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Tribute to Barbara Salken

Tom D. Kapp, Esq.*

First of all, it's really a privilege and an honor to have been invited to come here tonight and speak at this memorial service, and I want to thank Pace for inviting me.

I was Professor Salken's research assistant from about 1987 to 1988 at a time when Barbara was an untenured professor and had yet to publish any articles as a professor, and we worked very diligently—or I should say I watched her work very diligently—on her first Law Review article. As you can well imagine, in her attempt to get tenure she went through a lot of anxious times and I got to know her very well in those two years that I was her research assistant. And it was truly a privilege to have known this remarkable woman. And in addition to taking both her Criminal Procedure I and Criminal Procedure II classes, I learned a great deal as any student can attest to, from Barbara Salken. And I'd like to just share two things of import that I learned from Barbara both in her teachings and my private conversations with her.

The first really occurred when I was a student in a criminal advocacy—criminal trial advocacy course taught by another professor and I, along with another student, were co-prosecutors in a mock murder case. And what had happened was in the case we had a secret dying declaration that we were waiting to spring on our unwary defense counsel at the trial, and we had a pretrial suppression hearing and Barbara was our judge, unbeknownst to us since our professor was out sick that day. And the question came up on cross-examination by the defense attorney, did the victim say anything before he died? Now, this question was completely immaterial; it was irrelevant; it was beyond the scope of the direct examination and Barbara turned to us and said, with that Southern twang, "I wanna hear the answer." And as I saw this secret dying declaration and my grade in the course vanquished, I realized a great lesson could

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be learned from Barbara's desire to hear the answer and the dying declaration, and that was that, number one, judges often don't do the right thing. But in a larger sense, I learned that you have to learn to take the unexpected in life, both as lawyers and as humans. And Barbara did just that when she became ill; she took her illness and never claimed to be a victim; she never sought sympathy from anyone; she exhibited, as has been spoken of and will be spoken of for years, great courage during her ordeal.

Another lesson that I learned, and probably the bigger lesson I learned from Barbara, during her Criminal Procedure courses she always exhibited her Fourth, Fifth and Sixth Amendment Jurisprudence with a foreward, very simple phrase, and anyone who's ever taken her course will know the phrase, and that is: Does it "fe-e-el ba-a-ad"? And there are a lot of e's in this word "feel" and a lot of a's in the word "bad." But that was, in essence, how she looked at the Fourth, Fifth and Sixth Amendments but, in a larger sense, that's how she viewed life. She wanted people to feel good and did everything she could to make them feel good. During her courses she was never unkind, never had an unkind word to anyone or about anyone, and she was always considerate and thoughtful to her students, as I'm sure will be attested to tonight.

And in 1988, the year I graduated, we had a skit night, as I'm sure continues, and Barbara was one of the organizers of a group of professors that did a rendition of "What a Wonderful World This Would Be," sung to somewhat different lyrics and, Barbara, if you're listening, you've made this world a more wonderful place and you will be sorely missed.