

Dr. William Kemp was born August 21, 1925, in Wharton, TX, where he lived until entering the Navy for 3 years of service during World War II. He attended Texas A&I University in Kingsville for 3 years and was graduated from the Illinois College of Optometry in Chicago. Upon graduation, he moved to the North Shore area of Houston and was active in the community for many years, especially in the Lions International.

Dr. Kemp was active in politics where he served as president of the North Shore Democrats and skillfully represented Houston alongside with Congresswoman Barbara Jordan at the Democratic National Convention in Chicago in 1968. In 1972, Dr. Kemp was elected to the Texas State Board of Education, district 8, where he served for 11 years.

Dr. Kemp is survived by his wife of 41 years, Kathryn Lourene Kemp; three sons, Paul Davis Kemp, George William Kemp, and Robert Harris Kemp; two granddaughters, Kimberley Shae Kemp and Toni Louise Kemp; and one grandson, Matthew W. Kemp.

William Kemp will be remembered as a leader in his community whose ideas reached far and wide. His genuine enthusiasm for his community prompted people of all ages to become interested and involved in improving their community. Because I experienced Dr. Kemp's vitality and wisdom firsthand, I have no doubt that this tireless role model made Houston, TX, a richer place to live.

As friends and family reflect on his lifetime of contribution, it is only fitting that we also pay tribute to this great man and good friend.

THE PASSING OF A HERO

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, July 28, 1997

Mr. CONYERS. Mr. Speaker, on Thursday, July 24 a great constitutional scholar and advocate of social justice passed away. Supreme Court Justice William J. Brennan, Jr. served the highest branch of our judicial system from 1956 until 1990. His scholarship was at the forefront of an intellectual and moral frontier that began in the pre-civil-rights era.

Justice Brennan shaped our law and touched our lives in countless ways. In the area of voting rights he authored *Baker versus Carr*, 1962, which was one of the cornerstone of voting rights case law. It led to one-person one-vote reapportionment cases. On the issue of affirmative action he authored *Metro Broadcasting versus the Federal Communications Commission*, 1990, which upheld two affirmative action programs aimed at increasing African-American ownership of radio and television stations. In *Texas versus Johnson*, 1989, Brennan declared, "If there is a bedrock principle underlying the first amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." And continuing in his tradition of protecting the most vulnerable, in *Goldberg versus Kelly*, 1970, he established that it was a violation of the 14th amendment's guarantee of due process under law for a State to cut off a welfare recipient's benefit without a hearing.

Mr. Speaker, I rise today to honor this great drum major for justice of the 20th century. I

submit for the CONGRESSIONAL RECORD two articles from the Washington Post which I believe capture some of the spirit and letter of his contributions to our great system of justice.

[From the Washington Post, July 25, 1997]

THE BIGGEST HEART IN THE BUILDING

(By Joan Biskupic)

Supreme Court Justice William J. Brennan Jr. was remembered yesterday as a bulwark of liberal activism whose effects on America is so great—and his personality so compelling—that even those who disagreed with his views said much of his legacy will endure.

Brennan "played a major role in shaping American constitutional law," said conservative Chief Justice William H. Rehnquist. "He was also a warm-hearted colleague to those of us who served with him."

"He had the biggest heart of anyone in the building" said Thurgood Marshall Jr., son of the late justice. "Justice Brennan was not just my father's closest and dearest partner, but his hero in the pursuit of equality and justice."

Marshall, President Clinton's Cabinet secretary, said his father and Brennan could not have been more different as people, given the backgrounds from which they emerged. "But they both believed fervently in the very same ideals."

News of Brennan's death, coming shortly after noon yesterday, spread quickly among former colleagues and friends. He was known for the force of his opinions—more than 1,000—that embodied the notion that the federal courts should actively seek to right society's wrongs. He was venerated yesterday for his persuasive approach and good humor, and for a charisma that will help him be remembered for generations.

"There are few people who are truly extraordinary and we don't always know the reasons why they rise above the rest of us. But he did," U.S. appeals court judge Richard S. Arnold of Little Rock, who was a law clerk to Brennan in 1960, said yesterday. "His chief characteristics were kindness and love—to everybody."

Brennan, who retired from the court in 1990 and initially kept up professional and personal contacts, had been in poor health in recent months. He died at a nursing home in Arlington, where he had been rehabilitating after he broke his hip in November.

A court spokeswoman said Brennan's body would lie in state from 10:30 a.m. until 10 p.m. Monday at the Supreme Court Building. His funeral is set for 10 a.m. Tuesday at St. Mathews Catholic Church in the District.

All quarters of government reacted to word of Brennan's death. Clinton, who said Brennan's devotion to the Bill of Rights inspired millions of Americans and countless young law students, including myself, "ordered flags flown at half-staff at government buildings, military facilities and U.S. embassies worldwide."

In addition to Rehnquist, three other of Brennan's former court colleagues issued statements of admiration yesterday.

Justice John Paul Stevens, who sat with Brennan for 15 years and shared some of his liberal views, said, "The blend of wisdom, humor, love and learning that Justice Brennan shared with his colleagues—indeed with all those privileged to know him—was truly unique. He was a great man and a warm friend."

"Justice Brennan's death means the passing of an era in the history of the Supreme Court," Justice Sandra Day O'Connor said. "In addition to the remarkable legal legacy he left behind, he left a legacy of friendship and good will wherever he went."

Justice Anthony M. Kennedy said, "Justice Brennan was one of the great friends of

freedom, freedom for those who have it and freedom for those who yet must seek it."

Justice Antonin Scalia, who strongly disagreed with Brennan's liberal approach, nonetheless once called Brennan "probably the most influential justice of the century" and "the intellectual leader of the movement that really changed, fundamentally, the court's approach toward the Constitution."

Joshua E. Rosenkranz, a 1987-88 clerk who is now executive director of the Brennan Center for Justice at New York University, said, "I would be willing to bet that there is not a single person in our nation who hasn't been touched by Justice Brennan's legacy, whether they know it or not."

Attorney General Janet Reno said she was sad to hear Brennan had died and added: "Justice Brennan stood up for people who had no choice. He devoted his long, rich life to helping the American justice system live up to its ideals. He made a difference, and he will be remembered always by all Americans who prize the rule of law."

JUSTICE BRENNAN, VOICE OF COURT'S SOCIAL REVOLUTION, DIES

Former Supreme Court Justice William J. Brennan Jr., the progressive voice of the modern court and a justice unequalled for his influence on American life, died yesterday. He was 91.

During his 34 years on the court, Brennan pushed his colleagues to take on a variety of social issues and was widely recognized as the chief strategist behind the court's civil rights revolution.

He was the architect of rulings that expanded rights of racial minorities and women; led to reapportionment of voting districts guaranteeing the ideal of "one person, one vote," and enhanced First Amendment freedom for newspapers and other media.

A slight man with a ready Irish grin, Brennan was recognized across the political spectrum not only for his legal mastery but as a defender of individual liberty and a voice of civility. Poor health forced his retirement from the court in 1990.

"He was a remarkable human being, one of the finest and most influential jurists in our nation's history," President Clinton said yesterday upon learning of Brennan's death. "The force of his ideas, the strength of his leadership and his character have safeguarded freedom and widened the circle of equality for every single one of us."

Justice David H. Souter has said of the man he succeeded on the court: "One can agree with the Brennan opinions and one may disagree with them, but their collective influence is an enormously powerful defining force in the contemporary life of this republic."

What distinguished Brennan was his ability to forcefully articulate a liberal vision of judging. It was a vision that found the essential meaning of the Constitution not in the past but in contemporary life, prized individual rights beyond what was explicitly written in the text, and compelled him to reach out to right perceived wrongs. He called the Constitution "a sparkling vision of the supreme dignity of every individual," and employed it as a tool of racial equality and social justice.

"The genius of the Constitution rests not in any static meaning it may have had in a world that is dead and gone," he wrote in an essay published in 1997, "but in the adaptability of its great principles to cope with current problems and present needs."

In the confines of the court's conference room and chambers, Brennan was renowned for his cunning and persistence, and relentlessness in winning votes for his side. If a justice initially turned him down, Brennan

would begin with gentle persuasion, then offer grounds for compromise, then pull out all the stops to try to win another vote. If he lost, he would pursue the justice in the hope he would win on an issue the next time around.

In a May 1995 tribute to Brennan to inaugurate the Brennan Center for Justice at New York University School of Law, former appeals judge Abner J. Mikva defined "a Brennanist" as "one who influences his colleagues beyond measure." Retired Justice Harry A. Blackmun said Brennan operated in "quiet but firm tones."

Brennan was appointed to the court by President Dwight D. Eisenhower in 1956, three years after Earl Warren became chief justice. And Brennan's unmatched ability to build consensus made him a central figure in the Warren Court and a key participant in its most celebrated decisions.

He is considered the primary writer of the 1958 *Cooper v. Aaron* decision that forced school officials to accelerate classroom integration in the face of mass resistance.

Brennan also was the author of a 1962 decision that permitted federal courts for the first time to hear constitutional challenges to a state's distribution of voters, a ruling that brought new fairness to the sharing of political power between rural and urban America. He broadly interpreted the Constitution's guarantee of due process for criminal defendants, in cases, for example, that protected state defendants against self-incrimination and gave prisoners greater access to federal courts to challenge convictions. "In a civilized society," he wrote in the latter, "government must always be accountable to the judiciary for a man's imprisonment."

He led the majority to bolster the right of free speech, including a 1964 opinion that requires public figures who sue for libel to prove "actual malice" on the part of the media.

To the consternation of his conservative critics, Brennan was not afraid to cross boundaries into areas previously considered off-limits for federal courts. "Our task," Brennan once said, "is to interpret and apply the Constitution faithfully to the wisdom and understanding of the Founding Fathers. But often it is impossible to make a constitutional decision without basing certain findings on data drawn from the social sciences, from history, geography, economics and the like."

When Warren was succeeded as chief justice by Warren E. Burger and then William H. Rehnquist, the court began to move gradually to the right, and many of the rulings from the Warren era were reversed. But several Brennan decisions endured. Among the most important is *Baker v. Carr*, a 1962 opinion that gave federal courts the power to ensure the fairness of voting districts, reshaped politics and broadened participation in democracy.

Even as he found himself increasingly on the losing side in the 1980s, Brennan remained on good terms with his fellow justices. "Brennan brought to the work of the court a personal warmth and friendliness which prevented disagreements about the law from marring the good personal relations among the justices," Rehnquist once wrote.

The chief justice also remarked after Brennan had retired that "the enduring legacy of Justice Brennan—the high value which he placed on claims of individual constitutional rights asserted against the authority of majoritarian self-government—is in no danger of being forgotten or disregarded simply because he has left the bench."

Georgetown University law professor Mark V. Tushnet, who has read through the pri-

vate papers of several former justices, said Brennan's winning personal style added tremendously to his effectiveness. "If you look at the tone with which people responded to his suggestions for changing an opinion, Brennan made it easy. He was friendly and had a tone of accommodation."

A minor stroke and related poor health forced Brennan to retire suddenly in 1990, but he remained active in liberal causes. In 1994, a national anti-death penalty project was begun in his name. A year later, he was the inspiration for a free speech award given periodically by the Thomas Jefferson Center for the Protection of Free Expression in Charlottesville, Va.

Brennan said he hoped to continue effecting change and affecting lives.

"Justice Brennan has an abiding belief in the power of thoughts, thoughtful words and good will to reach understanding and solutions that more contentious methods cannot," Vernon E. Jordan, Jr., the civil rights leader and Washington lawyer, said in 1995 when a group of Brennan's admirers dedicated the Brennan Center.

Brennan was born in Newark on April 25, 1906, the second-oldest of eight children of Irish immigrant parents. His father worked as a laborer in a brewery and became a union leader and local politician.

Brennan was an honors student at the University of Pennsylvania's Wharton School of Finance and received a scholarship to Harvard Law School. Upon graduation in 1931, he joined a Newark law firm, Pitney, Hardin & Skinner, practicing there until he entered the Army in 1942. While in the military, he handled labor disputes on the staff of the undersecretary of war.

He returned to his law firm and began specializing in labor law, representing several large manufacturing enterprises, before being appointed to the New Jersey bench. In 1949 Republican Gov. Alfred E. Driscoll named him to the state superior court. Three years later, Driscoll elevated him to the New Jersey Supreme Court, and Brennan became a reliable lieutenant to Chief Justice Arthur Vanderbilt.

Brennan's nomination to the high court apparently came as a surprise. Then U.S. Attorney General Herbert Brownell Jr. telephoned him late one afternoon in his New Jersey chambers and asked that he meet Eisenhower at the White House the next day.

Brennan thought nothing of the request and even stopped at Union Station for a hot dog to bide his time, according to Robert M. O'Neil, who would become one of Brennan's first law clerks. "He didn't expect to get dinner at the White House," O'Neil said.

University of Virginia law professor John C. Jeffries Jr. wrote in his biography of Brennan's colleague, Lewis F. Powell Jr. that Brennan's shot at the high court was owed to chance.

"In 1956 the chief justice of New Jersey, Arthur Vanderbilt, was scheduled to give the keynote address at a large Washington conference on the problem of overburdened courts. Two days before the meeting, Vanderbilt fell ill, and Brennan went in his place. His speech impressed U.S. Attorney General Herbert Brownell, who, when a Supreme Court vacancy opened four months later, contemplated the electoral advantages to President Eisenhower of appointing Irish Catholic Democrat from the Northeast and recommended Brennan."

Brennan later said no one in the Eisenhower administration asked him a single question about his politics or judicial philosophy. And indeed, Eisenhower's choice for the high court marked the third time Brennan had been appointed or elevated to a court by a Republican official. The ability to bridge differences would distinguish his early career on the high court.

Brennan succeeded Justice Sherman Minton, who was retiring because of failing health, and initially received a recess appointment on Oct. 16, 1956. He was confirmed by the Senate March 19, 1957 on a voice vote. The only audible dissent came from Sen. Joseph R. McCarthy (R-Wis.), who said he was convinced that Brennan was "hostile" to congressional investigations of communism.

Brennan had given a speech in 1954 in which he said "there are some practices in the contemporary American scene which are reminiscent of Salem witch hunts."

Brennan was 50 at the time of his appointment, the youngest member of a court that included William D. Douglas, Hugo L. Black and Felix Frankfurter. In 1962 Frankfurter who taught Brennan at Harvard and was a strong advocate of limiting judicial power, told *Look* magazine: "I taught my students to think for themselves, but sometimes I think that Bill Brennan carries it too far."

Brennan formed an immediate relationship with Warren, becoming a close ally and developing the legal justifications for the decisions that would result in a social revolution.

The Warren Court broadly interpreted the Constitution to provide greater protections for individual rights. It demanded, for example, that states abide by most of the provisions of the Bill of Rights, a document originally interpreted to safeguard individuals only from the hand of the federal government. Essentially a political actor of the era, the court actively addressed society's problems, accelerating the civil rights movement, bringing fairness to reapportionment and reforming police practices.

When he saw a litigant in need, Brennan's litmus test for offering legal protection was whether anything in the Bill of Rights explicitly prevented him from doing so. He favored the individual and put the burden on the government to show that something in the Constitution disallowed protection. (The opposite, "judicial restraint" approach asks whether anything in the Constitution or in the court's precedents explicitly permits it to extend protection to an individual.)

Brennan and the other Warren-era judges crossed boundaries into areas previously considered off-limits for the federal courts. Before 1962, for example, the question of whether legislative voting districts were drawn fairly was considered a "political question," that is, the business of elected officials, not judges. But Brennan said the fairness question was constitutional, not political. Warren would later call the ruling in *Baker v. Carr* the "most important" of his time on the court. The decision broke rural America's lock on political power and gave urban voters equal representation to fulfill the principle of one person, one vote, as articulated in later voting rights cases.

Brennan also led the court in increasing protections against sex discrimination, writing in 1972, "distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members."

SPEECH RULINGS OFTEN ENGENDERED POLITICAL OUTRAGE

He had argued that laws treating men differently from women could be justified only by a compelling governmental interest—the strictest constitutional test for a law. He failed to win a majority of his colleagues to that standard but eventually succeeded in getting them to agree to an "intermediate" standard of scrutiny still in place. Until these rulings, states could, and did, treat women differently from men in a variety of ways, imposing different requirements for everything from beer drinking to alimony.

In another area of equal rights, Brennan was a strong advocate of affirmative action. In the 1979 *United Steelworkers of America v. Weber*, he wrote for the court that federal anti-discrimination law does not bar employers from adopting race-based affirmative action programs to boost the number of blacks in the work force and management.

In 1990, his last term, Brennan was the author of a decision upholding Congress's preferential treatment of blacks and other racial minorities in awarding broadcast licenses.

The court said the affirmative action program was justified by Congress's interest in broadcast diversity. The case, *Metro Broadcasting Inc. v. Federal Communications Commission*, was overturned in 1995 as the court increased its scrutiny of federal affirmative action programs.

When the court invalidated state death penalty laws in 1972 in *Furman v. Georgia*, Brennan wrote, "Death is an unusually severe and degrading punishment; there is a strong probability that it is inflicted arbitrarily." A court should determine "whether a punishment comports with human dignity. Death, quite simply, does not."

Four years later, when a majority reinstated the death penalty with a requirement for safeguards on its imposition, Brennan and his colleague and judicial soul mater, Justice Thurgood Marshall, dissented. Toward the end of their tenures on the court

(Marshall retired in 1991 and died in 1993), they were alone in opposition to capital punishment as cruel and unusual punishment.

One of Brennan's best-known opinions is his 1964 *New York Times v. Sullivan*, which made it harder for public officials to sue the media.

In it, he referred to "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Like many of his path-breaking opinions, Brennan's free speech decisions often engendered political outrage. Such was the case for his majority opinions in 1989 and 1990 decisions striking down bans on flag burning. Said Brennan, "the government may not prohibit expression simply because it disagrees with the message."

In the area of religion, Brennan favored a high wall of separation between church and state. Appeals Judge Richard Arnold of Little Rock, Ark., who as a young lawyer clerked for Brennan, once summed up Brennan's view: "In short, religion is too important to be co-opted by the state for political or governmental ends. . . . As Justice Brennan understands, public and ostentatious piety can be the enemy of true religion."

Brennan was the author of a 1987 decision, *Edward v. Aguillard*, that invalidated a Louisiana requirement that any public school teacher who taught evolution also teach "creation science." In the related area concerning the free exercise of religion, Brennan penned a majority opinion in 1963 that only a compelling state interest could justify limitations on religious liberty. Rehnquist, who was often on the opposite side of Brennan, wrote after he retired that "Brennan's abilities as a judicial craftsman, and his willingness to accept 'half a loaf' if that were necessary to obtain a court opinion, played a large part in translating what had at first been dissenting views into established jurisprudence."

Brennan first married in 1928 to Marjorie Leonard. They had two sons and a daughter. Marjorie Brennan died of cancer in 1982 after a lengthy illness. The following year, Brennan married Mary Fowler, his secretary of more than 20 years. They announced the news of their wedding to the rest of the court with a memorandum that said: "Mary Fowler and I were married yesterday and we have gone to Bermuda."

In addition to his wife, he is survived by his three children, William J. III, Hugh Leonard, and Nancy, and grandchildren.