



TOP (L to R): Former US Supreme Court Associate Justice Sandra Day O'Connor at a Justice & Society Seminar; US Supreme Court Associate Justice Harry Blackmun in Aspen. MIDDLE: Blackmun moderates a Justice & Society seminar with his colleague Norval Morris, a former dean of the University of Chicago Law School. BOTTOM (L to R): Justice & Society Program Director Alice Henkin walking with Blackmun in Aspen in August 1995; US Supreme Court Associate Justice William Brennan, Alice Henkin, and her husband, Lou Henkin, a renowned human rights lawyer, in Aspen in July 1984.

In Search of a Just Society

By Jennifer Myers

Thirty years after helping start the Institute's Justice & Society Seminar, its longtime leader Alice Henkin is reticent to discuss her accomplishments. She'd rather talk about the judges, lawyers, and professors who attended and moderated the seminar over the years, speaking of them as a proud parent would. She easily recalls all of the countries that her attendees have hailed from, she touts their achievements, and she keeps up with many of them to today.

But allowing Henkin to talk about others, without acknowledging her role in driving the Justice & Society Seminar — which, after 30 years of gathering the leading minds in the US and international justice systems to work through the toughest challenges in human rights and justice, has created a quiet storm in the field — would fail to do justice to “the true intellectual force behind the seminar,” as Stanford law professor and former dean Kathleen Sullivan, a longtime moderator of the program, calls her.

An accomplished lawyer well-known in the legal community, Henkin has been honored with many of the field's distinctions. But as she tells it, she was in the process of “recycling herself” when she met Robert McKay, the chair of the Executive Committee of the New York City Bar Association, who was about to become director of the Aspen Institute's Justice & Society Program, from which the seminar would emerge. Henkin, who was one of only a few women in the Yale Law School class of 1957, was at the time looking for a part-time job, having taken a break from a career that included law firm work and teaching, in order to raise her three children.

The Genesis

From the start, the program garnered some prominent fans, including Supreme Court Associate Justices Harry A. Blackmun, William Brennan, and John Paul Stevens; Ruth Bader Ginsburg, then a federal judge on the DC circuit; and Yale Law School Dean Harold Hongju Koh, a former law clerk to Justice Blackmun. Blackmun, in particular, became one of its most significant champions and was key in shaping its direction over the years.

“Justice Blackmun had been in what was then called the Executive Seminar [now the Aspen Seminar],” says Henkin. “He approached McKay and said, ‘They spend one day out of two weeks on justice. I think we could spend a whole two weeks on justice.’” From there, McKay, Henkin, and Blackmun launched the first seminar, a two-week pilot program that then-Aspen Institute President J.E. Slater wrote was “an opportunity for reflective discussion of significant issues of justice, illuminated by a humanistic viewpoint.” They modeled it after the Executive Seminar, with lengthy readings assigned beforehand and Socratically moderated dialogue. Blackmun himself moderated for 16 years, along with his co-seminarian from the Executive Seminar and prominent criminologist Norval Morris, who was then dean of the University of Chicago Law School. David Richards, a professor at NYU law school, created the readings, which ranged from Plato and John Locke to Herman Melville’s *Billy Budd* and *Roe v. Wade*.

The result of the first seminar was encouraging, said Henkin. “There was a lot of energy and enthusiasm,” she recalls.

US Supreme Court Associate Justice William Brennan ringing the dinner bell during a July 1984 seminar in Aspen.



“We thought, ‘Hey, we can do this.’” Satisfied with the outcome of that initial seminar, Henkin brought the two-week program back every summer through 1995, when it moved to the one-week format that endures today.

The discussion topics, while centrally focused on the multiple meanings of justice over the past 30 years, have been modified to respond to recent events. During

“Every one of my six sessions was an entirely different experience because of the unique chemistry of the participants,” says Kathleen Sullivan. “Alice is a master of mixing people in just the right way to produce a scintillating exchange.” Sullivan, a law professor and a partner at the firm Quinn Emanuel, has also served as co-moderator with several different federal judges. “To have

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— Alice Henkin, director of the Institute’s Justice & Society Program

2007, for example, the seminar included recent developments in US policy concerning terrorism, torture, and immigration. Similarly, the readings have added the Universal Declaration of Human Rights, the UN Charter, and text from the Qur’an. “We’ve made changes due to changes in the world,” says Henkin.

The Right Mix

Part of the freshness — and success — of the seminar has also come from new mixes of participants and moderators. Over the years, the seminar has included lawyers, judges, senior officers of the CIA, leaders from the US Judge Advocate General’s Corps, senior officials of the Federal Bureau of Prisons, academics, and corporate executives.

A fellowship created in Blackmun’s name also helped bring new voices to the seminar. “Following one of the seminars that Blackmun and Morris moderated, a participant started a fund that allowed us to bring people inspired by Blackmun who could not come without support,” explains Henkin. This sort of dedication to Blackmun was not unique, she notes. “Participants have said that Blackmun gave them the sense that, if this was somebody at the top levels of our government, then the system could work. He was an inspiring presence.”

a law professor and a judge allows us to impart our slightly different sensibilities,” she explains.

Recognizing the unique needs and perspectives of judges, the Justice & Society program also holds seminars just for them. “At the second one of these, during the Apartheid period, I was encouraged to invite a South African judge,” says Henkin. Over the Apartheid years, one South African judge became 17 judges — eight of whom were among the original 11 appointees to South Africa’s post-Apartheid Constitutional Court. (See sidebar for recollections from one of them, Justice Richard Goldstone.) This development opened the door for a quiet, young South African lawyer then named Ernest Moseneke (now Dikgang Moseneke) — currently the Deputy Chief Justice of the South African Constitutional Court — to reexamine his experiences in his Apartheid-torn country, recalls Judge Jon O. Newman of the Second Circuit Court of Appeals. “At the traditional gathering of the group on the last evening of the seminar one year, Ernest explained why the week had meant so much to him,” recounts Newman. “He said that although he had previously been at meetings with both black and white people, this was the first time in his life when he had spoken freely



Yale Law School Dean Harold Hongju Koh (center) and Justice and Society Program Director Alice Henkin at a seminar in November 2007

at a racially mixed meeting, with white people listening intently to what he was saying, and he exchanging views openly and candidly with them.”

“The Justice & Society seminar achieves a remarkable feat, which is to get people who had rested comfortably with their own ideas mid-career to strip them down and rethink,” says Sullivan.

“There are moments you watch individuals struggle with their own positions, and then you watch as someone convinces them to disagree with their own opinions,” says Sullivan.

Indeed, this is the type of metamorphosis that many say Blackmun himself underwent while at Aspen. Dennis J. Hutchinson, a University of Chicago Law School Professor who has devoted much of his studies to Blackmun’s writings, called the seminar “a catalyst for the metamorphosis” of Blackmun — a transition that culminated in Blackmun’s renunciation of the death penalty just months before his retirement in 1994.

Other Court observers agree that the Blackmun who laid the foundation for the seminar is, by all accounts, not the same Blackmun who moderated his final seminar in 1995 and subsequently asked to have a portion of his ashes strewn on the Institute’s Aspen Meadows campus. *New York Times* Supreme Court correspondent Linda Greenhouse, the only print reporter allowed advance access to Blackmun’s papers before they became public, wrote about

his ideological shift in a 2004 article: “[I]n Justice Blackmun’s first four years on the court, he voted with Chief Justice [Warren] Burger 87.5 percent of the time in closely divided cases, but only 32.4 percent in the chief justice’s last four years.”

Blackmun’s break on the court from Burger — a childhood friend — also served to divide their friendship. But those changes may have been shaped in part by his time at Aspen. Wrote Hutchinson in his article about Blackmun’s time in Aspen: “In Aspen, Blackmun, the summa cum laude graduate in mathematics from Harvard College, was exposed to classical political theory and jurisprudence for the first time in more than four decades, and, perhaps really for the first time in his life. His interaction with Morris and the distinguished students in the yearly seminars allowed Blackmun to redefine his job, as a jurist committed to espousing the standards of a just society rather than as a judge simply navigating case law.”

Yale Law School dean Harold Hongju Koh, the Supreme Court clerk whom Blackmun introduced to Aspen in 1992 as a Fellow, agrees that “lawyers and judges too often are thinking more about rules and less about justice.” But in Koh’s eyes, like the many others who have participated in the seminar over the year, “the joy of the seminar is going back to first principles.” ♦

To register or for more information about the Justice & Society Seminar, visit www.aspeninstitute.org/jss.

Justice Richard J. Goldstone, one of the original members of South Africa’s post-Apartheid Constitutional Court, recalls his first experience at a Justice & Society seminar held in Mobile, Alabama, in 1984:

“There were, as I recall, about 24 Federal judges at the seminar; I was the only non-American judge present. One of my neighbors was...then-DC Circuit Court Judge Ruth Bader Ginsburg. One of the other participants was a judge of the 9th Circuit, Anthony M. Kennedy. The friendships that were struck up at that seminar have lasted to this day.



Goldstone

During the Apartheid years, South Africa had no constitution, there was no Bill of Rights, and the human rights of the majority of South Africans were being violated every day of their lives. I had never studied constitutional or human rights law. In Mobile, Alabama, I learned what had been achieved through the law in advancing human rights in the US and how relevant that was to me as a judge in Apartheid South Africa. The internationalization of human rights made new norms and standards applicable throughout the world and in South Africa.

In more recent years, Alice has involved me in the Aspen seminars she has organized to educate important opinion-makers in the US about the International Criminal Court. I attended one of those seminars at Aspen and again witnessed what can be learned when open-minded people of many views and persuasions meet in a congenial off-the-record situation.

At the meeting were supporters and opponents of the International Criminal Court, and I doubt whether any of the participants left that seminar with the same views they brought with them.”