

A Jewish seat on the Supreme Court?

By Shiela Steinman Wallace February 13, 2003

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Is there a Jewish seat on the Supreme Court? Justice Ruth Bader Ginsburg contends that there once was, but that is no longer the case. She explored the subject during the 2003 Louis D. Brandeis Lecture on Tuesday, February 11, at the Seelbach Hotel. Immediately following the lecture, the University of Louisville's Louis D. Brandeis School of Law Brandeis Scholars presented Justice Ginsburg with the Brandeis Medal. The medal recognizes individuals whose lives reflect Justice Brandeis' commitment to the ideals of individual liberty, concern for the disadvantaged and public service. Judah Benjamin While Justice Brandeis was the first Jew appointed to the Supreme Court, Justice Ginsburg pointed out that he was not the first Jew nominated for the position. That honor went to Louisiana Sen. Judah Benjamin, who was nominated by President Millard Fillmore in 1851. Benjamin declined the honor, preferring to remain in the Senate, because, Justice Ginsburg noted, the Supreme Court had not yet achieved full equality as a branch of government. Benjamin resigned his Senate seat in 1861 when Louisiana succeeded from the Union and went on to hold leadership positions in the Confederacy. When the Confederacy was defeated, Benjamin fled to England and, at age 60, built another successful career as a barrister there, even serving as Queen's Counsel. What is most remarkable about Benjamin, Justice Ginsburg pointed out is that he achieved such a high level of success twice in his lifetime in spite of a great deal of anti-Semitic activity at that time. Benjamin, while he never denied his Jewish heritage, never actively practiced his religion and married a Catholic woman. A native Louisvillian, Louis D. Brandeis

became a successful lawyer and teacher, determined to ensure quality education for future lawyers. He invested heavily in the University of Louisville Law School and donated many of his books to the institution toward that goal. As a young lawyer, he spent half his time doing pro bono work for those who could not afford a lawyer, and Justice Ginsburg said, he reimbursed his law firm for this time. In 1916, at age 60, he was appointed to the Supreme Court by President Woodrow Wilson, despite evident anti-Semitism in the country. In fact, Justice Ginsburg noted, there is no picture of the 1916 Supreme Court because Justice James Clark McReynolds refused to sit next to Brandeis as seniority dictated. Brandeis achieved much on the Court. He was known for his judicial restraint as he admonished colleagues to guard against elevating their own prejudices into law. He was also a vocal advocate of free speech and assembly and women's rights. His influence is still felt in the Court today, she said. Although Brandeis did not practice ritual Judaism, he was an active Zionist and worked hard for a Jewish homeland. He believed it would be a refuge for the persecuted Jews of Europe and that it is the obligation of Jews in the U.S. to help build the land. The Jewish Chair While Benjamin Cardozo served on the Court while Brandeis was still sitting there, the subsequent appointments of Felix Frankfurter, Arthur Goldberg and Abe Fortas had one Jew filling the seat vacated by another. This pattern, Justice Ginsburg said, was broken when President Bill Clinton appointed her and Justice Stephen Breyer. Those appointments, she explained, were based on merit and the question of religion did not enter into the decision. "No one saw us as filling a Jewish seat," she stated. The atmosphere of the country has changed. The anti-Semitism so apparent during Benjamin's and Brandeis' time is no longer present. In fact, a silver mezuzah graces the doorpost of Justice Ginsburg's office and a plaque bearing the biblical quotation, "Tzedek, tzedek tirdof" – Justice, justice shall you pursue,

hangs on her wall. Jews today, she said, face few closed doors and overt expressions of anti-Semitism are not tolerated. To illustrate her point, Justice Ginsburg pointed to the tape made public last year of the discussion between the President Richard Nixon and evangelist Billy Graham. Graham's comments about the Jewish stranglehold on the media raised a firestorm of protest and force Graham to express his dismay and apologize publicly for ever having made such statements. Although she acknowledged that anti-Semitism seems to be reemerging in Europe today, she feels that American Jews are seldom touched by it.

The Brandeis Medal The Brandeis Medal was established by the Brandeis Scholars to recognize individuals whose lives reflect Justice Brandeis's commitment to the ideals of individual liberty, concern for the disadvantaged and public service. The medal itself is cast in the likeness of Justice Brandeis as a reminder of his contributions and dedication to the law. Later that evening the Brandeis Society members were presented.