

TRIBUTE TO LAURENCE H. TRIBE

In 1967 the California Supreme Court faced a difficult problem of evidence law. Both the defendants standing trial for a robbery and two persons who had been identified as the perpetrators of the crime were interracial couples with yellow automobiles. The question was how much weight this factual coincidence might be given. Paul Freund told the Harvard faculty how a brilliant young law clerk, then working for a great California judge, Matthew Tobriner, had helped solve the problem with finesse and originality, by bringing probability theory to bear on the law's concern for fairness. No one since has doubted the power of Larry Tribe's mind, the breadth of his knowledge, or the scope of his interests.

We are not here today, however, only to celebrate that excellent mind—an asset of which, in a sense, Larry is a passive beneficiary. Rather, we are here to recognize that during the thirty-five years since Paul Freund spoke, Larry, through commitment and activity, has realized Paul Freund's high expectations. Today, the community of students and scholars of constitutional law—those seriously interested in the subject—do not think of Professor Tribe as a teacher at the Harvard Law School; instead they think of Harvard Law School as the place where Professor Tribe teaches. And in that slight turn of phrase lies a world of achievement.

That achievement begins with what, for a professional academic, is the basic requirement—mastery of the subject. And it continues with an effort to explain the subject clearly and comprehensively, to transmit learning both to contemporaries and to future generations. This, Larry Tribe has accomplished in his treatise on constitutional law.

That achievement reflects a pragmatic effort to improve the law, improvement that reflects understanding of the status quo and is illustrated by the nature of the cases he has won in the courts. Naming just a few of Larry's many successes before the Supreme Court—cases like *Sable Communications v. FCC*,¹ *Pennzoil Co. v. Texaco*,² and *Richmond Newspapers, Inc. v. Virginia*³—shows how tremendous his impact has been in so many areas of the law. He is a scholar whose work makes a difference in the practical world, and he is a lawyer whose practical work has profound implications for the legal academy.

1. 492 U.S. 115 (1989).

2. 481 U.S. 1 (1987).

3. 448 U.S. 555 (1980).

Finally, that achievement embodies a humanitarian outlook that understands American law as an effort to help Americans live together, productively, in a society that respects, and safeguards, democracy, freedom, equality, and the rule of law itself. This achievement can be seen in the implementation of many of his useful recommendations. Larry does not simply follow the Court's cases and write pithy summaries, attempting to distill trends in one direction or another. Rather, he often begins the trends that the Court comes to follow. His groundbreaking work in privileges & immunities preceded the Court's own movement in that direction by decades.

Of course, there is more. His articles span a host of subjects—the First Amendment and the Fourteenth; abortion and affirmative action; cyberspace, hate crimes, and the environment. And that is not even a representative sample of the whole. “The Fourth Discontinuity”⁴ perhaps wins the prize for the most intriguing title (although “The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics”⁵ takes a close second).

Larry is an authority on many subjects. He has argued cases of all kinds. But still, we must not forget that we are beneficiaries, first and foremost, of his dedication to his basic task as the nation's leading expert on constitutional law and the values that it embodies. Law students and young practitioners are particular beneficiaries, for he provides them with a model. The model shows them how dedication to a basic task, learning a field, can grow into a lifetime of contribution—indeed, of ever-deepening knowledge and ever-growing contribution, to the profession, to the community, to others. It is growth that never stops. For that, and for much else besides, we commend Larry Tribe today. We are grateful for everything he has already done and for what we all know is yet to come.

STEPHEN BREYER

Associate Justice

Supreme Court of the United States

4. Laurence H. Tribe, *Technology Assessment and the Fourth Discontinuity: The Limits of Instrument Rationality*, 46 S. CAL. L. REV. 617 (1973).

5. Laurence H. Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn From Modern Physics*, 103 HARV. L. REV. 1 (1989).