

A Tribute to Justice Harry A. Blackmun

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Just before the Court's summer recess, we sent a letter of appreciation to Justice Blackmun, whose answer will never be far from my reach. He quotes Justice White's remark that "the Court is a very small organization for the weight it carries," the weight of consequences in people's lives and in the minds of those who make the decisions. Justice Blackmun might have added that the load does not always seem evenly placed among the nine Justices, as he has reason to know after bearing a uniquely heavy share of the Court's felt burden. While *Roe* is only one case out of more than a thousand in which the Justice wrote an opinion in his twenty-four years on the Court, it has drawn a more concentrated attack than any decision since *Brown*, and has been a point of division within the Court as sharp as any since at least the 1930's. Although the Justices divided seven-to-two, the other members of the majority seem almost forgotten, and for over twenty years *Roe*'s center of gravity has been found squarely over Justice Blackmun's shoulders.

There would have been no surprise if *Roe*'s aftermath had driven a quiet man like Justice Blackmun to seek stoic comfort in separation from the turmoil outside, in a place apart even from Justices blessed with greater distance from the tumult. He certainly had a haven for retreat, for life with Dottie Blackmun would have been rich in any circumstances, and, indeed, over the years some people may have sensed withdrawal in the Justice's courtroom silence, and detachment from his colleagues in his preference for lunch alone on conference and argument days. The weight of the evidence is, however, very much the other way.

Justice Blackmun, I'm told, has read every critical letter to reach his chambers, though he could have ignored them easily, and since I've known him, at least, he has chosen to sally out to deliver probably more speeches than any of his colleagues. Tourists of a mind to get in early enough have seen him virtually every weekday morning having breakfast with his clerks in public in the Court's cafeteria (albeit with a police officer at the next table, just in case). And I learned early on at the Court that Justice Blackmun's acts of solitude didn't extend to blocking the rest of us out of his thoughts. Over the years, he has addressed the state of our culture and our mental health, by turning into something of an impresario, treating all of us on the Court and our friends to

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musicales, held on afternoons late in the Term when the strain had begun to show and the crankiness needed lowering. Nor could I ever forget the Fall morning four years ago, just into my first Term on the Court, when something made him think of me particularly. He walked into my chambers unannounced and said he'd just dropped in to put his hand on my shoulder. Which is what he did, as he gently reminded me that everyone else had been through a first year, too. I could multiply examples but will let it go with saying that signs of estrangement are not what I've seen in my years with Justice Blackmun. Nor do any show up in that letter I mentioned before.

His reply to us turns out to be the moment for a long look at the Court on which he served (and, truly, lived) for a quarter century, seen against an image of what the life of the Court might ideally be. He files no complaint and gives no hint of might-have-been. His words speak, not of division or distance, but of the comfort he has drawn from the "awareness that we were all in this together, . . . that the system seemed to be working[,] that this was the way it was meant to be and that it would work out all right." As he glances back, old disagreements shrink to details in a dialectic, one bound to last as long as the Constitution itself and inseparable from our search for its meaning. Life on the Court, he tells us, is faithfulness to "a common, not an individual, task." So he has found it, just as it should have been.

We work together, nine judges diverse in much but alike in exalting constitutional government. Who could affirm that fact better than a Justice who has known profound disagreement, and who could speak for that ideal with surer standing? I will remember the magnanimity of Harry Blackmun's visions of the Court as it has been and as it ought to be, and when the need arises I will try to pass along his aspiration for us, and the pat of his hand on my shoulder.