

The Quad

SMU School of Law
Dallas, Texas
Spring 1990



Supreme Court Justice Harry A. Blackmun, the 1990 Judge Irving L. Goldberg Lecturer, visits with Professor Charles Morris.

Blackmun weighs Supreme Court's "ups and downs"

At the second annual Irving L. Goldberg Lecture, Supreme Court Justice Harry A. Blackmun captivated a standing-room-only crowd in the School of Law's Karcher Auditorium, simply by reflecting on his life, discussing the common needs of all people and reading excerpts from the Declaration of Independence and the Constitution of the United States.

Blackmun's Illinois childhood, Harvard Law School education, and nearly 60 years of working with the law has given him a large palette of life, from which he drew inspirational nuggets of wisdom and advice. He was a Nixon appointee to the High Court in 1970, and was initially expected to represent conservative views. But as subsequent appointments have shifted the Court to the political right, Blackmun has taken a more liberal stance. He wrote the majority opinion on the 1973 *Roe v. Wade* case and dissented from the majority opinion in last term's *Webster v. Reproductive Health Services*.

Although Blackmun's topic was "What I Have Learned," he used the occasion to remind audience members of the power of the Supreme Court, the significance of the law, and the positive and negative points of the American judicial system. "The question, 'What have I learned?' relates to my life experiences," Blackmun said, "but it leads me to other questions."

Blackmun said he has learned many things about human nature ("Larceny and unethical behavior is still prevalent in society,") and our country ("It has its beauty, it has its shame, and it is still a special place after 200 years under the Constitution and its additional amendments.") He has also learned that the Supreme Court is hard-working, responsible, sensitive, and that it operates with respect among the justices.

"The Supreme Court has had its ups and downs, it has had strong justices, weak justices, and it has occasionally hurt itself," Blackmun said. "It has a distinct richness, with a history of 105

justices, 16 chiefs and 490 volumes of United States reports. But it is also the end of the line. There is no other place for a litigant to go. So the Court had better be correct about its decisions. It is not always correct."

Blackmun also addressed what he has learned about personal needs. He prefaced this portion of his talk — which was peppered by anecdotes and quotes from colleagues and favorite writers — by saying, "I make no apologies for saying this, because these may be *your* needs, too." Blackmun discussed the need for intellectual refreshment, an open mind, acceptance of diversity, patience, a sense of humor, ability to accept the inevitable, courage and clarity of goals.

He spoke of the needs for faith and reverence, a sense of individuality, the need to realize that law and morality are not necessarily the same, a place for quiet, the need to dream, and the need to take care of "the house," a euphemism for the country and its goals and ideals.

Blackmun succinctly and eloquently reminded the audience of the basic messages of freedom upon which the Constitution and the Declaration of Independence are based. He pulled from his jacket a 30-page, pocket-sized version of the Constitution, a gift from a colleague. Upon reading the stirring opening words of the document, Blackmun commented on its eloquent simplicity.

"This is what it's all about in this country," Blackmun said. "The Constitution is brief, to the point and imperfect, yet it has been with us for two centuries. It bends, but it is not broken. It is flexible, thanks to the wisdom of its drafters."

In closing, Blackmun called upon each audience member to remember and uphold the basic teachings of the law. "We are all in this together and how vulnerable we are," he said. "We must realize how much we need each other, as we move along through the years allotted to us, under the rule of law."



The Judge Irving L. Goldberg Lecture-ship is endowed by the court clerks who have served under Judge Goldberg during his 25 years on the bench. The endowment celebrates his career as a lawyer, jurist, and humanitarian.

TWO FIRMS JOIN LAW SCHOOL'S COUNCIL FOR EXCELLENCE

The firms of Akin, Gump, Strauss, Hauer & Feld and Jones, Day, Reavis & Pogue have joined the Council of Excellence during the 1989-90 academic year. In joining this important partnership with the Law School, both firms have made significant financial commitments for the support of excellence in the study of law at SMU. Seventeen firms are now members of the Council.

MEMBER FIRMS

Akin, Gump, Strauss, Hauer & Feld

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Vinson & Elkins

Winstead, Sechrest & Minick

Worsham, Forsythe, Samples & Wooldridge

Dean's Message

The 1989-90 academic year has been a very good one for the Law School. The highlights noted in this issue of *The Quad* are headed by the Associate Justice Harry A. Blackmun's visit to the campus and delivery of the second annual Irving L. Goldberg Lecture in January. For the third successive year, applicants for entry to the school are showing a significant increase, well above the national average. Our annual giving campaign promises to reach our enhanced goal. We have attracted several significant new gifts, including support from the M.D. Anderson Foundation for research in law and medically related fields.

Gail Daly, Associate Director of the Minnesota Law Library, will join us as the new director of the Underwood Law Library in August. Professor Daly was our top choice after a nationwide search, and we feel very fortunate to have attracted her to SMU. The Law School owes a great debt of gratitude to Oragene Addis, who has carried on with remarkable competence and dedication as Acting Director since Earl Borgeson retired in 1987.

In addition, our faculty hiring is progressing very well. One of our new additions, Professor Gregory Crespi, joined us in January for the spring term after working a year with the President's Council of Economic Advisors in Washington. Professor Crespi is both a lawyer and an economist and promises to bring a new dimension to the faculty.

Certainly the decision about whether to reopen the evening school is the most important issue facing the Law School this academic year. President Pye asked us to consider the question in his August 30th Report on Academic Priorities entitled "Toward the 21st Century: Excellence and Responsibility." I have appointed an ad hoc committee, chaired by Professor Joseph Norton, to study the question with all its many ramifications. The committee, among other actions, has commissioned a professional marketing study to ascertain the breadth and caliber of the potential applicant pool for part-time legal education at SMU. It will be reporting on all of its findings at a faculty retreat in late April. The faculty will then make a recommendation to President Pye, who will present the issue to the Board of Trustees in its May meeting.

The Law School's Board of Visitors has also appointed a committee to study the evening school issue. That committee, chaired by Peter Lodwick '80, is working with the law school committee, and the two are sharing all data compiled. The Board will meet in May and will make their own recommendations to the President.

By now you should have received a questionnaire on the proposed evening school from the Law School Alumni Association's Long Range Planning Committee, chaired by David McLane ('66). We hope that you have returned the questionnaire as requested. Your perception of your Law School and your aspirations for it as we prepare for the 21st Century are of prime concern to your administration and faculty.

C. Paul Rogers III

FACULTY

PUBLICATIONS

Joseph J. Norton, Professor of Law:

"Bank of England's Lament: The Struggle to Maintain the Traditional Supervisory Practices of 'Moral Suasion,'" for a book to be edited by C. Schmittoff and R. Goode for the University of London and to be entitled *Protection of Bank Depositors*; "A Guide to the New Risk-Based Capital Adequacy Standards for Banking Institutions," 26 *Bull. Sect. Bus. L.* (State Bar of Texas) (Summer 1989); "International Convergence of Bank Supervisory Practices," 4 *J. Int'l. Bank L. Issue* 5 (1989); *Lender Liability: Law and Litigation Strategies* (1989), co-editor and contributor; Volume 4 of the *International Finance Series on International Tax Planning After the Tax Reform Act of 1986* (1989) (Mathew Bender) (Professor Norton serves as editor-in-chief of this series).

Professor Norton has completed the following periodic treatise updates: *Banking Law Manual* (semi-annual update, 325 new pages); *Commercial Loan Documentation Guide* (annual update, 218 new pages); *Lender Liability: Law and Litigation* (semi-annual update, 218 new pages); *Doing Business in Mexico* (Fall update, 263 new pages).

Daniel W. Shuman, Professor of Law: *Law and Mental Health Professionals: Texas* (American Psychological Association 1990); "Crime, Punishment, and Treatment," book review of S. Halleck's *The Mentally Disordered Offender* in 34 *Contemporary Psychology* 691 (1989).

Charles J. Morris, Professor of Law: *Labor Arbitration: A Practical Guide for Advocates*, co-author with opening chapter, "Historical Background of Labor Arbitration: Lessons from the Past" (BNA Books, Inc., Spring 1990); "NLRB Protection in the Non-Union Workplace: A Glimpse at a General Theory of Section 7 Conduct," 137 *University of Pennsylvania Law Review* 1673 (1989).

Charles T. Terry, Professor of Law: "Leveraged - Financed Tax Arbitrage: A Structural Accounting Analysis" in 7 *The American Journal of Tax Policy* 109-205 (1988); "The Nonrecourse Time Value of Money Is Presently At Risk in the Tax Court," *The Review of Taxation of Individuals*, p. 63 (Winter 1990).

Roy Ryden Anderson, Professor of Law: "Monetary Recoveries for Reliance and in Restitution Under Article 2 of the UCC," 22 *Uniform Commercial Code Law Journal* 248-277 (1990).

Alan R. Bromberg, University Distinguished Professor: Supplement #22 of *Bromberg & Lowenfels Securities Fraud and Commodities Fraud*, containing ex-

tensive new chapters on arbitration and insider trading as well as other matters.

Harvey Wingo, Professor of Law: "Abatement of Privacy Rights Upon Arrest" in Volume 11 *George Mason University Law Review* 43 (Spring 1989).

Beth Thornburg, Assistant Professor of Law: "Choosing A Different Sort of Life," (co-author) in 78 *International Review of Mission* 216 (1989).

Henry J. Lischer, Jr., Professor of Law: 1989 supplement for Volumes 16 through 18 of *West's Legal Forms*, subtitled "Estate Planning with Tax Analysis."

ACTIVITIES

Charles J. Morris, Professor of Law, gave his session's keynote paper entitled "NLRB Rulemaking: Promise and Prospects," at the Annual Meeting of Industrial Relations Research Association in Atlanta, December 1989. His speech was subsequently published in its entirety in the January 3, 1990, *Daily Labor Report* (BNA).

On January 25, 1990, he gave a lecture entitled "Nonunion Grievance and Arbitration Plans — Pitfalls under the Taft-Hartley Act" at the meeting of the North Texas Chapter of the Industrial Relations Research Association in Dallas.

Fred Moss, Professor of Law, spoke at the monthly meeting of the Garland Bar Association on October 5, 1989. His subject was an attorney's duty to disclose perjury at trial under the recently enacted Texas Rules of Professional Conduct. On October 14, Professor Moss delivered an expanded version of the same speech to the lawyers enrolled in the Dallas Bar Association's trial skills course.

Peter Winship, Professor of Law, was a Visiting Scholar at the University of Pennsylvania Law School in the fall of 1989. During the spring of 1990, he was the Mills E. Godwin Visiting Professor of Law at the Marshall-Wythe School of Law at the College of William and Mary in Williamsburg, Virginia.

The U.S. State Department has asked Professor Winship and Professor John O. Honnold (Pennsylvania) to act as National Correspondents to the United Nations Commission on International Trade Law for the collection of uniform law opinions.

Winship has also been appointed editor-in-chief of *INSOL International Insolvency Review* to be published by Carswell Legal Publications, a Canadian publisher. The primary purpose of the *Review* is to promote the study of insolvency law and practice, with special emphasis on the study of insolvencies that have effects in more than one national legal system. The first issue should appear in mid-1990.



ALUMNI

Robert L. Meyers III ('60) of Jones, Day, Reavis & Pogue and **Joseph F. Canterbury** ('66) of Canterbury, Stuber, Elder and Gooch were inducted as charter members into the American College of Construction Lawyers at their inaugural meeting on September 23, 1989, in Chicago. Meyers and Canterbury are among the 30 Fellows of the College elected nationwide.

Catherine Crier ('77), formerly a Texas state district judge, was hired to co-anchor CNN's new evening newscast, *The World Today*.

Russell "Rusty" Hardin ('75), a Harris County assistant district attorney, was honored as "Prosecutor of the Year" by the Texas District & County Attorneys. Hardin has spent his career at the Harris County District Attorney's Office and has never lost a felony case or had a jury assess probation in a case he tried.

Martha McKenzie Hill ('84) has accepted an appointment by the Bush administration as Special Assistant to Judge Abraham D. Sofaer, the Legal Adviser at the U.S. Department of State.

C. Michael McCurley ('72), name partner with Koons, Rasor, Fuller & McCurley of Dallas, was elected president-elect of the State Bar of Texas.

Linda Wertheimer Hart ('66), Vice Chairman of the Hart Group, recently served as chairwoman for the International Women's Forum luncheon. In attendance at the luncheon was Philippine President Corazon Aquino.

Linda Wilkins ('85) of Locke, Purnell, Rain and Harrell was a featured speaker at the Dallas YWCA's Women's Resource Center's seminar entitled "Women in Transition: A Program to Prepare for Life's Changes."

Alfred W. Ellis ('71) was inaugurated as president of the Dallas Bar Association on January 13, 1990. Ellis is a sole practitioner and instructor in trial advocacy at the Southern Methodist University School of Law.

Barbara Ann Bell ('89) received the highest score on the July 1989 Texas Bar Exam. She is clerking for Judge Sidney Fitzwater, Federal District Judge of the Northern District of Texas, and will join the Houston-based firm of Andrews and Kurth.

BIRTHS

David McLane ('66) and his wife announce the arrival of a baby girl, Elizabeth Clark McLane, on December 13, 1989.

Ann Fritts ('79) and her husband announce the birth of their son, Charles Parker, born December 5, 1989.

Brian McCrary ('85) and his wife announce the birth of their son, Taylor Reslor McCrary, on October 4, 1989.

R. Broh Landsman ('79) of the Seattle firm Helsell, Fetterman, Martin, Todd & Hokanson, and his wife, Tracy, announce the birth of twin sons, Peter and Samuel (September 13, 1989).

In Memoriam

Professor John Edward Kennedy, 1934 - 1989

John E. Kennedy, Professor of Law at Southern Methodist University, was born in Hutchinson, Minnesota, on August 30, 1934, and buried there on September 25, 1989.

John Kennedy was a graduate of Campion High School (1952), The University of Notre Dame (PhB., 1956; LLB, 1959), and Yale (LLM, 1964; JSD, 1970). Before joining our faculty, he taught at the University of Kentucky College of Law (1964-1971); he came to Southern Methodist University in 1971. During his career in teaching, he was a visiting professor at Illinois, Oregon, and Lewis and Clark.

John was an excellent teacher; he received the SMU outstanding professor award in 1973 and the law school's Don Smart Award in 1983. He published over 40 law review articles or book chapters, appearing in over two dozen different reviews and books. He was the reporter for the U.S. Judicial Conference Committee on Standards for Admission to Practice in Federal Courts (The Devitt Committee), from 1975-1979. Before he began teaching, he served as a Law Clerk to Chief Judge Edward J. Devitt in the District of Minnesota, and on active duty in the U.S. Coast Guard.

John's passions included his wife and family, fairness, Notre Dame, James Wm. Moore, Lake Wobegon, the Kentucky Derby, and the beauty of the Pacific Northwest. He loved procedure's marriage of metaphysical and mundane, and found each in the other. His mind worked in mysterious and wonderful ways; a conversation with John was a movable feast which recessed but never adjourned. John Kennedy was that rarity on a faculty — the colleague who evokes gentleness and sweet reason by offering them first.

John was a central person at the SMU Law School for many years. Students, graduates, staff, and faculty turned to John frequently for an idea, some support, or a smile. Never were they disappointed. Students who were baffled by the intricacies of procedure found either clarity or comfort with their bafflement. Faculty gained encouragement for their projects and had their ideas gently tested by John's probing intelligence. Graduates were delighted to discover that their favorite absent-minded professor remembered their names, the course they had taken from him, where they sat in class, and, all too frequently, their final grade. Deans were exasperated and inspired by John's persistent insistence on deliberation and fairness.

His students, co-workers, clients, friends, and readers were touched, and changed, by John Edward Kennedy's mind and spirit. We are grateful for the touch, the change, his mind, his spirit.

— William J. Bridge, Professor of Law

The Kennedy family requests that any donations made in Professor Kennedy's name be directed to the John E. Kennedy Scholarship Fund at Southern Methodist University.



John Edward Kennedy

NEW PARTNERS

Richard L. Covington ('83):
Thompson and Knight

Lou Hendrick Jones ('84):
Thompson and Knight

Robert C. Wendland ('83):
Vial Hamilton Koch and Knox

Jonathan W. Richards ('84):
Thompson and Knight

Rona R. Mears ('82):
Haynes and Boone

Lawrence D. Stuart, Jr. ('69):
Weil, Gotshal & Manages

John M. Cone ('83):
Strasburger & Price

Kirk F. Sniff ('76):
Strasburger and Price

Brent Clifton ('82):
Liddel, Sapp, Zivley, Hill & LaBoon

NEW ASSOCIATES

Carlton E. Joyce ('89):
Alembic, Fine & Callner (Atlanta, Georgia)

Dana Tait ('88):
Smith, Ralston, Russell & Wright

Emery G. Shannon ('83):
Baker, Mills and Glast

Melinda Forbes ('86):
Calhoun, Gump, Spillman & Stacy

The Academy of International Taxation

Chen Pan-Yung, Deputy Director-General of the Public Finance Training Institute of the Ministry of Finance of the Republic of China, visited the SMU School of Law in September 1989. He was accompanied by his assistant Ms. Tang Chi-Ming. Mr. Chen is responsible for administration of the Academy of International Taxation, which began in 1984 and is co-sponsored by the Ministry of Finance of the Republic of China and the School of Law.

The objective of the Academy is to provide fully subsidized, intensive training in taxation and tax administration to governmental tax administrators of the Republic of China as well as nations throughout the world. Countries represented at the Academy include the Republic of China, Republic of Korea, Fiji Islands, Solomon Islands, Indonesia, Thailand, Bahrain, Saudi Arabia, Jordan, Malawi, South Africa, Peru, and the Caribbean islands of St. Vincent, St. Lucia, Dominican Republic, and the Commonwealth of Dominica.

Over the years, distinguished tax practitioners and academics from around the world have served as faculty for the Academy, including individuals from



Dean Paul Rogers and Deputy Director-General Chen Pan-Yung

Singapore, Japan, Germany, the Philippines, Korea, Belgium, and the United States. Law professors from Berkeley, Vanderbilt, Georgetown, Houston, Florida, Michigan, Iowa, Syracuse, Wayne State, the University of Missouri-Kansas City, and SMU have participated.

During his visit to Dallas, Mr. Chen met with Professor Henry Lischer and with Dean Paul Rogers to begin planning for the 1990 Academy.



Tom McMurray (2L) secured his family's "plaid" while attending the Law School's Edinburgh Program in Scotland last summer. Edinburgh has been a center of learning since the University was founded in 1583 and was the focal point for the Scottish Enlightenment of the 18th century. The University counts as its own Charles Darwin, Sir Walter Scott, Thomas Carlyle, Robert Lewis Stevenson, and Alexander Graham Bell.

While attending the program, students live at the Pollock Halls of the University and attend classes at Old College where the Faculty of Law is situated. They have access to the University law library and recreational facilities.

STUDENTS

D. BRUCE HENDRICK (2L) has had his article entitled "Alternatives for Individual Debtors to Protect Retirement Plans and Effects of Recent Texas Bankruptcy Court Decisions" accepted for publication by the *Texas Bar Journal*.

CRIMINAL JUSTICE CLINIC

Since 1980, the SMU Criminal Justice Clinic has given students an opportunity to "practice" law in the Dallas County criminal courts. Under the direction of Professors Roark Reed, Walter Steele, Jr., Frederick Moss and criminal trial lawyer Mike McCollum, students represent indigent defendants charged with Class A or Class B misdemeanors.

Law students who have completed at least half of their law school course work investigate and prepare cases for trial, engage in negotiations with prosecutors, and resolve cases through plea bargaining and trial. To date, the student attorneys of the SMU Clinic have won about 50 percent of their cases — about the percentage a practicing attorney can expect to win.

According to Professor Steele, the overall goal of the Criminal Justice Clinic is to ensure that every student is broadly exposed to the criminal justice system and is introduced to the "ambiance" of having clients: not one or two clients, but 15 or 16 clients at any one time, and dozens in the course of a semester.

According to Steele, "The approach of balancing extensive client exposure with theoretical reflection answers one of the knocks on legal education: that students graduate ignorant of a segment of society that includes the poor and the mentally impaired. I would rather a student get the experience of defending his first indigent paranoid schizophrenic in a controlled situation than at the expense of some un-

suspecting client."

Students from the Clinic are appointed to represent clients primarily in the county criminal courts of Judge Ben F. Ellis (who has been central to the Clinic's operation since its inception), Judge Marshall Gandy (a former student in the Clinic), and Judge Lynn Burson. Students learn about the criminal justice system by being in court every day where they gain firsthand knowledge of its impact on the poor.

In addition to their individual case loads, all students undertake a semester project on specific legal problem. For example, the jailable offense of "driving while license suspended" (DWLS) is common among the poor who may be unable to afford liability insurance, lose their driver's license as a result, but continue to drive. This year's law students have studied the law regarding this issue, found the charging instruments inadequate, and have become extremely effective in challenging the charges in individual cases.

"The courthouse is abuzz with our activity in DWLS cases, and lawyers are calling us to find out why we are so successful," says Steele.

Beginning in the fall of 1990, there will be two changes in the Clinic. First, participants will have slightly smaller case loads to give them more time to consider the legal significance of each case they undertake. Second, the directorship of the clinic will rotate each semester



(Left to right) T.J. Johnson (3L), Michelle Mulder (3L) and Kim Chapman (3L).

among Professors Steele, Reed, and Moss.

When considering the long-term development of the Criminal Justice Clinic, Steele points to an increasing demand for criminal lawyers to be computer literate. Presently, the Clinic has limited computer access and, says Steele, "Even the University of New Mexico has totally computerized its clinics." He points out that computers can increase efficiency and lower fees, increase accuracy and reduce charges of malpractice. Moreover, computers can store ideas from one case for later use in another and, in Steele's opinion, improve the legal product overall.



Assistant Dean Neil Cogan (r) and State Senator Chet Brooks (l) look on as Governor Clements signs House Bill 1806 reforming the method whereby adoptive parents are informed of the background of children.



Senator Lloyd Bentsen delivered this year's Touche-Ross Lecture. In 1983 the Dallas office of Touche-Ross & Co. undertook the sponsorship of the Tax Law Lecture Series with the SMU School of Law.

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