Nova Law Review

Volume 22, *Issue* 3 1998 *Article* 2

COMMENTS OF 1997 LEO GOODWIN SCHOLAR

Nina Totenberg*

*

COMMENTS OF 1997 LEO GOODWIN SCHOLAR

Nina Totenberg

Abstract

I was pleased to have been invited to the Nova Southeastern University Shepard Broad Law Center to participate in the Law Center's 1997 Leo Goodwin Sr. Visiting Scholar Program.

KEYWORDS: scholar, Leo Goodwin

COMMENTS OF 1997 LEO GOODWIN SCHOLAR

Nina Totenberg

I was pleased to have been invited to the Nova Southeastern University Shepard Broad Law Center to participate in the Law Center's 1997 Leo Goodwin Sr. Visiting Scholar Program.

As National Public Radio's Supreme Court correspondent, the subject—The Rehnquist Court—has been my beat for some time. But covering the Court is much different from listening to law students and attempting to answer their questions about the Court, the Justices, their decisions and the process by which they arrive at those decisions.

It was not surprising that the students at the Law Center were inquisitive. The law faculty at Nova Southeastern has a tradition of litigating cases in the Supreme Court, and many of the students have assisted the faculty in preparing Supreme Court briefs and arguments.[1]

In addition the faculty have been co-counsel in *Fuentes v. Shevin*, 407 U.S. 67 (1972), and have filed Supreme Court Amicus briefs in several cases. Other Florida lawyers who are to appear in the Supreme Court regularly come to the Law Center for moot courts to prepare them for their arguments in Washington. Nova Southeastern students have accompanied faculty to Washington to watch their Supreme Court arguments. Thus, the Supreme Court is not a remote institution to Fort Lauderdale law students.

My task was not to parse the cases of the Rehnquist Court, but to parse the personalities of the Justices and the lawyers who attempt to persuade the Court that their answers are the better answers to the nettlesome legal and social issues presented by the cases the Court agrees to hear. Those cases, the honestly arguable, difficult to decide ones which admit of no single right answer are capable of being influenced by a single Justice's view of life and law. And unless a lawyer is steeped in a sense of who each Justice is, that

1. Nova Southeastern Law Center faculty members have argued Beach v. Ocwen Fed. Bank, 118 S.Ct. 1408(1998); Seminole Tribe v. Florida, 517 U.S. 44 (1996); Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995); Campbell v. Acuff-Rose, 510 U.S. 569 (1994); McNary v. Haitian Refugee Ctr. Inc., 498 U.S. 479 (1991); INS v. Jean, 496 U.S. 154 (1990); Jean v. Nelson, 472 U.S. 846 (1985); Davis v. Scherer, 468 U.S. 183 (1984); Ingraham v. Wright, 430 U.S. 651 (1977); Mathews v. Diaz, 426 U.S. 67 (1976); Francis v. Henderson, 425 U.S. 536 (1976); Gerstein v. Pugh , 420 U.S. 103 (1975); Argersinger v. Hamlin, 407 U.S. 25 (1972).

Nova Southeastern alumni have argued Farragher v. City of Boca Raton, argued Mar., 1998 (awaiting decision); United States Dep't of State v. Ray, 502 U.S. 164 (1991); Spaziano v. Florida, 468 U.S. 447 (1984).

lawyer may miss the opportunity to find an answer which resonates with the "swing vote."

Of course each Justice creates his or her own written record of their views—their opinions, concurrences, and dissents. But behind those pages are nine engaging people, who while similarly law conditioned, have also been shaped by forces which form all of us: education, family, religion, geography, and gender. I was not asked to "spill the beans" about my view of the Justices, not that I could or would do so, but the questions I was asked to answer made me realize how little even law students know about the human side of the Supreme Court. The grand rituals of the Supreme Court, its refusal to allow its proceedings to be seen other than in person, the remoteness of the Justices as compared to executive and legislative branch officials, combine to make the Court a mystery to most of the citizenry. Perhaps the mystique created by that aura serves the country well, for respect for the Court's authority is its only armament. However, those who seek to persuade the Court need to have it de-mystified a bit, and I did try to do that for the law students.

And I did try to share with them the strengths and shortcomings I have seen in Supreme Court advocates; the attributes and deficiencies which likely affect all lawyers at all levels of practice. Knowledge of the facts and knowledge of the law are only starting points. Knowledge of history, sensitivity, to societal needs, desires, and dilemmas of the day, and society's hopes for the future must be melded into a lawyer's arguments. And finally, the most-important skill—listening—pervades the process of advocacy. Listening to the client, listening to the witnesses, listening to the law, and listening to the Court's questions lead to the decisions which are the Supreme Court's only products: the law of the case and the law of the land.

I hope the thoughts I shared with the students left them with a sense of respect for the effort of the Justices to decide the hard cases in a way consistent with sound legal, social and economic principles. And I hope I imparted to them the intellectual challenge of Supreme Court practice, and a desire to follow the Nova Southeastern faculty and alumni to the Court's lectern.

Professor of Law
Nova Southeastern University

Bruce Rogow has been a professor of law at NSU Law since 1974 and served as Acting Dean in both 1978–79 and 1984–85. He was Supreme Court counsel in *Seminole Tribe v. State of Florida, Florida Bar v. Went For It, Inc. Campbell v. Acuff-Rose, Argersinger v. Hamlin, Gerstein v. Pugh, Ingraham v. Wright, Mathews v. Diaz, and Davis v. Scherer*, co-counsel in *Fuentes v. Shevin*, and appointed by the Court to represent the petitioner in *Francis v. Henderson.*

Professor Rogow has served as President of the Legal Aid Society of Broward County, General Counsel for the American Civil Liberties Union Foundation of Florida, Special Counsel to The Florida Bar, and as Special Assistant Attorney General. He successfully defended the Chief of the Seminole Tribe of Florida against federal and state Endangered Species Act charges for killing a Florida panther on the Reservation, represented 2 Live Crew in their federal and state obscenity trials and appeals, and successfully represented the Cuban Museum against the City of Miami's attempt to evict it. In 1992 he obtained the first federal court appellate decision declaring that a musical work was not obscene; his 1994 Supreme Court success in *Campbell v. Acuff-Rose* established copyright and constitutional protections for commercial parodies.

Professor Rogow has been listed in *The Best Lawyers in America* for the past ten years and is one of the few lawyers in the United States to be named in two separate categories: Criminal Law and First Amendment Law. He is one of two lawyers in Florida to be Board Certified in both civil and criminal appellate law and is one of twelve practicing Florida lawyers elected to the American Academy of Appellate Lawyers.