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# Symposium

## FOREWORD: THE LEGACY OF JUSTICE JOHN PAUL STEVENS

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When Justice John Paul Stevens announced his retirement in April of 2010, the editors of the *Northwestern University Law Review* had already begun planning a long-overdue celebration of his life and work. Nearly sixty-five years after Justice Stevens's graduation from Northwestern University School of Law, on May 12, 2011, the *Law Review* and the Law School had the privilege of welcoming him back to his old classroom in Lincoln Hall for a day of reflection on his distinguished career.

Over the course of four academic panels and a luncheon tribute panel, a distinguished group of legal scholars, journalists, and Justice Stevens's former clerks explored the Justice's legacy not only on the Court, but also on the legal profession. Panelists commented on Justice Stevens's executive power jurisprudence, his interpretation of the Free Exercise and Establishment Clauses of the First Amendment,<sup>1</sup> his trajectory on the Court, and finally his interpretive methods. This issue contains the scholarly work that resulted from this day of discussion and celebration. Additionally, the Justice gave the address at Northwestern University School of Law's 2011 graduation ceremony, and he has been kind enough to share those remarks with us in the issue. The variety of the issue's contents is a testament to the immense impact that Justice Stevens had on many areas of the law and, of course, on many lawyers, journalists, and scholars.

Some of Justice Stevens's former clerks recalled this incredible human touch. During their panel, they shared an inside look at their time in Justice

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<sup>†</sup> J.D., Northwestern University School of Law, 2012; Special Sections Editor, *Northwestern University Law Review*, 2011–2012. We would like to extend special thanks to Professors Lee Epstein, Andrew Koppelman, and John O. McGinnis for sponsoring this symposium; Professor Robert W. Bennett for serving as faculty advisor to the *Northwestern University Law Review*; Professor Jim McMasters, for his constant guidance throughout the planning process; Jaci Thiede, Associate Dean for Development and Alumni Relations, and the entire Development and Alumni Relations staff for their support in organizing the event; and the faculty and staff of Northwestern University School of Law for their help in hosting the symposium. We would also like to express our appreciation to the *Northwestern University Law Review* editors for their extremely hard work on this issue. We are pleased to note that video recordings of the symposium panels are available to view for free online at <http://colloquy.law.northwestern.edu/main/2011/06/the-legacy-of-justice-stevens.html>.

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<sup>1</sup> U.S. CONST. amend. I.

Stevens's chambers. Though clerks from the early years of Justice Stevens's tenure shared the dais with clerks from his final years on the Court, they all remembered the time and attention the Justice provided to the young lawyers who worked for him. In their pieces, they pay tribute to Justice Stevens as a mentor.

The pieces arising from the panel regarding Justice Stevens's executive power jurisprudence cover a wide range of some of the Justice's most momentous opinions, most notably his landmark decision in *Chevron U.S.A. Inc. v. NRDC*.<sup>2</sup> Professor Thomas Merrill frames the opinion in terms of Justice Stevens's orientation as a common law judge, arguing that the Justice did not intend to endorse the principle for which *Chevron* is now thought to stand. Professor Aziz Huq ties *Chevron*, among other opinions, to the "institution matching" canon, showing how institution matching persists in a variety of executive powers decisions. Professor Dawn Johnsen examines the Justice's role in executive detention cases following September 11, 2001, such as *Hamdi v. Rumsfeld*, in which Justice Stevens joined a dissent authored by Justice Antonin Scalia,<sup>3</sup> as well as *Rasul v. Bush*,<sup>4</sup> *Hamdan v. Rumsfeld*,<sup>5</sup> and *Boumediene v. Bush*.<sup>6</sup> Finally, Professor Steven G. Calabresi discusses Justice Stevens's role in separation of powers decisions, examining the doctrine through a historical lens.

The panel on Justice Stevens's role in religion cases yielded pieces focusing on the Justice's principled approach to the Establishment and Free Exercise Clauses. Professor Andrew Koppelman argues that although Justice Stevens is sometimes viewed as having been hostile toward religion, he actually enthusiastically supported religion through jurisprudence that encouraged religious neutrality. In a similar vein, Dean Erwin Chemerinsky's piece argues in support of the Justice's "strict separationist" approach to church-state issues. Finally, Professor Alan Brownstein reconciles Justice Stevens's differing views of the expansiveness of the Establishment and Free Exercise Clauses by framing both in terms of the Justice's concerns about religious equality.

A diverse collection of papers resulted from the panel that examined Justice Stevens's trajectory on the Court. Professor Stefanie A. Lindquist's empirical study of Justice Stevens's voting on the Seventh Circuit serves as a prequel to his tenure on the Supreme Court and asserts that then-Judge Stevens's frequent dissents and independent voting patterns formed the foundation of his later jurisprudence. In an excerpt from their forthcoming book,<sup>7</sup> Professor Lee Epstein, Professor William M. Landes, and Judge

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<sup>2</sup> 467 U.S. 837 (1984).

<sup>3</sup> 542 U.S. 507, 554 (2004) (Scalia, J., joined by Stevens, J., dissenting).

<sup>4</sup> 542 U.S. 466 (2004) (Stevens, J.).

<sup>5</sup> 548 U.S. 557 (2006) (Stevens, J.).

<sup>6</sup> 553 U.S. 723 (2008).

<sup>7</sup> LEE EPSTEIN, WILLIAM M. LANDES & RICHARD A. POSNER, *THE BEHAVIOR OF FEDERAL JUDGES*:

Richard A. Posner challenge the view of Justice Stevens as “the dissenter” and examine unanimous decisions on the Supreme Court. Finally, Bill Barnhart, one of the Justice’s biographers, explores the impact of Justice Stevens’s early life experiences on his later relationship with the press and views on the First Amendment.

The symposium’s final panel explored Justice Stevens’s methods of interpretation. Professor Diane Amann’s piece takes a unique approach, examining the Justice’s methods of interpretation as an “originalist” and concludes that Justice Stevens authored his decisions based on the view of being duty-bound to the principles embedded by the Framers in the Constitution, while also synthesizing modern sources to arrive at a contemporary understanding of justice. Additionally, Simon Lazarus examines the interpretational methods used by conservative Justices in opposition to progressive legislation, specifically the use of historical sources in interpreting the Constitution but only the use of text in interpreting statutes, and frames Justice Stevens’s impact in providing opposition to those methods.

This symposium was only possible because of the dedication of many individuals, both within and outside of the Northwestern University School of Law community. Each author who contributed to this issue and the conference brought a valuable perspective on the Justice’s work, and we are thankful for their contributions. The *Law Review* is grateful to Professors Lee Epstein, Andrew Koppelman, and John O. McGinnis for their sponsorship and to the faculty and administration of Northwestern University School of Law, especially former Dean David Van Zandt and Professor Kimberly Yuracko, for their generous support for the conference. We are also indebted to Nick Gamse, former Symposium and Essays Editor for the *Law Review*, for conceiving of the conference and for his tireless pursuit in planning it, and to Stephanie Kissel Leiter, former Editor-in-Chief of the *Law Review*, for her hard work in helping to organize the conference. But we are most indebted, of course, to Justice Stevens himself. The intelligence, compassion, and devotion he displaying during his forty years on the bench is a source of pride for everyone associated with Northwestern University School of Law. We hope the following pages can provide some small thanks for his remarkable career.

