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In Memoriam: Professor Michael Goldsmith

*Professor G. Robert Blakey**

In the natural order of time, children bury parents, yet life and death are not always so tidy in which succeeds the other. Few sights are as lachrymose as parents and their various-aged children with sunglasses hiding their tear-reddened eyes, black-dressed, and standing on a green cemetery lawn looking down at a diminutive mahogany coffin suspended over a freshly dug grave. Such sights are indelibly memorable and deeply poignant. It is similar when an aging professor gives up to death a student for whom he had served as a mentor in law school and in his highly successful professional career, and for whom he had written glowing recommendations for his judicial clerkship, for his positions as an Assistant States and Assistant United States Attorney and Counsel to the New York State Organized Crime Task Force, and for his teaching positions in law schools. Mike also worked two years for me as Senior Staff Counsel to the House Select Committee on Assassinations.

Michael Goldsmith, the Woodruff J. Deem Professor of Law, Brigham Young University, was more than a protégé. Over the years, he became a close colleague and a true and long-lasting friend. At Cornell, I taught a seminar on organized crime and the theft and fencing of stolen property. Mike was a student. At the end of the seminar, I asked if he might work with me in putting the materials the students collected in the seminar into an extended essay. I thought practitioners and legislators should become aware of needed reforms. Mike did. By the end of the project he had become more than a helpful student assistant; he was fully a colleague in crafting and editing as well as writing the article. Appropriately, his name is on it, not in an acknowledgment in an early footnote—the usual route for recognizing the contributions of students—but fully in the title as a coauthor. The *Michigan Law Review* published it;¹ it recommended the adoption of reform-legislation; the National Association of Attorneys General endorsed the text of the statutory

* William and Dorothy O'Neill Professor of Law, Notre Dame Law School.

1. G. Robert Blakey & Michael Goldsmith, *Criminal Redistribution of Stolen Property: The Need for Law Reform*, 74 MICH. L. REV. 1511 (1976).

recommendations; they became a model for state legislation; in the only challenge to its structure, the Supreme Court of Florida upheld it.²

In 1968, I drafted Title III on electronic surveillance of the crime control act of that year at the direction of Senator John L. McClellan, its chief sponsor.³ Yet when I finally sat down to write my “definitive” essay on electronic surveillance and looked over the piece that Mike had already written⁴ I found—not surprisingly—that I had nothing to say that he had not said: the protégé had overtaken the mentor. Mike’s piece is a classic, and it is unsurpassed in the literature on law and practice under Title III.

In 1970, I drafted Title IX on racketeering of the Organized Crime Control Act of that year (popularly know as RICO), at the direction of Senator John L. McClellan, its chief sponsor.⁵ Mike quickly became an expert on the racketeering statute, in particular its civil provisions, which authorize treble damages for those victimized by racketeering. He wrote prodigiously on it, defending it from its critics in the business community and the criminal defense bar.⁶ In fact, he was one of a small number of RICO practitioners to whom I could confidently refer people who sought knowledgeable representation on a possible civil RICO—no mean accomplishment, as civil RICO is to general civil law what brain surgery is to the general practitioner of medicine.

Mike’s scholarship and public service extended well beyond electronic surveillance or RICO. He was a leading scholar in the law of evidence; he had his own casebook.⁷ References to his criminal

2. *Hall v. State*, 826 So. 2d 268, 269–70 (Fla. 2002) (upholding the Florida Anti-Fencing Act of 1977).

3. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 211 (1968) (codified at 18 U.S.C. §§ 2510 *et seq.*).

4. Michael Goldsmith, *The Supreme Court and Title III: Rewriting the Law of Electronic Surveillance*, 74 J. CRIM. L. & CRIMINOLOGY 1 (1983).

5. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified at 18 U.S.C. §§ 1961 *et seq.*).

6. *See, e.g.*, Michael Goldsmith, *Resurrecting RICO: Removing Immunity for White-Collar Crime*, 41 HARV. J. ON LEGIS. 281 (2004); Michael Goldsmith, *Judicial Immunity for White-Collar Crime: The Ironic Demise of Civil RICO*, 30 HARV. J. ON LEGIS. 1 (1993); Michael Goldsmith, *RICO and Enterprise Criminality: A Response to Gerard E. Lynch*, 88 COLUM. L. REV. 774 (1988); Michael Goldsmith, *RICO and “Pattern:” The Search for Continuity Plus Relationship*, 73 CORNELL L. REV. 971 (1988).

7. PRINCIPLES OF EVIDENCE (Michael Goldsmith & Irving Younger eds., 1984). Originally published with the late Professor Irving Younger, it is one of the most widely-

procedure writings appear in a leading hornbook on criminal procedure.⁸ He was an early Commissioner on the Federal Sentencing Commission. While Mike was “tough on crime,” as they say, he was assuredly flexible, unlike many public figures today: he fought as a courageous but lonely minority voice on the Commission to ameliorate the sentencing disparities between crack and power cocaine, which affected disproportionately African-American offenders.⁹ Congress knew better, as did the Department of Justice, but their voices were silent. Only in private would they admit that Mike was right. Mike lived to see his recommended changes implemented but only after he left the Commission.

Tragically, Mike did not die quickly or without pain, physical and mental, as we all pray for ourselves. Well, maybe not all: Mike and I shared a lifelong friend who is not a theist, as Mike and I. One of our favorite jokes with him was that if he were right, he would never know, a matter that irked him, but if we were right, we would see if we could talk to the Lord and find out what, if anything, we could do for him, assuming we made it to the right place. I cannot speak for myself, but I know that if the manner of one’s death can trump the indiscretions of one’s life, Mike is already in the right place, waiting for us, and trying to do what he can for us with the Lord. We all die. We cannot do anything about the time or place. But the Lord leaves to us how we die. Mike died a courageous death, a death I would not wish on anyone, not even an enemy, much less on a friend. He slowly succumbed to ALS (Amyotrophic Lateral Sclerosis) or Lou Gehrig’s Disease. I saw him in New York in July of 2009. He looked awful, but his spirit was undiminished. We were in New York to celebrate one of the happiest days of his life. Mike was a leading voice for research to control or eliminate ALS, which is now a project of Major League Baseball, largely the doing of Mike. The Yankees asked him to throw out the opening pitch at their July 4 game; it was the 70th anniversary of Gehrig’s classic farewell speech in the old Yankee Stadium. We were in the new stadium. Mike walked unassisted toward the pitcher’s mound, such as he could. He

adopted evidence casebooks in American law schools; it is now in its fifth edition. It is also now coauthored with David Sonenshein, Professor of Law at Temple University.

8. CRIMINAL PROCEDURE 330 (Charles H. Whitebread & Christopher Slobogin eds., 1993).

9. *See, e.g.*, Senate Judiciary Hearings, August 10, 1995 (testimony of Commissioner Michael Goldsmith), <http://www.ndsn.org/oct95/crack.html> (last visited Apr. 2, 2010).

threw out the opening pitch, albeit underhandedly. He walked, such as he could, back to where his son was waiting to help him back up to his skybox seat. His face was beaming. His actions spoke eloquently of his indomitable spirit and of his personal fight against ALS. It was his farewell speech. He died four months later.

Mike was unlucky to fall from the ravishes of ALS. Yet he was lucky in life. In the end, people are all that count, not scholarship, public service, or fame. On this count, he was uncommonly lucky. He leaves a proud and long-suffering mother, Anitta, who not only experienced the Holocaust, but also the death of her only son. God asks much of those He loves, an enduring mystery of life. He leaves a throng of admiring students who in their professional lives will reflect the best of his teachings, a multitude of colleagues who are poorer for the loss of his scholarship, and a band of friends who will think of him each day and the loss of his invaluable counsel. Finally, he leaves two remarkable children, a son, Austen, and a daughter, Jillian, who owe to their father a debt the full extent of which they will not appreciate until they are much older. But most of all, sadly, he leaves a loving wife, Carolyn, who, especially at the end of his sickness, freely paid a debt in extraordinary care, in Shakespeare's words, "never promised."¹⁰

Michael Goldsmith: *Requiescat in Pace.*

10. WILLIAM SHAKESPEARE, THE FOURTH PART OF KING HENRY THE FOURTH act 1, sc. 2.