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Dedication: Justice John Paul Stevens

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DEDICATION

JUSTICE JOHN PAUL STEVENS

The editors of the *Loyola of Los Angeles Law Review* dedicate the law review's inaugural Supreme Court issue to Justice John Paul Stevens, upon his retirement from the bench and in honor of his incredible and lasting contributions to the legal community. The issue includes dedication letters from President Bill Clinton, Justice Ruth Bader Ginsburg, and Justice Sonia Sotomayor, as well as dedication letters and essays written by Justice Stevens' former clerks Susan R. Estrich, Michael J. Gottlieb, Abner S. Greene, Jamal Greene, Melissa Hart, Amanda Leiter, Gregory P. Magarian, Nancy S. Marder, David Pozen, Adam M. Samaha, and Samuel Spital.

My sincere thanks to each of my former colleagues for your kind words and, more importantly, for your superb contributions to the work of the Court.

Sincerely,

John Paul Stevens

President Bill Clinton

Capturing the essence of any career in a handful of paragraphs is never simple. The accumulated disappointments and triumphs would provide the underpinnings of an epic novel. When the subject has served an extraordinary three and a half decades on the nation's highest court, the challenge would seem to be all the greater.

The task is actually easier with Justice John Paul Stevens because he has written his own way into history. His opinions, whether for the majority in concurrence or in sometimes scathing dissent, are free of bombast and five-dollar words. They provide a clear view of the philosophy he applied to the cases before him, and what he believed to be their historical significance.

That the third-longest serving justice in the history of the Court would turn out to be one of its most gifted legal writers was no surprise to anyone who was paying attention in the fall of 1975. A *Time* magazine article on Gerald Ford's nomination of Stevens wrapped up with a glowing admiration from Philip Kurland, the University of Chicago's constitutional expert. Kurland, who had little patience for sloppily-written legal opinions, seemed nearly giddy at the prospect of a new justice who could write well.

At the time of the Stevens nomination, I was a young law professor at the University of Arkansas Law School at Fayetteville. I had been recommended for the job by my Corporate and Tax Law professor at Yale, in spite of the fact that he had once reprimanded me for reading Gabriel Garcia Marquez' *One Hundred Years of Solitude* in class instead of focusing on his lecture. While I should have been, like Kurland, paying closer attention to the nomination, at least I was an unapologetic fan of great writing.

After the recent storm over President Ford's pardon of Richard Nixon, I, like much of the country, briefly noted with appreciation Stevens' considerable qualifications and left it at that. The Senate was similarly impressed, and confirmed him quickly, and by a margin of 98-0.

That vote of confidence proved to be fully justified. Over the next thirty-five years, John Paul Stevens, in his questions from the bench and in his written opinions, gave a voice to those without a platform of their own: the ordinary citizens, the underrepresented, the victims of bigotry, the prisoners and the pariahs, and he did so in

words full of clarity and conviction.

Although Justice Stevens evolved in stark contrast to the rightward push of the Court's conservative majority, he maintained an impressive ability to frame coalitions around practical, common-sense positions. When he couldn't bridge the divide, he dissented in opinions that were combative and, I believe, prophetic. The boy who witnessed Babe Ruth's famous "called shot" in the 1932 World Series never hesitated to call them the way he saw them.

Justice Stevens' opinions are never loosely reasoned or decorated with affected prose. Like all great writers, he brings clarity to the indistinct and resolution to the tenuous. A jurist who can do this strengthens the foundations of our democracy, and assures even more firmly our rights for future generations.

A good illustration of Justice Stevens' special talent is his famous dissent—later vindicated by the ruling's reversal—in *Bowers v. Hardwick*:

“Although the meaning of the principle that ‘all men are created equal’ is not always clear, it surely must mean that every free citizen has the same interest in ‘liberty’ that the members of the majority share.”

You can hardly imagine a more clear affirmation of another brilliant legal writer, working in seclusion in June of 1776. Like Thomas Jefferson, Justice Stevens labored long and well to ensure that the rights his words described were extended to all citizens and would continue to be after he ended his service.

I am honored to join with the distinguished faculty and administration of the Loyola University of Los Angeles Law School in dedicating this special issue of the *Law Review* to the career and jurisprudence of Justice John Paul Stevens. I hope that those of us who contributed to it have done justice to his ideas, his eloquence, his way of making decisions and writing them down in clear, strong language. Justice Stevens' special qualities are gifts for which we should be grateful and which we all should strive to emulate.

Justice Ruth Bader Ginsburg*

Five years ago, in a letter applauding Justice Stevens' 30-year tenure on the Court, President Gerald Ford commented that Supreme Court nominations are seldom considered when historians assess Presidencies.¹ "Let that not be the case with my Presidency," Ford continued, "[f]or I am prepared to allow history's judgment of my term in office to rest (if necessary, exclusively) on my nomination . . . of Justice John Paul Stevens to the U.S. Supreme Court."² Legions of lawyers and judges would concur heartily in President Ford's praise for the "dignity, intellect[,] and [absence of] partisan political concerns"³ that characterized Justice Stevens' service on the Court.

Expressing my affection and admiration for my dear colleague, I wrote to Justice Stevens on the day he told us of his decision to retire:

You are the very best of jurists, and I will so miss your bright company. From my first year [at the Court], you have been my model of how a collegial judge should behave. Work from other chambers invariably took precedence over all else on your agenda. I could not match the immediacy of your responses to circulating opinions, but I have tried to be a respectful second.⁴

"Humility, not haughtiness," one of Justice Stevens' law clerks observed, "marked his career on the Court."⁵ In a Capital City with no shortage of self promoters, Justice Stevens set a different tone. Quick as his bright mind is, and fluent as his pen (or keyboard) is in drafting opinions, Justice Stevens remains a genuinely gentle and modest man. No jurist with whom I have served was more dedicated to the judicial craft, more open to what he called "learning on the

* Associate Justice, Supreme Court of the United States.

1. President Ford's letter is quoted in William Michael Treanor, *Introduction to Symposium on the Jurisprudence of Justice Stevens*, 74 *FORDHAM L. REV.* 1557, 1559 (2006).

2. *Id.*

3. *Id.*

4. Letter on file with *Loyola of Los Angeles Law Review*.

5. Diane Marie Amann, *John Paul Stevens, Human Rights Judge*, 74 *FORDHAM L. REV.* 1569, 1569 (2006).

job,”⁶ more sensitive to the well being of the community law exists to serve.

His manner at oral argument typified both his civility and the quality of his mind. He preceded his questions with the politest “May I, . . .,” then invited advocates to train their attention sharply on the precise issue likely to be dispositive.

Justice Stevens was not given to stock formulas that sometimes obscure the true basis for a Court’s decision. He insisted that *analysis*, not *habit*, should inform the Court’s judgments.⁷ His opinions, sometimes prophetic, often pathmarking, will continue to challenge and inspire jurists for generations to come.

6. John Paul Stevens, *Learning on the Job*, 74 FORDHAM L. REV. 1561 (2006).

7. *See, e.g.*, *Califano v. Goldfarb*, 430 U.S. 199, 222 (1977) (Stevens, J., concurring in the judgment) (“It is fair to infer that habit, rather than analysis or actual reflection, made it seem acceptable to equate the terms ‘widow’ and ‘dependent surviving spouse.’”).

Justice Sonia Sotomayor**Justice John Paul Stevens: Teaching By Example*

Working with Justice Stevens is among the most profound experiences of my career. And his retirement from the Court is one of the saddest. I feel fortunate beyond words to have spent almost a year working with this great man. He was most welcoming when I arrived at the Court, and through our conversations and other opportunities to observe him at work, I learned things that cannot be taught except by example.

Almost everyone to describe Justice Stevens remarks immediately on his decency and humility. It is no wonder, as he possesses each of these traits in unusual abundance. But this description does not begin to capture the complexities of the Justice's character or the depth of his work.

As his opinions show, there seemingly is no subject that does not interest Justice Stevens. And certainly there is none that he cannot master. This is as true of non-legal subjects as it is of legal ones. Consider that this man who lived through prohibition and the advent of television was one of the first Justices to comprehend the operation and significance of the Internet. And his understanding of electioneering in the age of political action committees is arguably unsurpassed.

Perhaps more striking than his command of the law is the Justice's indomitable sense of fairness. Despite all his years working in such a grand building removed from so much of society, Justice Stevens never lost sight of what some might consider smaller causes. To him, unfairness or injustice even on an individual scale seemed always to merit serious consideration. It is often said that the U.S. Supreme Court is not a court of error correction. But that is not entirely true, and Justice Stevens had a particular instinct for identifying those errors that warranted further review even absent a circuit split, a large amount in controversy, or the involvement of a public figure.

The Justice never told me so directly, but I sensed that his attention to these cases was in part a response to his view of the

* Associate Justice, Supreme Court of the United States. Justice Sotomayor gratefully acknowledges the assistance of her 2009 Term law clerk, Lindsey Powell.

Court's role in our society. He seemed to treat the protection of individual rights granted by the Constitution as a sacred obligation of our courts. His writings reflect a concern that, if the courts neglect that obligation, it is uncertain whether other institutions would respect those rights in their work, and our society would be the worse for it.

In keeping with this commitment to the integrity of the courts, Justice Stevens has been a lifelong devotee of the rule of law. He built his professional reputation in large part on his representation of the Greenberg Commission, which investigated allegations of judicial misconduct by Illinois Supreme Court justices. The Justice's rigorous and fair approach to the investigation captured the public's attention and propelled his rise to the bench. Over the years, Justice Stevens has remained loyal to these founding principles of his career. Notably, the decisions of the Supreme Court with which the Justice most adamantly disagreed are, by and large, those which he feared would be perceived as being influenced by factors other than fidelity to the rule of law.

In addition to his decency and humility, Justice Stevens is widely known as a free thinker. Although long considered the leader of the Court's so-called liberal wing, in many cases the Justice did not hesitate to stake out an opinion favored only by him or by one other Justice. Whether due to his close reading of the facts, his firsthand experience of the law's evolution in an area, or a singular approach to a legal doctrine, Justice Stevens often had a different take, and he would not hesitate to say so. Famously, some of his dissenting views became majorities over time, as seen in the Court's shift from *Bowers v. Hardwick* to *Lawrence v. Texas*. Even when they have not carried the day, the Justice's steady stream of separate writings have challenged the other writers on the Court and inevitably shaped their views.

It would be easy to underestimate the extent of this achievement. In an institution that operates by reference to majorities and traditions, the temptation to abandon individual efforts is substantial. The Court's extraordinarily heavy workload further augments the allure of agreement. Justice Stevens' intellectual advantages, including his near-photographic memory, surely made the project of writing separately somewhat easier for him. But it is no small feat to remain faithful, year after year, to the project of going it alone.

This fidelity to principle should not be confused with rigidity. Quite the contrary. In remarks made at the Symposium on The Jurisprudence of Justice Stevens, which was held at Fordham University School of Law on September 30, 2005, Justice Stevens described the ongoing learning process he engaged in while serving on the bench. In part, the Justice was making a statement about the relevance of certain types of questions during confirmation hearings. But the Justice's point was also a deeply personal one. Not only is "learning on the job . . . essential to the process of judging," he said, it has also been "one of the most important and rewarding aspects of [his] own experience over the last thirty-five years." This was evident to me even in the brief time Justice Stevens and I served together. Although he never said so, I suspect that the Justice's unusually careful attention to the facts of each case—a practice that others have so often noted—is part of what helped him to judge each case only as it was presented and to learn as he went.

Work at the Court involves long hours spent poring over often gruesome facts. For this reason, among others, one can imagine the Court's workload taking a toll over time. Yet, despite his unusually long tenure as a Justice, there is no evidence that Justice Stevens felt burdened or allowed himself to grow cynical. The Justice continued to engage, with every appearance of fresh eyes and a buoyant spirit, the facts of each case, and he would call attention to their inconsistencies and injustices more often than any other member of the Court.

Justice Stevens will continue to make substantial contributions to the law in his retirement. He remains a tireless participant in legal discourse, and the legacy of his decisions and his character will always deeply impact the Court's work. I know that I will routinely return to his writings and example as I continue my own evolution as a Justice.

Susan R. Estrich*

A Lawyer on the Court

To be honest, I wasn't entirely sure about Justice Stevens when I first went to work as his law clerk, three decades ago. My first choice was Justice Brennan but in those days, he didn't hire women. "Nothing personal," I was told. Justice Stevens, having been on the High Court all of one year and change at the time, seemed a tad conservative to me: appointed by a Republican, opposed by the National Organization for Women on the grounds that his opinions on the Seventh Circuit (particularly in one case brought by stewardesses) were insufficiently supportive of women's rights. On the other hand, at least he hired women.

Early on in my clerkship, the Justice explained his philosophy to my co-clerk and me. In almost every case, he said, if you look hard enough and think hard enough, there is a "right" answer. I could barely keep a straight face. A "right" answer? What could be more ridiculous? I had been taught—and not just by the critical legal studies people who were then on-the-rise at Harvard—that it was all politics, or values if you prefer, that you could argue almost anything from one side or the other, and the "answer" was itself a choice. It took me almost thirty years, and full-time practice for the last three, to understand what Justice Stevens meant. Not surprisingly, he was right.

To be sure, there are instances where the "law" could indeed go either way, where, as a lawyer, you can honestly say that the chances of winning are 50-50, or depend almost entirely (and only) on which judge or judges are sitting in the room. But most of the time, particularly in business litigation, that just isn't the case. There is a better answer, not a more liberal or conservative one, but one that makes sense of a statutory scheme, serves the goals of that scheme, reflects the concerns expressed in past opinions. Indeed, the rule of law, by which I mean the system of treating like cases alike, and the predictability which that allows to parties entering into contracts, making deals, running businesses, depends on the law being something much more than a coin toss.

* Clerk to Justice John Paul Stevens, October Term 1978. Robert Kingsley Professor of Law and Political Science, USC Gould School of Law.

Clerking for Justice Stevens was hard precisely because he didn't decide who should win before he had read the cases. His judgments were made and opinions written with careful attention both to how lower courts would understand them, and even more perhaps, to how lawyers in practice could follow them. As he moved from junior Justice to becoming, of all things, the senior "liberal" on the Court, and got to assign himself opinions in more significant cases (the senior Justice assigns when the Chief Justice is on the dissenting side), the Justice's determination to reach decisions and write opinions that made "lawyerly" sense became even clearer. His understanding that in law, as opposed to academics, facts really matter, line-drawing is inevitable, and "reasonableness" can be a standard that is more than a cover for political choices, infused his opinions.

None of this might have mattered except for another lawyerly trait—or at least a trait of the great lawyers I have worked with and against. He believed in writing clearly. Simply. If you can't say it simply, he would tell us, it's probably because you haven't got the argument right. A winning argument can be made in English; a losing one requires legalese. His insistence on writing clearly went hand-in-hand with his determination to find the "right" result, because that result should be easy to explain and support by reference to the words of the statute (say), the policies it serves, how it has been interpreted in the past, and the like. If you were struggling with an opinion, it was usually because there was something wrong with the opinion; if it "wouldn't write," as we used to say, it was probably because it shouldn't. If you have to be glib to get by a point, you probably haven't figured the point out right. Glibness is the last resort, the cover and not the answer.

I think about Justice Stevens a lot lately, as I supervise young associates writing motions and briefs on a day-to-day basis. I think of him when they come to me and give me an answer to a legal question that just doesn't seem, as he would say, "right"—that doesn't make sense of the statute, serve the goals it is supposed to serve, seem consistent with the thrust of precedent, in other words, when the only thing that would make it "right" is that it helps our client. "Is this really the law?" I try to ask nicely, because it is obviously not our job in practice to decide what the law is, but to argue for our client. Usually it isn't, which doesn't mean you abandon your client, but

that you need to find another approach, rather than trying to push a sure loser up the hill. I think of him when I edit briefs with sentences so long that I can't follow them; I remember when I used to write that way. Short sentences. Noun and verb. No flourishes. The greatest compliment the Justice used to give us was that a draft was simple, straightforward, easily followed and understood—and of course, right.

Michael J. Gottlieb*

A Tribute to Justice Stevens

We have all received phone calls we will never forget. One of mine took place eight years ago. It was on June 23, 2003, a date some will associate with the announcement of significant equal protection decisions,⁸ but which I will always remember as the date I interviewed to clerk for Justice Stevens.

I was only about a month out of law school when I was invited to interview with the Justice. I spent days poring over the Justice's opinions, reviewing legal commentary, and anticipating possible questions. I barely slept out of a fear that I would appear unprepared. In retrospect, I would have been far better off had I simply called my family and studied the 1984 Chicago Cubs Playoffs roster. For, true to form, the Justice did not grill me on legal doctrine; rather, he focused on my upbringing, career aspirations, and interests outside of the law, including my favorite baseball team.

When my phone rang later that afternoon, a voice instructed me to hold for Justice Stevens. Before I could catch my breath, the Justice came on the line and asked, "Mike, are you still interested in

* Clerk to Justice John Paul Stevens, October Term 2004. Special Assistant to the President and Associate Counsel to the President. The views expressed herein are solely those of the author in a personal capacity and do not reflect the views of any branch or agency of the United States Government.

8. See *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

coming to work for me?” Having reassured him that my intent had not changed since earlier that day, he offered me the job with one caveat. “You can have the job,” he explained, “as long as you’re still a Cubs fan.” I told him that could probably be arranged.

I had arrived at the Court on the morning of my interview knowing only those things about the Justice that could be gleaned from the public record. To be sure, I knew about his jurisprudence. But I had also learned of his patriotism—he served as a Naval cryptographer in World War Two; his brilliance—he received the best grades in the history of Northwestern Law School; his dedication to fitness—he had remained an accomplished golf and tennis player well into his eighties; and his distinctive fashion sense—he was the only Justice capable of pulling off his trademark bow tie. My clerkship confirmed that the Justice possesses all of those qualities in ample supply, yet they are not what I remember most.

My fondest recollections are of working for a fundamentally kind, modest, and decent human being. Justice Stevens always paid attention to how we were doing and asked about our families. He noticed when we were sick or tired. Once, perceiving two of us to be sleep deprived, he utterly baffled us by offering to complete our cert petition work so we could go to sleep. The Justice is well known for signing “respectfully” at the end of every memo to his colleagues, but he is even better known for the sincerity with which he uses the word. Over the years, his colleagues have repeatedly praised his unyielding collegiality. The Justice always gave credit to his colleagues whose suggestions or criticisms helped improve his work. Never once did his disagreements make him disagreeable, even when confronting views that he described as “dead wrong.”

Over more than three decades on the Court, Justice Stevens maintained a deliberately low public profile. I am partial to one anecdote from our Term. On the eve of the 2004 Presidential Election, my co-clerk and I stayed up late into the night monitoring ongoing litigation in Ohio. As the Circuit Justice for the Sixth and Seventh Circuits, Justice Stevens was called upon to decide a last-minute challenge relating to the presence of election monitors in polling stations. We exchanged drafts by email into the morning. The Justice’s opinion affirming the judgment below was released before the polls opened the next day. When Justice Stevens went to vote

near his home in Virginia, he found himself in line behind a man reading the newspaper. The man turned around, looked at the Justice, and said, “Did you see what the Supreme Court decided in the Ohio election case?” Justice Stevens played dumb; the other man never knew.

During his time on the Court, Justice Stevens avoided black-tie galas, power lunches, and the speaking circuit. At the start of our Term, the Justice gave a speech in which he bragged, tongue in cheek, about his lavish summer during which he had read several books and traveled to the “exotic locale” of Chicago.⁹ His typical lunch consisted of a grapefruit enjoyed in the privacy of his office, with his colleagues following arguments, or in the courtyard with his clerks when the weather permitted. I will never forget when the Justice returned from the second inauguration of President George W. Bush in 2005. Of all things, he was fixated on the food at the congressional luncheon. Apparently, the shellfish spread was out of this world.

Those of us lucky enough to have clerked for “JPS” know that he possesses more than raw brainpower. The Justice has never let go of his love of legal practice, which he first honed as an antitrust attorney in Chicago. Well into his twilight on the Court, the Justice continued to craft the first drafts of all his opinions, to test rigorously the strengths and weaknesses of the parties’ briefs both before and during oral arguments, and to read and reread cases from volumes of the United States Reports he would pull off the shelves in his office. But beyond his work ethic, the Justice displayed a genuine interest in the historical background to each case. It was not simply that he wanted to learn the record—he was legitimately excited about grasping the historical context that gave life to the particular dispute. For example, it was not the debate over the constitutionality of a Ten Commandments display that most attracted Justice Stevens’ attention in *Van Orden v. Perry*.¹⁰ Rather, in our many conversations about the case, the Justice returned most often to the unusual relationship between movie director Cecil B. DeMille and the Fraternal Order of Eagles, which had led to the original donation of the Ten

9. John Paul Stevens, *What I Did This Summer*, 18-OCT CBA REC., Oct. 2004, at 34, 35 (2004).

10. 545 U.S. 677 (2005) (Stevens, J., dissenting).

Commandments monument to the state of Texas. It was not that discussions about the Establishment Clause bored the Justice—not at all—he just he had more fun reading and talking about DeMille and the Eagles.

Those of us within the Stevens clerk family have always known his retirement was inevitable, though we would admit it only reluctantly. The inevitability of his departure, however, has made it no less easy to bear. We know that no one will be able to replicate the manner in which he could dismantle an argument with just one incisive question, which he always began with, “*Might I just ask . . .*” We suspect that the Court will miss the Justice’s midwestern sensibilities, his unique perspective as the only remaining Justice to have served in the military, and his ability to see modern disputes in the context of the long arc of history. And, of course, we lament that the era of the bow-tie Justice has finally drawn to a close.

True to my promise, I remained a Cubs fan. Near the end of our Term, to his great delight, the Justice was invited to throw out the first pitch at a Cubs game at Wrigley Field, the same stadium at which he watched Babe Ruth call his shot some seventy-three years before. The Justice, unwilling to disappoint his hometown crowd, decided to practice. And that is how, as my clerkship was in its final days, I found myself having a catch with Justice John Paul Stevens in the Supreme Court gymnasium. I did not attend the game. But I believe that, just as sure as Babe Ruth called his shot, Justice Stevens threw a strike.

*Abner S. Greene**

Dear Justice Stevens,

When I first met you, we talked about law and baseball. The Court had just risen from OT 1985, and I was eager to chat with you about your brilliant separate opinion in *Bowsher v. Synar*. But there was that signed Chicago Cubs baseball on your desk, which was somewhat of a distraction. I also recall saying near the end that this might be my only chance to chat with a Supreme Court Justice, and would it be okay if I asked you a question. You said sure, and we talked a bit about what it was like to live in the world as a Supreme Court Justice—whether people treated you differently, whether you felt any restraints on where you could go and what you could do.

I'm sure you cited some, but one of my fondest memories of clerking for you, starting a year later, was how important it was to you to have a life apart from your work. Some mornings you would come in from a tennis match with your archrival; some days we would chat about your bridge game or something that happened with the Cubs. (Probably not something good, usually :)) Since I play tennis and bridge, and am a baseball fan, I found all of this pretty thrilling. It made the work—the intense, wonderful, daily experience of talking law—fit with the rest of life.

That integration of work and life not only made days and nights in your chambers particularly resonant for me, but also (as I've come to see) helped inform your jurisprudence. There is some debate about the use of emotion or sympathy in judging, and your ability to strike the perfect notes here is something to behold. Judging must be disinterested but it need not be dispassionate; it must apply the law, but it must not ignore facts. Especially in your eloquent writing (sadly, often dissenting) about the rights of prisoners and about capital punishment, you always remind us that the state wields enormous power and must turn very square corners.

Your commitment to a jurisprudence of reasons—especially demanding that the state act for legitimate reasons, singling out neither friends nor enemies for specially favored or disfavored treatment—strikes me as the model of judgment. I believe that all of us who worked for you try to emulate that model in our work, and

* Clerk to Justice John Paul Stevens, October Terms 1987 and 1988. Leonard F. Manning Professor of Law, Fordham University School of Law.

our life, every day. It is a tough but worthy task.

With warm wishes and best regards,

Abner Greene (Law Clerk OT 1987 and 1988)

Jamal Greene*

Dear Justice Stevens,

Babe Ruth, when asked to comment on the fact that his salary was higher than President Hoover's, reportedly said, "Why not? I had a better year."

As the carefully filled-in scorecard on the wall of your chambers attests, Ruth's life and yours once intersected. It was October 1, 1932, at Wrigley Field in Chicago, in the fifth inning of Game 3 of the World Series between the Yankees and the Cubs. You, sitting in the crowd behind the third base line, were just twelve years old. The Bambino, at the plate, was in the winter of the greatest career the game has ever known. As you tell it, Ruth pointed toward the center field bleachers, and the rest was history.

Ruth's comment about Hoover betrays a cockiness that was every bit your opposite. But as I think back to my too-short year walking past that scorecard every day, I think of your own scorecard, and wonder whether you found some inspiration in that fleeting moment.

I think of your 1975 opinion for a Seventh Circuit panel in *Fitzgerald v. Porter Memorial Hospital*. In rejecting the claim of a substantive due process right of a father to be present in the delivery room of a public hospital, you expressed skepticism about framing such a right in "privacy" terms. You reframed it as an "interest in individual liberty that makes certain state intrusions on the citizen's

* Clerk to Justice John Paul Stevens, October Term 2006. Associate Professor, Columbia Law School.

right to decide how he will live his own life intolerable.” You repeated that view in your dissent in *Bowers v. Hardwick*, and Justice Kennedy specifically endorsed that dissent when the Court overturned *Bowers* in *Lawrence v. Texas*.

Then there’s the single day in 1989 on which the Court decided, in *Stanford v. Kentucky* and *Penry v. Lynaugh*, that it was perfectly constitutional for a state to execute juveniles and the mentally retarded. You had written *Thompson v. Oklahoma*, barring the death penalty for children under sixteen, the previous Term, and you dissented in both *Stanford* and *Penry*. Thirteen years later you wrote *Atkins v. Virginia*, overruling *Penry*, and three years after that you joined *Roper v. Simmons*, overruling *Stanford*.

Most remarkable, perhaps, are two memos you drafted as a law clerk to Justice Rutledge during the 1947 Term. As is now well known, your memo in *Ahrens v. Clark* was heavily incorporated into Justice Rutledge’s dissent, which argued that the presence of a habeas petitioner in the territory of a federal district court was not a jurisdictional requirement under the habeas statute. That dissent became the law in *Braden v. 30th Judicial Court of Kentucky*, and it formed the basis for your own opinion for the Court in *Rasul v. Bush*, holding that the habeas statute extended to petitioners held at Guantánamo Bay.

Earlier that Term, and less well known, you wrote a memo to Justice Rutledge in *Fisher v. Hurst*. The petitioner, an African American woman, was seeking to obtain a writ of mandamus to compel the Oklahoma Supreme Court to comply with the U.S. Supreme Court’s decision in *Sipuel v. Board of Regents*, requiring the state to give her adequate access to a public legal education. You advised Justice Rutledge to take judicial notice that “the doctrine of segregation is itself a violation of the Constitutional requirement.” The rest was history.

By my count that’s at least four called shots to one. I’ll say—since you never would—that you had the better career.

Warmest wishes,

Jamal Greene

*Melissa Hart**

Reflecting on the year that I had the extraordinary fortune to clerk for Justice John Paul Stevens (1996–1997), two moments stand out for me as representative of the great empathy and respect for the law that made him an exceptional Justice.

One of the things that surprised me about clerking on the Supreme Court was the amount of time that law clerks spent on death penalty work. Justice Stevens' clerks spent slightly more time than clerks in other chambers because he required us to write a memo on every cert petition in a capital case. He reasoned that the cost of missing an important question in just one of these petitions—the death of a man who was improperly convicted or even actually innocent—was so high that he wanted to be sure each petition was given serious attention. Then there were the capital cases that the Court heard on the merits—several in the year I clerked, including one that came to the Court through a petition for stay of execution. And for clerks in every chamber, there were a certain number of nights in each month that we were responsible for staying at the Court until a scheduled execution had occurred; our job was to be ready in case a motion for a stay of execution came in. When they did, we would review the claims, discuss the issues with the clerks in other chambers, talk with our respective Justices and notify the Clerk of the Court whether there were the necessary five votes to stay the execution (there almost never were).

At that time, Justice Stevens had not yet concluded that the death penalty was itself cruel and unusual punishment. We talked about the issue frequently, and he was careful in this as in other contexts to distinguish between what he might prefer as a matter of policy and what he read the Constitution to require or to prohibit. He did take very seriously arguments that particular methods of execution might be impermissibly painful, that a man or woman being put to death should have had all due process and effective representation, and that there might be certain categories of crime, or of perpetrator, where the death penalty would be inappropriate. So when we received petitions for a stay of execution, they always warranted careful evaluation.

* Clerk to Justice John Paul Stevens, October Term 1996. Associate Professor of Law, Director of the Byron R. White Center, University of Colorado Law School.

One night in late March 1997, I was the clerk responsible for reviewing a last-minute stay request on an execution scheduled to take place in Florida. On this particular night, Pedro Medina's lawyers asked the Supreme Court to stay his execution in light of evidence that he might actually be innocent of the murder for which he was convicted. Medina was a Cuban who had come to the United States as part of the Mariel boatlift. In addition to the actual-innocence argument, his lawyers argued that he was so mentally ill that execution was an inappropriate punishment. Though both arguments had some significant support, the procedural intricacies of the Antiterrorism and Effective Death Penalty Act posed insurmountable barriers to Medina's claims. Ultimately, the votes needed to stay the execution were not there. Pedro Medina was executed that night in Florida, in a process that made national news as Florida's "Old Sparky" malfunctioned. Witnesses to the event described a twelve-inch crown of flames shooting out of Medina's head.

It was, frankly, a deeply troubling event to have played any part in—even just the part of a law clerk evaluating the legal arguments thousands of miles removed from either the underlying crime or the execution. And when Justice Stevens came in to the office the next morning, he knew that. He walked up to my desk, looked at me gravely and said, "I am so sorry."

I knew that his empathy for me was only one piece of what he was expressing in those words. Without being self-important or over-emotional, Justice Stevens had a sense of personal responsibility for the decisions he took part in.

Eleven years later, in *Baze v. Rees*,¹¹ Justice Stevens penned an eloquent concurring opinion explaining that he had become persuaded that "current decisions by state legislatures, by the Congress of the United States, and by this Court to retain the death penalty as a part of our law are the product of habit and inattention rather than an acceptable deliberative process"¹² His opinion catalogs the many deep flaws in the justifications for and administration of capital punishment in the United States. "I have relied on my own experience in reaching the conclusion that the

11. 553 U.S. 35 (2008).

12. *Id.* at 78 (Stevens, J., concurring).

imposition of the death penalty represents ‘the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes’¹³

My experience was just one year of what Justice Stevens had seen for almost thirty when he wrote his concurring opinion in *Baze*. The careful years of thought, the accumulation of experience, the empathy for victims and their families, for the families of those executed, for the participants in the process of imposing death—to have just one conversation with Justice Stevens about capital punishment is to see the mind and heart of a man who carried the responsibility of this question with care and a real sense of its weight.

Despite his firm personal conviction that capital punishment was a violation of the Eighth Amendment’s prohibition on cruel and unusual punishment, Justice Stevens’ decision in *Baze* was a concurrence, not a dissent. He took precedent seriously and until a majority of the Justices was willing to reconsider the constitutionality of the death penalty, he treated the Court’s precedent as binding.

This respect for the principles of stare decisis was just one part of Justice Stevens’ larger, deep respect for the law. For me, one of the interesting ways in which this respect was most evident was in a real appreciation for the practice of law. Before he joined the Seventh Circuit in 1970, Justice Stevens was a lawyer for more than two decades. As a judge, he never forgot about being a lawyer.

The Supreme Court is often criticized for decisions that are either ignorant about or indifferent to how law actually happens in district courts or in the offices of attorneys advising their clients. Justice Stevens was neither ignorant nor indifferent; instead he always thought seriously about the consequences that Supreme Court decisions would have for litigants and for their advocates. When we talked about the cases the Court heard during the 1996 Term, he often reflected on how a particular rule would operate in practice. He enjoyed talking about the quality of the lawyering reflected in the record, as well as the quality of the work being done by advocates in front of the Supreme Court. And I will never forget the best career advice I have ever received. Very near the end of the Term, Justice

13. *Id.* at 86 (quoting *Furman v. Georgia*, 408 U.S. 238, 312 (White, J., concurring)).

Stevens came into my office and cautioned me against going too quickly into legal academia. “Go be a lawyer,” he said, with a smile.

As a teacher of Civil Procedure and Employment Discrimination today, I often find myself talking with my students about opinions—both majority and dissent—authored by Justice Stevens. I don’t always agree with his outcome or his reasoning. But his sensitivity to the consequences of the Court’s decisions is evident in nearly every case. Justice Stevens had a remarkable ability to empathize—with his clerks, with his colleagues (even when they disagreed), with the lawyers and the parties in the cases he considered, and more generally with the people who would feel the consequences of the Court’s interpretation of the law.

Justice requires both empathy and respect for the law. John Paul Stevens is a man who embodied those qualities of (a) Justice, and it is an honor to participate in this tribute to him.

*Amanda Leiter**

Dear Justice Stevens:

Many others have written about your contributions to the law, including the law of workplace equality. I’m writing to you in your capacity as an employer, to thank you for always and unselfconsciously practicing what you preached.

When you first interviewed me for a clerkship, I was three months pregnant. When I started the job about a year later, my son was exactly six months old. Throughout that year, you regularly asked me about him—you were interested in what he was learning to do, who was watching him while I was at work, whether he had yet learned to sleep through the night, to crawl, to walk, to say “mama.” Late in the year, you asked him—then a toddler—to “help” you tie your famous bowtie. He was welcome in the courthouse and even in

* Clerk to Justice John Paul Stevens, October Term 2003.

your Chambers. He first learned to crawl up stairs by exploring, after hours, the many marble staircases that connect the upper and lower offices of your and the other Justices' Chambers.

Your attitude toward my son was unfailingly warm. Yet equally important, you never once suggested that I take a lighter load as the only clerk (of four) with a child. You never asked whether I could handle the workload in spite of my often sleepless nights. You never suggested that I take on less than my fair share of the Court's saddest late-night work: waiting for and reviewing last-minute execution appeals. Rather, you respected each of us enough to treat us all equally, confident that whatever our individual obligations outside the courthouse, we would find a way to give our work the time, attention, and dedication it deserved.

You showed that same generosity of spirit in the summer of 2009, when I was home with my second baby, and you called to ask whether I'd enjoy arguing a case before the Court. You asked about the baby, a little girl. You even noted that the timing was imperfect for me to take on such a significant project. But the very fact of your call made clear to me that you expected I could handle the challenge. And your belief in me gave me the courage and confidence to do just that.

I will always be grateful to you for giving me these opportunities, and for expecting me, and everyone you hired, to perform up to our best abilities. You taught me, by example, that the essence of workplace equality is employer respect. I know that all of your former employees learned that lesson from you, and we all feel the consequent obligation: not just to rise to the career challenges that confront us, but also, more important, to embrace our employees' differences, and then to expect the most from each of them, regardless of those differences.

Thank you, now and always,

Amanda Leiter

Gregory P. Magarian*

Supreme Court Justices leave behind formidable written records on which we can fixate. We inevitably lose sight, however, of the human beings who wrote the opinions—their personalities, their physical presences, how they dealt with other people. Because very few people ever see the Justices do or even discuss their work, the passage of time exacts an especially heavy cost in lost insights. Justice John Paul Stevens is too modest, and too dedicated to the ideal of impartial, analytically rigorous judging, to overestimate how much he and his colleagues cast the law in their own images. Even so, I think he would acknowledge that a Justice's personal qualities necessarily influence his or her judicial writings. Justice Stevens' voluminous body of opinions documents his deep commitments to such crucial principles as inclusive public discourse, the separation of church and state, and equal opportunity regardless of race or gender. Having had the honor and pleasure of working under the Justice for a year that passed too quickly, too long ago (OT 1994), I want to share a few subjective impressions of the man—one who played a pivotal role in guiding our law from the twentieth century into the twenty-first.

Justice Stevens moves and speaks with a tranquil aspect, never in a rush, always with purpose. He has a way of making any person with whom he is talking—even a socially awkward recent law school graduate who has just stumbled into his chambers for a clerkship interview—feel immediately at ease. By all accounts he can be very intense, especially on the tennis court or the golf course, and I certainly have seen him animated. But during the year I spent in his chambers, I never saw him agitated or upset. Even when he returned from conferences with deep concerns about some of his colleagues' positions or arguments, or had to stare down the clock on an especially wrenching execution night, he remained calm, self-possessed, seemingly at peace. He never did or said anything that projected egotism (except for the occasional gleeful report of a victory at tennis), but he radiated the kind of quiet confidence that made the people around him feel secure and capable of doing their best work. I have never met anyone with a comparable aura of

* Clerk to Justice John Paul Stevens, October Term 1994. Professor of Law, Washington University.

gravitas that had less to do with any conscious effort to project gravitas. The Justice is a private person, in the sense that he does not readily talk about his personal life or probe into the personal lives of the people around him, but his manner is warm, welcoming, and friendly. His laughter, like his speech, flows easily, gently, and always sincerely. At some point in his life, he must have borne someone an ill thought or even let loose with a harsh word—but I cannot imagine how a harsh word from him would sound.

Justice Stevens genuinely seemed to enjoy talking with his clerks. Before each argument session he gathered us around him on the comfortable chairs in our office space to discuss the upcoming cases. He struck a thoughtful tone in those discussions, even as to cases about which he presumably had strong views, I think because he believed his job at that stage in the process was to ponder rather than to declare. He listened to our earnest briefings with far closer attention than his wealth of legal knowledge made necessary. After the Court's conferences he would reconvene us in the same spot. He engrossed and delighted us by sharing his detailed impressions about the votes and comments of the Justices, and he used these talks to educate us about his initial strategies for assigning opinions or drafting them himself. That he had before 1994 developed a reputation as a sort of quirky iconoclast on the Court seems incredible in retrospect; that year, his first as the senior "liberal" Justice, immediately revealed him as an adept and creative tactician. He liked the new responsibility. My co-clerks and I well remember his sly smile when he told us, early in the Term, that he would keep an interesting First Amendment majority opinion for himself.

Justice Stevens famously wrote his own first drafts, and more importantly he carefully planned and instructed us on his reasoning and rhetoric, but he gave us room to contribute—subject to careful review. I will never forget the day that, out of some combination of hubris and frustration, I made additions to the end of a draft dissent, putting an outrageous position in the Justice's mouth. After reading the draft, he walked into the clerks' office with his usual even gait, and told me, with no trace of anger or impatience: "This looks good, but I think I'd like to make a few changes in the last section."

I have never heard Justice Stevens declaim loudly, or quietly, about any of the deep values that animated his jurisprudence. He let his opinions do the vocal work, and he honored his commitments to

justice and fairness simply by treating the people around him—litigants, his colleagues, his staff—justly and fairly. When he has spoken out publicly about issues that matter to him, such as capital punishment, his tone has tended toward the analytical rather than the polemical. I think this sense of reserve and decorum has helped him to muster both the energy and the moral authority that he has sustained over a lifetime of public service. No young lawyer could hope for a better role model.

*Adam M. Samaha**

One day, early in my clerkship with Justice Stevens, I went into his office to discuss something or other. I no longer recall the subject of our conversation. But I do remember that we began discussing a judicial opinion that Justice Stevens wanted to review. “Let me pull it up on Westlaw,” he said, turning to his computer. And I thought to myself, “Alright, he knows about Westlaw. Impressive technology awareness for someone from his generation.” Then he said, “Now let me get rid of the headnotes.” And I thought to myself, “Wait a minute, you can get rid of the headnotes on Westlaw?” I spent the rest of my clerkship trying to catch up with Justice Stevens, technologically and otherwise.

Thankfully, Justice Stevens did not make it artificially easy to catch up with him. He set a vigorous intellectual pace even as he demonstrated civility, good humor, and ease with the burdens of judgment. This made his chambers a remarkable learning environment. The work was not easy, of course, and I faced a personal challenge. I have a neuromuscular disability called dystonia, which is in some ways unsightly and which interferes with the accomplishment of many simple physical tasks. But technology—as Justice Stevens well understood—is an equalizer for people with

* Clerk to Justice John Paul Stevens, October Term 1998. Professor of Law, The University of Chicago Law School.

disabilities. And I was quietly encouraged by Justice Stevens' confidence in my ability to serve, along with a casual remark that he made one day.

When my disability attracted a journalist's attention, Justice Stevens was asked to comment and he released a statement: "I will simply tell you that I applied the same standards in hiring my three current clerks that I have always employed and that their work so far this term has confirmed my judgment that they were the best qualified candidates available when I hired them." I was grateful for that message. We briefly discussed the situation in his chambers. "To tell you the truth," he said, referring to my disability, "you don't really notice it after a while." I was grateful for that, too.

I suppose that all of us want to be treated as unique individuals sometimes—with special talents, interests, even faults. But there are occasions when it is best to be seen as an undifferentiated member of a team—with potentially distinguishing features stripped away like a distracting headnote. As a judge, Justice Stevens demonstrated a special ability to concentrate on what mattered, to put aside what did not, and to provide a model of intellectual engagement and respect for everyone else. The Nation has never had a finer judge. It was an honor to work for him and to learn from him.

*Samuel Spital**

Dear Justice Stevens,

This letter is difficult to write. You taught me more about law, and about life, than I can begin to describe here. I decided to focus on just one of your many remarkable qualities: your modesty.

In light of the central, but complex, role of unelected, life-tenured Article III judges in our democratic society, modesty is oft-invoked as an essential judicial virtue—although even the best jurists

* Clerk to Justice John Paul Stevens, October Term 2005.

sometimes disagree about what that means in practice. I believe you represent judicial modesty at its finest.

In their statements upon your retirement, Justice Scalia twice referred to your brilliance, and Justice Alito noted that you “will surely be remembered as one of the most important Justices to serve on the Court.” I do not think it is an exaggeration to say that you are widely recognized as among the greatest legal minds in our nation’s history. Yet, when deciding cases before the Court, your intellect did not close your mind or distract you from your role as a judge. You never thought you knew it all in advance. Rather, you carefully considered the relevant facts and legal authorities, as well as the points made by your colleagues, the court below, counsel, and your clerks, before making your final decision.

Even after reaching your considered judgment in a case, your modesty remained. When the majority of the Court disagreed with you, you applied the principles of *stare decisis* seriously and fairly in the next case. And you never invalidated a state or federal statute because you believed it was bad public policy. This is not to say that you confused modesty with abdication of your independence or judicial responsibility. You did not substitute your views for those of legislative bodies in matters of policy, but you were vigilant in protecting federal constitutional rights. You applied the Court’s precedent fairly but not blindly: when there was a special justification for declining to adhere to a prior decision, you would not do so.

Your modesty not only made you a better jurist, it made you a more influential one. In a substantial number of cases, you convinced your colleagues that a prior case had been wrongly decided, and your dissenting position later became the holding of the Court. I believe this was, in part, due to the modesty of your dissents. Careful not to overstate the majority’s reasoning or holding, you cared about analysis, not rhetoric. You once explained to me that an argument I proposed adding to a dissent was not helpful because it showed only that the majority was wrong, not that we were right. You taught me that modest writing is more persuasive writing (and not only because briefs and opinions sound stronger without extraneous adverbs).

You are modest not only as a Justice, but as an employer and mentor. I wish those who view judges as elitist or out-of-touch could spend time with you so they could see how down-to-earth,

considerate, and kind you are.

Some of the most special memories I have from clerking for you are the stories you shared about your clerkship with Justice Rutledge. I know I speak for my fellow clerks when I say that you have inspired us every bit as much as he inspired you.

Samuel Spital

