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DEDICATION TO THE HONORABLE THOMAS M. REAVLEY

Brad Toben, Justice Jeff Boyd, Bryan A. Garner, and Marianne Auld

A Dedication to an Icon of the Bench and Bar: Judge Tom

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A DEDICATION TO AN ICON OF THE BENCH AND BAR: JUDGE TOM
REAVLEY

Brad Toben*

Judge Tom Reavley is one of my heroes. His life and career in the law and on the bench have exemplified and embodied every good and noble characteristic of the complete lawyer and judge. Now, at age 95, the Judge is still fully active on the bench. A cherished friend of Baylor Law, Judge Reavley is one of the longest tenured and most respected laborers in the judiciary. He is indeed deserving of the adjective “iconic.” He holds the title of “judge” in a way that evokes the nobility of the American judiciary, having many years ago forgone the opportunity for a lucrative practice to instead serve our nation, decade after decade. He has served on the federal bench under six (and soon seven) presidents!

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At Baylor Law School, we have a strongly enunciated theme that animates our program. The theme is that our profession is, first and foremost, a *servicing* profession. Many years ago, the Judge penned an article, *My Faith and My Work*.¹ It opens by setting forth the tenets and assumptions of his personal faith journey and theology that he holds dear in his heart and close to his soul. When I first read its opening paragraphs, I was moved by the Judge's discerning words and the cogency of his articulation. His lodestar—his faith and his deep and abiding commitment to *servicing* his nation through his profession—made the Judge, over many years, both a sought-after and welcomed teacher and guide of our Baylor Law students.

Judge Reavley. There are so many descriptors—Harvard Law grad; a World War II veteran; a young lawyer who longed for the courtroom; a public voice in the thick of Jim Crow fighting for equality; as a prosecutor, an early advocate for victims of loan sharking; a judge who made a major career decision based upon Governor Allan Shivers's pledge, as a Southern governor, to abide by and enforce *Brown v. Board*; a giant who served on the Texas Supreme Court and continues to serve on the Fifth Circuit Court of Appeals as a voice of reason; a judge with a tenure of decades on the bench, and an untold number of decisions, who points to his best decision as one invalidating an ordinance requiring proof of U.S. citizenship as a predicate to renting an apartment.

Judge Reavley was the catalyst and the linchpin behind the inaugural edition of *Viewpoints*, a conversation series sponsored by Baylor Law School. The first *Viewpoints* event unfolded at the National Press Club in October 2015. Our panelists were Judge Reavley, Judge Sri Srinivasan of the U.S. Court of Appeals for the District of Columbia, and Judge Ken Starr, then President of Baylor University and, among other public-service roles, a former member of the court on which Judge Srinivasan currently sits.

The panel addressed the topic “The Judge’s Objective: Prediction or a Preferred ‘Correct’ Rule?” This topic, also addressed in the Judge’s article in this issue of the *Baylor Law Review*, tackles the concept of whether judicial decision-making should be crafted to ensure predictability in the development and application of legal doctrine, and whether predictability in the law, if it is the highest value, leaves any space for a judge to give heed and effect to what the court may regard as the “correct” rule or result?

¹ See generally 27 TEX. TECH. L. REV. 1295 (1996).

How potent are the Judge's ideas, perspectives, and thoughts for each of us? The answer: inestimable. My colleague David Guinn and I have been privileged for the past several years to be invited guests at the annual meeting of the Tonahill Society, a small group of lawyers and judges who dedicate their efforts and time to the preservation of our Seventh Amendment rights and the enhancement of the profession and the rule of law. A few years ago, Judge Reavley was the Society's invited speaker for the gathering. I remember well how the Judge, seated amid us in an intimate space, spoke movingly on the themes of the majesty of the rule of law, the fealty that each of us, as stewards of the profession, owes to the rule of law, and his concerns for the liberties that are sometimes taken to supplant the rule of law with the rule of judges. The moment painted Judge Reavley: selfless public servant, iconic lawyer and judge, and an E.F. Hutton voice for us all. With pride and admiration we dedicate this volume of the *Baylor Law Review* to this servant of all that is good in the law and in our democracy.

THE HONORABLE THOMAS M. REAVLEY—A PORTRAIT



THE WRONGNESS OF REAVLEY

Justice Jeff Boyd**

My relationship with the Honorable Thomas M. Reavley began with a disagreement. I was right, and he was wrong. I arrived at his chambers in 1990 to interview for a clerkship, and I was worried. He had a somewhat foreboding LBJ-esque appearance, and some said he could occasionally exude that same intimidating, no-nonsense kind of gruffness. I had heard that he was one of the hardest-working judges on his Court and that his faith-based commitment to morality and civility had others referring to him as the “Pope of the Fifth Circuit.” But after a pleasant, if not yet exactly friendly, conversation, he offered me the position—and then promptly recommended that I turn it down. He had just taken senior status, and as he put it, I could “do better” than to clerk for “someone like” him. I knew instinctively and immediately that he was wrong and quickly withdrew all my other applications.

As his many other former clerks will attest, working for Judge Reavley was as life-changing as it was career-enhancing. Of course, he taught us the importance of knowing the law and of protecting the rule of law. He taught us the importance of disciplined habits, like reading the entire trial-court record before beginning even an outline of an appellate opinion. But beyond all that, he taught us the importance of truly respecting your colleagues even when you disagree with them, of avoiding the pettiness that sometimes finds footing within the bench and the bar, and of knowing the names of—and genuinely caring about—every deputy clerk, doorman, and waitress at the places you frequent. He was the first judge I ever really knew, and the only one I’ve ever wanted to be exactly like.

By tradition, new members of the Texas Supreme Court select someone to formally “present” them to the Court at their investiture ceremony. I could think of no one I’d rather have do the honors than Judge Reavley, who had himself served as a Justice on the Court for nearly ten years. When

**After clerking for Judge Reavley from 1991–1992, Justice Boyd practiced law in the Austin office of Thompson & Knight from 1992–2000 and again from 2003–2010. He served the State as Deputy Attorney General for Civil Litigation from 2000–2003 and then as General Counsel and Chief of Staff for the Governor’s office from 2011–2012 before joining the Supreme Court of Texas in December 2012.

I called to ask him for that favor in 2012, he again told me I could “do better.” Again I disagreed. Again, I was right, and he was wrong.

Now at 95 years old, Judge Reavley continues to carry a full load as a senior judge on the United States Fifth Circuit Court of Appeals. And on top of that, he has continued to write articles and speak to judges, lawyers, and law students, not just about the law, but about the importance of morality, civility, and professionalism within the bar and the judiciary. As his article in this issue of the *Baylor Law Review* demonstrates, he remains as committed today to the rule of law as he was when he took the oath to “administer justice without respect to persons, and do equal right to the poor and to the rich . . .” Reflecting the type of constraint that has made him a truly great judge, he writes here that “the common good is best served by faithful adherence to the rule of law, and not by individual judges seeking good in individual cases.”

That principle reflects the depth of Judge Reavley’s wisdom about a judge’s role in our society, but it also reflects the humility with which he has approached that role throughout his career. That same humility will undoubtedly leave him perplexed when he discovers that the Baylor Law School has dedicated this issue of the Law Review as a way to honor him for his remarkable service, not only as a judge, but as a caring friend to the University and its students through the years. Without an ounce of doubt or insincerity, he will say that the School could “do better” than to honor him. And yet again, he will be wrong.

THE ETHOS OF JUDGE THOMAS M. REAVLEY

Bryan A. Garner***

Almost immediately upon enrolling at the University of Texas School of Law in 1981, I encountered the name Reavley. My grandmother, Dorothy Porter Griffin, spoke often of my late grandfather's erstwhile colleague on the Texas Supreme Court. I saw his name in casebooks. And in the spring of 1982, he came to U.T. Law one morning to sit on a Fifth Circuit panel held there—a most impressive and imposing sight to this first-year student. I observed Judge Reavley from afar: at six-foot-four, with a booming voice that carried like no other I'd ever heard, Judge Reavley was both thoroughly charismatic and thoroughly intimidating.

During my second year, I wrote a lawnote for *Texas Law Review*—a piece assessing the rationales for awarding or denying welfare benefits to illegal immigrants. In that 90-page paper appeared a 5-page passage explaining and lauding a Reavley opinion. Shortly after, I met him at a retirement party for Texas Chief Justice Joe R. Greenhill. My grandmother, whose guest I was, introduced us. I praised his opinion and mentioned that I'd written about it. In the crowded Texas Law Center where the event was being held, hearing was difficult. But he said, "Send it to me, Bryan. I'd like to see that." I didn't know that my grandmother had remarked to him that he should hire me as a law clerk. Or perhaps it was more an admonition than a remark.

The next day, I sent Judge Reavley my long paper with a cover letter expressing the hope that he'd find some merit in it. Within days, his secretary Gloria called to say that Judge Reavley would like to see me in chambers. "Bring a C.V.," she said. Unbeknown to me, that was my clerkship interview. In that meeting, he told me that he liked hard-working judges, that judicial activism in the form of stretching the law is deplorable, and that he really liked my writing. He wanted to know all about me, and so I gave a short précis. That meeting was the first of thousands of times I'd

***After clerking for Judge Reavley in 1984–1985, Bryan Garner practiced law for three years in Dallas, then taught at the University of Texas School of Law for two and a half years, and then in 1991 founded LawProse Inc., the CLE provider and consulting firm. Since then, he has written more than 20 books, including *The Winning Brief*, *Garner's Modern English Usage*, and *Reading Law: The Interpretation of Legal Texts* (with Justice Antonin Scalia). Since 1995, he has been editor in chief of all editions of *Black's Law Dictionary*. His most recent book, *The Law of Judicial Precedent* (2016), was cowritten with 12 appellate judges, including Judge Reavley.

hear my name pronounced “Brahm,” and he studded the hourlong interview with my name. I was astonished by his exceedingly deliberate pace of speech: sometimes a single sentence would be interrupted by two five-second pauses. This conversational habit was more prominent in his speech during the 1980s than it became after 2000 or so. I also noticed that I had to concentrate hard on what he was saying because he’d be talking about legal intricacies that required close attention. Every word mattered.

“I like you, Brahm. You write well. I’d like you to be my law clerk—and I think your grandmother would like it as well.”

“It’d be an honor, Judge.”

“I can’t officially offer it to you now because the Court has a moratorium in place. It won’t be until later this spring that I can call you and make the offer official. If I offer it to you, you’ll accept immediately, won’t you?”

“Yes, sir.”

“I had a student last year make me wait a few days while she bided her time to see whether she’d get a ‘better’ offer. That’s bad form. I don’t want to be put in that position again.”

“I won’t apply with anyone else. I want to work with you.”

“You’re going to do just fine, Brahm.”

And so it was that I never really applied for a federal clerkship. In the spring, Gloria called to say that I’d be getting a call at precisely 2:00 p.m. the following Tuesday. She wanted to know where I’d be. “In my office at McGinnis, Lochridge & Kilgore, where I’m clerking.” The call took all of two minutes: “Brahm, you going to come be my lawyer next year?” It was in this conversation that I learned his habit of calling his clerks his “lawyers.”

“I’d be honored. I accept.”

“Now do you want to be the first, the second, or the third to start?”

“I’d like to be the first.”

“All right. That’ll be August 6. I’ll generally want you in at 8:30, but come at 9:00 a.m. that first day. I’ll also expect to see you work Saturday mornings when the workload so demands. Thank you, Brahm.”

So that was that. For the next six months, I watched my Law Review colleagues experience great anxiety over whether they’d get a clerkship offer. Some did; some didn’t. “How’d you get yours so *early*?” they’d ask.

“I don’t really know. I didn’t even apply. Judge Reavley simply asked me to be his clerk.” That was doubtless a mystifying reply.

I've frequently described the Reavley clerkship as the best year of my professional life. My job was to read Fifth Circuit slip opinions early each morning and to research and draft bench memos and opinions the rest of the day.

While reading other judges' published opinions, I'd mark them for noteworthy lapses in word choice, syntax, punctuation, and other matters of style—as well as making notes about new words and odd by-forms that bore some lexicographic interest. I'd take these home each night to supplement my manuscript for *A Dictionary of Modern Legal Usage*, which was then nearing completion.

In October 1984, I sent a one-page sample of my usage dictionary to some 35 publishers. The rejections trickled in over the next eight months. But both Oxford University Press and Little Brown asked to see a 100-page specimen. Oxford wanted five copies. After retrieving these from the commercial copy shop on 6th Street in Austin, a block from our office, I had an impish idea as I sat down to work. I received back from Judge Reavley an opinion I had typed, and he had stamped "PUBLISH" on the top, in all-caps red letters. Though I was always careful about separating my duties as a federal employee from my literary endeavors, I borrowed our chambers stamp and inkpad and emblazoned each copy of my manuscript with a big red "PUBLISH" on the upper right-hand corner before sending the packages off to Oxford and Little Brown.

It was a long wait.

My favorite aspect of clerking for Judge Reavley was interacting with him: driving with him to Houston for an en banc sitting—riding, that is, since he did all the driving (with the assurance in advance that there would be no stops); flying with him to New Orleans through Dallas; and having lunch and dinner with him whenever we were on the road. We'd talk about life and law. I'd prompt him to reminisce about my grandfather, Justice Meade F. Griffin, with whom he had overlapped for sixth months on the Texas Supreme Court. We got to know each other really well. My admiration and affection for him grew.

Judge Reavley's legendary insistence on reading the record was a manifestation of his *practical* turn of mind. He is a concrete thinker, and he thinks concretely about others. One thing I noticed is that in virtually every personal interaction he'd have, his magnanimous spirit would be almost forcibly impressed upon others' consciousness. Perhaps subconsciously, he'd make sure he got other people's attention—mostly by noticing and remarking on *them*. I'm talking about ordinary people: coffee-shop cashiers,

waiters, file clerks, bellmen, and even beggars. I was surprised at first to learn that he'd never pass a beggar without handing over money—but only after he had the beggar's attention to say something like "Bless you," or "Now use this wisely and take care of yourself," or something of the kind.

"But what if they're just using it on booze or crack cocaine?" I protested.

"Brahm, it's not for us to judge. You never know. But if it's alcohol, maybe that's what they need to ease the pain."

When he told me that on Bourbon Street in 1984, his habit immediately became my own.

His degree of compassion I've never seen matched by anyone else. He understands the plight of injured people, and he understands the predicament of insurance companies dealing with sometimes bogus claims. I have never known anyone more committed to enlightenment. He would never profess that explicitly, the way some unctuous, sanctimonious people do. He simply lives that way, day after day.

And his compassion is especially strong for the little guy. In the spring of 1985, he had a sitting in New Orleans in which one case had settled. The panel would finish at 11:00 a.m. instead of noon, and the posthearing conference would conclude by 11:30. That meant, he told me, that we might be able to catch a 1:00 p.m. flight instead of the 3:30 flight for which we were scheduled. But there was a problem: he had two bags, I had a bag, and we each had a heavy briefcase. He asked me, "How can we get the bags to the courthouse so that we can leave for the airport right at 11:30?"

"That's easy," I said. "Let's take a cab from the Royal Sonesta at 8:00 and store the bags at the courthouse. I can arrange that with Court personnel. I know just the guy to help."

"Now Brahm, we can't do that. It's not right. Those cab drivers start lining up at 5:00 a.m. They often wait three hours for a fare. If we take one of those cabbies four blocks to the courthouse, he'll have been waiting all that time on a short haul. No. He's depending on an airport run. It's inconsiderate to have him take us just four blocks. That'll ruin his day, because he may get only two or three fares during the whole day, and he'd have to get back in line again for another three hours. You know, some of these people barely make a living wage."

In the end, we agreed that I'd leave the courtroom at 10:50—from my post as bailiff for the hearing—rush to the hotel, retrieve the bags, jump in a cab (which would have been waiting in line some hours), and then wait for Judge Reavley to emerge from the courthouse at 11:35. On a morning that

saw two important decisions being made by the Fifth Circuit, Judge Reavley spent at least five minutes of his cognitive energy figuring out the logistics of how not to ruin the start of an unknown cab driver's day.

In April 1985, I received a letter from Little Brown: an editor wanted to travel from Boston to Austin to meet with me. Judge Reavley, who already knew all about my dictionary project, said we should greet the editor in chambers. And during the first week of May, we did. He spent 30 minutes with me, explaining the generous terms of Little Brown's offer to publish *A Dictionary of Modern Legal Usage*. Then he spent 30 minutes alone with Judge Reavley—apparently encouraging Judge Reavley to persuade me to say yes.

"My, oh my, Brahn. I've never seen such a thing. This man is excited to publish your book. Are you going to accept?"

"Maybe. I'm still waiting for Oxford University Press."

"How long have they been considering it?"

"Two months."

"Get them on the phone! You can't keep this Little Brown man waiting."

I called the OUP editor I'd exchanged two letters with—a Briton named David Attwooll. "Oh, Mr. Garner, is it?" he said in a wispish, Etonian voice. "Funny thing you should call: I've just concluded a committee meeting in which we've decided to publish your book."

"Little Brown has just sent a man down to Austin to meet with me and give me an offer as well."

"Is that right? Well, it's Little Brown—a fine American publisher. But Oxford University Press will see that your book gets proper worldwide distribution, from Australia to Europe to Africa and Asia. No one can compete with Oxford on that front, or in reference publishing generally."

Much to Judge Reavley's bemusement, I took three weeks to decide. The two publishers engaged in a bidding war, and the contractual offers got better and better. Every day Judge Reavley wanted a quick update. Then: "Now back to work! We have opinions to get out!" And so we did.

In the end, I chose Oxford University Press. Judge Reavley hosted a little party at the Headliners' Club to celebrate the signing of the contract. He made sure my grandmother would be there for that memorable evening.

My clerkship came to an end the last week of July 1985. He called me into his office. "Brahn, I somehow don't see you as a practicing lawyer—as a litigator." I was stunned and a little hurt. "I think you're going to be head of some foundation. You're a book author and a lexicographer—I didn't

even know the word *lexicographer* until you got here. You're no ordinary lawyer. Maybe you could be a judge someday, but I see you heading up some kind of foundation—a legal foundation.”

“Well, I really want to practice law, Judge. I really do.”

“Time will tell. Now let me say this: just because you've clerked for me doesn't mean that you'll always have the Reavley stamp on you. You're your own man.”

“I want the Reavley stamp, Judge, and I'll always have it.”

With the passage of more than three decades, that sentiment has only intensified.

THE TRULY HONORABLE THOMAS M. REAVLEY

Marianne Auld****

Custom long has dictated that we address judges as “honorable” out of respect for the position of power they hold and the service they perform. The first time I gave any significant thought to that custom was in 1987 when, as a second-year law student, I addressed my application for a judicial clerkship to The Honorable Thomas M. Reavley on the United States Court of Appeals for the Fifth Circuit. At that point in my life, of course, I had no idea just how apt a descriptor the word “honorable” is for Judge Reavley. Nor could I have predicted then that I would be blessed with a friendship so genuine that now, some thirty years later, I can say that the word “honorable” fails to do justice to the fullness of the judge and the man that I am privileged to know. Honorable? Absolutely. But also brilliant, compassionate, intellectual, honest, faithful, witty, fair, logical, incisive, humble, and *consistent*. Both in his words and in his deeds, Judge Reavley is as consistent as the rule of law that he advocates in this issue of the *Baylor Law Review*.

It has ever been so. In 1978, the *Baylor Law Review* recognized and honored Judge Reavley, who had retired from the Texas Supreme Court on October 5, 1977. In paying tribute to Judge Reavley’s “unselfish and meaningful distinguished public service,” the great Joe Greenhill—then Chief Justice of the Supreme Court of Texas—emphasized Judge Reavley’s “soundly constructed and forward-looking” opinions, his “unheralded help to the Court,” and his devotion “to his God and his fellow [human] beings.”¹

Regarding Judge Reavley’s judicial philosophy, Chief Justice Greenhill made the following observation:

[Judge Reavley] retained, with integrity, respect for constitutional and legislative pronouncements of the law. He publicly stated when assuming the bench, “If a judge

****Former *Baylor Law Review* Editor-in-Chief Marianne Auld clerked for Judge Reavley in 1988–1989. She then practiced law at Kelly Hart & Hallman in Fort Worth, Texas, for four years before returning to Baylor to join the law faculty. She is currently the Managing Partner at Kelly Hart and serves as a Jaworski Fellow at Baylor Law School.

¹Joe R. Greenhill, *Mr. Justice Thomas M. Reavley: A Tribute*, 30 BAYLOR L. REV. 3, 3–4 (1978).

believes the constitution or a statute should be changed, then let him write an article or make a speech. But I do not think he should attempt to do it in his opinions.”²

In the thirty-eight years that have passed since those words first were published, Judge Reavley remains true to that philosophy. If anything, he has become even more resolute. Indeed, on October 29, 2015, during the first installment of Baylor Law School’s *Viewpoints Conversation Series* at the National Press Club in Washington, D.C.—titled “The Judge’s Objective: Prediction or a Preferred ‘Correct’ Rule?”—Judge Reavley addressed head-on the tension between the “‘correct’ rule of judges” and the rule of law. Warning of the unpredictability that results when judges elect to follow what they may perceive to be a “better” rule, Judge Reavley stated, “[t]here’s too much assumption that the proper job of a judge is to decide what that judge thinks ought to be the law. We’ve got to start promoting the rule of law.”³

While that statement is classic Judge Reavley, it also, from my perspective, is ironic. If ever there were a judge that could be trusted to create sound, thoughtful, even-handed judge-made law, certainly it would be Judge Reavley. Yet he acknowledges that the rule of law must prevail over what he, or any other judge, thinks the law *should* be. That acknowledgment, perhaps, provides the greatest insight into the foundation upon which Judge Reavley’s character is built. As a profession, we could do no better than to follow his lead, heed his words, and commit ourselves anew to encouraging respect for the rule of law.

² *Id.* at 3.

³ See generally Baylor Law School, *Viewpoints Conversation Series October 29, 2015*, YOUTUBE (Nov. 12, 2015), <https://www.youtube.com/watch?v=7vAbNzGFAWg>; see also Thomas M. Reavley, *The Rule of Law for Judges*, 30 PEPP. L. REV. 79, 79–80 (2002).