tails off, its murky mistakes (or sins) permanently inscribed in the memories of all concerned.

As Lowell finishes what will be his last book, *Day by Day*, he writes a valedictory letter to Frank Bidart, certain that he has consumed all his subject matter:

> Now there can be no more. I can rub my hands over the bottom of the pot and find no ~~more~~ material.... I think I've even thrown some of the metal of the pot in. And yet, nothing is ever perfect, even within its crippling inevitable human limitations.... I think the ambition of art, the feeding on one's soul, memory, mind etc. gives a mixture of glory and exhaustion. I think in the end, there is no end, the thread frays rather than is cut, or if it is cut suddenly, it usually hurtingly frays before being cut. No perfected end, but a lot of meat and drink along the way.

Lowell's thread was cut suddenly, but the letters are witness to how many frayings preceded the end. The poem approximating the sentiments in this letter had appeared earlier, as the final sonnet in *For Lizzie and Harriet*. It is called "Obit," and begins with an acknowledgment of the most hurting fraying of all, the dissolution of a long marriage: "Our love will not come back on fortune's wheel." The poem becomes a hymn in favor of natural change over transcendence, but ends, "After loving you so much, can I forget / you for eternity, and have no other choice?"

The valedictory poems of *Day by Day*, published just before the poet's death, are free-verse exhibits of the fraying thread, as Lowell fears a depletion that can merely transcribe, not create—a dejection phrased, of course, in as firm a style as ever:

> I am too weak to strain to remember,
> or give
> recollection the eye of a microscope.
> I see
> horse and meadow, duck and pond,
> universal consolatory
> description without significance,
> transcribed verbatim by my eye.

The animus of politics, the aspirations of religion, have waned, and the poet sees himself modestly, hoping to be one of those who have consoled their readers by transcribing into words the universal images of their common world. In the opening poem of *Day by Day*, however, Lowell takes a stronger, if partly ironic, view of the contribution of age to poetic strength:

> This is riches:
> the eminence not to be envied,
> the account
> accumulating layer and angle,
> face and profile,
> 50 years of snapshots,
> the ladder of ripening likeness.

The letters give us (without biographical intervention) "layer and angle,/face and profile" of Lowell's mind and character. They offer forty years of Lowellian snapshots—those "lurid, rapid, garish, grouped" likenesses (as he called them in "Epilogue"). The lurid and the garish certainly are here, but the letters are also touching, spirited, and reflective. Like the snapshots, they are "grouped": Lowell, for all his solitariness as a writer, intensely required others to talk to, to write to, and to love, and the letters are the proof of his literary gregariousness. They confirm, especially in their volatility of erotic choice, Lowell's Keatsian characterization of writers as chameleons:

> We are things thrown in the air
> alive in flight...
> our rust the color of the chameleon.

Living by "improvisation and invention," changing styles, enthusiasms, wives, girlfriends, and addresses (there are thirty-eight addresses—not including hospitals—listed in Hamilton's appendix), Lowell endured a punishing restlessness, a terrible drivenness, that was belied by his leisurely social ease, his desultory amusement, his delight in late-night talk. His enormous early zest for almost anything—theology, books, women, friendship, politics—gradually diminishes, here, under the blows of illness and marital failure and the inconveniences of age. A poem by Hölderlin, called "The Course of Life," could serve as a motto for the later Lowell:

> Upwards my soul aspired,
> but soon
> Love drew it down;
> Suffering humbled it more;
> So I hasten round the curve
> Of life, and return whence I began.

In the letters, as in the poems, Lowell is a more humanly attractive figure at the weary end than in the fierce beginning. ■

David J. Garrow
The Accidental Jurist

Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey
By Linda Greenhouse
(Times Books, 268 pp., $25)

Harry Blackmun always remembered his very first day on the United States Supreme Court. "I'll never forget the ninth day of June 1970, when I was sworn in," he told a small audience in the south of France in 1992. "Immediately after the swearing in we went into 'the Conference,' so called," the Court's name for a gathering of the nine justices. "I walked into that room and there was Hugo Black, William O. Douglas, William J. Brennan Jr., John Marshall Harlan—and I said to myself, 'What am I doing here?' "

In the early 1970s, Blackmun was not the only person asking that question. Justices Black, Douglas, and Potter Stewart all wondered whether the little-known sixty-one-year-old Minnesotan could handle the tasks that confronted them all. Just eight years earlier those justices had watched with profound sadness as a similarly untested Midwesterner—Charles E. Whittaker, who had joined the Court in 1957—cracked under the emotional strain of the Court's tough cases. Hospitalized after threatening to commit suicide, Whittaker was pressured

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into retiring by Chief Justice Earl Warren. Whittaker had been named to the lower federal bench, and then to the Supreme Court, largely as a result of his close friendship with President Eisenhower's brother.

Harry Blackmun arrived in Washington straight from the same appeals court on which Whittaker had sat. He, too, owed his appointment to that judgeship, and then President Nixon's nomination of him to the high court, largely to one man: Warren E. Burger, his closest friend since kindergarten and, since 1969, chief justice of the United States. Burger and Blackmun grew up together in St. Paul before Blackmun received a scholarship to attend Harvard College. After law school, also at Harvard, Blackmun returned to Minnesota to clerk for a federal judge. He then joined one of the Twin Cities' premier law firms, where he did much of his work for the Mayo Clinic in nearby Rochester. In 1949 Mayo asked Blackmun to become its first in-house counsel, and Blackmun, his wife Dottie, and their three teenage daughters moved to small-town Rochester.

Warren Burger earned his law degree by attending night classes while working for an insurance firm in St. Paul. He then joined a local law firm, married (Blackmun was best man at his wedding), and became active in Republican politics. He managed the election campaigns of Harold Stassen, the youthful three-term governor, and also led Stassen's unsuccessful presidential candidacy in 1948. At the closely contested Republican National Convention in 1952, Burger proved crucial to Dwight D. Eisenhower's first ballot nomination. When Eisenhower became president, Burger was rewarded by being named assistant attorney general in charge of the Justice Department's Civil Division.

Three years later, Eisenhower elevated Burger to a judgeship on the U.S. Court of Appeals for the District of Columbia Circuit. His judicial status notwithstanding, Burger remained in close contact with the Justice Department, and when the Minnesota judge for whom Blackmun once had clerked signaled his desire to retire, Burger played a decisive role in ensuring that the nomination for the vacancy would go to his friend. In November 1959, on his fifty-first birthday, Blackmun took his seat on the U.S. Court of Appeals for the Eighth Circuit. Their joint service as federal judges strengthened Burger and Blackmun's friendship.

When Blackmun's huge collection of personal and official papers at the Library of Congress was first opened in early 2004, five years after his death, one of the most notable troves was the many deeply personal letters from Burger to Blackmun pre-dating 1970.

Linda Greenhouse, who for twenty-seven years has covered the Supreme Court for *The New York Times*, made the two justices' lifelong relationship the centerpiece of two front-page stories one year ago. Given advance access to the Blackmun collection (along with Nina Totenberg of National Public Radio), Greenhouse had a two-month head start on other journalists, but the *Times* published only a modest amount of the material that she gathered. Her new book is not a long one, nor is it based on any additional sources beyond Blackmun's papers, but it reprises in rich, thoughtful, and more extensive detail the main emotional and interpretive threads of Blackmun's career.

Blackmun joined the Supreme Court after a Senate Judiciary Committee hearing that lasted less than four hours, despite the two prior nominees for that vacancy, federal appellate judges Clement Haynsworth and G. Harrold Carswell, having both been rejected by the Senate. Blackmun's confirmation was unanimous, but repeated newspaper depictions of him as Burger's "Minnesota Twin" decisively counterbalanced the senatorial courtesy. Blackmun's first years on the high bench underscored both his insecurities about whether he belonged there and his pronounced conservatism. In *Wyman* v. *James*, a case challenging intrusive home visits imposed upon welfare recipients, and in *United States* v. *Kras*, which disputed a $50 fee required of anyone filing for bankruptcy, Blackmun wrote majority opinions upholding the policies despite fervent dissents from the Court's liberals.

THE SINGULAR—AND MOMENTOUS—exception during Blackmun's first three years on the Court was his opinion in *Roe* v. *Wade*. This case, along with its companion case, *Doe* v. *Bolton*, arrived at the Court while the justices were already considering a criminal appeal challenging the District of Columbia's anti-abortion law. Blackmun indicated in his own private notes on that case that he "would not be offended" by the extension of the Court's constitutional privacy precedents

to include women's access to abortion, but the justices resolved the D.C. case without confronting that issue. In December 1971, *Roe*, which challenged Texas's nineteenth-century abortion statute, and *Doe*, which disputed Georgia's slightly liberalized law, came before a seven-justice Court. Both Black and Harlan had retired earlier that fall, and their successors, Lewis Powell and William H. Rehnquist, would not take their seats until early 1972.

Years later, in a letter to Rehnquist in 1987 and in multiple oral history interviews recorded in the 1990s, Blackmun repeatedly asserted that the seven justices heard *Roe* and *Doe* only after a Burger-appointed subcommittee chaired by Potter Stewart erred in failing to postpone the two cases until a full Court was available. In fact, not a single contemporaneous document, in either Blackmun's papers or those of other justices, offers any evidence that this subcommittee existed anywhere except in Blackmun's faulty memory. Blackmun's interviews are misleading on many particulars concerning *Roe* and *Doe*; and aside from her rehearsal of the fictional subcommittee, Greenhouse knowledgeably avoids all the historiographical traps. On the most interesting question of all—why did Burger assign the preparation of the majority opinions in *Roe* and *Doe* to his old friend?—Blackmun always professed to know nothing more than anyone else. Given how exceptionally close the relationship between the two men had been before Blackmun joined the Court, the absence of any private discussion of the two cases between the two old friends was a telling sign of what was to come.

The greatest irony of *Roe* and *Doe* is how Blackmun came to personify a ruling that he initially sought to hedge and about which he later admitted surprising ambivalence. In the months immediately following the cases' assignment, Blackmun and his law clerks drafted rather narrow opinions overturning the Texas statute but leaving many other issues in limbo. Come late May, feeling dissatisfied with his drafts, Blackmun recommended holding the two cases over for re-argument in the fall rather than handing down decisions in June. But most members of his nascent majority—Brennan, Stewart, and especially Douglas—reacted angrily to the suggestion, fearing that the addition of Powell and Rehnquist, plus the uncertainty of both Blackmun and Burger, might well mean that delay would result in an opposite outcome.

Blackmun defused the in-house controversy by re-assuring those justices that his votes were firm, and over the summer his law clerk George Frampton significantly fleshed out the two opinions, introducing many of the ingredients that would appear in the final rulings five months later. Frampton flagged for Blackmun how he had failed to expand *Roe*'s minimal constitutional analysis, but once the two cases were re-argued in October, no bickering ensued. Powell heartily sided with Blackmun, making for a seven-member majority if the uncertain Burger remained on board. With support from both Brennan and Thurgood Marshall, Powell recommended that Blackmun clarify how the rulings would apply to the later stages of pregnancy. With relatively little reflection or debate, *Roe*'s and *Doe*'s declaration of women's access to legal abortion was extended from the end of the first trimester of pregnancy, where Blackmun's existing draft had limited it, to the point of fetal viability, near the end of the second trimester.

The most fascinating and unanswerable question about the making of *Roe* v. *Wade* is to what extent, if any, the subsequent political controversy over the ruling would have been less intense, or would even have abated, had the Court stuck with Blackmun's initial inclination to protect fully only first-trimester abortions. Years later, when asked if he had any regrets about *Roe*, Blackmun repeatedly cited only the opinion's disavowal of knowing when life begins, a passage he wrongly claimed he added only at Stewart's insistence. Blackmun never mentioned, and may very well not have remembered, the brief flurry of clerk-drafted memos about whether to almost double the extent of *Roe*'s constitutional reach.

Roe and *Doe* were announced on January 22, 1973, and protests targeting Blackmun began almost immediately. "I have never before been so personally abused and castigated," he wrote to a friend who was a Minnesota minister soon afterward. Far more notably, Greenhouse quotes a letter that Blackmun sent to a Catholic priest whom he knew well. Emphasizing that the Court "did not adjudicate that abortion is right or wrong or moral or immoral," the author of *Roe* v. *Wade* went on to declare that "I share your abhorrence for abortion and am personally against it." Blackmun added that "I understand the critical letters, but I do not understand the vilification and personal abuse which has come to me from some quarters."

In that letter, Blackmun spoke of "this unwelcome job I seem to have inherited," and years later he stated that *Roe* "happened to me in my early years here." Yet rather than continue to distance himself from *Roe*'s holding or put the decision behind him, Blackmun, as Greenhouse rightly says, came "to embrace *Roe* with a fierce attachment and a deep personal pride." As the attacks on *Roe* became more sustained and unrelenting, Blackmun responded by championing the decision with much greater fervency than he had exhibited in early 1973.

Greenhouse suggests that Blackmun's ardent embrace of *Roe* was rooted initially in his remarkable sensitivity to criticism. She depicts Blackmun as unusually self-preoccupied from early life onward. At the age of fourteen, he underwent an appendectomy, and "for the rest of his life, Blackmun would mark the anniversary of his own surgery; March 8 attained a lasting significance." Indeed, when Justice Sandra Day O'Connor had the same operation in 1988, Blackmun wrote her to say that "sixty-five years ago today I had my first surgery."

While Blackmun was serving on the appeals court in the late 1960s, he was assigned an opinion upholding a death sentence that had been imposed on a murderer who had killed three people

during the course of a bank robbery. Blackmun appended a brief statement at the end of his draft opinion expressing uncertainty about capital punishment, and asked his fellow judges if any objected. When two did, calling the passage "gratuitous," Blackmun was "deeply wounded," Greenhouse records. What's more, "months later, the episode appeared to have become more, rather than less, painful to Blackmun."

This precursor to his behavior after *Roe* also foreshadowed Blackmun's long subsequent struggle with the death penalty. Even as early as 1972, while voting to uphold the constitutionality of capital punishment, Blackmun nonetheless volunteered that "I yield to no one in the depth of my distaste, antipathy, and, indeed, abhorrence for the death penalty." Blackmun's struggle to separate his personal opinions from his judicial responsibilities, combined with his own deep-seated doubts about his analytical ability, made for a justice who invested very long hours in his job but never relished it.

"For me, my years at the Court have not been very much 'fun' and have not been 'enjoyable' in the ordinary meaning of that word," Blackmun confessed in 1986. "Perhaps I am too personally sensitive." His daughter Nancy, who became a psychologist, observed that there "was often a shadow of pessimism, of sadness, of intermittent depression about him." At the Court, Blackmun's daily routine was marked by isolation and loneliness. Most stories that his former clerks tell revolve around the regular weekday routine of breakfasting with Blackmun each morning in the Court's public cafeteria. They recount his kind greetings to visitors and his great interest in baseball, but "as 9 o'clock approached," former clerk Edward Lazarus wrote in 2004, "the Justice's attitude and demeanor changed radically. As he shifted into work mode, Blackmun became unapproachable, a man consumed by a mantle of professional duty that fairly seemed to crush him."

Blackmun's clerk Mark Schneider recalled that "except on argument days," when the Court heard cases, "after breakfast he would generally hole himself away in a private reading room in the library and pore over briefs and cases. He was not to be disturbed. He took a private lunch and then went back to the library." Blackmun thus fashioned for himself what Lazarus called "a distinctly solitary existence," which was further magnified by Blackmun's strong aversion to discussing pending cases orally with his clerks. Sometimes at breakfast Blackmun would pull from his pocket small slips of paper with questions or thoughts that he wanted his clerks to consider, but "they were only hints," Schneider said.

Blackmun "liked to tell clerkship applicants that he was the least able justice," Lazarus revealed, and Blackmun's low self-regard may also have been a major factor in how distant he remained from his colleagues. Come 1992, when Justice Anthony Kennedy, Blackmun's next-door neighbor at the Court, wanted to tell Blackmun that he, O'Connor, and David Souter had hijacked the famous abortion case of *Planned Parenthood* v. *Casey* from Chief Justice Rehnquist, Kennedy sent Blackmun a handwritten letter asking for time to talk. As Lazarus observed, "Kennedy's note—an awkward and stilted request for a face-to-face conversation—is the kind of note one would write to a virtual stranger," not someone whose office had been next door for more than four years.

Blackmun's increasing distance from Warren Burger over the course of the 1970s was both dramatic and painful. Greenhouse quotes statistics showing that during their first five years together, the two men agreed in 87.5 percent of closely divided cases. During their second five years, however, that percentage dropped to 45.5, and by the early 1980s Blackmun and Burger were on the same side of only 32.4 percent of the Court's five-to-four cases. *Roe* v. *Wade* was not a significant factor in their split. It appears that the Court's handling of *United States* v. *Nixon* in 1974, which precipitated the president's resignation from office, played a major role.

"From then on we grew apart," Greenhouse quotes Blackmun as remembering, but the details of the old friends' divergence are sketchy. Blackmun recorded in his notes numerous instances in which he felt Burger had behaved poorly towards him—"CJ for the first time very cool," "CJ picks on me at conference"—and Greenhouse rightly observes "how easily hurt" Blackmun was "by any indication from Burger of a lack of regard." Virtually every journalist and historian who has addressed Burger's chief justiceship has acknowledged how pompous, patronizing, and imperious Burger often was in his dealings with his colleagues. Yet Greenhouse is certainly correct to emphasize how "Blackmun, always thin-skinned, was hypersensitive to slights from Burger," and was "perhaps perceiving slights when . . . nothing particularly personal was intended."

Early in 1978, Blackmun wrote Burger to complain that while some justices already had as many as fourteen majority-opinion assignments for the current term, he had received only ten. This may not seem like a major disparity, but Blackmun told Burger that the difference "makes me feel somewhat humiliated not only personally, but publicly." Blackmun's sensitivity may have stemmed from the two men's intense disagreement over *Bates* v. *Arizona State Bar*, in which the Court legalized commercial advertising by lawyers. Burger not only dissented angrily from Blackmun's majority opinion, he also repeatedly denounced the decision in various public forums. Blackmun, Greenhouse reports, responded by taking "a lasting proprietary interest" in the case, just as he did with *Roe*.

One of the most significant votes that Blackmun cast during his twenty-four years on the Court came in 1985, in *Garcia* v. *San Antonio Metropoli-*

tan Transit Authority, a case about federalism. Ten years earlier, in *National League of Cities* v. *Usery*, a similar federalism case that Lewis Powell had called "the most important case since I have been here," Blackmun had joined with Powell and the more conservative justices to exempt state government employees from federal wage and hour protections. But Greenhouse discloses that when the Garcia case arrived at the Court in 1984, one of Blackmun's law clerks, Scott R. McIntosh, wrote a long memorandum that "persuaded him that he was on the wrong side" of the Court's five-to-four divide. Burger had assigned Blackmun the majority opinion on behalf of the Court's conservatives, but McIntosh "offered to produce a draft" that would instead align Blackmun with the four dissenters. Blackmun adopted McIntosh's draft and notified his colleagues of his switch. Burger protested and insisted that *Garcia* be re-argued, but Blackmun's new position prevailed.

The following term, another law clerk, Pamela Karlan, made similarly influential contributions. In September 1985, the Court's internal civility was badly roiled by an angry dispute over *Darden* v. *Wainwright*, a capital punishment case. Blackmun drafted a letter to his colleagues complaining that "the Court as an institution would certainly look a little strange" if it granted review but nonetheless allowed Darden to be executed before a decision could be rendered. Karlan, Greenhouse recounts, told Blackmun that that sentence "was 'far too tame, given what we're really talking about here.' She suggested stronger language: the Court would appear 'intellectually and morally bankrupt.' Blackmun adopted her proposal" and included her harsh phrase in his letter.

That same year also featured one of the most significant post-*Roe* abortion cases, *Thornburgh* v. *American College of Obstetrics and Gynecology*. Greenhouse describes how Blackmun's majority opinion "rephrased the rationale for *Roe* in language that was more directly centered on the woman than any of the Court's previous" abortion rulings. "The almost clinical tone of *Roe* was replaced by something close to passion. The rights of women, rather than those of doctors," became Blackmun's focus. Yet Greenhouse does not note a crucial memo that Karlan gave Blackmun after reviewing a first draft of his opinion. "I think the constant appending of phrases like 'with her physician' to the description of the woman's right to an abortion … is unnecessary," Karlan asserted. "It is a woman's right, and not a physician's, and I think the repeated reiteration of the physician's role detracts from the essential nature of this right to women." As the final opinion reflected, Blackmun and her fellow clerks took Karlan's comments to heart.

As the years went on, Blackmun's law clerks enjoyed increasingly free rein. Greenhouse emphasizes "the disrespectful way his law clerks felt free—or even encouraged—to refer to the chief justice" in their memos to Blackmun. But Blackmun's contempt was not limited to Warren Burger; his acerbic views of other colleagues—terming them both rude and childish—recur repeatedly in his private notes. Greenhouse also acknowledges Blackmun's regular pattern of recording physical descriptions of lawyers and other individuals whom he encountered "in terms that were rarely flattering." Women attorneys "were usually described at least partly by their attire" and often by their hairstyles. A male applicant for a clerkship had a "small nose." Solicitor General Kenneth Starr was labeled "a Boy Scout goodie-goodie."

WARREN BURGER RETIRED as chief justice in 1986, but "there is no record that the two old friends exchanged any personal notes about this momentous transition," as Greenhouse poignantly remarks. By that time, "the friendship between Burger and Blackmun had vanished," leaving Blackmun a far lonelier justice than he ever could have imagined back in 1970. Only years later, following Burger's death in 1995, did Blackmun even come close to voicing his feelings about what had happened. A student law review requested his comments for a memorial volume, and Blackmun's brief response featured none of the usual encomia. "Much already has been written … about Warren as Chief Justice," Blackmun observed. "Less will be written and said, perhaps, about his contributions to the basic substance of the law and its development," he disdainfully added. "He was what he was and therefore must be accepted as an influential Chief Justice."

As Greenhouse comments, "This was Blackmun speaking directly, not Blackmun editing a law clerk's draft." Burger, Blackmun went on, "did not achieve by smooth or gentle or patient tactics." When the two men differed, "the disagreement often was basic and, on occasion, emphatic. He had little patience for disagreement," and when it occurred, "his disappointment was evident and not concealed. The situation was not comfortable, but it was inevitable." Whether that verdict was based upon simply his view of Burger's personality, or whether his own evolution had contributed significantly to that inevitability, Blackmun did not say.

Three years after Burger's retirement, the Bush administration mounted a frontal challenge to *Roe* v. *Wade*, and in doing so it cited Blackmun's opinion in *Garcia* as precedent for how the Court sometimes reversed its own constitutional rulings. Blackmun was furious. "This is a personal attack on me," he angrily, and egocentrically, noted. But *Roe* survived not only that assault, in *Webster* v. *Reproductive Health Services*, when O'Connor refused to give Chief Justice Rehnquist an anti-*Roe* majority, but also a far greater threat in *Planned Parenthood* v. *Casey* in 1992. As Kennedy told Blackmun face-to-face after first sending that ungainly note, not only had O'Connor joined with newcomer David Souter in refusing to inter *Roe*, but Kennedy himself surprisingly had defected from the expressly anti-*Roe* stance that he previously had endorsed in *Webster*.

THE CASEY RULING PRESERVED *Roe* just as Blackmun, by then eighty-three years old, was beginning seriously to contemplate his own retirement. Yet the wrenching centerpiece of Blackmun's final years on the Supreme Court was not the jurisprudence of abortion; it was the jurisprudence of capital punishment, with which he had wrestled well before *Roe*. As Greenhouse explains, "Blackmun's discomfort with the death penalty grew with each passing term" during the 1980s and the early 1990s. In early 1993, in a dissent in *Herrera* v. *Collins*, Blackmun explicitly questioned whether "capital punishment remains constitutional at all."

In Blackmun's mind, the disqualifying flaw in the policy of capital punishment was the glaring possibility that even minimal fairness with regard to which convicted murderers were executed and which were not had proved to be hopelessly unattainable. Several months later, in August 1993, one of Blackmun's outgoing law clerks, Andrew Schapiro, gave Blackmun a forceful memo advocating that in the upcoming term Blackmun should indeed declare that capital punishment was inescapably unconstitutional. Blackmun gave Schapiro's memo to one of his incoming clerks, Michelle Alexander, who set to work drafting a comprehensive opinion. Greenhouse describes the importance of Schapiro's and Alexander's work with little editorial comment. But in one phrase—"reverting to his role as law clerk rather than counselor"—she does passingly acknowledge just how unusual it was, relative to other justices' practices, for law clerks to play so assertively substantive a role as Schapiro and his successor did in their work for Blackmun.

Prior to the end of 1993, no one except Blackmun himself knew how seriously he was contemplating that the 1993 term would be his last. In a December interview with Nina Totenberg, Blackmun signaled that he soon might have something notable to say about capital punishment: "I'm not certain at all that it—the death penalty—can be constitutionally imposed. I haven't taken that position yet, but I'm getting close to it." Indeed, Alexander was already carefully perusing the roster of pending capital cases with an eye toward finding an ideal one in which to issue the dissenting opinion that she had drafted and polished. By February 1994, she had identified Texas death row prisoner Bruce Callins, whose petition for Supreme Court review the justices were poised to deny, as the best opportunity, and on February 22 Blackmun's *cri de coeur* was announced as a dissent from his colleagues' refusal to hear *Callins* v. *Collins*.

Greenhouse delineates clearly, yet without any explicit criticism, how not only the opinion's analytical content, but even its signature protestation, was almost wholly the work of Michelle Alexander, not Harry Blackmun. As Greenhouse writes, "Aside from some minor editing, Blackmun accepted nearly everything Alexander had written: 'From this day forward, I will no longer tinker with the machinery of death.' Blackmun changed 'forward' to 'on,' but Alexander persuaded him to change it back. Blackmun changed 'will' to 'shall' and reversed the word order for emphasis: 'From this day forward, I no longer shall tinker with the machinery of death.' "

The words may have been almost entirely Alexander's, but the underlying repugnance was Blackmun's own and reached back prior to his elevation to the nation's highest court. As an appeals judge in 1968, and as a justice from 1970 right up through hundreds and hundreds of death row petitions during the 1980s and early 1990s, Blackmun had always refused to allow his personal sentiments to trump the limits of the judicial role. But his years of loneliness on the Supreme Court, plus his years of embracing the self-chosen martyrdom of *Roe* v. *Wade*, made him an increasingly sentimental jurist in his final years.

Blackmun's widely mocked declaration "Poor Joshua!" in the opening words of his dissent about the legal responsibility for the abuse of a child of that name in *DeShaney* v. *Winnebago County* in 1989 was, as Greenhouse attests, wholly his own phrase and not the inspiration of some young clerk. But this exclamation, like his dissent in *Callins*, marked Blackmun as a jurist whose empathy for society's least fortunate also betrayed an aspect of emotional self-indulgence. *Roe* v. *Wade* will always remain Harry Blackmun's indelible legacy, but as he himself would have been the first to admit, a landmark ruling does not require a great jurist. Far from it. ■

CORRESPONDENCE

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EFRAIM KARSH RESPONDS:
Stephen Schwartz charges me with "accusing all Muslims of . . . [anti-Jewish] bigoted beliefs and behavior." I made no such accusation. Rather, I argued that the representation of Arab anti-Semitism as an offspring of the Arab-Israeli conflict "ignores a deep anti-Jewish bigotry that dates to Islam's earliest days and reflects the prophet Muhammad's outrage over the rejection of his religious message by the contemporary Jewish community." But this is not to say that all Muslims are anti-Semites. I might have added that both the Koran and later biographical traditions of the prophet abound with negative depictions of Jews. They are portrayed as an evil and treacherous people who, in their urge for domination, betray allies and swindle non-Jews; they tamper with the Holy Scriptures, spurn Allah's divine message, and persecute His messenger Muhammad, just as they had done to previous prophets like Jesus of Nazareth. For this perfidy, they will incur a string of retributions, both in the afterlife (when they will burn in hell) and here on earth (where they have been justly condemned to an existence of wretchedness and humiliation).

I raised these issues in the *Commentary* article, from which Schwartz quotes selectively. In an attempt to downplay the pervasiveness of the blood libel in the nineteenth-century Ottoman Empire, Schwartz claims that my piece wrongly substitutes "three cities in Syria" for "the whole 'Muslim World,' " before claiming I neglect their Christian origins. Not only did my NEW REPUBLIC piece specify that the blood libel was imported from Europe, but the *Commentary* article shows how the scope far exceeded "three cities in Syria," including Aleppo, Antioch, Beirut, Damascus, Deir Al Oamar, Homs, Tripoli, Jerusalem, Alexandria, Port Said, and Cairo. There is no denying that the persecution of Jews in the Muslim world never reached the scale of Christian Europe. But that did not spare them from centuries of repression.

ALIENATION

I HAVE KNOWN REPRESENTATIVE TOM Tancredo for a long time, but his anti-immigration crusade is disastrous for the Republican Party ("Border Wars," March 28 & April 4). Most Mexican immigrants embrace traditional values, hard work, education, and entrepreneurship. The GOP should be recruiting them, not driving them away. Republicans need only look to the demise of California's GOP to see the consequences of nativism. Unfortunately for Republicans in states like Arizona and Texas—states with tremendous immigrant growth—there are no Arnold Schwarzeneggers to save the party from itself.

CLINT BOLICK
Phoenix, Arizona