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Justice Kennedy, Teacher

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INTRODUCTION

In a tribute paid upon Justice Kennedy's retirement, Chief Justice Roberts noted "his abiding commitment to civics education."¹ Ask other judges, his former law clerks, members of the academy, middle and high school classroom teachers, and students themselves: to a person they say, Justice Kennedy is "a teacher at heart."² "One thing that immediately struck me . . . was his respect and love of teaching."³ "He sees teaching and judging as two sides of the same coin."⁴ "Teaching may prove to be his greatest legacy."⁵ So many have seen this side of the Justice because he is tirelessly peripatetic in his teaching.⁶ And wherever he goes, he greets each and every one of us — not just judges and lawyers — as a "fellow adherent to the idea and the reality of the rule of law."⁷ As adherents, he reminds us, we have

¹ Chief Justice John G. Roberts, Jr., *In Tribute: Justice Anthony M. Kennedy*, 132 HARV. L. REV. 1 (2018).

² E.g., E-mail from Ellen Wong, Teacher, McClatchy High School, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Jan. 4, 2019, 6:58 AM) (on file with author) ("It only takes a minute or two with Justice Kennedy to know he is a teacher at heart."); E-mail from Ting Lan Sun, CEO, Natomas Charter School and State Board of Education Member, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Jan. 3, 2019) (on file with author) ("I think Justice Kennedy is a true teacher at heart.").

³ E-mail from Kevin Williams, Teacher, Davis Senior High Sch., to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Jan. 7, 2019, 10:06 AM) (on file with author) ("One thing that immediately struck me about Justice Kennedy was his respect and love of teaching. He came from a family of teachers, and frankly, I think he sees himself as one.").

⁴ Telephone Interview with Ashutosh Bhagwat, Martin Luther King, Jr. Professor of Law, UC Davis Sch. of Law (Jan. 31, 2019).

⁵ E-mail from Ellen Wong, *supra* note 2.

⁶ As Professor Jack Goldsmith, who clerked for the Justice during the 1990–91 Term, wrote recently, "Kennedy has long been, and will surely remain, an active ambassador for the court and the U.S. rule of law — at home with everyone from legal experts to schoolchildren and laypeople, and abroad before foreign jurists and dignitaries. He pushes himself incessantly to learn and think about [United States] and judicial history and traditions. And he is a mesmerizing speaker and devoted teacher. Two years ago, my students [at Harvard Law School] gaped in awe for [ninety] minutes as the now-[eighty-one]-year-old justice, without notes, brilliantly analyzed a recent opinion." Jack Goldsmith, *Justice Kennedy's Retirement Leaves the Future of U.S. Constitutional Law Entirely Up For Grabs*, WASH. POST (June 27, 2018), https://www.washingtonpost.com/opinions/justice-kennedys-retirement-is-the-biggest-event-in-us-jurisprudence-in-at-least-15-years/2018/06/27/746db704-585d-11e7-b38e-35fd8e0c288f_story.html.

⁷ E.g., *Free Speech and How to Be Civil About It: Advice from SCOTUS Judge*, KCRA (Sept. 16, 2017, 5:50 PM) (article with accompanying video of Justice Kennedy's opening remarks, beginning with this greeting), <https://www.kcra.com/article/free-speech-and-how-to-be-civil-about-it-advice-from-scotus-judge-1/12258212> [hereinafter *Free Speech and How to Be Civil About It*].

the duty to truly learn and fully understand the fundamentals of our constitutional democracy. Because, “we, the people” is no empty phrase; textually and structurally, the ultimate duty to protect, preserve and defend the Constitution, our way of life, our freedoms, resides first and foremost in us, the citizenry.

There are many important aspects to Justice Kennedy’s legacy as lawyer, circuit judge and Justice, but any account of his many contributions is incomplete without fully honoring his role as teacher.⁸ In doing so, it is most fitting to listen directly to those he has taught and taught with over the years, drawing their words from published reports and personal interviews.

I. TEACHING ROOTS

Justice Kennedy comes by his teaching and civics credentials honestly, as the son of a teacher and civic activist. He bears his mother Gladys’s maiden name as his middle name, McLeod.⁹ Gladys attended Stanford University, and as archives of the *Stanford Daily* reflect, was “very active” in campus community affairs.¹⁰ She joined Delta Gamma, whose founding aims were to promote women’s “educational and cultural interests, [] create in them a true sense of social responsibility, and [] develop in them the best qualities of character.”¹¹ Graduating in 1928, Gladys lived in San Francisco and taught school for two years, remaining active in the city’s social life.

⁸ Justice Kennedy himself has embraced the label of teacher. For example, in presenting the Supreme Court’s 2016 Budget to the House Committee on Appropriations, as he did with Justice Steven Breyer for many years, Justice Kennedy at one point exclaimed, “We teach! We teach what the Constitution is, we teach what rights are, we teach what responsibilities are” He happened to be addressing the hot-button issue of cameras in the courtrooms, but the words conveyed a role he embodies in any number of contexts. Gabe Roth, *Justice Kennedy: We’re Teachers*, C-SPAN (March 23, 2015), <https://www.c-span.org/video/?c4666258/justice-kennedy-were-teachers> (User-created clip by Gabe Roth of C-SPAN Supreme Court Fiscal Year 2016 Budget, Presentation to House Appropriations Subcommittee on Financial Services and General Government); see also *Supreme Court Fiscal Year 2016 Budget*, C-SPAN (Mar. 23, 2015), <https://www.c-span.org/video/?324970-1/supreme-court-budget-fiscal-year-2016> (full video of the hearing).

⁹ *Associate Justice Anthony M. Kennedy*, COURTHISTORY.ORG, <http://courthistory.tripod.com/kennedy.html> (last visited Mar. 18, 2019).

¹⁰ See E-mail from James Maginness, Branch Librarian, Ninth Circuit Library, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Jan. 18, 2019, 11:18 AM) (report based on review of information gleaned from search of newspaper archives and *Stanford Daily* archives).

¹¹ *Our Story*, DELTA GAMMA FRATERNITY, <https://deltagamma.org/ourstory> (last visited Mar. 15, 2019) (quoting the Delta Gamma Constitution).

After moving to Sacramento for work at the State Capitol, she met Anthony J. “Bud” Kennedy, a former dock worker turned successful lawyer and lobbyist, whom she married in 1932.¹² Gladys — known as “Sis” — did not resume classroom teaching, but continued with her many civic activities as she raised their family of three children, with Anthony the middle child. The Pony Express statue in Old Sacramento is but one of the contributions she spearheaded, with a plaque nearby acknowledging her as “Gentle Lady, Gracious Friend, Exemplary Citizen.” A smaller artist’s model of that statue has stood on a pedestal in her son’s Supreme Court chambers, near his desk.¹³

In 1963, a year after passing the bar, having served a stint in the Army National Guard and begun to practice law, Justice Kennedy married another teacher, Mary Jeanne Davis, a native Sacramentan he had known since childhood. Mary graduated from the University of California before obtaining her Masters’ Degree in Education from Stanford University.¹⁴ Once their three children were old enough to attend school, Mary taught third grade at Golden Empire Elementary School, beginning in 1979.¹⁵ Mary retired from full-time classroom duty once Justice Kennedy was appointed to the Supreme Court and the family moved to the Washington area. But she has continued to identify as a teacher and been an active partner in the Justice’s educational initiatives.

¹² Multiple sources repeat these basic outlines of Justice Kennedy’s parents’ biographies. E.g., *Associate Justice Anthony M. Kennedy*, *supra* note 9; *Anthony Kennedy: Supreme Court Justice (1936-)*, BIOGRAPHY (April 2, 2014), <https://www.biography.com/people/anthony-kennedy-9362868>; *Anthony M. Kennedy*, OYEZ, https://www.oyez.org/justices/anthony_m_kennedy (last visited Mar. 18, 2019).

¹³ A copy of a photograph showing the Justice at his desk with the model of the Pony Express statue hangs today in the Justice Anthony M. Kennedy Library and Learning Center in the Robert T. Matsui U.S. Courthouse in Sacramento, near another model of the Pony Express statue obtained locally and a photo of the plaque honoring Gladys Kennedy.

¹⁴ E-mail from James Maginness, Branch Librarian, Ninth Circuit Library, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Jan. 23, 2019 9:43 AM) (confirming Mary’s Stanford Master’s degree and UC undergrad degree) (on file with author).

¹⁵ See Emily Cadei & Michael Doyle, *Justice Kennedy Played an Unexpectedly Pivotal Role at the Supreme Court*, SACRAMENTO BEE (June 27, 2018, 2:47 PM), <https://www.sacbee.com/latest-news/article213928224.html>; see also Email from Maginness, *supra* note 14 (confirming Mary’s Golden Empire school tenure).

II. THE TEACHER WITHIN EMERGES

As one friend puts it, Tony Kennedy as a boy “was always a great student.”¹⁶ Powerhouse former state judge and McGeorge Law School Dean Gordon D. Schaber summed up those early years this way, upon Ninth Circuit Judge Kennedy’s nomination to the Supreme Court,

As a youngster, his curriculum in his elementary school could not hold him and absorb all of his intellect and energies. At the age of ten years, he began to work almost full time in the State Senate as one of the first pages to be employed in California. Simultaneously, he began accompanying his father to trials throughout the northern part of the State and worked around the law office. He did a great deal more of this prior to the time he attended college.¹⁷

Throughout his youth, Kennedy maintained his earnest nature, and remained admirably decorous despite his father’s efforts to incite mischief.¹⁸ He ranked as valedictorian of his graduating class at McClatchy High School.¹⁹ In college at Stanford, and then at Harvard Law after a stint at the London School of Economics, the future Justice stood out as a “brilliant student.”²⁰

¹⁶ Email from Joe Genshlea, Esq., Founder, Joe Genshlea Law and Mediation, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Feb. 20, 2019, 4:44 PM) (on file with author).

¹⁷ *Nomination of Anthony M. Kennedy to be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary*, 100th Cong. 14 (1987) [hereinafter *Schaber Letter*] (letter from Gordon D. Schaber, Dean, McGeorge Sch. of Law, to Vic Fazio, Rep., House of Representatives (Dec. 2, 1987)).

¹⁸ Douglas Jehl, *A Product of Two Sides of Town: Judge Kennedy’s Roots in Sacramento Go Deep*, L.A. TIMES (Dec. 14, 1987), http://articles.latimes.com/1987-12-14/news/mn-19225_1_appeals-court (noting “young Tony was a somber and conscientious boy ‘who drew the line on his responsibilities at a very young age,’” such that his “big moment came when he dropped his gum off the Washington Monument on his trip to the East”; quoting close friend David Dozier as saying Kennedy “was so straitlaced that his father once half-seriously offered his son \$100 if he would get himself arrested ‘so that the police would call up Mr. Kennedy, like other fathers, and say ‘Come on down, we got him, take him home.’”).

¹⁹ Sam Stanton & Darrell Smith, *Justice Kennedy Loves Sacramento but Friends Doubt He’ll Retire in His Hometown*, SACRAMENTO BEE (June 27, 2018, 5:33 PM), <https://www.sacbee.com/news/politics-government/capitol-alert/article213935779.html> (noting senior high school class rank of valedictorian). The text of Justice Kennedy’s valedictory speech hangs in the Kennedy Learning Center, on loan from McClatchy High School, along with his note authorizing its display.

²⁰ BIOGRAPHY, *supra* note 12.

Harvard Law gave an early nod to Tony Kennedy's teaching potential in electing him a member of the Board of Student Advisors while he was in law school.²¹ Advisors were "entrusted with running the first-year moot court program," and each was assigned twenty 1Ls as mentees.²² One of those Kennedy mentored, now-Senior United States Circuit Judge Diarmuid O'Scannlain, recalls feeling "perfectly free to call on him. He was always very gracious and helpful."²³

A formal offer to teach arrived soon after the Justice and Mary settled in Sacramento, Kennedy having returned home to join his father's local firm after his father's untimely death. Local audiences have been treated to his story of being recruited by Dean Schaber to teach constitutional law. The new lawyer demurred, saying he'd be happy to teach business law, something he understood well enough from his bread and butter law practice. No, Dean Schaber insisted, he needed a Con Law professor and Anthony Kennedy fit the bill. Ultimately Kennedy relented and in 1965, while maintaining his private practice, launched a twenty-three-year run as an adjunct Con Law professor,²⁴ teaching night classes held at the time upstairs in an unassuming downtown office building. The Justice has wryly observed that experience teaching Con Law, something he'd not gone looking for, helped burnish his qualifications for appointment to the federal bench.²⁵ But long before appointment was on anyone's mind, students in Professor Kennedy's classes admired the excellent teacher, who went out of his way to be sure they comprehended the meaning of court cases and the legal underpinnings of decisions.²⁶

²¹ Judge Diarmuid F. O'Scannlain, *In Tribute: Justice Anthony M. Kennedy*, 132 HARV. L. REV. 8, 8 (2018).

²² Telephone Interview with Diarmuid F. O'Scannlain, Senior Circuit Judge, Ninth Circuit Court of Appeals (Feb. 1, 2019).

²³ *Id.*

²⁴ See Bethany Daniels, *Renowned Tsakopoulos Family Donates \$1 Million to Establish Justice Anthony M. Kennedy Endowed Chair at McGeorge School of Law*, U. PAC., MCGEORGE SCH. L. (Aug. 7, 2018), <https://www.mcgeorge.edu/news/news-2018/tsakopoulo-gift-kennedy-endowed-chair-at-mcgeorge> (reviewing Justice Kennedy's history with school, beginning in 1965).

²⁵ The author has been in a local audience treated to the Justice's telling of Dean Schaber's call to teach. For the Dean's more formal confirmation that he was the one who reached out, see *Schaber Letter*, *supra* note 17 ("Of course, having been aware of his intellect and talents, I early seized upon his return to Sacramento to solicit interest in teaching. During these past twenty-three years, that decision has proven to be one of my finest.")

²⁶ In the years prior to his appointment to the bench, students in other Con Law sections even would attend Kennedy's classes to be sure they got the benefit of his teaching, he was so good. See Telephone Interview of Ed Telfeyan, Professor of

III. TEACHER AND JUDGE

Following his appointment to the Ninth Circuit in 1975, at age thirty-eight the youngest American appellate judge at the time, then-Judge Kennedy continued teaching constitutional law at McGeorge, which had become the law school for the University of the Pacific, with a campus in Sacramento's Oak Park. After his appointment to the Supreme Court in 1988, while he retained a close connection with those on the McGeorge campus, the nature of his teaching and its reach naturally expanded.

A. *Teaching Through Written Decisions*

In becoming a judge and Justice, Kennedy's teaching extended to the process of preparing his formal opinions and the opinions themselves. He takes pains to ensure lay audiences know the importance of a judge's explaining him or herself in written decisions, after considering all sides of an argument. This is our form of transparency, an exercise in intellectual integrity, a way to earn trust and keep faith with the reader, if not fully persuade. The explanation matters, to other judges with whom one serves, to the parties to a case, and to the public at large.²⁷ The written opinion, whether majority,

Lawyering Skills, McGeorge Sch. of Law (Feb. 12, 2019) (indicating that the interviewee would attend Justice Kennedy's constitutional law class despite being enrolled in another class); *see also Schaber Letter, supra* note 17 (reporting "He has a tremendous intensity about his teaching and his work. Our students regularly applaud his presentations during the course of the academic year."); Danielle Burton, *Ten Things You Didn't Know About Anthony Kennedy*, U.S. NEWS & WORLD REPORT (Oct. 1, 2007), <https://www.usnews.com/news/national/articles/2007/10/01/10-things-you-didnt-know-about-anthony-kennedy> (describing Kennedy as an "extremely popular teacher," who "reportedly does not use notes when lecturing and has been known to receive standing ovations from his students"). Moreover, in "September 1987, he delivered a lecture attired as President James Madison (complete with powdered wig) in celebration of the bicentennial of the U.S. Constitution." *Id.*; *see also* Stanton & Smith, *supra* note 19 (also reporting James Madison story). *But see* Telephone Interview with Telfeyan, *supra* (confirming powdered wig story but opining it's overplayed given that Kennedy did not rely on costumes as a general rule to make his points).

²⁷ Here as well, the author has been in the audience more than once to hear Justice Kennedy's explanation of the reasons for and importance of written decisions. *See A Conversation on the Constitution with Justices Stephen Breyer, Anthony Kennedy, and Sandra Day O'Connor: Freedom of Speech*, ANNENBERG CLASSROOM, <http://www.annenbergclassroom.org/page/conversation-judicial-independence> [hereinafter *A Conversation on the Constitution*] (Beginning at 1:56, Justice Kennedy explained the purpose of judicial decisions to ultimately "convince the litigants that they've had a fair hearing to resolve the case according to the law, so that in the long term, people will give it allegiance and loyalty.") (last visited Mar. 15, 2018).

concurrence or dissent, is a hallmark of the judiciary's independence, and of its restraint, the deceptively simple way the third branch anchors itself in deciding those cases and controversies referred it by the Constitution.²⁸

Early in his tenure as an Associate Justice, Kennedy wrote a brief and solitary concurrence displaying his understanding of the judicial opinion as tool for communicating beyond the Court's towering marble columns. In *Texas v. Johnson*,²⁹ a Court majority led by Justice Brennan affirmed a state appellate court's reversal of a criminal conviction for "desecration of a venerated object."³⁰ The venerated object was the American flag, which Johnson had burned in front of the Dallas City Hall following a demonstration during the 1984 Republican National Convention.³¹ The Court majority found Johnson's conviction violated the First Amendment as he was engaging in "expressive conduct" without "threaten[ing] to disturb the peace," and the State's interest in "preserving the flag as a symbol of nationhood and national unity" was insufficient to justify the conviction.³² Justice Kennedy joined the majority opinion "without reservation," but wrote his concurrence "with a keen sense that this case, like others before us from time to time, exacts its personal toll."³³

He explained the difficulty posed by the case in that "[w]e cannot here ask another Branch to share responsibility," as when a more complex statute challenged as unconstitutional requires statutory interpretation in the process. He clarified why the Court was tasked with answering the question posed by the case: "[W]e are presented with a clear and simple statute to be judged against a pure command of the Constitution. The outcome can be laid at no door but ours."³⁴ And he sensitively acknowledged the powerful views of the dissenters, with whom he signaled his agreement insofar as "the flag holds a lonely place of honor in an age when absolutes are distrusted and simple truths are burdened by unneeded apologetics"; he recognized the flag as "constant in expressing beliefs Americans share, beliefs in law and peace and that freedom which sustains the human spirit."³⁵ And then, in two straightforward and beautifully crafted sentences, he

²⁸ See U.S. CONST. art. III, § 2.

²⁹ 491 U.S. 397 (1989).

³⁰ *Id.* at 400.

³¹ *Id.* at 399.

³² *Id.* at 420 (Kennedy, J., concurring).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 421.

explained: “The case here today forces recognition of the costs to which those beliefs commit us. It is poignant but fundamental that the flag protects those who hold it in contempt.” Because Johnson’s acts qualified as speech, “he must go free.”³⁶

Texas v. Johnson is a particularly good example of Justice Kennedy’s teaching through his opinions,³⁷ as the Justice himself has explained. After the opinion issued, he was visiting California when an attorney recognized him and approached. The man said his own father’s reaction to the *Texas* decision was to say his son should be ashamed to be an attorney. The father’s reactions were so strong because he’d been a prisoner of war held by Germans during World War II; making small flags from scraps of material had helped keep up morale. The son took the tack of giving his dad the Court’s opinion, including Justice Kennedy’s concurrence. His dad came back the next day and said he could be proud of being an attorney after all. In Justice Kennedy’s words, “He thought about it. He realized that he was fighting for something, and what he was fighting for was the right to have your own thoughts, to reach your own conclusions, to protest, to change

³⁶ *Id.*

³⁷ There are many other examples of Justice Kennedy opinions that serve to teach an audience broader than lawyers and judges. Just two that come immediately to mind, based on the author’s own adjunct teaching of Federal Courts at McGeorge Law School and a conversation with Professor Bhagwat, include *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593-2608, apps. A&B (2015) (opening reference to Constitution’s promise of “liberty to all within its reach”; reviewing the “history of the subject now before the Court” and the evolving history of marriage as “one of both continuity and change”; examining the language of the Fourteenth Amendment’s Due Process clause and “instructive precedents,” observing “dynamic of our constitutional system that individuals need not await legislative action before asserting a fundamental right”; concluding “same-sex couples may exercise the fundamental right to marry” and “there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character”; appending a large set of federal and state court decisions addressing same sex marriage) and *Boumediene v. Bush*, 553 U.S. 723, 732-98 (2008) (beginning substance of decision with “a brief account of the history and origins of the writ” of habeas corpus, covering the Magna Carta’s provision for the writ and the Framers’ views; drawing “guidance as well from founding-era authorities addressing the specific question before us”; analyzing jurisdictional questions “regarding the Constitution’s geographic scope” from a historical perspective and close reading of case law; rejecting Government’s sovereignty arguments as raising “troubling separation-of-powers concerns,” noting “[o]ur basic charter cannot be contracted away like this”; all leading to holding U.S. CONST. art. I, § 9, cl. 2 “has full effect at Guantanamo Bay,” and after further analysis of operation of Detainee Treatment Act of 2005, holding it “is not an ‘adequate substitute’ for habeas review” and section 7 of the Military Commissions Act of 2006 operates as an unconstitutional suspension of the writ).

your mind [—] and he changed his mind.”³⁸ If only all judges could be so persuasive through our decisions in convincing critics to temper their views!

B. Mentoring Law Clerks in the Process

While Justice Kennedy is anything but law clerk driven when it comes to drafting his decisions,³⁹ he of course worked closely with his many clerks over the years, forging strong relationships and lasting bonds. A number have shared publicly their distinct memories of his contributions to their understanding and appreciation of the law, his approach to the law, and what he expected of them to do his job according to the high standards he set for himself.

One former clerk, Ashutosh Bhagwat, is now a professor at UC Davis School of Law. While he sees the role of Court law clerk as “very different from that of a student,” given the independent research and writing involved, Professor Bhagwat distills the essence of Justice Kennedy’s approach in saying “he saw judging and teaching as two sides of the same coin.”⁴⁰ Through long discussions about a speech Justice Kennedy planned to give, Bhagwat recalls realizing the Justice “clearly saw the job of the judge as highly pedagogical.” And it was not just other judges and lawyers he saw as his audience: “[H]e really thought this stuff should be accessible to people as a whole.”⁴¹

Bhagwat’s co-clerk, Michael C. Dorf, is also now a professor at Cornell Law School. Before his Kennedy clerkship, Professor Dorf served an appellate court clerkship where his main task was writing bench memos. Justice Kennedy eschewed bench memos, preferring to rely on his own, unfiltered reading of parties’ briefs. While the Justice requested copies of key precedent, Dorf reports, he “also instructed us to make audio recordings of our thoughts so he could listen to them on his drive into work each morning. . . . I was flummoxed by this assignment. For some reason, sitting at my desk alone, I could not just talk into a microphone.”⁴² Dorf tried a workaround, which involved “writing a short bench memo and then recording myself reading it.”⁴³

³⁸ *A Conversation on the Constitution*, *supra* note 27.

³⁹ Jeffrey Pojanowski, *Tribute: Remembering Little Things That Matter*, SCOTUSBLOG (June 27, 2018, 3:23 PM), <https://www.scotusblog.com/2018/06/tribute-remembering-little-things-that-matter/>.

⁴⁰ Interview with Bhagwat, *supra* note 4.

⁴¹ *Id.*

⁴² Michael Dorf, *Tribute: Justice Kennedy’s Genius*, SCOTUSBLOG (June 28, 2018, 8:32 AM), <https://www.scotusblog.com/2018/06/tribute-justice-kennedys-genius/>.

⁴³ *Id.*

But that did not meet the Justice's needs, "so he asked me if instead of making recordings I could just talk to him about the cases. I readily agreed, although it meant that he would gleefully pepper me with tough questions as I talked."⁴⁴ The clerk as student took note, and now as professor says, "[t]o this day, I model my Socratic teaching on the kinds of questions he asked."⁴⁵

It surely is no mere coincidence that so many of Justice Kennedy's former Supreme Court clerks, like Professors Dorf and Bhagwat, are now teachers themselves. Upon his retirement in 2018, thirty assistant and full professors — more than one-fifth of a total 145 clerks — listed Justice Kennedy as their former boss.⁴⁶ This does not count

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ These Supreme Court law clerks are as follows, listed with their clerkship year followed by their current (or in two instances where a former clerk is now a judge, immediate past) academic affiliation: Harry P. Litman (1988-89), UCLA Law (constitutional law, national security law) & UC San Diego School of Political Science; Hon. Gregory E. Maggs (1989-90), George Washington University Law School, 1993-2018 (national security and U.S. foreign relations), prior to becoming Judge of U.S. Court of Appeals for the Armed Forces; J. Randy Beck (1990-91), University of Georgia Law School (Association Dean of Academic Affairs, constitutional law); Jack Goldsmith (1990-91), Harvard Law School (international law, civil procedure, inter alia); David G. Litt (1990-91), Keio University, Tokyo, Japan (corporate law); Ashutosh Bhagwat (1991-92), UC Davis School of Law (administrative law, antitrust, constitutional law, inter alia); Michael C. Dorf (1991-92), Cornell Law School (constitutional law); Hon. Cheryl Ann Krause, University of Pennsylvania School of Law (appellate litigation externship program; concurrent with sitting on federal Third Circuit Court of Appeals); Nancy Combs (1995-96), William and Mary Law School (Human Security Law Center); Ward Farnsworth (1995-96), University of Texas Law School (Dean); Allen Ferrell (1996-97), Harvard Law School (securities); Renée Lettow Lerner (1996-97), George Washington University Law School (legal history, civil and criminal procedure, inter alia); Hon. Stephanos Bibos (1997-98), University of Pennsylvania Law School (criminal law, professional responsibility; prior to appointment to Third Circuit Court of Appeals); Christopher S. Yoo (1997-98), University of Pennsylvania Law School (communication, computer and information science); Lisa Grow Sun (1998-99), Brigham Young University School of Law (disaster law); Nicholas Quinn Rosenkranz (2001-02), Hoover Institute at Stanford University & Georgetown University School of Law (constitutional law); Edward Dawson (2003-04), Southern Illinois University Law School (federal courts, civil rights, administration law, inter alia); Orin Kerr (2003-04), University of Southern California Gould School of Law (computer crime, internet); Matthew C. Stephenson (2004-05), Harvard Law School (administrative law); Randy J. Kozel (2005-06), Notre Dame Law School (Associate Dean of Faculty Development, Constitutional Structure Program); Jeffrey Pojanowski (2005-06), Notre Dame Law School (administrative law); Zachary Price (2005-06), UC Hastings Law School (civil procedure, constitutional law); Lisa Marshall Manheim (2006-07), University of Washington Law School (constitutional law, federal courts, civil procedure); Christopher J. Walker (2008-09), Ohio State University Moritz College of Law (civil procedure, constitutional law, ethics, inter

many others in law practice or government service who serve as adjunct professors, also following in the footsteps of “their” Justice.

One former clerk turned professor, Richard M. Re, made a point of asking Justice Kennedy for advice when he began teaching at UCLA Law. “I had clerked for him a few years before and knew that he had taught hundreds of law students in America, Europe and elsewhere.”⁴⁷ The Justice’s response reduced the essence of successful teaching to a concise five words: “Let them see you think.”⁴⁸ Re explains, linking the teacher with the judge: “For Kennedy, engaging with hard issues — deliberately, honestly, and independently — is a critical skill to teach by example. He applied a similar approach to judging.”⁴⁹ As in *Texas v. Johnson* early in his Supreme Court career, “[b]y letting us see him think through these complex issues, Kennedy helped reveal the tensions and judgment calls that make the hard cases of constitutional law so hard.”⁵⁰

C. Teaching as Extracurricular Avocation

And then there is the Justice as teacher whose classroom knows no bounds. As former Kennedy clerk now federal appellate judge Cheryl Krause puts it, he “has reached out across communities and even

alia); Daniel Epps (2009-10), Washington University School of Law (criminal law and procedure); Richard M. Re (2010-11), UCLA Law School (criminal procedure, federal courts, constitutional law); James Y. Stern (2010-11), William and Mary Law School (property and private law theory, intellectual property, conflict of laws); Sam Erman (2010-11), University of Southern California Gould School of Law (Puerto Rican history and relations with U.S.); Leah Litman (2011-12), UC Irvine (constitutional law); Justin Walker (2011-12), Brandeis School of Law, Louisville University (legal writing). See *List of Law Clerks of the Supreme Court of the United States (Seat 1)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/List_of_law_clerks_of_the_Supreme_Court_of_the_United_States_\(Seat_1\)](https://en.wikipedia.org/wiki/List_of_law_clerks_of_the_Supreme_Court_of_the_United_States_(Seat_1)) (last visited Apr. 3, 2019). As Professor Bhagwat observes, the large number of former Kennedy clerks in the academy “probably reflects the kind of people he tends to hire,” namely “people interested in the law in some sort of abstract sense.” Interview with Bhagwat, *supra* note 4. Additionally, this list does not include former clerks to the Justice when he served on the Ninth Circuit Court of Appeals, for example, J. Clark Kelso, Professor of Law at McGeorge School of Law. *J. Clark Kelso: Professor of Law*, U. PAC. MCGEORGE SCH. L., <https://www.mcgeorge.edu/profiles/faculty/j-clark-kelso> (last visited Mar. 18, 2019).

⁴⁷ Richard M. Re, *Tribute: Seeing Justice Kennedy Think*, SCOTUSBLOG (June 29, 2018, 10:39 AM), <https://www.scotusblog.com/2018/06/tribute-seeing-justice-kennedy-think/>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

oceans to teach about the Constitution, the genius of checks and balances, and the importance of an independent judiciary.”⁵¹

As he was being nominated to the Supreme Court, Justice Kennedy agreed to sponsor a new Inn of Court at McGeorge, the Kennedy Inn, established the summer after he was sworn in. That Inn recently celebrated its thirtieth anniversary with a swank dinner where the Justice spoke. Reflecting on its contributions, he sounded a theme we will return to, “emphasiz[ing] the importance of making friendships in the law.”⁵² He cautioned, “we are living in an era where civility in the law is often ignored,” and stressed the importance of “attorneys and judges [] get[ting] to know each other,” a purpose served well by the Inn of Court.⁵³

His teaching with McGeorge transitioned to accommodate the Court’s summer break following the end of Term each June. Beginning in 1988, and virtually every year since, he and Mary have decamped to Salzburg for the McGeorge international summer program for undergraduates. British legal scholar Sionaidh Douglas-Scott, with whom the Justice has taught a fundamental rights course, notes, “I suspect it’s rare for an American judge to spend as many summers teaching in Europe as has Kennedy.”⁵⁴ She not only has taught with him, but learned from him: “Kennedy is a formidable teacher, and I could not have had a better introduction to the study of the U.S. Constitution.”⁵⁵

Visiting Salzburg as a guest panelist one year, Judge O’Scannlain, the Justice’s former mentee at Harvard Law School, “witnessed his mesmerizing lectures, entirely without notes, extolling various features of the Rule of Law.”⁵⁶ Current McGeorge Dean Michael Hunter Schwartz recounts having seen Justice Kennedy exemplify the best in teaching when visiting the Salzburg program in 2017:

He called on a student, and as many of us do when we teach, he asked her, “What would you argue if you were the lawyer in this case?” The student articulated her argument. Justice

⁵¹ Judge Cheryl A. Krause, *In Tribute: Justice Anthony M. Kennedy*, 132 HARV. L. REV. 6, 7 (2018).

⁵² Ellen Arabian-Lee, *Anthony M. Kennedy Inn of Court Thirtieth Anniversary Gala*, SACRAMENTO LAW., Nov.–Dec. 2017, at 24, 24.

⁵³ *Id.*

⁵⁴ Sionaidh Douglas-Scott, *Tribute: Formidable Teacher, Friend and Still “Somewhat of an Enigma,”* SCOTUSBLOG (June 28, 2018, 1:25 PM), <https://www.scotusblog.com/2018/06/tribute-formidable-teacher-friend-and-still-somewhat-of-an-enigma/>.

⁵⁵ *Id.*

⁵⁶ O’Scannlain, *supra* note 21.

Kennedy replied, “That was not the argument I was looking for.” The class held its collective breath, as the student no doubt searched her mind for another answer. Then, the Justice added enthusiastically, “It’s better!” His humility and sincere delight in student success were evident throughout the class session.⁵⁷

Dean Hunter Schwartz knows whereof he speaks, as co-author of *What the Best Law Teachers Do*.⁵⁸ He opines hands-down that the qualities Justice Kennedy displayed in that Austrian classroom — “humility and sincere delight” — “are two common characteristics”⁵⁹ of the best law professors there are. These qualities make for the best teachers because, among other reasons, they signal we all are in a community of learning together, where everyone’s contribution has value and everyone can learn from it.⁶⁰ The Dean in fact calls the Justice the “legal education equivalent of LeBron James (an iconic figure, someone everyone would like to have on her or his team, a guy who makes those around him better, and a free agent [as of] summer [2018]).”⁶¹

Even though he only recently attained free-agent status himself, the Justice has visited many countries other than Austria, well-worn Constitution in hand. In 1994 or 1995, he became the first sitting Justice to visit China, accepting “an invitation . . . to speak with judges there about the rule of law.”⁶² As Judge Krause notes, “Even on rough

⁵⁷ Michael H. Schwartz, *Justice Anthony Kennedy*, WHAT GREAT L. SCHS. DO (July 3, 2018), <https://www.whatgreatlawschoolsdo.com/2018/07/justice-anthony-m-kennedy/>.

⁵⁸ MICHAEL H. SCHWARTZ ET AL., *WHAT THE BEST LAW TEACHERS DO* 13-4 (Harvard Univ. Press 2013) (reporting on comprehensive study of twenty-six teachers representing diverse backgrounds).

⁵⁹ Schwartz, *supra* note 57.

⁶⁰ In his book, Dean Hunter Schwartz spells out the attributes of the best teachers, which in detail match up with those Justice Kennedy displays. Regarding personal qualities, the best teachers “are passionate, enthusiastic, positive, energetic, authentic, expressive, and creative. They have superb listening skills, exude empathy, and are very good at what they do. They are committed to continuously improving themselves as teachers. Finally, their students find them to be inspiring and, in most instances, humble.” SCHWARTZ ET AL., *supra* note 58, at 18. In terms of teaching activities, “[t]hey structure their classrooms to be learning communities, in which they actively encourage diverse perspectives and push students to think harder and dig deeper.” *Id.* at 20-21.

⁶¹ Schwartz, *supra* note 57.

⁶² Krause, *supra* note 51, at 7; see also *Free Speech and How to Be Civil About It*, *supra* note 7 (showing a video of Justice Kennedy’s keynote at Civil Discourse symposium, during which he references his “practice” of going to China “every year to teach”).

terrain, he was committed to planting the seeds of freedom and respect for individual rights.”⁶³ Other trips have taken the Justice and Mary to Hungary,⁶⁴ Poland,⁶⁵ Ireland⁶⁶ — each stop providing an opportunity for dialogue, to learn and share insights on the rule of law and to motivate others — often students — “to think carefully and hard about [i]nternational human rights issues.”⁶⁷

Judge O’Scannlain observes, “[He’s] still a walking encyclopedia on how different countries relate to their judiciaries.”⁶⁸ In trademark fashion, Justice Kennedy “was always available to assist the International Judicial Relations Committee of the United States Judicial Conference when [O’Scannlain] was its chair, as indeed he reminded me in a note that said, ‘It is, after all, our duty to defend the Rule of Law and this is best done by teaching its methods to other Nations.’”⁶⁹ To distill the Rule of Law into teachable form, the Justice personally designed a bookmark, “which later was adopted by the U.N. Committee on the Empowerment of the Poor.”⁷⁰ The bookmark, which has been translated into “about eight or nine languages,”⁷¹ sets forth three principles, the third stressing the importance of informing citizens of their rights and responsibilities as members of a community in which the sharing of ideas is essential:

The Law must devise and maintain systems to advise all persons of their rights, and it must empower them to fulfill

⁶³ Krause, *supra* note 51 at 7.

⁶⁴ *U.S. Supreme Court Justice Anthony Kennedy Visits Hungary*, U.S. EMBASSY, <https://photos.state.gov/galleries/hungary/31234/kennedy/index.html> (last visited Apr. 3, 2019).

⁶⁵ See *Justice Anthony Kennedy Talks Civics to the Upper School*, PACKER COLLEGIATE INST. NEWS (Jan. 10, 2016, 5:20 PM), http://www.packer.edu/cf_news/view.cfm?newsid=364 (Justice Kennedy told the “story of a diplomatic visit to Poland in which [Kennedy] visited with school graduates entering an undergraduate law program. Their questions about the U.S. justice system were so sophisticated, he thought it was ‘a trick.’ . . . [but] ‘No, no . . . you had freedom, we didn’t. We had the communists for [fifty] years, and when they left we wanted our own constitution. We’ve been studying your Constitution since [Fourth] Grade.’”).

⁶⁶ See *A Rare and Brilliant Experience: Justice Anthony M. Kennedy Makes Special Appearance at Galway Summer Program*, NEW ENG. L. (Oct. 12, 2011), <https://student.nesl.edu/media/news.cfm?newsDetailID=3954>.

⁶⁷ *Id.*

⁶⁸ Interview with O’Scannlain, *supra* note 22.

⁶⁹ O’Scannlain, *In Tribute*, *supra* note 21, at 9.

⁷⁰ *Id.*

⁷¹ *Id.*

just expectations and to seek redress of grievances without fear of penalty or retaliation.⁷²

Domestically, the Justice has supported many American law schools other than McGeorge. In 1996, for example, he made the first of three visits to serve as jurist in residence for the William S. Richardson Law School, at the University of Hawaii at Mānoa.⁷³ In 2008, while visiting Lewis and Clark Law School with Justice O'Connor to celebrate the Federal Judicial Center's⁷⁴ fortieth anniversary, the Justice upon being asked immediately "authoriz[ed] a permanent lectureship in his honor," something Judge O'Scannlain says "was an easy sell."⁷⁵ In the early days, the Justice remained involved "to be sure speakers provided a range of jurisprudential views,"⁷⁶ making suggestions of persons to invite. "Today, the Kennedy Lecture is an annual endowed presentation featuring distinguished jurists and intellectual leaders, beginning with the auspicious initial lecture by then-Stanford Law School Dean Kathleen Sullivan in 2009," who was followed by a parade of luminaries, most recently Jeffrey Toobin.⁷⁷

Marking his years of devoted service to McGeorge, McGeorge has established The Anthony M. Kennedy Endowed Chair, with support from the Tsakopoulos family and McGeorge's Powell Endowment. As Dean Hunter-Schwartz announced, "The endowed chair will provide the resources to bring prominent faculty to McGeorge to teach and advance legal thinking through scholarship and leadership in the legal community." And it "allows McGeorge to celebrate the more than 40 years that Justice Kennedy has been a towering figure at McGeorge,

⁷² JUSTICE ANTHONY M. KENNEDY, RULE OF LAW BOOKMARK (on file with the Justice Anthony M. Kennedy Library & Learning Ctr.).

⁷³ *US Supreme Court Jurists-in-Residence Program*, U. OF HAW. MĀNOA WILLIAM S. RICHARDSON SCH. L., <https://www.law.hawaii.edu/us-supreme-court-jurists-residence-program> (last visited Mar. 1, 2019).

⁷⁴ Justice Kennedy served briefly on the Federal Judicial Center Board of Directors from 1987-88, prior to his elevation to the Supreme Court. *Kennedy, Anthony McLeod*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/kennedy-anthony-mcleod> (last visited Mar. 1, 2019).

⁷⁵ O'Scannlain, *supra* note 21, at 10.

⁷⁶ Telephone Interview with O'Scannlain, *supra* note 22.

⁷⁷ O'Scannlain, *supra* note 21 (other speakers included appellate lawyer Paul Clement, then-Judge now Justice Brett Kavanaugh, Professor Bill Eskridge, Professor Charles Fried, Kenneth Feinberg); *see also Author, CNN Legal Analyst Jeffrey Toobin to Give Kennedy Lecture*, LEWIS & CLARK L. SCH. (Nov. 13, 2018, 5:30 PM), <https://law.lclark.edu/live/events/288293-author-cnn-legal-analyst-jeffrey-toobin-to-give>.

and in Sacramento, [and] the longest serving as a member of the McGeorge faculty.”⁷⁸

IV. A LASTING TEACHING LEGACY BENEFITTING THE NATION’S CHILDREN

Justice Kennedy’s engagement with elementary and secondary school teachers and their students will be a lasting part of his legacy, perhaps as much as cases he has decided as circuit judge and Justice. McClatchy High School teacher Ellen Wong, a Humanities and International Studies teacher at Justice Kennedy’s alma mater, McClatchy High School, offers a typical account of the Justice’s generosity in time and intellectual engagement with young students, saying his visits have given her senior students “the opportunity to go toe-to-toe with him in meaningful discussion about the judiciary.”⁷⁹ She exclaims, “His ability to engage 17 year olds with his Socratic style, while making them feel confident and connected to their political system is invaluable. He challenged them and they responded.”⁸⁰

Two projects in particular embody Justice Kennedy’s determination to provide the best possible tools to teachers and the next generation of citizens they are helping to raise up.

A. *Annenberg Classroom*

In 2003, by which time Justice Kennedy had served fifteen years on the Court, Leonore Annenberg was evaluating the work of the Annenberg Foundation Trust at Sunnylands in Rancho Mirage, California, following the death of her husband Walter, former publisher, philanthropist and Ambassador to the Court of St. James. Mrs. Annenberg had served as President Reagan’s Chief of Protocol from 1981 to 1982, when she became acquainted with Justice Sandra Day O’Connor. She invited Justices O’Connor, Kennedy and Breyer to visit Sunnylands and “sought their assistance in determining how best the Annenberg Foundation could help with civics education.”⁸¹

⁷⁸ McGeorge Sch. of Law, *Justices on Justice*, YOUTUBE (Oct. 15, 2018), <https://www.youtube.com/watch?v=gsS54yCVg60> (opening remarks given by Dean Michael H. Schwartz).

⁷⁹ E-mail from Ellen Wong, *supra* note 2.

⁸⁰ *Id.*

⁸¹ Telephone Interview with Kathleen H. Jamieson, Elizabeth Ware Packard Professor of Communication, Univ. of Pa. Annenberg Sch. for Communication, the Walter and Leonore Director of the University’s Annenberg Public Policy Center, and

Since that first gathering, the Justice and Mary Kennedy have made many return working visits to Sunnylands to provide feedback and counsel to the Annenberg project, whose fruits are offered through The Leonore Annenberg Institute for Civics (LAIC), host to Annenberg Classroom. Noted scholar Kathleen Hall Jamieson, Program Director of the Annenberg Retreat at Sunnylands, has worked side by side with the Justice and Mary the entire time. Even Jamieson, a multidisciplinary author, commentator and consummate academic multitasker, sounds incredulous as she describes all Kennedy does: “He reviews all our curricula and videos in proposed form. He appears in videos.”⁸² (A search of the Annenberg Classroom website for “Kennedy” returns nearly 900 hits!) “[He] recommends content — what kind of resources will be most helpful given the available funds,” all with an eye “to best serve the nation’s children.”⁸³

Jamieson lauds the depth of Justice Kennedy’s commitment. Early on in their partnership, she led film crews to the Supreme Court where the Justice engaged with student groups in “focused interactions on Constitutional topics.”⁸⁴ The conversations were taped, edited and distilled into programs available at the website today. The programs record not only his words, they bear the fingerprints of his behind-the-scenes collaboration as well. He devotes an “enormous amount of time — he clears his schedule to be the person who sits down with our film crew,”⁸⁵ to work on the script, tape excerpts to best explain concepts, whatever is needed.

Looking at those videos, she urges, is a wonderful way to see the Justice as teacher at work. “When you watch him interact with students what you realize is that this brilliant man manages to be able to understand where the student is coming from. . . . You’re not surprised when a good teacher does it.”⁸⁶ She puts it this way: at the same time he’s “digesting complex cases and writing elegant opinions,” he also has the ability to “listen to a student’s question, understand the reason behind it, and answer in a way that leaves the student empowered and not feeling dumb for asking.”⁸⁷ And his crystallization of concepts provides a view into the person behind the prestigious title. You see the “love of the law, love of the

Program Director of the Annenberg Retreat at Sunnylands (Jan. 28, 2019).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

Constitution . . . [and deep commitment to ensuring core principles survive through understanding].”⁸⁸

The videos themselves bear out Professor Jamieson’s keen insights. In explaining judicial independence to high school students visiting the Court, Justice Kennedy suggests a helpful mnemonic:

Here’s a way for you to think about it. I call it the three Rs. What’s the Reason for Judicial Independence, the first R? What are the Requirements, or the Requisites for it, how do you structure it? What are the Responsibilities that it entails, the responsibilities of the judges, the responsibilities of the other branches, the responsibilities of the people?⁸⁹

Regarding the first R, he posits for the students’ consideration the reasons he finds compelling:

[I]f you believe that there are some neutral principles, if you believe that there are some fundamental principles, if you believe that those principles can be understood and the American people . . . has a consensus about those principles, that’s the beginning of the reason for judicial independence, so you can protect those principles.⁹⁰

In helping another group of students get clear on the First Amendment and its underpinning, Justice Kennedy’s questioning prompts a student to give a good first answer. He then prods further, gently if not gleefully Socratic: “What does that tell you about why we have speech? Why is it important that you have the right to express yourself?”⁹¹ She answers:

It’s the way that we express ourselves. If we founded this country on the people and what the people want, and how they choose and how they make their decisions, I think it’s vital to know what they want and what they make their priorities.⁹²

⁸⁸ *Id.*

⁸⁹ *A Conversation on the Constitution*, *supra* note 27, at 10:15–11:06.

⁹⁰ *Id.*

⁹¹ *A Conversation on the Constitution with Justices Stephen Breyer, Anthony Kennedy and Sandra Day O’Connor: Freedom of Speech*, ANNENBERG CLASSROOM (Sept. 13, 2018), <https://www.annenbergclassroom.org/resource/conversation-constitution-freedom-speech/>.

⁹² *Id.*

He then approvingly affirms her response, paraphrasing it back and underscoring the essential point:

It's who you are, we define ourselves by what we say, by what we read, by what we think, by what we hear, by what we sing, by what we pray. This is who we are. This is our self-definition. We define ourselves, the government does not define us.⁹³

The Justice's commitment is evident in the energy he brings to bear in front of the camera and behind it as well, and in his consistent passion for the Annenberg project. Year in and year out, "he makes specific recommendations for additional materials needed to achieve our goals."⁹⁴ Together with other Justices, he prescribes subject matter for new videos on constitutional provisions most important to students: "How checks and balances works; how we got our system of government; then we walked through the amendments — why we have juries, and that jury service is an honor and a civic duty."⁹⁵ As someone who "stays in touch with popular culture," he's helped "innovate in ways we deliver materials,"⁹⁶ leading, for example, to video games, including the recent "That's Your Right."⁹⁷ He's made a lot of suggestions, and Jamieson says without hesitation her project has "followed through on every recommendation he has made."⁹⁸

There is no question "it helps that Mrs. Kennedy is a teacher. She's always a part of our meetings."⁹⁹ She consistently reminds us, "Don't leave behind the student that's having trouble."¹⁰⁰ Heeding her advice, there are times when the video producers have "added blocks to films because between the two of them they want to be sure the student who's having trouble isn't left behind." They know "it's easy to teach for the honor student," but that's not the primary or only goal.¹⁰¹

⁹³ *Id.*

⁹⁴ Telephone Interview with Jamieson, *supra* note 81.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Filament Games, *Annenberg Classroom's That's Your Right*, ANNENBERG CLASSROOM, <https://www.annenbergclassroom.org/resource/annenberg-classrooms-thats-right/> (last visited Mar. 16, 2019). Another specific suggestion was to prepare and distribute no-cost books on key topics, which Annenberg also has done. See *Book*, ANNENBERG CLASSROOM, https://www.annenbergclassroom.org/media_type/book/ (last visited Mar. 16, 2019).

⁹⁸ Telephone Interview with Jamieson, *supra* note 81.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

“His dedication is remarkably important,” Jamieson says in summing up Kennedy’s contribution to student understanding. And his dedication means “he is a true ambassador for civics. Having students experience [what he has to offer] is a gift.”¹⁰² Through the Annenberg materials he helps create, that gift will last for generations.

B. Ninth Circuit Court of Appeals: Justice Anthony M. Kennedy Library and Learning Center

In 2013, the Ninth Circuit Court of Appeals made its own commitment to honor its famous alum’s devotion to civics education in creating The Anthony M. Kennedy Library and Learning Center as part of its branch library space at the Robert T. Matsui U.S. Courthouse¹⁰³ in Sacramento. The Kennedy Learning Center has fast become a Northern California civics “hot spot” for teachers and students on fieldtrips, with more than 4,000 now visiting annually, not counting teams of judges and lawyers dispatched from the courthouse to classrooms to dialogue with another 2,500 students.¹⁰⁴ It also is an incubator for civics education innovation, as well as a convening space for interactive learning involving the bench, bar, legal academy and education community. In 2016, to support the Center’s growth and help meet public demand, the Circuit hired Administrator Kari Kelso, Ph.D., to manage the Center and support civics education

¹⁰² *Id.*

¹⁰³ There is historic resonance in the federal courthouse’s name, given that Congressman Matsui was a strong supporter of Justice Kennedy’s appointment to the Supreme Court upon his nomination by President Reagan. The text of the Congressman’s remarks on the House floor and a photo of him with Justice and Mary Kennedy and their family in the Oval Office with President Reagan hangs in the Kennedy Learning Center. *See Nomination of Anthony M. Kennedy to be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary, 100th Cong. 21-22 (1987) (statement of Rep. Robert T. Matsui).*

¹⁰⁴ E-mail from Kari C. Kelso, Ph.D., Adm’r, Office of the Circuit Exec. for the 9th Circuit, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Feb. 6, 2019) (providing attendance figures for 2018). The Operation Protect & Defend project, which operates under the umbrella of the Sacramento Federal Judicial Library and Learning Center Foundation, was started after 9/11 under the leadership of U.S. District Judge Frank C. Damrell, Jr. (E.D. Cal.), now retired. *See Mission, SACRAMENTO FED. JUD. LIBRARY & LEARNING CTR. FOUND.*, <https://www.sacjlc.com/mission> (last visited Mar. 16, 2019). Judge Damrell drew inspiration for the project from a classroom dialogue with Justice Kennedy at McClatchy High School. Justice Kennedy has promoted similar dialogues in high schools and law schools throughout the country under the moniker “Dialogue on Freedom.” *See, e.g., US Supreme Court Justice Holds “Dialogue on Freedom” Forums - 2002-10-24*, VOA (Oct. 29, 2009 3:22 PM), <https://www.voanews.com/a/a-13-a-2002-10-24-39-us-67409117/383336.html>.

Circuit-wide. She coordinates with a nonprofit Foundation that provides financial support.

As the Annenberg Classroom resources do by virtue of his close involvement, the Kennedy Learning Center's programs and projects reflect the Justice's distinctive approach to teaching about the Constitution and the laws, and the courts' role in interpreting and applying them.

1. Reading List

Upon the Kennedy Learning Center's opening, Justice Kennedy authorized the Ninth Circuit Library's publication of a reading list prepared for young people, a "version" of "a very personal list of suggested readings on liberty for his grandchildren."¹⁰⁵ The list, distributed along with a red leather commemorative bookmark to those attending the 2013 launch, is titled, "Understanding Freedom's Heritage: How to Keep and Defend Liberty," with the teaser of a subtitle noting it "includes some acknowledged classics and some idiosyncratic choices."¹⁰⁶ Chief Justice Roberts described the list this way in his recent tribute, "Thought provoking for readers of any age, Justice Kennedy's curated collection adds an additional dimension to the portrait of an extraordinary judge."¹⁰⁷ Upon his own review of the list, the Chief Justice divined certain themes: the list's contents touch on the "basic charters of our liberty," "courageous demands for freedom that changed the world," "the sacrifices through history . . . necessary to secure liberty," and "meditations on the prize won."¹⁰⁸

In the latter category, the list recommends John Magee's "High Flight," which, Chief Justice Roberts explains, "captures the beauty of

¹⁰⁵ One former clerk, Justin Walker, recalls hearing the list had been prompted originally by the Arab Spring, although he cannot be sure. He's clearer on its purpose: "[I]ts audience was anyone who wanted to learn more about individual liberty, the rule of law and the values that make a democracy endure." Whatever the origins, Walker reflects, "how beautiful that after three decades in our cynical capital, and in an era of shouting pundits and shock-talk DJs, Justice Kennedy thought part of the answer to global crises should be found in the words of Shakespeare, Jefferson, and Lincoln — as well as dozens more thinkers, and a few of his favorite movies (including *Legally Blonde*)." Justin Walker, *Guest Blog: Reflections on Justice Anthony Kennedy*, UNIV. LOUISVILLE: DISPATCHES FROM DEAN, <http://louisville.edu/law/about/deans-blog/guest-blog-reflections-on-justice-anthony-kennedy> (last visited Mar. 16, 2019).

¹⁰⁶ Justice Anthony Kennedy, *Understanding Freedom's Heritage: How to Keep and Defend Liberty* (June 25, 2013), http://cdn.ca9.uscourts.gov/datastore/library/2013/06/27/AMK_ReadingList_20130625.pdf.

¹⁰⁷ Roberts, Jr., *supra* note 1, at 1.

¹⁰⁸ *Id.* at 2.

freedom in its soaring description of flight — freedom that allows the ‘silent, lifting mind’ to ‘touch[] the face of God.’ Robert Frost’s ‘Road Not Taken’ speaks of the liberty to chart your own path. So too does Reese Witherspoon’s commencement address as Elle Woods in *Legally Blonde* (really).¹⁰⁹ The list also includes “warnings about what awaits the loss of liberty,” if lost.¹¹⁰

Perhaps the best thing about the list is its readability, in terms of content and time. It serves as a primer capturing the core messages Justice Kennedy weaves into all his summons to civic responsibility. As the Chief Justice says, “The seventy-nine brief items can easily be read (or watched) over a couple of months. We should do it. They will stick with us over a lifetime.”¹¹¹

2. Summer Teachers Institute

Within a year of opening, the Kennedy Learning Center began offering an annual summer institute for local middle school and high school teachers, recognizing Justice Kennedy’s contributions in this respect and the need to provide as many teachers as possible the best available tools for conveying important civics lessons to their students.

To attract teachers before their summer vacations, the third week in June is the last possible time to host the Institute. That, of course, is also one of the busiest times at the Court, as the Term draws to a close and final opinions are issued, at times daily. Nonetheless, for the

¹⁰⁹ *Id.* Justice Kennedy spoke about the movie *Legally Blonde* in his commencement address to Stanford’s 2009 graduating class. He explained that in selecting students for China’s first law school based on the American, three-year graduate model, the committee asked applicants what inspired them to want to attend law school. “Any number of students answered that it was a movie. . . . The movie was: *Legally Blonde*.” After some investigation, “we found an explanation . . . when [Reese Witherspoon’s character] goes to the law school she takes a serious risk. She must enter a new, unfamiliar, unfriendly, threatening, small universe, one formerly closed to her. These Chinese students were taking a risk like that.” *Text of Justice Kennedy’s 2009 Commencement Address*, STAN.: NEWS (June 14, 2009), https://news.stanford.edu/news/2009/june17/kennedy_text-061709.html [hereinafter *2009 Commencement Address*]. Another example of Justice Kennedy’s comfort and familiarity with contemporary youth culture comes from teacher Jed Larsen, recalling one of his class’s visits to the Matsui Courthouse: “He invoked a Harry Potter analogy to bridge understanding to an audience that included junior high students . . . engag[ing] with the next generation of citizens, to impress upon them the human and often difficult but necessary job of interpreting our laws in an ever-changing society.” Email from Jed Larsen, Teacher, Sacramento City Unified School District, to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (Jan. 4, 2019).

¹¹⁰ Roberts, Jr., *supra* note 1, at 2.

¹¹¹ *Id.* at 4.

Institute's inaugural year the Justice made time in his schedule to appear by videoconference for a discussion with the teachers in attendance. The teachers sat around a large U-shaped conference table and the Justice sat in a chair in Washington at the table's virtual head. After brief remarks, he took questions and engaged in a full discussion, answering many good questions. The "best teacher" was on full display, including when he complimented one questioner, saying he'd have to think about what she had asked because he hadn't pondered that before. As then-5th grade teacher Jed Larsen recalls, the Justice "shar[ed] his own insights on the federal judiciary and engag[ed] our questions as equal citizens searching to create meaning for others. He wanted the law to matter, and make sense."¹¹² When the call came to an end, the excitement in the room was palpable. A teacher helping to lead the Institute was "pinching himself" to be sure the experience was real. In subsequent years, continuing to provide critical support, the Justice has reappeared virtually at the Institute when he can, also beaming in to a sister institute launched at the Robert E. Coyle U.S. Courthouse in Fresno.

Heeding the Justice's admonition to avoid reinventing the wheel, the Institute ensures teachers know about Annenberg Classroom and civics materials available through projects such as the Constitutional Rights Foundation¹¹³ and the California Chief Justice's Power of Democracy initiative.¹¹⁴ The Institute's planning committee of teachers, lawyers and judges also draws on local cases to drive home key constitutional concepts, recognizing a kid can best comprehend the lessons bound up in an event that happened close to home — the community Justice Kennedy also called home. A local event prompting a legal case that went all the way to the Supreme Court can serve as an anchor for better teaching and learning — in contrast, cases that happened elsewhere no matter how important can come across as distant and abstract. The geography embraced by the Eastern District of California has hosted any number of important cases to reach the Court over the years, including: Michael Newdow's First Amendment challenge to his daughter's saying the pledge of

¹¹² Email from Larsen, *supra* note 109.

¹¹³ Constitutional Rights Foundation, <https://www.crf-usa.org/programs/crf-programs.html> (a 501(c)(3) non-profit which works with young Americans throughout the nation to gain a deeper understanding of citizenship, primarily through teaching about the Constitution and its Bill of Rights) (last visited June 3, 2019).

¹¹⁴ Power of Democracy, <http://www.powerofdemocracy.org/civic-learning/what-works/> (a civic group that works to improve civic awareness and education in California) (last visited June 3, 2019).

allegiance, leading to *Elk Grove Unified School District v. Newdow*,¹¹⁵ Mitsuye Endo's habeas petition filed from Tule Lake, making her ultimately the only successful WWII incarcerated before the Court in *Ex parte Mitsuye Endo*,¹¹⁶ and the equal protection challenge brought by Allen Bakke to the UC Davis Medical School's admissions program's consideration of race, culminating in *Regents of University of California v. Bakke*.¹¹⁷

The Institute's case-based program distills a teaching approach the organizers attribute directly to Justice Kennedy. As Natomas Charter School CEO and State Board of Education Member Ting Lan Sun observes, "the Justice approaches topics through what I call 'renaissance lenses.' He analyzes any subject immediately at hand from a multitude of angles and perspectives — not just one."¹¹⁸ The Justice's approach inspired the Institute's instructional approach, which is "rooted in four 'Dimensions of Inquiry'" and embraces the wisdom that "court cases and court decisions cannot be reviewed outside of the historical and social context in which they occurred." Acting on this insight, the Institute "humanizes" the cases selected by exposing teachers to the "perspectives of the parties involved in the case." And then it "models lessons in which teachers can utilize one or more of the four inquiry approaches to examine the court case."¹¹⁹ Those dimensions of inquiry include:

- Social Context: In applying this dimension, teachers use art, literature, music and such to help students understand the time period of the case.
- Historical Context: Here, teachers use primary and secondary sources to establish historical debate and connections for the case.
- Judicial Context: In applying this approach, teachers use strategies to investigate legal and constitutional elements and questions raised by the case.

¹¹⁵ 542 U.S. 1 (2004).

¹¹⁶ 323 U.S. 283 (1944). As teachers attending the Kennedy Learning Center Summer Institutes in 2014 and 2015 heard from Senior Ninth Circuit Judge Mary M. Schroeder and scholar Peter Irons, other incarcerated obtained relief from their criminal convictions only many years later, by filing petitions for writs of *coram nobis*. See, e.g., *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. Apr. 19, 1984).

¹¹⁷ 438 U.S. 265 (1978).

¹¹⁸ Email from Sun, *supra* note 2.

¹¹⁹ *Id.*

- Action Civics: In undertaking this inquiry, teachers help students take insights from their study of the case into a real-world situation and or project.¹²⁰

A few examples help illustrate how the Justice Kennedy-inspired dimensions of inquiry work. Jed Larsen worked with his Institute team to develop a teaching tool following the Historical Context inquiry approach, applied to the fugitive slave case of Archy Lee, who was brought to Sacramento by his slaveowner Charles Stovall and ultimately freed by a federal commissioner. The Archy Lee curriculum allows a teacher to satisfy California History-Social Science Content Standards by providing a foundation from which students explore pre-Civil War era history and social tensions, a nod to Justice Kennedy's deep appreciation of historical context as essential to understanding legal decisions. The curriculum invites debate and discussion, with students learning about the *Dred Scott* decision issued just a year before Archy Lee was freed in California, and proposes role-playing exercises to deepen students' thinking about unity and division, all in line with the Justice's probing yet friendly Socratic approach.

Another team of Institute teachers followed the Judicial Context line of inquiry to a curriculum for teaching about California's long-running prison health care and mental health care cases, *Plata* and *Coleman*.¹²¹ For their final presentation, the teachers used masking tape to map out the size of a holding cell used in managing inmates receiving care; they then stood inside the tape — demonstrating a simple way to have students experience one key fact they had identified in the cases.¹²² In this way, they modeled the importance the Justice stresses, of reading cases carefully and thinking hard about what the words mean and describe.¹²³

¹²⁰ *Id.*

¹²¹ *Plata v. Brown*, Case No. 3:01-cv-01351-JST (N.D. Cal. Apr. 5, 2001); *Coleman v. Brown*, Case No. 2:90-cv-00520 (E.D. Cal. Apr. 23, 1990).

¹²² Email from Steven Crain to Kimberly J. Mueller, Dist. Judge, E. Dist. of Cal. (May 9, 2019 6:45 PM) (on file with author). The author also personally observed the teachers' exercise, while watching the Institute graduation in 2014. As the current presiding judge in *Coleman*, the author did not present on the case or otherwise discuss any aspect of the case with any Institute participant.

¹²³ *Cf. Davis v. Ayala*, 135 S. Ct. 2187, 2208-10 (2015) (Kennedy, J., concurring) (The concurrence responded solely "to one factual circumstance," that of petitioner's serving "the great majority of his more than [twenty-five] years in custody" in solitary confinement. Justice Kennedy expressed concern that "[t]oo often, discussion in the legal academy and among practitioners and policymakers concentrates simply on the adjudication of guilt or innocence. Too easily ignored is the question of what comes next." In the proper case, "the judiciary may be required, within its proper jurisdiction

While no formal study has been conducted, it seems clear the Institute is making a difference, as teachers follow through on what they have learned. Elena Vincent, Social Science Instructor at Fresno's Central High School, East Campus has begun incorporating more lessons based on Supreme Court cases into her government courses. "With real, relevant examples that I am able to provide from my experiences in visiting the courts, hearing from guest speakers, and engaging in conversation with members of the district court, my students' educational experiences are vastly enhanced as well."¹²⁴ Elena draws a direct line from what she has learned to the Justice himself, noting her appreciation of "Justice Kennedy's commitment to educating us, and our students as well."¹²⁵

Alex Ivanov, who teaches AP Government and Politics and World History at Clovis West High School, sees the Institute as "an integral educational opportunity for me to bring the Federal Court system to life in my classroom."¹²⁶ For him, the chance to meet federal judges in person has been a highlight, and a launchpad to having a number of those judges visit his classroom. He particularly values that "[t]he institute is very hands on, it goes beyond book learning, and takes us straight into the application of what we learn when we get to experience the process of the justice system."¹²⁷

Davis Senior High School history teacher Kevin Williams is an alum of the inaugural Institute who has returned to helped lead the Institute program in subsequent years. As he sums up, "For me, [the approach taken] is emblematic of the core mission of the Kennedy Learning Program. How can something that many think is confusing be presented in a smooth less-complicated way?" Based on his having observed Justice Kennedy several times now, Kevin observes, "in a very real sense, the Kennedy Learning Program mirrors Justice Kennedy's desire to teach in an inclusive manner. All stakeholders —

and authority, to determine whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them." Justice Kennedy closed by quoting Dostoyevsky: "The degree of civilization in a society can be judged by entering its prisons.' There is truth to this in our own time.").

¹²⁴ E-mail from Elena Vincent, Teacher, Cent. High Sch., to Stanley A. Boone, Magistrate Judge, E. Dist. of Cal. (Jan. 16, 2019).

¹²⁵ *Id.*

¹²⁶ E-mail from Alex Ivanov, Teacher, Clovis W. High Sch., to Stanley A. Boone, Magistrate Judge, E. Dist. of Cal. (Jan. 15, 2019).

¹²⁷ *Id.*

the court, teachers and students should have equal access (thank you Justice Kennedy!) to the rule of law.”¹²⁸

3. Magna Carta’s 800th Birthday

The Kennedy Learning Center has served as a sort of civics “pop up” when the Justice visits to share ideas on teaching with local teachers. In 2015, on the occasion of the Magna Carta’s 800th Birthday, the Justice developed a presentation on the document that is an essential grandparent to democratic structures in England and America. He specifically requested the opportunity to present to classroom teachers, with Mary in the room, as a way of sharing his insights and asking for feedback, demonstrating what has impressed Jed Larsen as “how personally Justice Kennedy took on the role of teacher with his Judicial Learning Center.”¹²⁹

The presentation highlighted the meeting of King John and the rebel barons at Runnymede for the medieval equivalent of a signing ceremony, with the classic illustration by James William Edmund Doyle. It included a selective chronology, reviewing key events in the 800 years before the Magna Carta, including issuance of King Alfred’s law code (893) and the Domesday book (1086), and the 800 years since, during which Henry III and Edward I confirmed the charter (1225, 1297, respectively), Sir Edward Coke published his *Second Institutes of the Lawes of England* (1642), and of course the American Declaration of Independence, Constitution and Bill of Rights issued (1776, 1789, 1791). The Justice drew out the lasting effects of the powerful concepts recorded on parchment. He drilled down to closely review the language of the text, including Articles 39 and 40 — among the “acknowledged classics” on the Justice’s 2013 reading list for young people — drawing the connection between the language of Article 39 and that of our Fourth Amendment, the language of Article 40 and the Preamble to the U.S. Constitution. And he concluded with the reminder, inspired by the barons’ actions, however self-interested, that “Legitimate power comes from us, and freedom lives in us — not as an abstract idea but as a concrete reality.”¹³⁰

¹²⁸ Email from Williams, *supra* note 3.

¹²⁹ Email from Larsen, *supra* note 109.

¹³⁰ The author attended the Magna Carta presentation as an observer; this summary is based on her notes. See Anthony M. Kennedy, Justice, U.S. Supreme Court, Magna Carta’s 800th Birthday, Presentation at the Justice Anthony M. Kennedy Library and Learning Center (May 8, 2015) (on file with author).

As Kevin Williams recalls, the presentation “detail[ed] the direct effects of the Magna Carta on American Constitutional and political thought.” And he had a catbird seat: “I sat in the front row in awe of a presentation that took a complex topic and somehow made it easy to comprehend.”¹³¹

After the Justice finished his presentation he paused, and then asked, “Well, what do you think? Does this work?” The consensus in the room was, yes, it did. And then there were dozens of other questions. Although Mary and he had dinner plans, they stayed, conversing, discussing, considering what the teachers had to say and responding in the way the Justice and Mary always do, making the teachers understand and feel their worth as those we are counting on to educate and motivate the next generation.

4. Civil Discourse Symposia and Civics Passport

As the Kennedy Learning Center matures and takes its place as a key hub of civics learning on the West Coast, it has begun to offer an annual Constitution Day program to celebrate our founding charter’s birthday and consider topics related to its ongoing vitality. In the last two years, the Constitution Day program has centered on the topic Justice Kennedy stressed at the Kennedy Inn’s anniversary dinner: civil discourse.

In 2017, the Federal Judicial Center offered the first, full day program on civil discourse, cohosted by the Ninth Circuit Court of Appeals and the Federal Judicial Library and Learning Center Foundation.¹³² A hundred participants came from the ranks of judges, lawyers, professors, community groups as well as high school teachers. Justice Kennedy spoke first on “Why Civil Discourse Matters.”¹³³ And then he stayed for the day, observing from the front row the various panels: one, exploring the challenges to civil discourse in a social media age; another positing the judiciary as a model for civil discourse; and a closing panel looking to the future and development of practical strategies to improve civil discourse. Over lunch, University of California President Janet Napolitano, aired for

¹³¹ Email from Williams, *supra* note 3.

¹³² See *Symposium: The Nature and Practice of Civil Discourse*, FED. JUD. CTR. & 9TH CIR. CT. APPEALS (Sept. 15, 2017) (agenda on file with author, previously available at <http://fjc.dcn/content/321584/symposium-nature-and-practice-civil-discourse>, but URL no longer valid) (program description, agenda, and prescribed prereadings including Martin Luther King, Jr.’s Letter from Birmingham Jail and Abraham Lincoln’s First and Second Inaugural Addresses).

¹³³ See *Free Speech and How to Be Civil About It*, *supra* note 7.

the first time her administration's plans for addressing the protests roiling campuses at the time.¹³⁴ After lunch, participants took part in a practicum designed to model and test the skills needed for effective civil discourse, led by trained mediators. At day's end, the teachers in attendance made a point of saying how meaningful the day had been for them. One, on her way out the door, said she "definitely" would be applying in her classroom what she had learned.

In 2018, the Ninth Circuit Court of Appeals kept the focus on civil discourse with a half-day program titled "Walk the Talk," cohosted by the Learning Center Foundation.¹³⁵ Once again, an eclectic mix of judges, lawyers, professors and teachers assembled — this time with high school students as well. Teachers who attended in 2017 returned to report on various ways they had deployed what they learned the year before. Midmorning, the Sacramento County Superintendent of Education helped unveil a new Civics Passport to encourage students to explore their local legal and civic landscape. The students in attendance then were dispatched to pilot the passport by visiting sites hosted by the California Museum's Unity Center, the State Capitol, the California Third District Court of Appeal and the California Railroad Museum. At each site, students were treated to presentations by judges, appellate justices or trained docents. While they toured, other attendees participated in a workshop on "Civil Discourse in Action," led by Constitutional Rights Foundation staff. Upon the students' return, representatives provided reports back, facilitated by Sacramento Mayor Darrell Steinberg. Justice Kennedy, who once again attended the full program, provided remarks over lunch, during which he recited the Preamble to the Constitution from memory, explicating each phrase reverently. He also advised taking the time to read the Constitution in full each year, noting it takes about an hour. The Justice and Presiding Justice Vance Raye from the California Third District Court of Appeal then stamped the students' passports as proof they had visited the Kennedy Learning Center that day!

The Kennedy Learning Center symposia honor the promotion of civil discourse that runs to the core of Justice Kennedy's being. Sharing with teachers and their students about why civil discourse matters so deeply is part and parcel of his pedagogical mission. He advances that mission, in good part, by modeling civil discourse and

¹³⁴ See Bob Egelko, *Napolitano Pledges to Uphold UC's Free-Speech Tradition*, SF GATE (Sept. 16, 2017, 12:32 PM PDT), <https://www.sfgate.com/bayarea/article/Napolitano-vows-to-uphold-UC-s-free-speech-12202087.php>.

¹³⁵ See JUSTICE ANTHONY M. KENNEDY LIBRARY & LEARNING CTR., WALK THE TALK: CONSTITUTION DAY 2018 (2018) (primary organizers: Kari Kelso and Chi Soo Kim).

embodying the ultimate in good behavior. As former Justice Kennedy clerk, now Supreme Court Justice Neil Gorsuch shares, “As great as Justice Kennedy’s legal legacy may be, I cannot help but wonder if today the person may have as much to teach us as the judge. . . . The rules Tony Kennedy has chosen to follow in his life he’s chosen carefully and worked hard to abide. They are timeless, tested, and true. They represent what is best, if too often missing, in our profession and our culture. Treat others as you would have them treat you, remembering that those with whom you disagree love this country every bit as much as you do. . . . These are the simple but enduring truths Tony Kennedy has sought to honor in his life. It is a life that is a grace to our profession and our nation and a model for those who follow.”¹³⁶

CONCLUSION

For Justice Kennedy, teaching is in his blood and close to his heart, as a means to a higher end, fulfilling an essential purpose. As he has been heard to say, “Democracy and the idea of freedom are not in your DNA. . . . Freedom is taught, and teaching is a conscious act.”¹³⁷ He cautions against the consequences of ignorance and complacency: “My friends, make no mistake, there is a jury that’s out. It’s half the world. The verdict is not yet in.”¹³⁸ As Justice Kennedy instructs, those doubting democracy “are waiting for you to make the case.”¹³⁹ Meaning it’s up to all of us, to learn well the lessons required to keep the republic we’ve inherited, and convey them forward, to guarantee a lasting freedom at home and around the world.

¹³⁶ Justice Neil M. Gorsuch, Tribute, *In Tribute: Justice Anthony M. Kennedy*, 132 HARV. L. REV. 3, 5 (2018).

¹³⁷ Kaitrin McCoy, *Justice Kennedy: “We Must Know Our Heritage and Our History,”* CHAUTAUQUAN DAILY (July 23, 2013), <https://chqdaily.wordpress.com/2013/07/23/justice-kennedy-we-must-know-our-heritage-and-our-history/> (reporting on address to “Chautauquans” attending the interdisciplinary summer program at the Chautauqua Institution in southwestern New York state).

¹³⁸ *Justice Kennedy and the Meaning of “Freedom,”* NPR (Aug. 8, 2006, 1:00 PM), <https://www.npr.org/templates/story/story.php?storyId=5626695> (Slate legal analyst Dahlia Lithwick talking with radio show host Alex Chadwick about Justice Kennedy’s speech to American Bar Association; including clip of portion of speech) [hereinafter *Meaning*]; cf. 2009 Commencement Address, *supra* note 109 (“[T]he jury on whether to pursue law and freedom is a jury that is still out.”).

¹³⁹ *Meaning*, *supra* note 138.