

Brennan influenced key rulings

By Liz Schevtchuk
Catholic News Service

WASHINGTON — Justice William J. Brennan, who announced his resignation from the Supreme Court July 20, backed both a right to abortion and a right to protest against it. He also favored religious freedom alongside church-state separation.

Brennan's abrupt departure for health reasons also cut the court's Catholic membership by one-third and removed one of the strongest opponents of the death penalty.

In 1956, when President Dwight Eisenhower asked Brennan, then a New Jersey Supreme Court justice, to fill a court vacancy, the nominee's Catholic beliefs became an issue.

By the time Brennan retired at age 84, some abortion opponents had prayed for his demise.

His rulings over the years were varied on issues of concern to his fellow Catholics and other U.S. religious believers.

Although he did not write the majority in the case, Brennan was considered a primary influence in the Supreme Court's 7-2 *Roe vs. Wade* ruling that in 1973

legalized abortion nationwide.

During a rare interview, with National Public Radio in 1987, Brennan said the constitutional right that safeguards abortion is "the right to privacy, of course."

"It's a constitutional right that every individual has, male and female, and it happens in the case of the female to include the right ... to have an abortion," he said.

Brennan was one of the dissenters from the 1989 Webster ruling that upheld state abortion restrictions. In it he joined in a minority opinion that claimed the court wanted to "overrule *Roe* ... and return to the states virtually unfettered authority to control" abortions.

But he also did not hesitate to defend the right of opponents of abortion to publicly demonstrate and promote their views.

In 1988, for example, Brennan backed the right to conduct pro-life picketing at the home of a Wisconsin physician who performed abortions. The court majority found that the "especially offensive" demonstration at a private residence could be prohibited. But Brennan, joined by Justice Thurgood Marshall, disagreed and said that staging the protest at someone's

home "does not strip it of constitutional protection."

He and three other dissenters lost a 5-4 vote in May to let stand an injunction against pro-life demonstrations in Atlanta.

Brennan also wrote the majority opinion in 1986 in a 5-4 ruling that said subjecting a pro-life group to federal restriction of corporate political activity "infringes protected speech without a compelling justification."

His church-state opinions were equally mixed.

In a 1963 ruling, Brennan wrote the majority opinion declaring that government could interfere with religious freedoms only if it had a "compelling state interest" for doing so.

He authored the dissenting opinion when the court this spring voted 6-3 to uphold a ban on religious use of peyote in a Native American sacramental rite. The court's majority in the peyote case took issue with the "compelling state interest" concept.

He also wrote the majority opinion in a 1987 ruling declaring that it violates religious freedom when employees fired for refusing to work on the Sabbath are denied unemployment benefits.

However, Brennan wrote the majority opinions for two 1985 rulings, both 5-4, that struck down New York City and Grand Rapids, Mich., programs allowing public school teachers to teach remedial education classes in church-run schools. Brennan said such arrangements "have the effect of promoting religion." He also objected to the court's 1984 ruling that allowed the inclusion of a Christmas creche in a municipal holiday display in Pawtucket, R.I. Brennan found the creche was "an impermissible governmental endorsement of a particular faith." In the 1987 radio interview, the justice described himself as a "devout Catholic" who attends Mass every Saturday evening.

At his confirmation hearing in 1957, Brennan was asked how, as a Catholic purportedly "bound by your religion to follow the pronouncements of the pope on all matters of faith and morals," he would handle a conflict between American law and church law.

Brennan replied that "what shall control me is the oath that I took to support the



File photo

Justice William J. Brennan

Constitution and laws of the United States and I shall so act upon the cases that come before me for decision."

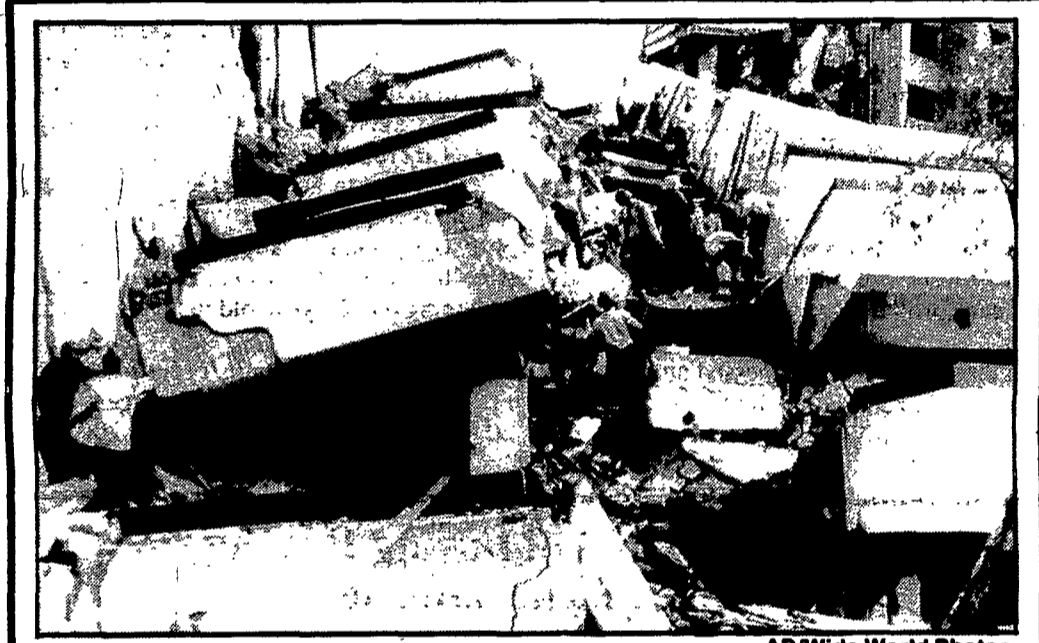
The question had been asked by Senate committee members at the request of a group called the National Liberal League, which claimed existence of a "sufficient similarity between one who follows the Communist Party line ... and one who accepts the pope as infallible in faith and morals to justify excluding Judge Brennan from the Supreme Court."

When the Senate voted to confirm Brennan's appointment, only a fellow Catholic, Sen. Joseph McCarthy, R-Wis., voted "no."

In 1989, demonstrators in Louisville, Ky., criticized the decision by Spalding University, a Catholic institution, to award Brennan an honorary degree. In 1986, shortly before the justice addressed law students at Loyola-Marymount University in Los Angeles, a Protestant minister asked his congregation to pray for Brennan's death so an abortion opponent could be appointed to the court.

The University of Notre Dame awarded Brennan its Laetare Medal, given to an American Catholic for outstanding public or professional service, in 1969.

Two Catholics, Justices Antonin Scalia and Anthony M. Kennedy, remain on the high court.



AP/Wide World Photos

GRIM TASK — Rescuers swarm over the massive concrete ruins of the Hyatt Hotel in Baguio City, Philippines, July 18, in an attempt to free more than 100 people believed trapped by an earthquake two days earlier.

Group urges Knights to boot pols who favor abortion

By Liz Schevtchuk
Catholic News Service

WASHINGTON — In an ongoing campaign to kick politicians who back abortion out of the Knights of Columbus, Human Life International is urging pro-lifers to send postcards to the Knights urging expulsion of such politicians.

"There's a growing scandal inside the Knights," Benedictine Father Paul Marx, president of Human Life International, wrote recently. "Some of America's most prominent pro-abortion politicians are members of the Knights of Columbus."

Such lawmakers "are responsible for the violent deaths of millions of unborn babies, including thousands of our future priests. They give millions of our tax dollars to the abortion industry," said the priest, whose organization is based in suburban Washington.

Father Marx asked pro-lifers to mail printed postcards urging Supreme Knight Virgil C. Dechant to "please end this public scandal by expelling these disloyal Catholics."

Some Knights support the expulsion effort and predict it will surface at the Aug. 7-9 national convention in San Antonio.

Knights' officials, though, contend it is not their place to determine who is a "practicing" or, as they say, a "practical" Catholic.

To be a Knight, "the basic criterion is that a Catholic man be a practicing or prac-

tical Catholic," said Russell Shaw, the Knights' Washington-based public information director.

But whether one is a practicing Catholic is "up to the pastors of the church to decide. It's not for the Knights of Columbus to define 'practicing' Catholic," Shaw said July 17.

In his mailing, Father Marx also encouraged pro-lifers to "send a tax-deductible gift" to support his organization's "action programs. We need your financial support urgently to get millions of Catholics to ask Dechant to act."

He identified as "abortion Knights" seven Democrats in the House of Representatives along with Sen. Edward M. Kennedy, D-Mass., New York Gov. Mario Cuomo, and New Jersey Gov. James Florio. Florio resigned from the Knights in May.

The targeted House members are Edward Roybal of California, John Dingell of Michigan, James Traficant of Ohio, Tom McMillen of Maryland, Bernard Dwyer of New Jersey, David Obey of Wisconsin and Edward Markey of Massachusetts. Markey previously has said his membership in the Knights of Columbus has lapsed.

Press aides to several of the House members said the congressmen had little or nothing to say about the dispute, which surfaced in late 1989.

Dennis Fitzgibbons, Dingell's spokesman, said Human Life International

"did not contact us" before making the attack. "We prefer not to comment on things relayed through the media. Obviously, they're one of many groups with an opinion," he said.

All the congressmen voted against pro-life positions in a majority of 1989 votes, according to the National Right to Life Committee, which tracks legislation and is not part of Human Life International.

The votes covered such issues as whether the District of Columbia may fund abortions with its local tax money, whether the federal Medicaid program may finance abortions in rape or incest cases, and support for the United Nations population program.

Roybal and Kennedy also signed a Supreme Court friend-of-the-court brief backing legal abortion and are sponsors of a bill to prevent states from restricting abortion. Traficant signed the brief as well but did not sponsor the bill.

In a July 16 telephone interview with Catholic News Service, Father Marx cited an "enormous response" to his expulsion effort but would not reveal how much money has been raised. It is "never enough," he said, "but it was substantial" by mid-July.

Shaw said postcards have been received at the Knights' New Haven, Conn., headquarters. "I don't think it's been an overwhelmingly large number," he said.

"Nobody questions Father Marx's right

... to send those postcards," Shaw said. Yet, "the Knights are a pro-life organization" and if pro-lifers target each other "it's just not helpful," he said.

Father Marx, who says he is a member of the Knights, cited a rule stating that any member "who shall fail to remain a practical Catholic in union with the Holy See" loses his membership in the Knights.

Shaw said that "I'm not saying there should be no standards" for Catholics. "But that's not everybody's right (to judge). That's for the pope and bishops to say."

Michael Engler, special consultant to Human Life International and a California member of the Knights, suggested top Knights "are defending the powerful" and think their "job is preventing political embarrassment and repercussions to the bishops."

"The (expulsion) thing is going to continue to boil," Engler said July 18. "And it's coming from within the Knights."

He and another California Knight, Francis Crotty, who chairs a group called the Save Our Babies Caucus, said the California Knights recently approved a resolution calling for expulsion of "pro-abortion" Knights.

Washington state Knights had a dispute in early June when a resolution seeking Kennedy's ouster was shelved.