

the Warren Court of the 1960's, a body that boldly expanded the role of the Federal courts and the Constitution itself to protect individual liberties.

Yet even when the Court shifted in a more conservative direction under Chief Justices Warren Burger and, later, William Rehnquist, Justice Brennan was not content to play a marginal role as an eloquent dissenter. Armed with a keen intellect, a forceful personality and a gift for building coalitions, he had surprising success in mustering narrow majorities to keep alive the legacy of the Warren Court and its core notion that the Constitution was a living document that could and should be interpreted aggressively.

"There is no individual in this country, on or off the Court, who has had a more profound and sustained impact upon public policy in the United States for the past 27 years," said an article in the conservative journal *National Review* in 1984, and it is hard to disagree with that assessment. Justice Brennan was the author of 1,350 opinions, many of them landmark rulings that altered the political and social landscape.

He left his mark on a wide range of issues. *Banker v. Carr*, in 1962, asserted the one-person-one-vote doctrine that transformed democracy and, through reapportionment, the composition of the nation's legislatures. His famous First Amendment ruling in *New York Times v. Sullivan* in 1964 reconfigured the law of libel to give "breathing space" for free expression and the robust debate of public issues. In *Goldberg v. Kelly*, a 1970 ruling of which he was particularly proud, Justice Brennan initiated what turned out to be a steady expansion of the 14th Amendment's guarantee of due process by ruling that a state could not terminate a welfare recipient's benefits without a hearing.

Over all, Justice Brennan's greatness was rooted in his vision of the law as a moral force and his understanding that the "genius of the Constitution" would be betrayed if the Court insisted on the narrow, static doctrine of original intent, the notion that the Constitution can best be interpreted through the eyes of the Framers. The unique feature of the Constitution, he argued instead, was "the adaptability of its great principles to cope with current problems and needs."

That vision and driving passion are not thriving in today's Court. Like Justice Brennan himself, they are sorely missed.

ABROAD AT HOME
(By Anthony Lewis)
REASON AND PASSION

MINNEAPOLIS.—William J. Brennan Jr. once said, in conversation, that every Supreme Court justice with whom he had served was as committed as he was to the Constitution. It was not just an idle remark. He meant that he respected his colleagues' faith in their differing understandings of what the Constitution requires.

Justice Brennan's extraordinary influence on the Court, his ability to shape majorities, was often ascribed to his personal charm and kindness. But those qualities would not have persuaded men and women of strong views. I think, rather, that his colleagues felt his respect for them—and felt in him an intellectual force that was the stronger because it was accompanied not by arrogance but by modesty.

Justice Brennan's character won him affection on the Court across ideological lines. Justice Antonin Scalia, calling him "probably the most influential justice of the century," said, "Even those who disagree with him the most love him." Justice David Souter, who was appointed to the Court on Justice Brennan's retirement in 1990, was pressed at his confirmation hearing to dis-

tance himself from the expansive Brennan view of human dignity and freedom. He said:

"Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and ever will have."

Outside the Court, Justice Brennan's criticisms on the political right denounced him in extravagant terms, calling him an "activist" who invented constitutional protections of liberty. But even in their own terms those critics missed the point.

In the great decisions with which he is especially linked, Justice Brennan was passionately faithful to the principles that the Framers expressed in the spacious phrases of the Constitution: "the freedom of speech," "due process of law" and the rest. What he did was to apply those principles to changed conditions.

Thus James Madison, drafter of the First Amendment, intended it to protect Americans' right to criticize their rulers—however harshly, even falsely. At the time, civil libel actions did not menace that freedom. But when Southern politicians began using libel, in the 1960's, as a way to threaten press reporting of the civil rights movement, Justice Brennan saw that libel suits, too, must conform to Madison's principle. That was the thrust of his majestic opinion in *New York Times v. Sullivan*.

Again, the courts over many years kept hands off the issue of legislative districting. But when state legislatures came to be controlled by small numbers of voters in rural districts, and the legislators in power refused to redistrict, Justice Brennan grasped the challenge to democracy. His remarkable opinion in *Baker v. Carr* in 1962—one that no other justice could have made the Court's—opened the way for a judicial scrutiny that is now universally accepted.

More broadly, Justice Brennan saw that the Constitution's guarantees must be applied to the reality of the vast expansion of government in modern times. In *Goldberg v. Kelly* in 1970, he wrote for the Court that government benefits—on which so many now depend—could not be withdrawn without notice and a hearing.

He "translated from the level of principle to legal reality," Justice Stephen Breyer said, adding: "That is an enormous contribution."

We have a more conservative Supreme Court now, and it has overturned some of Justice Brennan's opinions. But the heart of his legacy remains. Part of that legacy is in the institution itself.

Here in Minneapolis the other day, at the Eighth Circuit Judicial Conference, Justice Clarence Thomas spoke movingly of the Court and Justice Brennan. "I don't think there was a more decent or more brilliant human being," he said. He described how well the justices get along today despite their differences; he said he hoped Americans would get over "the presumption that all is wrong with our institutions" and realize that "they are working and those in them deserve our respect."

Justice Brennan left us his vision of American freedom. Just before his retirement he wrote the Court's opinion in the second flag-burning case. "We are aware," he said, "that desecration of the flag is deeply offensive to many." But "punishing the desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering."

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ENTITLED "U.S. ARCTIC RESEARCH PLAN, BIENNIAL REVISION: 1998-2002"—MESSAGE FROM THE PRESIDENT—PM 57

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs.

To the Congress of the United States:

Pursuant to the provisions of the Arctic Research and Policy Act of 1984, as amended (15 U.S.C. 4108(a)), I transmit herewith the fifth biennial revision (1998-2002) to the United States Arctic Research Plan.

WILLIAM J. CLINTON.

THE WHITE HOUSE, July 29, 1997.

MESSAGES FROM THE HOUSE

At 11:25 a.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 103. An act to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes.

H.R. 1596. An act to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges, and for other purposes.

H.R. 1855. An act to establish a moratorium on large fishing vessels in Atlantic herring and mackerel fisheries.

H.R. 1953. An act to clarify State authority to tax compensation paid to certain employees.

H.R. 2005. An act to amend title 49, United States Code, to clarify the application of the Act popularly known as the "Death on the High Seas Act" to aviation incidents, and for other purposes.

H.R. 2209. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1998, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con Res. 74. Concurrent resolution concerning the situation between the Democratic People's Republic of Korea and the Republic of Korea.

H. Con. Res. 98. Concurrent resolution authorizing the use of the Capitol grounds for the SAFE KIDS Buckle Up Car Seat Safety Check.

H. Con. Res. 124. Concurrent resolution expressing the sense of the Congress regarding acts of illegal aggression by Canadian fishermen with respect to the Pacific salmon fishery, and for other purposes.

The message further announced that the House has passed the following bills, without amendment:

S. 430. An act to amend the Act of June 20, 1910, to protect the permanent trust funds of the State of New Mexico from erosion due to inflation and modify the basis on which distributions are made from those funds.

S. 670. An act to amend the Immigration and Nationality Technical Corrections Act of 1994 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States.

The message also announced that pursuant to clause 6 of rule X, the Speaker announced the following modifications to the conference appointment to the bill (H.R. 1119) to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes:

Mr. McKEON is added to the panel for the Committee on National Security to follow Mr. BARTLETT.

The first proviso to the panel from the Committee on Resources is stricken.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1757) to consolidate international affairs agencies, to authorize appropriations for the Department of State and related agencies for fiscal years 1998 and 1999, and ensure that the enlargement of the North Atlantic Treaty Organization [NATO] proceeds in a manner consistent with United States interests, to strengthen relations between the United States and Russia, to preserve the prerogatives of the Congress with respect to certain arms control agreements, and for other purposes, and requests a conference with the Senate on the disagreeing votes of the two Houses thereon;

And appoints the following Members as the managers of the conference on the part of the Houses:

For the consideration of the House bills (except title XXI) and the Senate amendment, and modification committed to conference: Mr. GILMAN, Mr. LEACH, Mr. HYDE, Mr. BEREUTER, Mr. SMITH of New Jersey, Mr. HAMILTON, Mr. GEJDENSON, Mr. LANTOS, and Mr. BERMAN.

For the consideration of title XXI of the House bill, and modifications committed to conference: Mr. GILMAN, Mr. HYDE, Mr. SMITH of New Jersey, Mr. HAMILTON, and Mr. GEJDENSON.

At 5:33 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 75. Concurrent resolution expressing the sense of the Congress that States should work more aggressively to at-

tack the problem of violent crimes committed by repeat offenders and criminals serving abbreviated sentences.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1348. An act to amend title 28, United States Code, relating to war crimes.

H.R. 2266. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 1348. An act to amend title 18, United States Code, relating to war crimes; to the Committee on the Judiciary.

H.R. 1596. An act to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges, and for other purposes; to the Committee on the Judiciary.

H.R. 1855. An act to establish a moratorium on large fishing vessels in Atlantic herring and mackerel fisheries; to the Committee on Commerce, Science, and Transportation.

H.R. 1953. An act to clarify State authority to tax compensation paid to certain employees; to the Committee on Governmental Affairs.

The following concurrent resolutions were read and referred as indicated:

H. Con. Res. 74. Concurrent resolution concerning the situation between the Democratic People's Republic of Korea, and for other purposes; to the Committee on Foreign Relations.

H. Con. Res. 75. Concurrent resolution expressing the sense of the Congress that States should work more aggressively to attack the problem of violent crimes committed by repeat offenders and criminals servicing abbreviated sentences; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following measures were read the first and second times by unanimous consent and placed on the calendar:

H. Con. Res. 98. Concurrent resolution authorizing the use of the Capitol Grounds for the SAFE KIDS Buckle Up Car Seat Safety Check.

H. Con. Res. 124. Concurrent resolution expressing the sense of the Congress regarding acts of illegal aggression by Canadian fishermen with respect to the Pacific salmon fishery, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2617. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, a rule regarding debt collection received on July 23, 1997; to the Committee on Finance.

EC-2618. A communication from the Chief of the Regulations Unit, Internal Revenue

Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Ruling 97-31 received on July 22, 1997; to the Committee on Finance.

EC-2619. A communication from the Assistant Commissioner (Examination), Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Maquiladora Industry Coordinated Issue Revision" received on July 23, 1997; to the Committee on Finance.

EC-2620. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule received on July 21, 1997; to the Committee on Finance.

EC-2621. A communication from the National Director, Tax Forms and Publications Division, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report relative to Revenue Procedure 97-32 received on July 22, 1997; to the Committee on Finance.

EC-2622. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to agricultural quarantine and inspection services (RIN0579-AA81), received on July 24, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2623. A communication from the Administrator, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to building grants program (RIN0524-AA03), received on July 21, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2624. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to limited ports, received on July 21, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2625. A communication from the Administrator, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to Higher Education Challenge Grants Program (RIN0524-AA02), received July 21, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2626. A communication from the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to popcorn promotion, received on July 23, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2627. A communication from the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to Federal milk orders, received on July 23, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2628. A communication from the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to sheep promotion, research, and information, received on July 23, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2629. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to brucellosis in cattle, received on July 22, 1997; to the Committee on Agriculture, Nutrition, and Forestry.