued his distinguished career on behalf of our country's working men and women. And in 1955 he participated in and was a legal advisor on the merger of the AFL and CIO.

In the '50s and '60s he became a senior partner with Goldberg, Feller and Bredhoff in Washington. And around that time, or shortly thereafter, he was a member of the firm in Chicago of Devoe, Shadur, Mikva & Plotkin. So we're very pleased, and we're pleased to have Justice Shadur with us today.

He was active in the civil liberties community and served as a public director of Chicago's Amalgamated Labor Bank and the National Lawyers Guild. How about that?

A few short months later he fulfilled a lifelong dream when he was appointed to the United States Supreme Court, taking his place on the bench fifty years ago, in September 1962. Three years later, President Lyndon B. Johnson asked him to step down from the bench and accept an appointment as the United States Ambassador to the United Nations, succeeding Adlai Stevenson, another Illinoisan who had recently passed away.

In 1968, Justice Goldberg resigned from the ambassadorship and returned to private life. And during that time he also represented Curt Flood in his lawsuit before the United States Supreme Court to end the reserve clause in baseball. The Court did not rule in favor of Curt Flood, but his case is generally regarded as the turning point for the players in eliminating the reserve clause from baseball.

President Carter then called on Justice Goldberg to serve as the United States Ambassador to Belgrade in 1977. For his distinguished and lengthy service to our country, he received the Presidential Medal of Freedom in 1978.

Justice Goldberg passed away in 1990, and he is buried at Arlington Cemetery with his wife.

The list of books and papers and articles and honors that are part of Goldberg's legacy is impressive and lengthy. His impact on the world stage as a dedicated and fierce public servant for the underserved people is well known. Perhaps his reputation is not as well known as it should be and we hope the event today will serve in some measure to rectify that situation.

We are very privileged to have Justice Goldberg's daughter, Barbara Cramer, and grandsons, Daniel Cramer and Matthew Cramer, with us today.

(Applause.)

And at this time I would like to invite Daniel Cramer to come forward with remarks on behalf of the Goldberg family.

Daniel.

(Applause.)

MR. CRAMER: Thank you so much. I am the oldest of Arthur Goldberg's six grandchildren. On behalf of the Cramer and Goldberg families, especially my mother, Barbara Cramer, my uncle, Robert Goldberg, who couldn't be here, we'd like to thank John Marshall, the

deans in particular, for this great honor to our family, it really means the world to us.

I'd like to send a special thank you to Justice Scalia for being here. I know without any question it would have meant the world to my grandfather.

Thank you again.

(Applause.)

He had such respect for his colleagues even when they did not always agree on decisions and his relationships with them was incredibly important to him.

It will be no surprise to anyone that my grandfather was passionate about the law. What some people, I think, find maybe more surprising is I think he was equally, if not more, passionate about the study of law.

I experienced this firsthand, this passion, the summer after my junior year of college. I was in Washington, DC, doing an internship on Capitol Hill that he had arranged for me, trying to figure out what I was going to do after college, thinking I'll probably go to law school, because I'm Arthur Goldberg's grandson.

And one day I got a call from his assistant, "Your grandfather would like you to come for dinner." That's great, that wasn't unusual. But then she said, "He says you should wear a suit." That was unusual, because we were having dinner at his house, and I only owned one suit. But I showed up in my one suit, only to find that we were being joined at dinner by Justice Brennan.

Over the course of dinner, Justice Brennan spent twenty minutes explaining to me why I should not go to law school. I found this surprising. At the end of the night, though, it became clear that he was doing this on my grandfather's behest. He acknowledged as much and said he would be happy to have a one-on-one conversation with me to further explore the subject.

Well, this pattern repeated itself over the course of the summer—dean of a law school, a high ranking official at the bar association. Prominent officials would all come for dinner, I would wear my suit, and at my grandfather's behest they would tell me why I should not go to law school.

But at the end of the summer I realized that it wasn't that my grandfather didn't want me to go to law school, it's that he wanted me to be sure that I was going for the right reasons. That if I went to law school, it wasn't because I was Arthur Goldberg's grandson, but because I was interested in studying the law, exploring the intersection between law and justice.

When I finally decided to go to law school five years later, I was so glad he had held my feet to the fire. And while I've not followed a traditional law practice, eschewing more of the practice of law for the practice of politics, I am so grateful every day for my legal education and for the fact that he encouraged me to think so thoughtfully about it.

My grandfather loved to teach. In the last few years of his life, when I would ask him to share stories about his career, he usually wouldn't start with stories about the Supreme Court or the UN, he would start with stories about how he was teaching at law schools all across the country. He would share stories about a particular class he led on the Supreme Court, where students got to be both justices and lawyers arguing before the Court. And he would share stories about his students and the passion for law that they had.

My grandfather loved to teach, whether it was a room of students, to his grandchildren, or to people just sitting around his dining room table. And that's why this dedication means so much to us and our family. This courtroom is really a living legacy to my grandfather, to his love of teaching and for his passion for the law and the study of law. Thank you so, so much.

(Applause.)

PROFESSOR CORKERY: Well, thank you very much, Daniel, for your very warm and touching portrait of Justice Goldberg. It really adds a lot to the celebration today and gives us all a sense of who the Justice really was, so thank you so much.

At this time it is my great privilege to introduce the Honorable Antonin Scalia, Justice of the United States Supreme Court.

(Applause.)

JUSTICE SCALIA: Dean Corkery, thank you, Mr. Amari, members of the Goldberg family. That's a hard act to follow.

Let's be honest, I am not a good choice to praise Arthur Goldberg if you want praise of Arthur Goldberg, the associate justice. He wrote some fine opinions for the Court, including the one calling for the granting of immediate relief to black plaintiffs seeking desegregation of Memphis city parks and recreation facilities.

The Sixth Circuit had approved a district court's order requiring merely the filing of a desegregation plan within six months. That would not do. Goldberg wrote "The rights here asserted are like all such rights, present rights, they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our

Constitution are warrants for here and now. And unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled.”

He even wrote a fine originalist concurrence in *Bell v. Maryland*, explaining why the original understanding of the Fourteenth Amendment entitled blacks to equal treatment in places of public accommodation.

And in his concurrence in *Griswold v. Connecticut*, the famous birth control right of privacy case, he felt the need to find textual support for a privacy right that went beyond the ones the Fourth Amendment protected. Not content with penumbras and emanations, but finding justification in the text of the Ninth Amendment, which he said showed that liberty and the due process clause meant more than those liberties explicitly referred to in the Bill of Rights, which is certainly true, but still does not explain why the guarantee that liberty will not be taken away without due process is a guarantee that certain unenumerated liberties will not be taken away at all.

Though Justice Ginsburg believed—Justice Goldberg—I’m usually talking about Ginsburg—Justice Goldberg believed, in other words, in so-called substantive due process, though only in the original version which, as his opinion in *Griswold* said, incorporated only those liberties “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” If he meant that, had he still been on the Court, he would have joined Justice White’s dissent in *Roe v. Wade* and would have dissented as well from our later holding that there is a constitutional right to homosexual sodomy.

We have come a long way since the substantive due process that Justice Goldberg approved. But that was predictable. All right. Once judges depart from text and from the original meaning of text, they are on a slippery slope leading either to judicial hegemony or to a judiciary that will be brought under public control.

Believing as I do that substantive process is a contradiction in terms, I am not here to praise Justice Goldberg’s jurisprudence, which is not to say that I cannot praise the accomplishments of a justice whose jurisprudence I disagree with. I probably disagree with no justice’s jurisprudence more than that of my former colleague and friend, William Brennan; but I have said and believe that he was the most influential justice of the twentieth century.

Justice Goldberg was not around long enough to compete for that title. Three terms are hardly enough to make a dent, which was the length of Justice Goldberg’s service. He ranks 106th out of the 112 justices to have ever served. He was just passed by Justice Sotomayor over this past summer. So, you know, you cannot blame him for not being William Brennan, he had only three years.

The common wisdom is that President Johnson cajoled Justice Goldberg to leave for the post of Ambassador to the UN, and some say with a promise of supporting him for President, so that Johnson could replace him in the Jewish seat with Abe Fortas. In those days there was only one Jewish seat, there are now three, and six Catholic seats.

For what it is worth, the colleagues with whom I have sat who were on the Court with Goldberg said that they doubt that he took much cajoling. He did not like the job. That should not be surprising. Many are the lawyers who have lusted after a job on an appellate court only to discover after getting there that the work was dull. And for the man of action, so to speak—and I use man here to include women—it is dull. Unlike the practice, it does not offer the variety of fare that even the litigation specialist, never mind the generalist practitioner, enjoys—advising and strategizing with clients, preparing and arguing motions, writing briefs, arguing the merits, participating in settlement negotiations, et cetera, et cetera.

And there is constant interaction with other people. Much of that is true even for the trial judge. But the work of an appellate judge is something else. Read the briefs, hear the arguments, write the opinions. Read the briefs, hear the arguments, write the opinions. Read the briefs, hear the arguments, write the opinions.

Unless one has an academic turn of mind, unless one enjoys thinking, figuring out legal puzzles and writing, and does not much like the active life, the job is not much fun. No variety except for the legal subject and almost no professional human contact except with colleagues and law clerks.

It did not surprise me then to hear that Justice Goldberg was eager to leave. He was a man of action, anxious to get back to the fray. Our Ambassador to the United Nations, Adlai Stevenson, died in 1965. The UN was a much more important and active world organization in those days. Stevenson's shoes were enormous. And President Johnson had relied considerably on Stevenson's prestige to represent the nation to the UN during the war in Vietnam.

So when John Kenneth Galbraith suggested Goldberg as a replacement, Johnson seized upon it immediately and prevailed upon Goldberg to take the job. The UN ambassadorship was, I guess, even shorter than the Supreme Court service. It ended in April 1968 when he resigned out of frustration with the war.

But he still had not had his fill of government service and so decided to challenge Nelson Rockefeller for governor of New York in 1970. Unfortunately, the best and biggest government jobs really designed for men of action are elective, and some men of action are no more cut out for running for office than they are for appellate judgeships. Despite

receiving the endorsement of both the Democratic Party and the Liberal Party, Justice Goldberg lost badly as Governor Rockefeller won his fourth term by some 700,000 votes.

I do not think it was the UN ambassadorship anymore than the brief tenure on the Supreme Court, much less the failed entry into electoral politics, that made Arthur Goldberg a man worthy of praise and emulation. Those offices were, in my judgment, signs of, or rewards for, his accomplishment rather than the substance of it.

But just as there is life after leaving the Court, so also there is life before joining it. And that is where in my judgment your Arthur Goldberg shone. In that respect he is, in my judgment, like Thurgood Marshall, who will not, I think, be remembered for his work on the Court, but will never be forgotten for his brilliant and courageous leadership of the lawyers in the civil rights movement.

As Marshall's calling was civil rights, Goldberg's was the labor movement. Before his appointment to the Court, he was almost certainly the most prominent and influential labor lawyer in the nation. He was, in fact, a union member before he was a lawyer—though not much before. Goldberg joined a construction union when he was in law school, which is a natural thing to do when you've decided to work part-time hard labor to fill your free time while studying at Northwestern.

The division of attention naturally took its toll so that it took Goldberg a full two and a half years to graduate with honors and as president of the Illinois Law Review. Unfortunately, being only twenty-one years old when he graduated, he could not at that time be admitted to the Illinois bar. He therefore did the obvious thing and sued the Illinois State Bar Association and was admitted by the court after successfully arguing his own case.

It is perhaps not surprising that while he began his practice at the well-regarded Chicago firm of Pritzker & Pritzker, he soon struck out on his own after winning several appeals in the Illinois Supreme Court at the ripe age of twenty-five.

The practice began modestly enough with Goldberg representing many small manufacturers, often run by European refugees. But it did not stay modest. Goldberg soon represented the American Newspaper Guild in its strike against Hearst, which it won, and was invited to represent the Steelworkers Organizing Committee. He was thirty-two at the time.

When World War II broke out, as you've heard, Goldberg, who had once wanted to be a marine, temporarily abandoned his law practice as he began working with the U.S. government to gather information from European labor unions on Nazi movements.

Perhaps as proof that a fine enough hammer really does render every problem a nail, Goldberg also arranged a strike at a Swedish manufacturer, a Swedish plant that was secretly making war material for Germany.

His service during the war, in addition to being exciting—he admitted later that he temporarily entertained visions of an exciting future for himself as a spy—only served to bolster his standing with the leaders of international trade unions and political figures in every nation in western and central Europe.

Upon his return to Chicago in 1944, he was therefore pleasantly surprised to find that he had little difficulty reopening his law practice. He soon rose to serve as general counsel for the CIO, whereupon he began an enormous negotiating effort that would take nearly a decade to bear fruit, the official merger of two longtime labor rivals, the AFL and the CIO, in 1955. This merger unified the nation's trade unions and, perhaps, foreshadowing his future career as a diplomat, it is said that Goldberg himself chose the name for the new organization, AFL-CIO.

Probably, inevitably, Goldberg was asked to serve as Secretary of Labor in the new Cabinet upon President Kennedy's election. Goldberg actually wanted to be Kennedy's Attorney General instead, but some other fellow was tapped for the job.

Goldberg was also appointed to Kennedy's Presidential Commission on Equal Employment Opportunity as vice chair, where he advocated vigorously and successfully for the legislation that came to be known as the Equal Employment Opportunity Act.

When Justice Frankfurter resigned in August 1962, President Kennedy consulted with a man who had edged Goldberg out for Attorney General, and the first choice was clear, Goldberg was swiftly confirmed and was sworn in a month later.

I have said all I mean to say about Justice Goldberg's jurisprudence, but a word more on his judicial tenure. Justice Goldberg was the last member of our Court to have served in the Cabinet. Though he had no prior judicial experience, neither did most of those on the Court that he joined. Chief Justice Warren had been governor of California; Justice Black, a senator from Alabama; Justice Douglas, chairman of the SEC; Justice Clark, the Attorney General of the United States; and Justice White, the Deputy Attorney General. Only Justices Harlan, Brennan and Stewart had any judicial experience when they came onto the Court that Goldberg joined.

Matters are different today. Of the nine of us who now sit, only Justice Kagan was not a judge before joining the Court, and she was the first since President Nixon appointed William Rehnquist in the 1970s.

The reason for that is, alas, that the confirmation process has become so confrontational that no President, unless his party has overwhelming control of the Senate, is willing to give the opposition the facile basis for rejection—they never use the real one, “He has no judicial experience.”

A distinguished and enormously influential labor lawyer, an effective and popular Secretary of Labor, an intelligent and conscientious member of the Supreme Court, a patriot who served his country in the army and who became the nation’s representative to the United Nations, Arthur Goldberg was laid to rest in Arlington National Cemetery with full military honors. His life of talented service well deserves the honor that the naming of this moot courtroom bestows upon him.

Thank you.

(Applause.)

PROFESSOR CORKERY: Thank you so much, Justice Scalia, for your thoughtful remarks and for your wonderful, evocative portrait of Justice Arthur Goldberg and your description of the political history of Arthur Goldberg and his times. We could not have asked for more about Justice Goldberg and your presentation has added immeasurably to the day, so thank you so much for being with us here today.

I would like to invite—what we’re going to do now is unveil the portrait of Justice Goldberg—and I would like to invite Barbara Goldberg Cramer, Matthew Cramer, Justice Goldberg’s daughter and grandson, to come forward and unveil the portrait of Justice Goldberg that will be on permanent display in this room.

And as I think we said before, just tug gently at the cover, not the frame. Please go ahead, proceed.

(Whereupon the portrait of Justice Arthur Goldberg was unveiled.)

(Applause.)

Thank you so much for unveiling that portrait Barbara and Matthew and Daniel.

If I could ask certain people to remain at the front of the room, we will now cut the ceremonial ribbon to officially dedicate the courtroom. So may I ask the following people to come forward and assist with the ribbon cutting: Mr. Justice Scalia; Leonard Amari; Mrs. Cramer; Judge Tim Evans; Celia Gamrath, Judge of the Circuit Court; Mary Ann Hines; Rory Smith, Associate Dean at John Marshall; and Kurt Brna, President of the Student Bar Association. Mary Ann Hines, as I may have mentioned, is a member of our Board of Trustees.

(Whereupon the ribbon was cut.)

(Applause.)

Ladies and gentlemen, this concludes our dedication ceremony. Thank you so much for joining us today. I encourage you to spend some time in the lobby taking a look at the wonderful portraits and other memorabilia that we have from Justice Goldberg. We have a wonderful collection of photos and other items. This permanent display will serve as a reminder and inspiration for our students for years to come. Thank you so much for attending and have a wonderful afternoon.

(Whereupon the The 20th Belle R. And Joseph H. Braun Memorial Symposium was concluded.)