

# Geoffrey Stone; Ninth Dean of the Law School

On January 8, 1987, Geoffrey R. Stone, the Harry Kalven, Jr. Professor of Law, accepted President Hanna Gray's invitation to become the ninth Dean of the University of Chicago Law School, effective July 1. Several days later, Stone sat in his office on the fourth floor of the Law School to discuss his appointment. Occupying one entire wall is a set of United States Reports. The other walls and bookshelves contain some of the artifacts of his life and career: personally inscribed photographs of Skelly Wright and William Brennan, for whom Stone clerked; a Christmas card sent to his wife, Nancy, in 1969 by the "Chicago Seven"; a collection of photographs of some of his favorite Justices (Holmes, Brandeis, Black, Douglas, Jackson, Warren, and the two Harlans); a collection of photographs of the parties in some of the Supreme Court's landmark constitutional decisions (Linda Brown, Eugene Debs, Benjamin Gitlow, Clarence Gideon, the Scottsboro Boys, and *Lochner's Bakery*); a Chicago Blackhawks' calendar; and a rather large poster given him several years ago by *Philip B. Kurland* setting forth the text of the First Amendment to the United States Constitution.

Stone reflected on how he had arrived at this time and place. "The career

choices facing students graduating college in 1968 were neither easy nor obvious. I received my undergraduate degree in economics from the Wharton School of the University of Pennsylvania. I was less interested in business, however, than in archeology and political theory. I was inclined upon graduation to pursue graduate work in archeology, but finally settled on law school on the theory that the law might provide a useful vehicle for social change."

Stone's uncertainty about his vocation soon disappeared. "Once I arrived at the University of Chicago Law School, I developed an absolute passion for the law." Stone's "passion" proved productive. He was editor-in-chief of the *Law Review*, graduated *cum laude*, and was elected to membership in the Order of the Coif. Stone's recollections of his student days reflect the general fervor of the period. "Those were exciting and difficult times. Exciting for the students; difficult for the institution."

After graduation in 1971, Stone clerked first for The Honorable J. Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit and then for The Honorable William J. Brennan, Jr., of the Supreme Court of the United States.

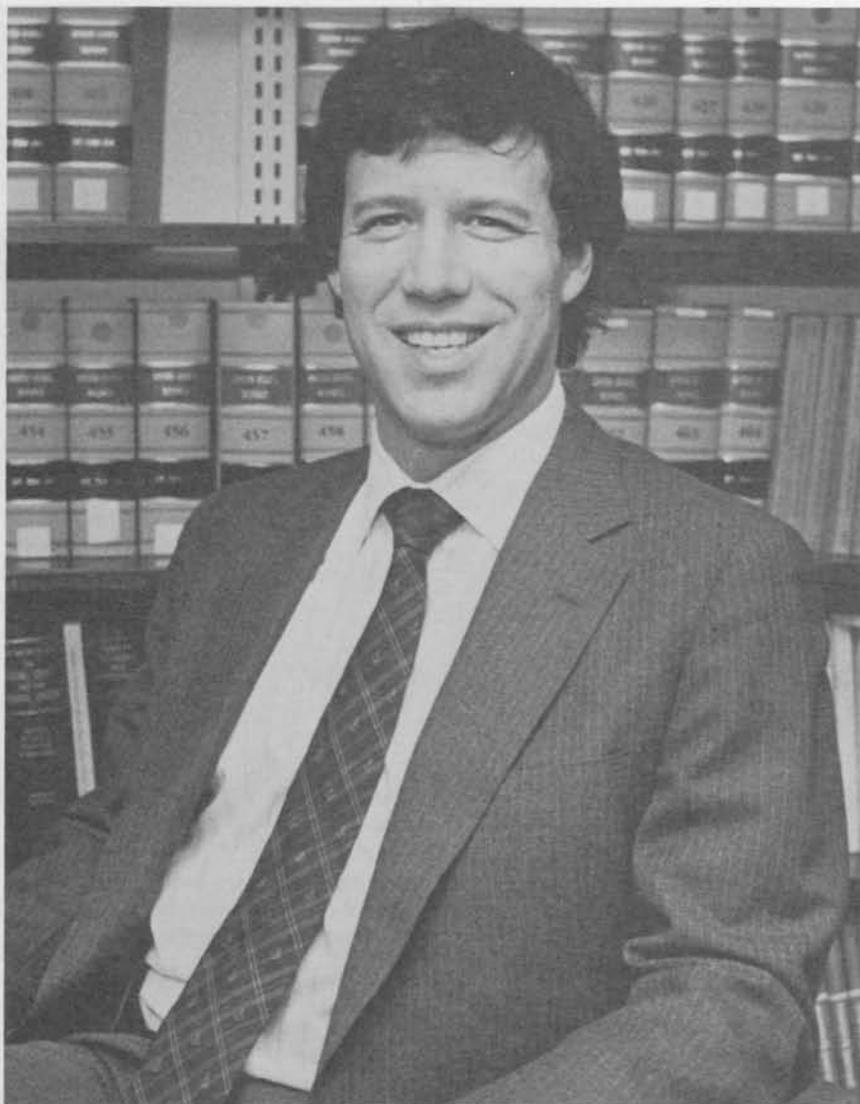
After completing his clerkships, Stone again faced a dilemma. He took the New York bar examination while debating what to do next. He had three options in mind: working on Capitol Hill, practicing law with a public interest law firm, or teaching. After visiting several other law schools, Stone was contacted by former Professor Owen M. Fiss about joining the University of Chicago faculty. Stone was surprised. He was confident that his outspokenness on controversial issues as a student had alienated at least some of his former professors. Nonetheless, his curiosity aroused, Stone accepted the invitation to return to campus for an interview. Not one to make things easy for himself, Stone challenged the faculty by choosing as the thesis for his appointments "presentation" the proposition that heroin addicts have a constitutional right to possess heroin.

To Stone's astonishment, the visit went exceedingly well. Indeed, as he compared the University of Chicago faculty to the faculty of other institutions, he concluded that the Chicago faculty was "more open-minded, more interested in ideas, and more willing to test even highly provocative arguments in a rigorous and objective manner." Several weeks after Stone's visit, Dean Phil C. Neal called him to offer a position on the faculty.

Stone accepted the appointment and returned to the Law School where he quickly established himself as a popular and innovative teacher. One of his most interesting innovations was his seminar on constitutional decision making.

"My students were too quick to criticize judges, whose opinions are an easy target in the classroom. To give students a better perspective on the judicial process, I devised this seminar. Students form five-member courts, each of which decides a total of sixteen hypothetical cases (with majority, concurring, and dissenting opinions) posing issues about a particular constitutional provision. The students must work with the text of the Constitution, the legislative history, their own notions of constitutional interpretation and their own precedents. They may not rely on any actual decisions of the Supreme Court." The constitutional decision-making seminar is one of the most popular at the Law School. It is now offered not only at Chicago, but at several other schools—often by former students who have gone on to become law teachers and who teach the seminar to their own students.

Over the years, Stone has become increasingly involved in administrative responsibilities both at the Law School and the University. He has chaired virtually every major committee at the Law School and he has served on numerous University committees, including the Committee of the Council of the University Senate, a seven-member body that oversees the governance of the University. Stone notes that such administrative work is essential if a small faculty is to control its own destiny. "Moreover, the work brings its own rewards. In particular, I have drawn immense satisfaction from my work on the Faculty Appointments Committee, both as its chair and as a member, and from my work on the Admissions Committee. Under Dean *Casper's* leadership, we have attracted the most dynamic and productive young faculty in the nation. They are outstanding teachers, promising scholars, and splendid colleagues." It is a sign of how long Stone has been at the Law School that two of his former students—*Mary Becker* and *Daniel Fischel*—are now tenured members of the faculty.



*Geoffrey Stone*

Stone's principal scholarly interest has been in constitutional law and in particular the First Amendment. His most influential teacher was perhaps Harry Kalven, with whom he worked closely after he joined the faculty.

"Harry was one of the people I looked to most for friendship, advice and guidance as a young teacher and scholar. My first writing was in the First Amendment area, inspired by Kalven. Many of the ideas I've developed over the years grew out of those early conversations. I was therefore genuinely touched and honored when Dean Casper made me the first holder of the Harry Kalven chair in 1984."

Stone believes that Kalven would have enjoyed the casebook he recently wrote with Louis Seidman, *Cass Sunstein*, and Mark Tushnet. *Constitu-*

*tional Law*, which was published in 1986, offers a contemporary view of constitutional issues. Stone and his co-authors felt that none of the most widely used constitutional law casebooks reflected this viewpoint.

"We believed that by reorganizing the cases and emphasizing different aspects of the material we could make a significant pedagogical and intellectual contribution to the way in which students, professors, lawyers, and judges understand constitutional issues. We sought to achieve two goals. First, we attempted to redefine some fundamental constitutional questions in a way that would more clearly illuminate the underlying problems. Second, we sought to integrate into our book the wealth of academic commentary in the area of

constitutional law. Most casebooks consist of cases and lengthy notes filled with endless rhetorical questions. We used the notes to inject ideas from political theory, economics, history, critical theory, philosophy, and ethics, as well as from legal scholarship. To understand constitutional law, it is essential to consider perspectives other than those presented by the justices of the Supreme Court."

Stone's current scholarly interests center principally on the freedom of speech. He has written a series of articles that attempt to bridge the gap between general First Amendment theory and the articulation of less abstract doctrines that can be used by courts to resolve concrete disputes in a principled and coherent manner.

"We might agree, for example, that the freedom of speech is necessary for the effective functioning of a self-governing society. But we cannot usefully ask on a case-by-case basis whether each and every law that restricts free speech is justified in terms of such an open-ended value. Such an *ad hoc* approach would be vulnerable to the inevitable pressures to censor and suppress. What we need is a set of specific doctrines that enables us to decide

concrete disputes predictably while preserving both the underlying constitutional values and the government's often competing but legitimate interests in maintaining a stable and ordered society. In recent years, the Supreme Court has increasingly relied on a distinction between laws that are content-based (e.g., no Nazi may march in Skokie) and laws that are content-neutral (e.g., no person may erect a billboard) to serve this function. I have looked closely at this doctrine in an effort to discern when the distinction makes sense and when it does not, when it should be preserved and when it should be abandoned."

Stone has not let his academic, teaching, and administrative responsibilities within the Law School and the University keep him from active involvement in "real world" First Amendment issues. He has participated in extensive public interest litigation in the Supreme Court and other federal courts defending the constitutional rights of a broad range of groups and individuals. He has frequently testified before congressional committees on such issues as school prayer, FBI undercover operations, and

obscenity regulation. And he has been active in the legal community as a member of the Board of Directors of the Illinois Division of the American Civil Liberties Union, the Board of Governors of the Chicago Council of Lawyers, and the Steering Committee of the Commission on Law and Social Action of the American Jewish Congress.

Stone's decision to accept the Deanship was not an easy one. "I love what I do. I have never enjoyed teaching and writing and interacting with students more than in the past few years. I would not have considered the deanship of any other law school. But, although it's hard for me to believe it, I've been here for seventeen of the last nineteen years. I've developed a profound respect for the institution and a deep affection for my colleagues, my students, and the alumni. The Law School has become a part of me. I suppose it's my turn to take some responsibility for its future. I am daunted by the prospect of following in the footsteps of Edward Levi, Phil Neal, Norval Morris, and Gerhard Casper. But this is a great time in the life of the Law School. The chance to be at the helm is not something I can turn down." ■

