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## Tribute to Professor Laurence Tribe

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## TRIBUTE TO PROFESSOR LAURENCE TRIBE

### The Honorable Stephen Reinhardt<sup>\*</sup>

#### I. INTRODUCTION

As the lone judge on this panel of esteemed scholars here to pay homage to Larry Tribe, I would like to use my time to comment not mainly on Professor Tribe's influence on the field of constitutional law, which is vast, nor principally on his influence on the law more generally, which also is vast and indeed immeasurable. Instead, I would like to direct my attention primarily to Larry's influence on judges and judging. Fortunately, Larry has made my job an easy one. His influence on judges, as I hope I will be able to illustrate, is marked by a depth and diversity unmatched by that of any other lawyer of our time. "Influence" can be a difficult concept to capture or measure and even harder to express in words. My hope, however, is that through a series of reports about the sundry roles that Larry has played in the course of his illustrious career, I will be able to convey some sense of the powerful impression that Larry has made on judges, both in this country and abroad.

First, a cautionary note: Too often, in my opinion, we in the legal world marvel at "influence" detached from any normative assessment of the effects of that influence on the world. We are far too impressed by clever thinkers and eloquent speakers without more. Larry, however, possesses an unrelenting beneficence and compassion that keeps pace with his abundant intelligence and eloquence. Larry has employed his influence unceasingly to advance the interests of fairness and justice in our legal system. It is one thing to say that the world would be a different place without Larry Tribe. That is true. The more important observation by far, however, is that liberty would be a far scarcer commodity without Larry Tribe. That is truly grounds for celebration and that is truly deserving of our tribute—it is what elevates Larry from the realm of "influential" to that of "inspirational." It is what separates him from the bloodless, abstract bean counters, with their debits and credits, their costs and benefits, who populate both the judiciary and academia today.

Now to the topic at hand: Larry's impact on judges and judging. Perhaps the first judges Larry had occasion to influence were the two judges fortunate enough to employ him as a clerk: Justice Mathew Tobriner, of the California Supreme Court, and Justice

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<sup>\*</sup> Ninth Circuit Court of Appeals Judge and a graduate of Yale Law School. This text is a speech delivered at Tulsa Law Review's Symposium honoring Laurence Tribe in April 2007, presented at The University of Tulsa. Thanks are due to my law clerk, John Rappaport, who assisted in the preparation of this speech.

Potter Stewart, of the Supreme Court of the United States. Larry made his impression on each, to be sure. During his tenure in California, the California Supreme Court, which was then recognized as the outstanding state court in the nation, heard a now-famous appeal from a criminal conviction in which the prosecution had relied upon probabilistic calculations to argue to the jury that only a one-in-twelve-million chance existed that the culprits—described by witnesses as a white woman with a blond ponytail and a black man with a beard and mustache driving a yellow car—were not the defendants.<sup>1</sup> The crucial question was how much weight to give to the state’s probabilistic argument.<sup>2</sup> Legend has it that Larry, a *summa cum laude* mathematics graduate of Harvard College, solved the problem with gusto, debunked the prosecution’s misleading theory, and provided the intellectual force behind the court’s reversal. The resulting opinion continues to hold a place in evidence casebooks in discussions of relevance and statistical evidence.<sup>3</sup> Larry later spun his insights into an ambitious article published in the *Harvard Law Review* entitled, “Trial by Mathematics.”<sup>4</sup> At present, this article has been cited in seventy-four judicial opinions and dissents.<sup>5</sup>

Although Larry was a brilliant mathematician before he became a brilliant lawyer, he was never very practical. After he left his clerkship with Justice Tobriner he drove across the country to Washington, D.C., where his job with Justice Stewart awaited him. Emerging from a motel in Kansas early one morning, he asked his traveling companion, “Which way is East?” His friend replied, “Larry, just look at the sun and you can tell.” A sheepish Tribe responded, “Does the sun rise in the East or the West?”

Somehow, Larry and his friend found their way to Washington. While clerking for Justice Stewart, Larry helped, in a single decision, to transform the future of the Fourth Amendment, as the nation teetered on the brink of an era of rapidly developing technology, replete with novel constitutional quandaries.<sup>6</sup> The court of appeals had affirmed a criminal defendant’s conviction, rejecting his Fourth Amendment argument concerning the government’s wiretap of a phone booth on the basis of a forty-year-old precedent called *Olmstead*,<sup>7</sup> which had required physical governmental intrusion into tangible property to trigger the Fourth Amendment’s protections.<sup>8</sup> Initially, five Justices voted to retain the Court’s prior mode of analysis, agreeing with the court of appeals. After Larry had his say, however, that number quickly decreased to two. A seven-Justice majority ended up overruling *Olmstead*<sup>9</sup> in *Katz v. United States*,<sup>10</sup> in a now-famous

1. *People v. Collins*, 438 P.2d 33, 36–37 (Cal. 1968).

2. *Id.* at 33.

3. See e.g. Kenneth S. Broun et al., *McCormick on Evidence* § 210 n. 4 (John W. Strong ed., 5th abridged ed., West 1999).

4. Laurence H. Tribe, *Trial by Mathematics: Precision and Ritual in the Legal Process*, 84 Harv. L. Rev. 1329 (1971).

5. Search in Westlaw, ALLCASES library (Feb. 13, 2008) (using the search: “Trial by Mathematics” /s Tribe).

6. See Laurence H. Tribe, *The Constitution in Cyberspace: Law and Liberty beyond the Electronic Frontier*, 51 *The Humanist* 15, 20–21 (Sept.–Oct. 1991).

7. See *Olmstead v. U.S.*, 277 U.S. 438 (1928).

8. *Id.*

9. *Id.*

10. 389 U.S. 347 (1967).

opinion by—who else—Justice Stewart, Larry’s Justice, teaching that “the Fourth Amendment protects people, not places.”<sup>11</sup> On the wall in Larry’s home office hangs a hand-written note from Justice Stewart thanking Larry for helping him achieve the *Katz* majority. We who value our privacy thank Larry too. If only we could send Larry back as a clerk today to whisper in the Justices’ ears and convince them not to jettison what little of his handiwork remains. But, then again, there are some limits. Could even Larry move the members of this Court sufficiently to revive the spirit of *Katz*, to recognize that, first, the war on drugs and, second, the war on terrorism neither require nor justify our abandonment of fundamental constitutional principles? I would like to think he could, though in truth, I am not optimistic.

## II. THE BIRTH OF A SCHOLAR

The career of Larry Tribe, the law clerk, was understandably short-lived; yet that of Larry Tribe, the scholar, sprung to life almost immediately thereafter when Larry was appointed to the faculty of Harvard Law School at the age of twenty-eight. The necessary starting point for any discussion of Larry’s academic career, and its influence on judges and judging, is of course his groundbreaking work, *American Constitutional Law*.<sup>12</sup> As anyone who has ever thumbed its pages knows, Larry’s treatise is penetrating and creative. Literally every paragraph teems with his incisive intellect and his engaging personality. The first clue that Larry’s treatise is no ordinary book comes in the table of contents, which organizes the masterpiece not by quotidian groupings such as “First Amendment” or “Equal Protection,” but by thematic and inventive ones such as “The Inversion of the *Slaughter-House* Logic: Glimpse at a Boomerang”<sup>13</sup> and “From *Lochner*’s Ashes: Other Forms of Substantive Due Process and the Still-Beating Heart of *Lochner* Itself.”<sup>14</sup> For hundreds upon hundreds of pages, Larry proceeds to synthesize and analyze constitutional cases with a brilliance most scholars would be proud to manifest in the best five pages of their tenure piece. It is no surprise then, that judges rely on Larry’s treatise every day to inform the exercise of their judicial duties. I have in my chambers several copies of the treatise, which my clerks and I consult regularly in preparing cases. I would wager that my practice is the norm in courts of every level and locality.

Indeed, the numbers would suggest as much. The citation statistics are astounding. The United States Supreme Court alone has relied upon *American Constitutional Law* sixty-four times in my count,<sup>15</sup> including three times in 1978,<sup>16</sup> the year the first edition of the book was published, when Larry was only thirty-seven years old. Federal appellate courts have cited the treatise over six-hundred times in published opinions.<sup>17</sup>

11. *Id.* at 351.

12. Laurence H. Tribe, *American Constitutional Law* (3d ed., Foundation Press 2000).

13. *Id.* at xxvii.

14. *Id.* at xxviii.

15. Search in Westlaw, SCT library (Feb. 13, 2008) (using the search: “American Constitutional Law” /s Tribe).

16. *Baldwin v. Fish & Game Commn. of Mont.*, 436 U.S. 371 (1978); *McDaniel v. Paty*, 435 U.S. 618 (1978); *Bd. of Curators of U. of Mo. v. Horowitz*, 435 U.S. 78 (1978).

17. Search in Westlaw, CTA library (Feb. 13, 2008) (using the search: “American Constitutional Law” /s

My own court contributed ninety-eight citations to that tally,<sup>18</sup> and my own opinions a dozen,<sup>19</sup> although they almost certainly would have been better, if not more immune to reversal, had that number been higher. All of the preceding figures, moreover, say nothing about the roughly one-thousand state court citations to Larry's masterpiece,<sup>20</sup> not to mention citations by the highest courts of India, Germany, Russia, and Canada, among others,<sup>21</sup> and all of the cases in which judges consulted Larry's book but decided for some reason not to cite it in the final product. Even when I have disagreed with Larry, such as in a case involving the meaning and scope of the Second Amendment, I could not ignore him or his powerful treatise.<sup>22</sup> I felt compelled in that case<sup>23</sup> to confront head-on what "the learned Professor Tribe," as my decision referred to him, had to say about the troubling subject.<sup>24</sup>

Nor do numbers paint the entire picture. So special is Larry's work that Supreme Court Justices inquire about the progress of the latest edition.<sup>25</sup> When Larry decided to postpone indefinitely publication of the second volume of the third edition of his treatise, he made headlines.<sup>26</sup> He was forced to explain the reasons for his decision publicly, in an open letter to Justice Breyer, a former colleague of his at Harvard, who had asked about the status of the project.<sup>27</sup> As Yale Law School Professor Jack Balkin characterized Larry's announcement, "I can't think of a scholarly decision of similar symbolic importance."<sup>28</sup> Or, as another law professor put it in a more populist manner, "It's like Michael Jordan leaving basketball at the top of his game."<sup>29</sup> Fortunately, unlike number twenty-three, Larry did not leave the game entirely. Far from it—Larry has plenty of game left in him.

I said that we should begin with Larry's treatise, *American Constitutional Law*,<sup>30</sup> but our discussion of the impact of Larry's scholarship on the work and thinking of judges should hardly stop there. There are, of course, Larry's articles, and then there are other substantive subjects as well. Early in his career, Larry taught and wrote in fields outside of constitutional law, and did so, as he does everything, brilliantly. District Judge John Koeltl, a former student of Larry's, has written of how, thirty years after he took Larry's evidence course, he continues to use the analytical framework that Larry taught him in order to try to understand the nettlesome subject of hearsay—a tale made all the more remarkable by the fact that Larry's teachings predated the passage of the

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Tribe).

18. Search in Westlaw, CTA9 library (Feb. 13, 2008) (using the search: "American Constitutional Law" /s Tribe).

19. *Id.* (restricting result by JU(Reinhardt)).

20. Search in Westlaw, ALLSTATES library (Feb. 13, 2008) (using the search: "American Constitutional Law" /s Tribe).

21. See Tony Mauro, *Scholar's Shift in Thinking Angers Liberals*, USA Today A4 (Aug. 27, 1999).

22. See *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002).

23. *Id.*

24. *Id.* at 1068 n. 22.

25. See Tony Mauro, *A Big Surprise from Laurence Tribe*, Legal Times (June 6, 2005).

26. *Id.*

27. See Laurence H. Tribe, *The Treatise Power*, 8 Green Bag 292 (Spring 2005).

28. Mauro, *supra* n. 25.

29. *Id.* (quoting George Mason University School of Law professor Ross Davies).

30. Tribe, *supra* n. 12.

Federal Rules of Evidence, which now govern federal cases like the ones over which Judge Koeltl presides.<sup>31</sup> Larry also authored books on environmental protection and technology and the law in the early 1970s, decades before those subjects took center stage in public debate.<sup>32</sup> In a particularly creative endeavor, Larry, with the aid of an especially bright student research assistant—an assistant who could, if he wanted to, have followed in Larry’s footsteps—a student named Barack Obama—drew once again on his mathematical past in publishing a fascinating piece about the lessons lawyers and judges can learn from modern physics.<sup>33</sup>

### III. IMPACT BEYOND SCHOLARSHIP

Make no mistake, however—Larry is more than just a scholar. His impact on the judiciary extends far beyond the enormous utility of his scholarly work to judges as we carry out the daily duties of the judiciary. Larry Tribe, the constitutional consultant, has touched jurists in a number of foreign nations by helping to shape the very framework within which those judges serve—that is, by lending his considerable knowledge and talent to the drafting of their national constitutions. Larry helped the Marshall Islands draft a new constitution in the late 1970s, served on the U.S.-European Committee on Revision of the Czechoslovak Constitution in the early 1990s, and acted as a constitutional advisor to the chief justice of Russia in the late 20th century as well. Larry has been a major exporter of the very best commodity that the United States has to offer—its constitutional values.

I have read that Larry’s personal and family history had something to do with the direction of his career, which does not surprise me. Larry was born in Japanese-occupied Shanghai just two months before Japan bombed Pearl Harbor.<sup>34</sup> His parents were Eastern European members of the Jewish diaspora.<sup>35</sup> His father, who had become an American citizen, was taken and interned by the Japanese—an event Larry still remembers—leaving Larry to his mother’s care.<sup>36</sup> After the war, the reunited family sailed to San Francisco, where the Russian-speaking young Tribe enrolled in the public schools.<sup>37</sup> More than most of us, Larry knew early and well the dangers of totalitarian government and the contrasting benefits of American constitutional liberty. As Larry himself once put it, his childhood experiences gave him “a powerful dose of what tyranny means.”<sup>38</sup> I imagine that it was a matter of great pride, then, for Larry to advise two Eastern European nations on constitutional matters shortly after communism fell, and I am quite sure that he was the perfect choice for the job.

Next comes Larry Tribe, the political consultant. This Larry, on numerous

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31. John G. Koeltl, *Tribute to Laurence Tribe*, 59 N.Y. U. Annual Survey Am. L. 1, 7–8 (2003).

32. See e.g. Louis L. Jaffe & Laurence H. Tribe, *Environmental Protection* (Bracton Press 1971); Laurence H. Tribe, *Channeling Technology Through Law* (Bracton Press 1973).

33. Laurence H. Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics*, 103 Harv. L. Rev. 1 (1989).

34. See Paras D. Bhayani, *A Humble Start on the Path to Stardom*, 225 Harv. Crimson 1 (Oct. 18, 2006).

35. *Id.*

36. *Id.*

37. *Id.*

38. Jeffrey Toobin, *Supreme Sacrifice*, *New Yorker* 43, 46 (July 8, 1996).

occasions, advised U.S. senators preparing to examine Supreme Court nominees. Indeed, one might say that Larry literally “wrote the book” on Supreme Court confirmations.<sup>39</sup> On one momentous occasion in 1987, Larry shed his gloves and appeared as a lead witness opposing Robert Bork’s confirmation to the Court. He had been warned by a knowledgeable friend well-versed in the inner workings of national politics that if he testified, the Republicans would never forgive or forget, that his chances of a Supreme Court appointment would be ended.<sup>40</sup> His friend urged him to think it over carefully before appearing before the Senate. Larry said he would. A day later he told his friend, “I have to do it—the Court can’t afford to have this happen.” As is well documented by now, Larry’s testimony probably made the difference and, consequently, altered our nation’s history.<sup>41</sup> Although Justice Kennedy, who ultimately assumed the disputed seat, is a solid member of the current conservative majority and remains unapologetic to this day about his vote in *Bush v. Gore*,<sup>42</sup> a “Justice Bork” would not have authored any of several enlightened landmark decisions written by his replacement, namely *Lawrence v. Texas*,<sup>43</sup> *Roper v. Simmons*,<sup>44</sup> and *Romer v. Evans*.<sup>45</sup> The last of these decisions, interestingly, was rooted in an argument Larry created, and firmly rejected a conflicting argument suggested by Robert Bork. Even more significant, Justice Bork would indisputably not have cast a critical vote in *Planned Parenthood of Southeast Pennsylvania v. Casey*<sup>46</sup>—to preserve *Roe v. Wade*,<sup>47</sup> an act for which, incidentally, Larry Tribe is still blamed for today in right-wing circles.

The story, according to conservative lore, is that Justice Kennedy was talked into relying on the doctrine of *stare decisis* by Michael Dorf, a brilliant young law clerk, now a professor of constitutional law at Columbia. Members of the vast right-wing conspiracy, as a non-Tribe educated presidential candidate likes to call them, are convinced that Dorf was planted in Kennedy’s chambers by his law school professor and mentor, Larry Tribe. Because Dorf was previously planted in my chambers by that same manipulative professor, I think the story may be true. I do know that following the immense uproar in right-wing circles after Kennedy’s startling vote, a committee to screen future law clerks was established to ensure that there would be no more Dorfs. How successful it has been in screening out Tribe protégés, only Larry himself can tell you.

Incidentally, Professor Dorf is not the only brilliant Tribe student I have had as a clerk. I tried and failed to get Barack Obama, who passed up all clerkship offers in order to go straight into politics. But I have had a number of others. What is different about

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39. Laurence H. Tribe, *God Save this Honorable Court: How the Choice of Supreme Court Justices Shapes Our History* (Random House 1985).

40. See Robert M. Shrum, *Tribute to Laurence H. Tribe*, 59 N.Y. U. Annual Survey Am. L. 1, 12–13 (2003).

41. *Id.*

42. 531 U.S. 98 (2000).

43. 539 U.S. 558 (2003).

44. 543 U.S. 551 (2005).

45. 517 U.S. 620 (1996).

46. 505 U.S. 833 (1992).

47. 419 U.S. 113 (1973).

the process with Larry, is that I always receive a completely honest recommendation from him. Many law professors will write you about five students a year. According to their letters, which they must assume you will not compare, each is the best student he has had in the last twenty years. Larry does the opposite. He tells you precisely what he thinks. That is why I have turned down some who list him as a reference. But when he tells me to take someone, that is all I need to know. I do it. And he has never been wrong.

To return to the bench, Larry's influence over the personnel of the federal courts extends not only to the students I will discuss, whom he helped, directly or indirectly, put *on* the courts, but also to the one he helped keep *off*. As his friend had predicted, by opposing Bork, Larry sacrificed his own chance to occupy a seat on the highest Court in the land.<sup>48</sup> He went from being simply the country's leading law professor to being its most controversial as well. And the only Democratic president since the times of the Bork episode, President Clinton, was not one to risk controversy over a judicial appointment, to the Supreme Court or otherwise, regardless of how highly qualified the prospective appointee was and, in more than one case, regardless of how close to the President the individual happened to be. A friend of Larry's and mine put it best when he commented, "Larry Tribe should be on the Supreme Court, not arguing before it. But he would rather pursue justice than be a Justice. And to me, that truly is courage."<sup>49</sup> I could not say it any better.

Larry Tribe, the political consultant and witness, has also influenced judges' work in countless subtle ways by testifying more than forty times before congressional committees, the arms of the very body that writes the laws we federal judges interpret and apply on a daily basis. He has testified on a wide variety of subjects, from flag desecration to the war on terrorism to late-term abortion. Unsurprisingly, the force of Larry's testimony is usually to urge Congress to pay careful respect to the constitutional rights of the citizens—or in some cases, noncitizens it seeks to regulate. Testifying shortly after September 11, for example, Larry was quick to warn the Senate Judiciary Committee that, "[a]lthough many of our constitutional freedoms would be rendered meaningless without freedom from terrorist attack, they may be equally threatened by undue governmental limitations and intrusions imposed in the elusive pursuit of national security. . . . Our challenge is to secure the liberties of all against the threats emanating from all sources," Larry admonished, "the tyranny and terror of oppressive government no less than the tyranny of terrorism."<sup>50</sup>

Then there is Larry Tribe, the professor and mentor. This Larry has shaped the minds and whetted the intellectual appetites of countless members of the judiciary and their clerks, as well as the professors who have trained yet another generation of judges and clerks. I already mentioned Judge Koeltl, for one example. Chief Justice John Roberts, too, studied constitutional law under Larry Tribe, although I wish that he had listened more closely to what Larry had to say about the meaning of and methods for

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48. Shrum, *supra* n. 40, at 12–13.

49. *Id.*

50. U.S. Sen. Comm. on the Judiciary, *DOJ Oversight: Preserving Our Freedoms While Defending against Terrorism*, [http://judiciary.senate.gov/testimony.cfm?id=129&wit\\_id=73](http://judiciary.senate.gov/testimony.cfm?id=129&wit_id=73) (last accessed Feb. 13, 2008).



interpreting our nation's founding document. Larry's former students and research assistants have populated chambers across the country on numerous occasions, as law clerks (as I have noted, including my own), and now populate our law schools throughout the nation as faculty members and deans. These teachers of law, of course, presently instruct our future judges on how to read the Constitution. Let us hope that Larry's message trickles down through the generations and that it will not be too long until we once again have a Supreme Court that views the Constitution, including the Fourteenth Amendment, as a charter designed to ensure fairness, equality, and justice to all our citizens, an expansive and growing set of rights designed to keep pace with the times and to protect the interests of those most in need: the poor, the disabled, the disadvantaged, and all those who may be disdained by an intolerant majority.

Larry's students are everywhere. I mentioned a moment ago that Larry frequently testifies before the body that writes the laws we judges apply. His former students, too, are some of the authors. Representative Barney Frank, of Massachusetts, is one. And of course I have already mentioned Barack Obama, the junior senator from Illinois. Protégés such as these not only help to write our laws but also serve as institutional gatekeepers who safeguard our federal judiciary through the confirmation process. Someday a Tribe product may even have the opportunity to select one or more Justices of the Supreme Court, which, as we know from experience, on a court of only nine, can make a tremendous difference in the direction of important rulings and of the country itself. To perform that task, much as I hate to say it, I have more confidence in the student trained by Larry Tribe at Harvard, than the student educated at my own beloved law school, Yale.

Finally, Larry Tribe, the advocate, has aggressively pursued the causes of justice throughout his impressive career. Never content simply to publish brilliant scholarship from an ivory tower in Cambridge, Larry influences judges by appearing before them in person. Larry has argued before the Supreme Court more than thirty times.<sup>51</sup> He has urged the Court to broaden our constitutional freedoms of free speech and separation of church and state, among a score of others. Larry took up gay rights decades before even mainstream liberals did, winning one case,<sup>52</sup> losing the next, and then being vindicated in the end when the latter case, *Bowers v. Hardwick*,<sup>53</sup> was declared wrong from the beginning when it was overruled in *Lawrence v. Texas*.<sup>54</sup> In addition to articulating and asserting the constitutional rights of individuals, he has also acted to insulate from constitutional challenge local initiatives that benefit underprivileged persons, such as the City of Berkeley's rent-control initiative in the 1980s.<sup>55</sup> Larry has also appeared before the First, Second, Third, Fourth, Fifth, Ninth, Tenth, and D.C. Circuits, literally circling the country to pursue his causes.

And not only does Larry "influence" judges in some empty sense of the word by

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51. Search in Westlaw, SCT library (Feb. 13, 2008) (using the search: AT(Tribe), locate within results (Laurence)).

52. *Bd. of Educ. v. Natl. Gay Task Force*, 470 U.S. 903 (1984).

53. 478 U.S. 186 (1986).

54. 539 U.S. 558 (2002).

55. *See Fisher v. City of Berkeley*, 475 U.S. 260 (1985).

standing before them and speaking, he actually persuades them most of the time. Larry's arguments reveal his truly encyclopedic knowledge of the Supreme Court's rulings on every aspect of constitutional law. In arguing *Bowers v. Hardwick*,<sup>56</sup> for example, Larry synthesized a striking number of opinions, concurrences, and dissents relating to the First, Third, Fourth, and Fourteenth Amendments, often citing to the Justice who had asked a particular question a passage he or she had previously written. Larry is ever careful, as well, to swaddle his technical, doctrinal arguments in rhetorical flair of the finest fashion. In *Bowers*, Larry declared that

[i]t is not a characteristic of governments devoted to liberty that they proclaim the unquestioned authority of big brother [to] dictate every detail of intimate life in the home. What sense would it make to say that the government cannot order its regiments in the home, if it could regiment every detail of life in the home.<sup>57</sup>

This was moments before quoting Robert Frost.<sup>58</sup> Thanks to the power of Larry's persuasion, both at argument and on the briefs, which are equally brilliant, the Supreme Court has, over the past three decades, recognized a bevy of constitutional rights we now consider self-evident, including the very right to a public criminal trial.<sup>59</sup>

A few years ago, the *New York Times* published a review of a book about Alexander Hamilton.<sup>60</sup> The review compared Hamilton's relationship to the presidency to Larry Tribe's relationship to the members of the Supreme Court, pronouncing that "without holding the office, he was kind enough to help do the thinking necessary for those who did."<sup>61</sup> As noted previously, Supreme Court Justices are not the only judges for whom Larry Tribe has untangled and worked his way through many difficult constitutional and other legal problems. We in the judiciary are blessed to possess Larry's insights and arguments to aid us in the adjudicative process. Larry Tribe, in his many roles, has changed both the face of the judiciary and the meaning of the Constitution. The younger generation whose lives he has touched will doubtless pick up wherever he eventually leaves off, inspired by his unremitting commitment to justice. Fortunately for all of us, for all people, Larry is above all a good soul who has used his intellectual abilities always for the betterment of our courts and our society. We are grateful, all of us, that we have had as our inspiration, America's leading professor of the law, Larry Tribe.

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56. 478 U.S. 186 (1986).

57. Hrg. Transcr. (Mar. 31, 1986), *Bowers*, 478 U.S. 186.

58. *Id.*

59. *See Richmond Newspapers, Inc. v. Va.*, 448 U.S. 555 (1980).

60. Caleb Crain, *The Un-Jefferson*, 151 N.Y. Times § 7, at 10 (Nov. 11, 2001).

61. *Id.*

