

Essays
THE JURISPRUDENCE OF JUSTICE
WILLIAM J. BRENNAN, JR.

FOREWORD

The fact of the matter is that we hold many of the freedoms we enjoy because of the wisdom, courage and foresight of the 104 Justices who have sat on the Supreme Court.

But there have been moments in history when the Court—like other institutions in this nation—has come to a crossroads; moments when the Court's future has confronted its past—moments when its long-term direction has been at stake.

It is at these moments when the Court is most shaped by the outlook and philosophy of the individuals who serve as Justices. In my view, we are witnessing such a moment today.

. . . .

I sincerely hope, Judge [Souter], that you will join me in a dialogue on the Constitution . . . about:

—The due process clause and its protection of our right to privacy and individual liberty;

—The equal protection clause and its guarantees of racial equality and equal rights for women;

—The first amendment and its protection of freedom of speech and religion;

—And other important constitutional issues of our day.

At this fateful moment in our history, we have a right to know—and a duty to discover[]—precisely what you . . . think about the great constitutional questions of our time.

—Hearings on the Nomination of Judge

David Souter to be Associate Justice of the United States Supreme Court, Before the Senate Judiciary Comm., 101st Cong., 2d Sess. (Sept. 13, 1990) (opening statement of Sen. Joseph Biden, Del., Chairperson of the Senate Judiciary Comm.).

Justice William J. Brennan, Jr. announced his retirement from the United States Supreme Court on July 20, 1990 after thirty-four years of service. Though not all commentators agree with Justice Brennan's opinions, few dispute that he had a substantial impact on the jurisprudence of the Court. The Editors of the Law Review invited a distinguished panel to comment on four separate areas of

constitutional law from among the many upon which Justice Brennan left his mark. The essays that follow comprise their thoughtful responses. The analyses are not meant to be, nor could they be, comprehensive in scope. Instead, the essays provide critical perspectives on the four rubrics—freedom of religion, freedom of speech, equal protection, and substantive due process—that Senator Biden later called “the great constitutional questions of our time.” Together, they offer a glimpse of the extraordinary contributions of an historic jurist.