

INTRODUCTION TO THE DWIGHT D. OPPERMAN LECTURE

WELCOME AND INTRODUCTION OF THE PRESIDENT OF DRAKE UNIVERSITY

David S. Walker, Dean of Drake Law School

Good afternoon. I am David Walker, and I am privileged to serve Drake University as the Dean of the Law School. I want to welcome you this afternoon to a very special event, the highlight of any year in which it is given, and that is the Dwight D. Opperman Lecture in Constitutional Law.

Our Constitution, including the expansive, pervasive, much debated, and evolving body of law that surrounds and proceeds from it, is an area of law that we emphasize at Drake Law School. We were one of four schools recognized by Congress, in celebrating the Bicentennial of the Constitution, with appropriations helping to endow and authorize a constitutional law center, which would serve as a resource on issues of constitutional law to lawyers and judges, journalists, political scientists, and other scholars interested in the Constitution. Drake is the only such school to have established a Constitutional Law Center, and true to the purposes intended by Congress, our Center—through speakers, symposia, scholarship, and other means—quite intentionally serves as a resource on issues and matters of Constitutional Law. The Opperman Lecture has been a gift of incalculable benefit to the faculty and students of the Law School, and we are grateful to be able to share it with the broad community of which we are a part, and with all of those interested in that document so vital to our democracy, and to all who look to our country for example.

It is an inestimable honor to have United States Supreme Court Justice Stephen G. Breyer visit Drake to deliver the Opperman Lecture; and I will have the privilege of introducing him to you shortly. First, however, I want to recognize and call upon the President of Drake University, Dr. David E. Maxwell, for welcoming and such other remarks

as he would like to make at this time.

If I might briefly speak of Dr. Maxwell, I would tell you that he is in his seventh year as the President of Drake University; and during his seven years at Drake he has forcefully and persistently, but gracefully and with humor, led it through extensive program review and strategic planning that have enabled us to meet great challenges, realize ambitious and important goals, and bring within reach a grand vision of the University's future. I was honored to serve on the search committee that recommended him for the Presidency, and in the last two years—particularly the last year—I have been grateful to be able to work for and with him. Please recognize David Maxwell, the President of Drake University.

WELCOMING REMARKS AND RECOGNITION OF DWIGHT D. OPPERMAN

David E. Maxwell, President of Drake University

Thank you Dean Walker. I would like to add my welcome to the 2005 Dwight D. Opperman Lecture. On behalf of all of us at Drake University, I would like to welcome Justice Breyer to our university.

I hope that you have found your interaction with our Drake law students for the last few hours to be as stimulating and rewarding as we do on a daily basis. I am sure that it was an experience that they will cherish for a lifetime.

We are looking forward to your remarks with great eagerness, but before we begin the program, I would like to acknowledge—and thank—the person who made today possible. Every great university, every institution of higher learning that strives to fulfill its vision and its promise, has a very few special people in its history that have truly shaped what the university is and will be—people who, through their vision, commitment, intellect, enthusiasm, and generosity have changed the institution's trajectory, and who have enabled it to become something others might not have even dreamed of.

Drake University has been truly fortunate to have Dwight Opperman—alumnus of both the undergraduate college and the Law School, member of the board of trustees, and remarkably generous supporter—someone whose engagement at Drake has, without question,

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enriched the lives of generations of Drake students, faculty and staff and whose vision of bringing a Supreme Court Justice to the Drake campus enriches our lives today.

I would add on a personal note that Dwight's friendship, support, and encouragement have been a cherished part of our six years at Drake thus far for Madeleine and me.

This fall, we begin a year-long celebration of Drake University's 125th birthday—a year of saying thank you to the thousands and thousands of people who have enabled Drake to become one of the premier institutions in the Midwest. So Dwight, in keeping with the spirit of our 125th anniversary year, and on behalf of all of us who are enriched by your ideas and your actions, thank you.

INTRODUCTION OF THE HONORABLE STEPHEN G. BREYER

David S. Walker, Dean of Drake Law School

Justice Stephen G. Breyer was nominated for the Supreme Court by President Clinton in May of 1994 to replace Justice Harry A. Blackmun, who had retired; and with broad bipartisan support, he was confirmed by the Senate in late July of that year and took his judicial oath on August 3. At a time when politics, including the politics surrounding judicial appointments, has been characterized by division and suspicion, it is instructive to look at his background and journey to the Supreme Court.

He was born in San Francisco, California, during the Depression, to a family that revered education and was involved in public life. His father was a lawyer and legal counsel for the San Francisco Board of Education, and his mother volunteered actively for the San Francisco Democratic Party and the League of Women Voters. The democratic process—small “d”—was important, and his father would take him on trips to the voting booth and helped him to develop what Justice Breyer would later describe as “a trust in, almost a love for the possibilities of a democracy” and a belief that “with trust and cooperation and participation, people can work through their government to improve their lives.” These are themes, you will find, to which he gives attention in his recently published book, *Active Liberty*.

He attended Lowell High School, the flagship or “magnet” of the San Francisco public school system. There he distinguished himself, accumulating debating, science, and math awards and completing high school with only one “B.” An Eagle Scout by the age of twelve, fellow scouts referred to him as the “troop brain.” While at Lowell, classmates presciently voted him “most likely to succeed.” Reportedly his parents feared that Harvard—to which he had been admitted for college—might make him too bookish, and he declined.

He attended Stanford University, where he graduated with highest honors, was elected to Phi Beta Kappa, and was selected for a Marshall Scholarship. As a Marshall Scholar he continued his studies at Oxford University, Magdalen College, and in 1961 he earned a B.A. with first class honors for his study of philosophy, politics, and economics.

Following Oxford he was admitted to and attended Harvard Law School. He was elected to be Articles Editor of the *Harvard Law Review*, wrote required independent work on pragmatism, and graduated from Harvard *magna cum laude*. Following graduation in 1964, he accepted a Supreme Court clerkship with Associate Justice Arthur J. Goldberg.

The thirty years extending from the completion of his clerkship with Justice Goldberg to his own confirmation as a Supreme Court Justice are characterized by themes of academic and professional distinction, extraordinary public service, and a widely perceived ability to break through the knottiest of problems and secure consensus where opposition had prevailed. He was Special Assistant to Assistant Attorney General Donald F. Turner in the Antitrust Division of the Department of Justice and then Assistant and later full Professor at Harvard Law School. At Harvard he specialized in antitrust and federal administrative law, and he examined and wrote about government regulation—when and where it was appropriate, when and where it was counterproductive.

In 1973, he returned to Washington as an assistant special prosecutor in the Watergate investigation and stayed for an additional two years as special counsel to the Administrative Practices Subcommittee of the Senate Judiciary Committee. Later he became chief counsel to the Judiciary Committee. Among other things, he focused on the airline industry, and he impressed both Republicans and Democrats for his work on airline deregulation. A decade later, with the difficult and politically controversial issue of federal sentencing guidelines, he would be called upon for similar leadership; and the same thorough, pragmatic, consensus-building approach would likewise result in resolution.

President Carter nominated him for a seat on the First Circuit Court

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of Appeals in the fall of 1980, when a Republican victory in November seemed imminent; and his nomination might have stalled, as others did and have. But the care and thoroughness of his work for Senate Judiciary had so impressed both sides of the aisle, in addition to obvious qualifications, that he won confirmation easily and was the final selection of President Carter to be confirmed as a federal judge. A decade and more later, nominated for the Supreme Court by President Clinton at a time of similar political crosswinds, he would likewise draw on bipartisan support and win confirmation handily.

Inquiry and research reveals not only the academic and professional distinction one hopes for in a Justice of the Supreme Court, but also a gift for humor. In a question-and-answer session earlier today and at lunch, faculty and students witnessed and enjoyed his abundant sense of humor. As Dean of a law school with a strong orientation toward the bench and the bar, devoted to preparing graduates for the practice of law, I especially appreciated an exchange that occurred during oral argument of a case at the Court. Tony Mauro reported that Justice Scalia “had mused during oral argument on lawyer advertising about how lucky he was that he didn’t have to practice law on the way to becoming a justice,” to which Justice Breyer replied quickly, “it might have helped.” Also, reportedly he was once asked by a writer for the *Harvard Law Bulletin* how he would categorize his own legal philosophy. The Justice declined, jokingly adding, “Roscoe Pound said once, ‘that judge is so stupid, he doesn’t know if he’s a member of the historical epistemological school or the sociological functional school of jurisprudence.’”

I will not ask that question, but some insight would be revealed in the nearly thirty articles and five books that Justice Breyer has authored or co-authored, including his book published less than a month ago, *Active Liberty: Interpreting Our Democratic Constitution*, an outgrowth of the Tanner Lectures on Human Values that he delivered at Harvard University last year.

For now, let me welcome United States Supreme Court Justice Stephen G. Breyer to Drake and invite him to deliver the Dwight D. Opperman Lecture in Constitutional Law. Please welcome Justice Breyer.