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JUSTICE STEVENS'S BLACK LEATHER ARM CHAIR

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As a law clerk to Justice Stevens in the October Term 2002, I felt that the very best part of the job came almost every afternoon. Without any advance warning, the Justice would get up from his desk and walk through chambers to the law clerks' main office and plop down into a well-worn black leather arm chair that formed part of a cozy seating area flanked by tall bookshelves filled with volumes of case reporters and the United States Code. As soon as the Justice started settling himself into his arm chair, my co-clerks and I all knew that the Justice was ready to chat and that the four of us should gather around the Justice and take a seat.

Once we were all seated, we would talk. And talk. And talk. These conversations, which often would span an hour or more each afternoon, generally were quite casual with the Justice putting his feet up on the adjacent coffee table. The Term that I clerked for the Justice, we had no end of interesting cases to talk about, including *Lawrence v. Texas* involving Texas's anti-sodomy statute[1] and the University of Michigan affirmative action cases.[2] When we sat down together, the Justice almost always solicited our views first, politely asking us what we thought about particular issues and gently questioning us as we tried to articulate our own views of the cases. The thing that amazed me the most about these conversations was how tremendously patient the Justice was with us and how very generous he was with his time. Even when he strongly disagreed with our views (which happened from time to time), he would kindly indulge us, giving us time to try to articulate our own views before providing us with his views and with an honest assessment of what wrinkles we might have missed in our own analyses. Only after he felt that we had reached reasoned disagreement and that no more could be said on a given case would he subtly (and perhaps subconsciously) start to pat his right hand on his left shoulder—a signal that we quickly took to mean that we were done discussing that case and that he had made up his mind.

It was often at this point that our conversations would move toward lighter, nonsubstantive topics ranging from my co-clerk's flying lessons to

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[1] 539 U.S. 558 (2003).

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

my own attempts at perfecting my mom's recipe for apple pie, which I would bake for special occasions like birthdays in chambers. Here too he was always extremely generous with his time, relishing the opportunity to sit around with us talking about sports, current events, or even the weather.

My favorite conversation of the entire year occurred one Monday while the Justice was seated in his black leather arm chair. "So Justice, did you catch the Washington Redskins game on TV yesterday?" my co-clerk Eric Olson asked Justice Stevens after we had finished discussing various cases on the Court's oral argument calendar that week. The Justice sat up excitedly in his chair, eager to discuss the game, which he had indeed watched. So did my co-clerk Amy Wildermuth, who also had watched the game. After the Justice, Eric, and Amy finished their animated rehashing of the good and bad parts of the game, another one of my co-clerks, Troy McKenzie, chimed in: "Justice, did you by chance happen to see the PBS Special on TV over the weekend about who is the real Shakespeare?" The Justice's eyes lit up, and he nodded enthusiastically indicating that he had indeed seen the special. Then Troy and the Justice engaged in a heated discussion about Shakespeare's works with the Justice emphasizing his own belief in the theory that Shakespeare's plays were actually written by Edward de Vere, the Earl of Oxford.[3]

In my mind, this simple exchange—which flowed seamlessly from cases on the Court's docket to football to Shakespeare—epitomized what is so wonderful about Justice Stevens: his sense of balance in life. The Justice took his job at the Court extremely seriously and worked very hard, and he cared deeply about justice. He studied and dissected all of the briefs very closely prior to oral argument. He was intent on getting the reasoning in opinions correct, and in order to do so, he—unlike the other Justices—drafted his own first drafts of all opinions, often emailing us draft opinions bright and early before we had even arrived at work. Yet he did not let his job define or consume him. Nor did he let it get to his head. To the contrary, the Justice found time to regularly play golf and tennis while he was on the Court. Indeed, he occasionally would squeeze in a morning tennis game before sitting on the bench, dashing in to chambers in his tennis whites with just enough time to shower, clean up and tie his bow tie before jumping on the bench for oral argument. I could always tell if he had won his tennis match by whether or not he had a big grin on his face as he rushed into chambers.

In addition, in the winter months, he found time to take in some sunshine at his home in Florida where I have heard that his neighbors knew him simply as an attorney from D.C. named "John." He loved watching football and basketball, and he relished betting small amounts (usually a dollar at a time) on games with Chief Justice Rehnquist. He generally ate

[3] For more on Justice Stevens's theories on Shakespeare, see Jess Bravin, *Justice Stevens Renders an Opinion on Who Wrote Shakespeare's Plays*, WALL ST. J., Apr. 18, 2009, at A1.

just a simple sandwich for lunch that he brought into work in a plastic Tupperware container, sometimes joining us outside in one of the Court's beautiful courtyards on sunny days and chatting with us about how we were doing.

My interview for the clerkship with the Justice, which took place in the summer of 2001 at the end of my third year of law school, should have tipped me off to the Justice's great sense of balance in life and his diverse interests both within the law and outside of the law. During the interview, the Justice started out by asking me about a research paper I had written during law school,[4] which related to his famous opinion in *Chevron U.S.A. Inc. v. NRDC*,[5] and he questioned me about Justice Souter's majority opinion and Justice Scalia's dissent in *United States v. Mead Corp.*,[6] the Court's most recent pronouncement of note on *Chevron* deference. However, after covering these substantive matters, the Justice changed the conversation to a variety of much lighter topics, asking me about my experiences as a law student at Northwestern (his alma matter), how I liked living in Chicago (his hometown), and what I thought of Wrigley Field (his favorite ballpark). The subject that most animated him during my interview was decidedly not his famous *Chevron* decision or Justice Scalia's biting dissent in *Mead Corp.* Rather, it was rumors that renovations might begin at his beloved Wrigley Field—a ballpark where as a young boy he watched Babe Ruth call his shot during the 1932 World Series[7] and where more than

[4] The senior research project served as the basis for an article that I subsequently coauthored with Professor Tom Merrill. *See* Thomas W. Merrill & Kathryn Tongue Watts, *Agency Rules with the Force of Law: The Original Convention*, 116 HARV. L. REV. 467 (2002). When the article was published in the *Harvard Law Review* during my clerkship, the Justice quickly digested the 120+ page article and typed out a two-page note. Much like the conversations I had with Justice Stevens and my co-clerks while the Justice sat in his black arm chair, the note was thoughtful and generous but also honest. Specifically, the Justice started out his note by indulging me with some praise about how the piece was a "scholarly and thoroughly researched piece of work," but he ultimately minced no words stating: "[I]t will not surprise you that I do not agree with your central thesis." This was not the last time the Justice offered me some candid feedback on my scholarship. After publishing an article in the *Yale Law Journal* in 2009, the Justice wrote to me with some thoughtful substantive comments and also with what he called one small "flyspeck," which the Justice easily spotted on his one read through the lengthy article even though it had gone undetected by me and the many Yale editors who had scoured the piece. The "flyspeck" had to do with my inadvertent misuse of the word "weary." *See* Kathryn A. Watts, *Proposing a Place for Politics in Arbitrary and Capricious Review*, 119 YALE L.J. 2, 54 (2009) ("[C]ourts should be weary of political influences resting on pure partisan politics . . . ."). As the Justice put it in his characteristically kind note to me: "The flyspeck confirms my view that every brief and every article, no matter how carefully edited, contains at least one typo. Line 6 of page 54 suggests that you may have been a little weary when you should have been more wary about the risk of an undetected typo." As I read this, I remember wishing that I could be just half as witty and half as sharp as the Justice.

[5] 467 U.S. 837 (1984).

[6] 533 U.S. 218 (2001).

[7] *See generally Supreme Court Justice Stevens Opens Up* (CBS television broadcast Nov. 28, 2010 5:01 PM), *available at* http://www.cbsnews.com/video/watch/?id=7096996n (stating that Justice Stevens considers his ruling that Babe Ruth called his shot the "one ruling I will not be reversed on").

seven decades later the Justice in 2005 tossed out a ceremonial first pitch at a Cubs game.[8]

The Justice's ability to maintain such diverse, balanced interests in life—despite sitting on the highest Court in the land for more than three decades—is likely what enabled him to keep the job up for so long without becoming jaded, feeling too downtrodden when his views were not adopted by the majority, or forgetting that there is room for reasoned, respectful disagreement. The Justice wrote many dissents during the year I clerked for him.[9] Yet whenever the Court decided a case contrary to the way we knew Justice Stevens felt it should have been decided, we would look at the Justice's face as he sat in his black leather arm chair and see that—even when we could detect disappointment on his face—he did not dwell in the past or hold grudges. Indeed, he sometimes joked light heartedly with us about being the "lone dissenter." From his seat in the black arm chair, the clear message he conveyed to us was that just like in baseball, he expected to win some and lose some when it came to judging. In other words, "onward and upward" was his lesson for us.

I think often about this lesson and the many others that Justice Stevens taught me from his black leather arm chair: the importance of being generous, patient and kind; the value of listening to and accepting those with different views; the need to keep your chin up even when things do not turn out as you want them to; and the benefits that flow from putting your all into your job but nonetheless maintaining a sense of balance and perspective in life. I am so grateful that I had the opportunity to learn these lessons from the Justice. It truly was the opportunity of a lifetime. Now that the Justice is retired, I am very sorry that he will no longer give four new clerks each year the opportunity to learn from him, and I am sorry that the

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When I was clerking for the Justice, a scorecard from that famous game where the Justice saw Babe Ruth call his shot hung on the wall in my office in the Justice's chambers.

[8] Like everything else in his life, the Justice was determined not just to throw out the ceremonial pitch, but to throw it well. Indeed, in anticipation of throwing out the pitch, he practiced at a park with one of his law clerks and also practiced pitching with his wife. When I saw the Justice in Chicago at a bar association event the day after he threw out the pitch, he was still beaming from ear to ear. Years later, in October 2011 when I had the privilege of moderating a fireside chat with the Justice at the annual meeting of the American College of Trial Lawyers, I asked him whether he most prized the day he threw out the first pitch at the Cubs game *or* the day he was confirmed as a Justice. Although the Justice hesitated a bit in answering the question, I sensed that he leaned in favor of the day he tossed out the first pitch.

[9] *See, e.g.*, Eldred v. Ashcroft, 537 U.S. 186, 222 (2003) (Stevens, J., dissenting); Scheidler v. Nat'l Ass'n for Women, 537 U.S. 393, 412 (2003) (Stevens, J., dissenting); Ewing v. California, 538 U.S. 11, 32 (2003) (Stevens, J., dissenting); United States v. Am. Library Ass'n, 539 U.S. 194, 220 (2003) (Stevens, J., dissenting); Gratz v. Bollinger, 539 U.S. 244, 282 (2003) (Stevens, J., dissenting); Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 454 (2003) (Stevens, J., concurring in the judgment and dissenting in part).

black leather arm chair in his chambers is likely not getting quite as much use as it did before Justice Stevens retired.[10]

[10] As a retired Justice, Justice Stevens does still keep an office in the Court (where his black arm chair presumably still sits), and he does still hire one law clerk per Term, but not the four clerks that he hired per Term when I was clerking for him.