

**Charles Ogletree Delivered the First  
Social Justice Diversity Lecture, Speaking on Race and the Supreme Court**  
by Hasan McGee, '07 and Sonja Zavala, '06

In the first Fall Social Justice Diversity Lecture, Charles J. Ogletree, Jr. (Harvard Law School) shared his views about the direction of the Supreme Court in light of developments that had taken place “within the last few hours.” Ogletree spoke shortly after the recent death of former Chief Justice William Rehnquist. Ogletree painted a picture of an evolving court that would shift with the political winds, as it has for decades. “When I voted in the last presidential election I knew the election was important, more important than people initially thought, because I knew whoever won the election would have the opportunity to elect multiple Supreme Court Justices. Now the time has arrived,” Ogletree observed.

“The term judicial activist is not defined by liberal ideology,” Ogletree said. The hallmark of judicial activism is the tendency to lay the groundwork for future decisions in dicta and dissenting opinions with the hope that these views will influence future courts and one day command a majority. According to Ogletree, Justices Antonin Scalia and Clarence Thomas, currently thought to be the most conservative members of the court, have used this tactic brilliantly, as did Rehnquist.

Ogletree referred to Rehnquist in the 1970s as the “Lone Ranger,” describing his record of writing lone dissents that were “way out to the right.” He was soon joined by Reagan nominees Sandra Day O’Connor, Scalia, and Anthony Kennedy and was able to command a majority on many of the same issues.

While the new court will be called the “Roberts Court,” in the likely event that current nominee John Roberts is confirmed as Chief Justice, in effect, the new court will be the “Scalia Court.” Scalia will be the intellectual center, because of his seniority, deep understanding of the judicial process, and commanding leadership.

Though it is likely that Scalia will have significant influence over the future Justice Roberts, it is difficult to predict the precise contours of Roberts’s judicial philosophy. Like Scalia, Roberts has conservative views on states’ rights, the right to privacy, and affirmative action. But in all likelihood, “Roberts himself doesn’t have any idea” where his judicial philosophy will take him 20 years from now, Ogletree said.

This unpredictability is characteristic of new Justices. Ogletree illustrated this fact with an anecdote from his days as a lawyer in the early 1990s. At that time, Ogletree said that Supreme Court nominee David Souter “was a terrible candidate, an ideologue who added nothing and would take the Court strongly to the right ... I didn’t realize he would be sitting on the court three months later when I argued a death penalty case before the court ... Thurgood Marshall basically made my argument for me and supported everything I said. All the other justices gave me grief, except for Souter, who just stared at me.” Ogletree won a unanimous decision. Souter wrote the opinion, his first for the Court. After that, when reporters asked Ogletree what he thought about justice Souter, he said “I think he’s the most fair, liberal justice

on the Supreme Court.”

This example illustrates a larger trend: the influence of *Stare Decisis* and the desire for consensus often cause justices initially seen as conservative to gravitate toward the center. Hugo Black, a former Ku Klux Klan member, defied expectations and became an “important and thoughtful” justice, Ogletree said.

As the Court hears fewer cases, becomes more conservative, and the issue of race becomes less persuasive, according to Ogletree, it will be up to the community to use more grass roots means to achieve its goals and to come up with new formulas to address old problems. “We will be living in a very changeable constitutional time.”