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Tribute to Justice William J. Brennan, Jr.

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Abstract

I am honored to be asked to write a tribute to Justice William J. Brennan, Jr. for the *Nova Law Review*. One of the most difficult aspects about a personal encounter with this most warm human being is the realization that we are in the presence of one of the great figures of the twentieth century.

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I am honored to be asked to write a tribute to Justice William J. Brennan, Jr. for the *Nova Law Review*. One of the most difficult aspects about a personal encounter with this most warm human being is the realization that we are in the presence of one of the great figures of the twentieth century.

Should you go to the United States Supreme Court Building in Washington, D.C. you will find a small museum in the basement with a majestic statute of John Marshall. And in the hallway upstairs are the busts of the Chief Justices who have served the Court over its years. Those somber faces evoke our customary idea of great jurists. Justice Brennan eludes this stereotype. His charming Irish wit and engaging warmth have never seemed to be attributes that could be carved into marble.

Yet Justice Brennan was the Senior Associate Justice of the United States Supreme Court since the retirement of William O. Douglas in 1975. Appointed by President Eisenhower in 1956, Justice Brennan served on the Court longer than all but a handful of Justices. Marshall and Story sat on the Court some thirty-four years. Justice Brennan was in his thirty-third year when he announced his retirement.

Although the era of greatest change in that span is known as that of the "Warren Court," Justice Brennan often led the way with his opinions on issues critical to the direction of the Court. Chief Justice Earl Warren's biographer has recognized Justice Brennan as the Chief Justice's most capable lieutenant and the one to whom "the Chief Justice was to assign the opinions in some of the most important cases decided by the Court." This period could perhaps be better called that of "the Brennan Court."

Many of that Court's decisions provoked strong criticism and controversy when they were handed down. Yet the words "Miranda warning" are easily understood and casually accepted by television viewers today who cannot recall the controversy evoked by the Court's decision

* Associate Justice of The Supreme Court of New Jersey, 1981 - present; J.D., Harvard University, 1957. Justice O'Hern clerked for Justice Brennan during the 1957-58 Term.

in *Miranda v. Arizona*¹ requiring police to inform a suspect of the right to remain silent and to have the assistance of counsel. It is hard for us to recall today that decisions such as *Gideon v. Wainwright*,² mandating counsel for the indigent in criminal cases, or *Mapp v. Ohio*,³ protecting citizens from warrantless searches, came in the aftermath of one of the most politically repressive periods in American history. Artists, writers, public officials, could then be blacklisted, essentially barred from society, if their views did not conform to the prevalent party line. So great today is our self-confidence as a nation in the right of each of our citizens to speak and write freely that even the most repulsive speech, even the burning of a flag, is constitutionally protected.

I do not think that I exaggerate when I suggest that Justice Brennan is one of the most influential persons of the twentieth century in or out of the law. His unrelenting respect for human dignity and individual rights in the face of bureaucratic forces of government has carried the day in our country. By one of those ironic turns of fate, those from the right who have most denounced his views may be reaping the greatest benefits of Justice Brennan's respect for freedom and individual rights. I say this because the yearnings for self-government that we have seen in Russia, in Poland, in China, in Eastern Europe — indeed, throughout the world — express a burning desire for the freedom that we often take for granted in our society, but which has been so carefully preserved and nurtured by Justice Brennan.

Like many Americans, I accepted, with insufficient reflection, Justice Brennan's contributions to the life of the law, but I have had the good fortune in recent years to be in attendance at various ceremonies in his honor and have seen the respect, bordering on awe, in which he is held by law students, lawyers, and judges, even by those who probably would have never shared his opinions if they had been in the same position of power. These experiences revealed to me the shining light that Justice Brennan has upheld for all in shaping many of the freedoms which we now enjoy. And every time I visit with him I learn something more. I had occasion recently to attend a lecture on his contributions to the law (will you believe it?) of land-use planning. His overarching principle of decision — that the Constitution protects people against their government — means that government may no more invade the

1. 384 U.S. 436 (1966).

2. 372 U.S. 335 (1963).

3. 367 U.S. 643 (1961).

property rights of citizens than it may invade their personal rights.

And, finally, in the field of international human rights, which is the subject of his 1987 speech at the Columbia Law School Bicentennial, he explains how the Jeffersonian and Madisonian ideals enshrined in our Constitution and Bill of Rights provide a charter for freedom throughout the world. How paradoxical it must seem to the conservative right, which has denounced him so often, that these ideals so long nurtured by Justice Brennan should be the wellspring of freedom for leaders throughout the globe. Did not Vaclav Havel, the poet, playwright, and political leader of Czechoslovakia; express in his speech to the United States Congress that world-wide yearning for freedom under law that Justice Brennan has come to symbolize? Speaking of our constitutional documents before the United States Congress he said, "They inspire us all. They inspire us despite the fact that they are over two hundred years old. They inspire us to be citizens."⁴ Did not Nelson Mandela, the long-imprisoned leader of the South African freedom movement, express the same respect for our constitutional ideals? He said:

We fight for and visualize a future in which all shall, without regard to race, color, creed or sex, have the right to vote and to be voted into all elective organs of state. We are engaged in struggle to ensure that the rights of every individual are guaranteed and protected, through a democratic constitution, the rule of law, an entrenched bill of rights, which should be enforced by an independent judiciary, as well as a multi-party political system.⁵

Is not the preservation of the Bill of Rights by an independent judiciary the enduring legacy of Justice Brennan's life on the Court? This was the example that he gave.

In Justice Brennan's words to us, published here today for all to read, he exhorts us that "if we are to continue to be an example to the nations of the world, it will be because of our ceaseless pursuit of the constitutional ideal of human dignity."

Leaders yet to be born throughout the world will be nurtured by the ideals of the American Constitution if we but follow the course that Justice Brennan has charted for us.

4. 136 CONG. REC. S1356 (daily ed. Feb. 21, 1990).

5. 136 CONG. REC. H4136 (daily ed. June 26, 1990).