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WELCOME ADDRESS

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WELCOME ADDRESS

GARRY JENKINS

I would like to introduce Dean Clark, who will be our first speaker this morning. Dean Clark is the Royall Professor of Law at Harvard Law School and has been Dean of the law school since 1987.

Today we are here to honor, remember, and debate Justice Brennan's legacy. We are also here to discuss strategies to move forward in developing a society consistent with his vision. In his foreword to volume one of the *Harvard Civil Rights-Civil Liberties Law Review*, Professor Mark DeWolfe Howe wrote that *CR-CL* was needed to advance the personal freedoms and human dignity of the American people.

On behalf of *CR-CL*, I welcome you, and I thank you for coming today and helping us to remember Justice Brennan's commitment to advancing personal freedoms and human dignity, and, in doing so, to help *CR-CL* reinvigorate its own commitment.

Before I turn it over to Dean Clark, I would like to thank some of the many people behind the scenes. First I would like to thank my partner-in-crime, my friend, my colleague, and my Co-Editor-in-Chief, Amy McManus.

I would also like to thank two other *CR-CL* editors who have given a great deal of their time in helping put this conference together, Sarah Harrington and Brian Morrison. In addition, we have had a team of conference liaisons who have worked tirelessly to plan the panels and to coordinate the speakers. They have done a fantastic job. I would like to recognize Tor Aarestad, Josh Auerbach, Alvin Bragg, Courtney Joslin, Beong-Soo Kim, Adam Szubin, Kimberly Thomas, and Jonathan Hooks. Additionally, there are three people who have been handling the logistics behind the scenes: Kate Jones, Alyze Lowen, and Daniel Levin.

I shall turn over the discussion to Dean Clark.

ROBERT CLARK

Thank you, Gary. On behalf of the Harvard Law School, I would like to welcome all of you. I am especially pleased to acknowledge some of the judges who are here. They include Daniel O'Hern, of the New Jersey Supreme Court, which is Justice Brennan's old stomping ground; Patricia Wald, of the D.C. Circuit; Steve Reinhardt, of the Ninth

Circuit; and Abner Mikva, former Chief Judge of the U.S. Court of Appeals for the D.C. Circuit. I also offer a special welcome to Norma Cantú, Assistant Secretary for Civil Rights in the U.S. Department of Education, and Bill Lee, the acting Assistant Attorney General for Civil Rights in the U.S. Department of Justice.

I am very pleased that this event is being co-sponsored by our *Civil Rights-Civil Liberties Law Review*, together with the Brennan Center at New York University.

I want to spend just a few moments talking about the Harvard-Brennan connection. Justice Brennan, as you know, was a law student at Harvard Law School, beginning in the fall of 1928. Among his classmates were Paul Freund, Milton Katz, and Ernest Brown, all of whom became Harvard Law School faculty members. As it turned out, these connections had consequences.

In his time at law school, Brennan overlapped two years with Harry Blackmun, and one year with Erwin Griswold, who later became the dean of Harvard Law School.

There is no record that Griswold and Brennan actually knew each other while they were students. However, Dean Griswold later made up for this by appearing before Justice Brennan and the Court a near record-breaking number of times as Solicitor General. And, of course, Brennan and Blackmun became friends on the Court.

When Brennan was a law student, there was only one constitutional law course in the LLB curriculum, as was typical of many law school curriculums of the time. William Brennan did not take the course.

Today, you might have over fifteen courses in just core constitutional law, and it is hard to find a new entrant into the law teaching market whom does not want to teach constitutional law.

Brennan took public utilities regulation with Felix Frankfurter, then a professor. Professor Frankfurter used to urge his students to "Think for Yourself." Later, when they were both together on the Supreme Court, Frankfurter would sometimes say, "I always wanted my students to think for themselves but Brennan goes too far." That is the consequence of the little bits of advice you give students.

That story reminds me of another that was told about Erwin Griswold. When he was dean of Harvard Law, he had the habit of going around the school and turning off lights in the library stacks and the faculty offices if no one was here. He was a very frugal man. Because his vision was poor, he would turn off the lights even if you were present. In

November of 1965 there was a blackout in much of the East Coast of the United States; the faculty members, of course, stormed out and said, "this time Erwin has gone too far."

Well, that is connected to yet another story about Brennan. When he was appointed to the Court, he was introduced to the other Justices by Chief Justice Warren. Seven of his new colleagues were sitting around a table eating sandwiches in the dark. He thought this was strange so he put on the light. As it turned out, the Justices had all been watching the opening game of the 1956 World Series. So, as Brennan was introduced, someone immediately ordered that the light be turned off, and the Justices started watching the series again. Perhaps the Justices were unaware that the future Babe Ruth of civil rights and civil liberties just walked into the room with them.

Another connection, which is very interesting, is that when Brennan was a member of the Legal Aid Bureau at Harvard, it was probably the only functioning public interest organization at that time.

Nat Hentoff, who wrote in *The New Yorker*, said Brennan's work for the Legal Aid Bureau foreshadowed one of his chief concerns on the Court: making due process of law attend every defendant, including defendants with the least resources.

I met Justice Brennan a few times, and he told me another fact about his time at Harvard. While he was a student, his father died, and as a result Brennan had to get a scholarship that enabled him to finish his studies. He had to wait on tables in a fraternity house to supplement his income. He was very grateful for that experience, and in his mind it seemed to be a reason for his continuing to come back to the school, which he did on many occasions.

Professor Tribe, in a eulogy to Brennan, wrote that:

Through his 1,360 opinions, Justice Brennan . . . [built] an edifice of common sense and uncommon wisdom that transformed the landscape of America. If John Marshall was the chief architect of a powerful national government, then Brennan was the principal architect of the nation's system for protecting individual rights.¹

Professor Tribe also noted something that others have observed.

1. Laurence H. Tribe, *Lion of Liberalism*, TIME, Aug. 4, 1997, at 19.

Anyone who knew Justice Brennan would realize that it is not just his analytical ability and good judgement that explains his great influence but also his compassion and his extraordinary emotional intelligence.

Let me close with just one personal recollection. I first met Justice Brennan in the early 1990s at a fund-raising event. I was just starting the Campaign for Harvard Law School, and former Dean Griswold convened a big event in Washington, D.C. He also arranged that I would sit next to Brennan and have dinner with him.

I will never forget the experience. I trained to be a Catholic missionary priest, and my first reaction in talking with Brennan was, "He resembles a Monsignor or a Bishop! He has the same manner and look! He is the kind of person who will trick me into carrying out a different life plan than I imagined."

I was still very conscious of the fact that in the 1960s there was a revival in Catholicism of what used to be called the Social Gospel Movement. It began around the turn of the century and was a strong trend in Catholicism that supported the Irish Catholic labor movement efforts in the United States. The movement emphasized social justice, not theological doctrine. I felt that somehow Justice Brennan was a carrier of this frame of mind.

I do not know if any historians have explored this connection, but it seemed to me that for a brief moment, I had some insight into what might have been part of the background of this wonderful, complex man.

It was a privilege to meet him, and I hope that all of you will carry out his legacy and explore what it means for the future. Welcome.