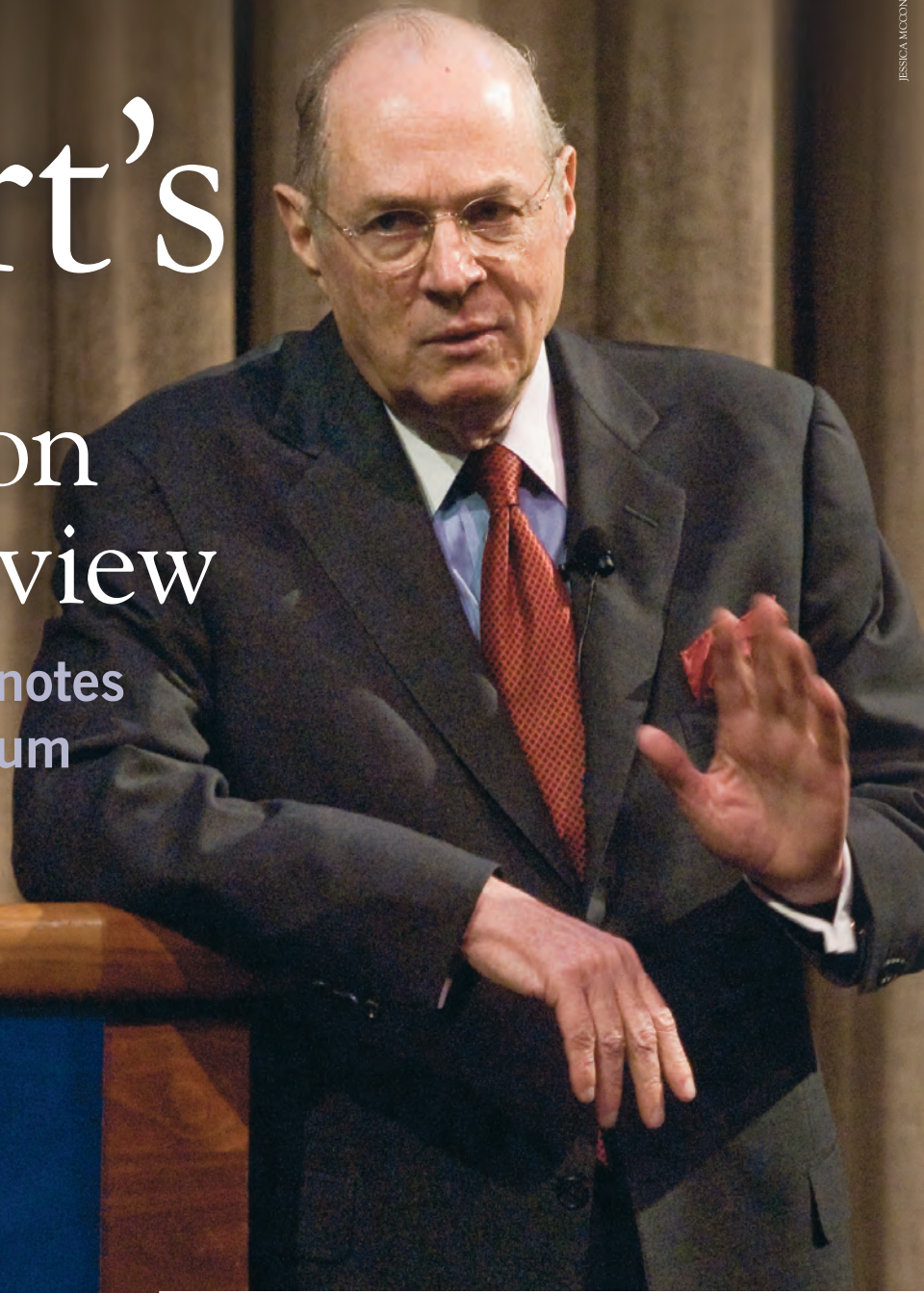


An Expert's View on Judicial Review

Justice Kennedy Keynotes Law Review Symposium

By Jamie L. Freedman



Justice Anthony M. Kennedy spoke about the history and importance of judicial review as the symposium's keynote. He is the seventh Supreme Court Justice to visit GW Law in recent years.

U.S. Supreme Court Justice Anthony M. Kennedy addressed a capacity crowd Oct. 15 at GW's Dorothy Betts Marvin Theatre for the opening event of the two-day *George Washington Law Review Symposium*. The keynote address, focusing on judicial review, set the stage for a series of panel discussions on the topic by distinguished scholars from across the nation.

The seventh Supreme Court justice to visit GW Law in recent years, Justice Kennedy offered wide-ranging insights on the history and importance of judicial review—the power of a court to invalidate legislative and executive acts deemed



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unconstitutional. Appointed to the court by President Ronald Reagan in 1988, he is a swing voter who has played a key role in a number of decisions evaluating the constitutionality of statutes.

“It is a grave power that nine justices, five if the court is divided, can declare invalid a statute that has been passed by the Congress and signed by the president,” he said in discussing the doctrine. Justice Kennedy emphasized that judicial review provides “permanency and constancy” and helps unite people over time with “the purposes, intent, and wisdom of the framers of the Constitution.”

It is vital for all Americans to understand the Constitution, he stressed. “The Constitution does not belong to a bunch of lawyers and judges. It belongs to the people. Americans come from many backgrounds, ethnicities, and religions, but the one thing we all have in common is the Constitution. And it is immensely important to our heritage that our people know and understand the Constitution, because you cannot defend what you do not know.”

An engaging speaker, Justice Kennedy elicited frequent rounds of laughter and applause for his candid remarks. His wide-ranging discourse spanned the history of English common law, the Magna Carta, and *Marbury v. Madison*—the 1803 Supreme Court case that established judicial review. He spoke at length about the “seeds of freedom,” saying, “The common law

Justice Kennedy with Dean Frederick M. Lawrence. In his welcoming remarks, Dean Lawrence underscored the Law School’s close and long-standing relationship with the Supreme Court.



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GW Law Associate Dean Gregory Maggs, Professor Orin Kerr, and Associate Professor Renée Lettow Lerner are former clerks of Justice Kennedy.

comes from the people to the state, not the state to the people. It ultimately prevailed because it made sense to the people who believed in freedom, and it has sustained us to this day.”

Justice Kennedy concluded his talk with a question and answer session, touching upon topics ranging from the court’s collegiality to its declining caseload. “When I first came to the Supreme Court, we heard about 150 cases a year, which was too many cases, and now we are down to around 80, which does not work us to full capacity,” he said, attributing the decrease to more cases going to arbitration and to Congress passing fewer statutes recently requiring review.

In his welcoming remarks, GW Law Dean Frederick M. Lawrence underscored the Law School’s close and long-standing relationship with the Supreme Court. “We’ve been connected to the court for well over a century,” he said. The dean pointed out that three former clerks of Justice Kennedy are now members of the Law School’s full-time faculty—Associate Dean Gregory Maggs, Professor Orin Kerr, and Associate Professor Renée Lettow Lerner, who introduced Justice Kennedy at the event.

A former constitutional law professor, Justice Kennedy congratulated the GW Law students on attending a “splendid” law school. “I am thrilled that people of your talent and commitment are in law school and hope that many of you go on to practice law,” he said.

Justice Kennedy’s remarks were a fitting preamble to three lively panel discussions exploring judicial review, moderated by GW Law faculty members and hosted by *The George Washington Law Review*. Topics included law and judicial duty, the will of the people, and contemporary and comparative approaches to judicial review. **GW**

(Far left) The symposium included three panel discussions. From left to right, Peter J. Smith, professor of law at GW Law; Jenna Bednar, associate professor, University of Michigan Department of Political Science; and William E. Forbath, Lloyd M. Bentsen chair in law, University of Texas School of Law, participate in “The Will of the People” panel.

(Left) The George Washington Law Review’s Editor in Chief Mark Taticchi and Special Projects Editor Rebecca Bianchi meet with Justice Kennedy during the event.