

EARL WARREN PROFESSORSHIP<sup>†</sup>

MICHAL R. BELKNAP

INTRODUCTION BY LAURENCE A. BENNER\*

Chief Justice Earl Warren would be pleased that a chair bearing his name is being given to someone who has dedicated his life to the study of the Supreme Court and its protection of civil liberties. Certainly no one is more deserving of this honor than Michal Belknap, who is not only a preeminent legal scholar, but also one of the most prominent legal historians of our time.

Professor Grant Gilmore, a renowned professor at both Yale University and the University of Chicago law schools, once said that the law “at any one time or place is an unstable mass, in precarious equilibrium.” Gilmore therefore believed that the study of legal history was one of the most important functions of legal education because it helped lawyers, judges, and legislators gain the wisdom necessary to prepare for the future. Professor Gilmore did not assert that the historian could predict the future, but rather that the historian showed us the possibilities for the future, and thus taught us how to discern the new directions and paths the law might travel. In order to fulfill this noble role as the collective consciousness and facilitator of wisdom, the legal historian must therefore have integrity, intelligence, and the ability to inspire. Michal Belknap has, in extraordinary abundance, all three of these attributes.

Integrity can indeed be said to be a hallmark of Michal Belknap’s work over the past thirty years. His books on the civil rights era have transformed our understanding of the interaction between the President, the Supreme Court, and Congress. In *Federal Law and*

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<sup>†</sup> Accepted by Michal R. Belknap on December 13, 2007, at California Western School of Law.

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*Southern Order*,<sup>1</sup> the second of his eight published books, he examined the federal government's response to the racial violence which followed the desegregation decision in *Brown v. Board of Education*.<sup>2</sup> In an impressive assault upon the citadels of myth and fallacy, Professor Belknap uncovered the truth without regard to whose hero might be tarnished—whether it be the famous Southern Senator Sam Irvin, President Eisenhower, or President Kennedy. Respect for the integrity of his research has also been recognized by the Supreme Court Historical Society, which honored him with the coveted Hughes-Gossett Award for Historical Excellence. Indeed, he is held in such high esteem that this august body requested he speak to them on the history of military commissions—an occasion that was attended by several Supreme Court Justices. Professor Belknap's research, which revealed the dangers presented by the use of military commissions, was highly relevant to cases involving the Guantanamo Bay detainees which were then working their way toward the Supreme Court's docket in *Boumediene v. Bush*.<sup>3</sup> We at California Western School of Law are therefore very fortunate to have on our faculty a nationally recognized expert on issues of such vital importance to the rule of law.

Professor Belknap's extraordinary intellect is shown in the breadth of his scholarship. His eight books touch such disparate subjects as the Smith Act prosecution of communists in the 1950s, the history of the Civil Rights Act of 1968, the Vietnam War, the court-martial of Lieutenant Calley, and the history of the American Judicature Society. He has also written two books which focus directly on the Supreme Court's jurisprudence; one details the history of the Supreme Court under Chief Justice Vinson, and, appropriately, his most recent book addresses the legacy of the Warren Court.

His books have received high praise from the academic community. To take just one example, *The Vietnam War on Trial* is described by one commentator as:

A wise, discerning and powerful account of a notable trial that illuminates the larger meaning of the Vietnam War. Belknap's

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1. MICHAL R. BELKNAP, *FEDERAL LAW AND SOUTHERN ORDER* (1995).
  2. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).
  3. *Boumediene v. Bush*, 128 S. Ct. 2229 (2008).

extraordinary analysis of the My Lai story skillfully explores the atrocities, the cover-up, and the political manipulation of the affair, and takes us beyond contemporary journalism to the complex history of what happened—and why.<sup>4</sup>

In addition to these impressive achievements, Professor Belknap has also been an enormously prolific writer in other venues as well, publishing over fifty law review, historical journal, and encyclopedia articles; over sixty book reviews; and over fifty scholarly papers, essays, book chapters, and comments.

Finally, Michal Belknap is not only a true scholar of the highest caliber, he is also an inspiring teacher both here at California Western and at the University of California San Diego, where he is an adjunct professor of history. There is a synergy between research and teaching that brings vibrancy and a genuine reality to Professor Belknap's classroom. I have had the opportunity to observe first hand the crystal clarity of his wit and the delightfully entertaining style in which he engages in dialogue with his students. He has a brilliant, penetrating, and incisive mind and is a first-rate teacher. He is also a great colleague and mentor to all of us in the academic community. His achievements stand as a beacon of light pointing the way, and we look forward to reading more of his inspiring scholarship in the years ahead.

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4. MICHAL R. BELKNAP, *THE VIETNAM WAR ON TRIAL* (2000), reviewed by Stanley Kutler, available at <http://www.kansaspress.ku.edu/belvie.html>.

## EARL WARREN PROFESSORSHIP

ACCEPTANCE BY MICHAL R. BELKNAP\*

Thank you, Larry [Benner]. I am honored by what you have said about me. I am far more honored to be named as the first holder of California Western School of Law's Earl Warren Chair.

I cannot think of any greater accolade than to be linked in this way with the late Chief Justice of the United States. One invited guest who could not be here this evening, an economist and chaired professor at the Georgetown business school, Richard James Sweeny, reminded me that it has been almost forty-three years since we collected our bachelors' degrees from the University of California Los Angeles and marched off along somewhat different paths, both committed to becoming scholars.

Forty-three years ago, the Supreme Court that Justice Earl Warren led seemed to be remaking the country. To us, Justice Warren looked like a larger-than-life heroic figure. Michael Parrish has captured particularly well how he was viewed by our generation.

In October 1970, soon after retiring from the Supreme Court, Justice Warren came to a new university in La Jolla, California, to give a speech. As he began to speak, some students unfurled a large banner. Accustomed to the expletive-laced denunciations young people commonly hurled at anyone or anything associated with "the establishment," University of California San Diego administrators and professors cringed. When the sign came down, though, it proclaimed: "Right on Big Earl!"

Warren was someone with whom the increasingly disillusioned and even radicalized youth of my generation could identify. This was because he seemed to have done something to make the country better. What seemed important to those of us who chose to become

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lawyers was that he had used the law to do it.

Earl Warren and I do not have a lot in common. He was a big bear of a man, while I rather obviously am not. He was a mediocre student, while Dick Sweeny and I busted our butts in pursuit of Phi Beta Kappa keys. He got his bachelor's and law degrees from the University of California Berkeley, while I always thought that California gold was meant to be worn with *powder* blue, that *navy* blue was for sailors, and that the University of California did not really come of age until John Wooden brought the first of his ten NCAA basketball championships home to Westwood in 1964.

Besides being Chief Justice of the U.S. Supreme Court from 1953 to 1969, Justice Warren was the District Attorney of Alameda County, the Attorney General of California, a three-term governor of the state, and the 1948 Republican nominee for Vice President.

I, on the other hand, have been a professor pretty much my entire career. Justice Warren and I both served briefly as very junior Army officers during a war—Justice Warren served in World War I, and I served in Vietnam—without ever getting anywhere near the fighting.

There is only one really striking similarity between the Chief Justice and me. The “Super Chief” was a natural left-hander, who in an era when there was considered to be something wrong with southpaws, was forced to learn to write and eat with his right hand. I am also a southpaw. I throw left-handed, and am proud to report that Justice Warren also played sports with his naturally dominant left hand. That odd coincidence, however, is not enough to make me a fitting choice to be the first Earl Warren Professor.

What does, I hope, is my belief in the idea that Justice Warren came to symbolize for lawyers of my generation. Practically the first decision the Supreme Court handed down after Earl Warren became Chief Justice was *Brown v. Board of Education*.<sup>1</sup> *Brown* was followed by a plethora of legal landmarks, ranging from *Miranda v. Arizona* (with its requirement that police give warnings to suspects in custody before interrogating them),<sup>2</sup> to *Reynolds v. Sims* (the one-person, one-vote ruling),<sup>3</sup> to decisions banning prayer and Bible reading from

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1. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

2. *Miranda v. Arizona*, 384 U.S. 436 (1966).

3. *Reynolds v. Sims*, 377 U.S. 533 (1964).

public school classrooms.

The constitutional law, criminal procedure, and federal jurisdiction casebooks of today are filled with Warren Court decisions. Entire branches of the law really begin with rulings of Warren's Court, some of them with opinions that he wrote. Most of his decisions had a common thrust: expanding the rights of society's outsiders, particularly members of racial minorities. A generation of lawyers came out of law school wanting to follow in the footsteps of the Warren Court: to litigate the next big case that would establish the next important right for the less fortunate.

Social scientists have now demonstrated that many of our assumptions were badly flawed. They have provided empirically grounded demonstrations that litigation did not do much to advance important social reforms, such as school desegregation. One legal historian has even written a massive and compelling book arguing that the civil rights movement that won equality for African Americans in the 1960s and 1970s was not so much inspired by *Brown v. Board of Education*,<sup>4</sup> as it was the result of a reaction against it. Yet, in my role as a member of the California Western admissions committee, I read countless personal statements demonstrating that many students entering law school today still view law as an instrument for promoting positive change in society. I am pleased about that.

In his last public speech at Morehouse College, Earl Warren declared: "The great virtue of our government is that people can do something about it."<sup>5</sup> That is especially true for lawyers.

As the first Earl Warren Professor, I hope to continually remind California Western students of this great virtue. I want students to come away from their legal education with the message of those UCSD undergraduates thirty-seven years ago imprinted on their brains: Right on Big Earl.

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4. *Brown*, 347 U.S. at 483.

5. Earl Warren, Chief Justice, United States Supreme Court, Commencement Address at Morehouse College (May 21, 1974) in JACK HARRISON POLLACK, EARL WARREN: THE JUDGE WHO CHANGED AMERICA 321 (1979).