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A TRIBUTE TO JUSTICE HARRY A. BLACKMUN

Richard A. Meserve*

Much of the discussion in our seminar earlier today has focused on the Justice Blackmun that is revealed by his many contributions to the United States Reports. This approach is an entirely appropriate means by which to take the Justice's measure. At core, however, I think that all of us are also interested in the man who lies behind the decisions. I will take a different approach in trying to reveal him.

Like some of the other contributors here today, I served as Justice Blackmun's clerk. As a result, I have had the good fortune to know the person behind those decisions. As our morning papers often reveal, the private side of prominent figures is often different from the public image. In the case of Justice Blackmun, however, the public and private sides reinforce each other. The Justice's clerks are fond of him and are loyal to him because increasing exposure in fact serves to enhance the respect — even awe — in which we hold him.

I first met the Justice at my interview as a prospective clerk. I expected to be confronted by a stern figure who would probe at my knowledge of the legal issues confronting the Court or who, heaven forbid, would even ask some pointed questions about tax law. Instead, I was met by a friendly man, clad in a cardigan sweater I recall, who seemed to view the interview as an opportunity to reassure and relax me. I do not recall any questions that focused on my legal knowledge, although I suspect in retrospect that the Justice learned far more about me than I realized at the time. Instead, much of the interview reflected his concern that a clerk's work load might intrude unduly on my family life. The Justice knew that I had young children and he wanted to be sure that I fully considered all the disadvantages of assuming a clerkship. The incongruity of the

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situation has often struck me: I was being interviewed for the most fascinating legal position available to a young lawyer, and the Justice seemed to be discouraging me from considering the job. With the wisdom of increased years, I now understand that Justice Blackmun was seeking to assure that important things — such as the impact of the clerkship on the lives of those around his clerks — had been adequately evaluated.

Perhaps one recurring event is a central feature of every clerk's memory of his or her experiences in the Justice's chambers. It is not the triumphant majority opinions or the biting dissents — it is breakfast. Shortly after 8:00 a.m. each morning, the Justice would collect his clerks and shepherd them down the stairway to the Court's cafeteria. The Justice invariably ordered the same breakfast: one scrambled egg, juice, coffee, and — his one luxury — raisin toast. We would then engage in quiet banter until returning to the office to start the day's work.

I often think back on the breadth and warmth of those morning conversations. Some mornings we would discuss the Court's work. Sometimes the Justice would announce with wry bemusement, even glee, that he was "in the doghouse with the Chief" over a particular decision. Sometimes he would chuckle over some development relating to the Court's personnel. Often, however, the conversation focused on other things: the morning's headlines, baseball, or personal matters — wives, children, parents, hometowns. I am amazed that the Justice still remembers many of the personal facts. He often inquires about parents or children or other interests that he learned about over raisin toast.

The Justice's concern for people is not limited to his clerks. One day, a distinguished gentleman appeared at the breakfast table and announced that he was a district judge from a distant part of the country. Justice Blackmun did not know the judge, but asked if he would join us. The Justice started a discussion with the judge about his home state when the Justice noticed that a younger man was standing near the table. The judge saw the Justice's concern and stated that the man was a federal marshal who had accompanied him to Washington. The Justice stood up, went over to the marshal, put out his hand and said, "Hello, I'm Harry Blackmun. Please join us." The Justice pulled up a chair and held it for the marshal as he sat down. A smile crossed the marshal's face as he introduced himself and responded to questions about his home and job.

Others today have observed that the practical evaluation of the

real-world impact of the Court's actions is a hallmark of the Justice's opinions. I believe this characteristic stems from the fact that Justice Blackmun is a person who truly cares about the "little people." As my anecdotes reveal, this care is reflected not only in his approach to the Court's work, but also in the way the Justice deals with people he encounters in everyday life.

The Justice's concern for the consequences of the Court's decisions is perhaps most poignantly revealed by a careful examination of his office. On one wall near the stand-up writing desk at which he occasionally works, the Justice has hung an inconspicuous, but very unusual certificate of sale. On February 21, 1853, one S.E. Cotterliss of South Carolina paid \$625 to become the owner of a 12-year-old black child named Titus. The wall for the most part includes a display of photographs and plaques bearing on the justice's own life. We all might wonder at that certificate and at its placement on the wall. It might serve as a simple and constant reminder of the obligation to protect the weak and the disfavored. It might also serve to remind the Justice to consider the personal implications of his decisions. It must be remembered that the sale of Titus was protected by the Supreme Court at the time. That bill of sale must serve as a constant reminder to look beyond contemporary societal conventions so as to assure that the promise of equal justice under law is, in fact, achieved. As others earlier today have discussed, the Justice's opinions have amply demonstrated his efforts to fulfill that obligation.

The Justice's concern for the practical impacts of the Court's decisions is also reflected in the work that goes on behind the scenes. Every Term, the Court considers thousands of petitions for certiorari. Justice Blackmun reads them all. Moreover, every petition is analyzed by the clerks in memoranda — called "pool memos" — and the collection of memos from past years is preserved in chambers. The clerks on occasion find it necessary to review the analyses of prior petitions on a similar subject or to check the pool memo arising from an earlier incarnation of the case. The memos are invariably filled with etchings in the fine-pointed pencil of the Justice: cryptic symbols in the margins, words underlined, little question marks, and notes to himself. Often the notes reveal that the Justice has detected aspects of the petition that had escaped the clerks or the parties. The notations prove that, although the petition may not have been of a significance that warranted discussion at the Court's conference, the Justice had carefully and probingly scrutinized the case.

I think back on those memos with considerable amazement. The Justice must have read many tens of thousands of petitions, briefs, bench memos, pool memos and other papers related to the Court's work. Given the enormous volume, it is perhaps easy to assume that many of these papers must have been given only hasty scrutiny. In the case of at least one Justice, however, the words "cert. denied" do not serve as a casual or thoughtless response. There is a Justice who has read the papers carefully and has sought to assure that each case has been given an appropriate disposition.

I do not believe that anyone other than his clerks can fully appreciate the prodigious workload that the Justice cheerfully bears. Justice Blackmun always put in a long day in chambers. But, before leaving in the evening, the Justice would usually stick his head through the door to the office shared by the clerks. Invariably he would say, "Well, I guess I'll desert you now." The comment would bring smiles to the clerks, because we knew the Justice's day was far from over. He obviously worked late into the night because each morning before breakfast, he would deposit a stack of materials, each meticulously annotated, on the desk. The claim that the Justice was deserting us was never a real concern. Our concern was keeping up with the pace that he set.

I think that everyone who meets the Justice is struck by his genuine modesty and humility. Although he has a position at the pinnacle of governmental power, his status does not seem to affect his image of himself. He has remained a quiet, self-effacing person who perhaps does not recognize his own importance. Let me give you a simple example. After lunch on pleasant days, a familiar slight figure in that same cardigan sweater often walks the block around the Court building. Not infrequently, as the walker passes the front steps of the building, tourists stop him and ask him to take their picture with the Court as a backdrop. He cheerfully takes instructions on operating the camera and then, task performed, proceeds on his walk. The tourists are none the wiser as to who has served as their photographer. And it does not occur to the man in the cardigan that he is too busy or too important to lend a helping hand.

The Justice's mild manner, however, can be deceptive. There is a significant measure of steel inside this man; he will not bend on important matters of principle. Indeed, the Justice has demonstrated his courage in protecting important rights — an aspect of his nature about which his clerks only slowly became aware. Each day the Justice receives a volume of mail attacking him for his decisions on

abortion matters. He does not share that mail with his clerks. But, he reads it all. He is reminded on a daily basis of the irrational hatred that is provoked by his brave stand on behalf of personal rights. Justice Blackmun is a sensitive man and it is hard to imagine the personal toll that is exacted by this unremitting onslaught. Nonetheless, he has not wavered in his studied and careful response. He is the conscience of the Court — perhaps of America — on this issue. Too few people recognize the extent to which he has sacrificed his personal privacy to protect a constitutional zone of privacy for others.

History will show that Justice Blackmun is a far different and more significant figure than the “Minnesota Twin” that was predicted upon his confirmation. Harry A. Blackmun deserves our tribute as a great Supreme Court Justice. As one who has had the good fortune to know him personally, I can say that he also deserves our tribute as a magnificent human being.

