

Foreword

The Honorable David S. Tatel[†]

This special issue reviews the breathtaking scope of Judge Stephen Williams's work and his profound impact on administrative law. Steve was an extraordinary jurist and a wonderful man. As his colleague and friend, I take great pleasure in sharing some reflections on his life's work.

In his thirty-four years on the D.C. Circuit, Steve became one of the nation's most admired judges. Everyone knew him for his warm collegiality; his precise, gentle questioning at oral argument; his analytical comments at conference; his wise, graceful, witty, and almost always persuasive opinions; and his fierce commitment to the rule of law.

Two cases reveal much about this outstanding judge. The first is *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001). Shortly after our court decided to hear the case en banc, Steve dropped by my chambers and made a novel suggestion—that we prepare for oral argument together. We divided the case into eight key issues and throughout the next month or so exchanged memos and met together with our law clerks. Steve had a deep understanding of antitrust law, and I learned an enormous amount from him. But not until years later during lunch at the Capitol Grille did Steve reveal exactly why he had suggested that we prepare together. He explained that in this important case, the first to apply the antitrust laws to the personal computer, the nation would be best served if the court spoke with one voice, which he believed would be more likely if he, a conservative (his word), and I, a liberal (also his word), could agree. And that is exactly what happened. Under the leadership of Chief Judge Harry Edwards, who assigned a portion of the opinion to each member of the en banc court, the D.C. Circuit produced a unanimous 125-page opinion.

The second case, *Shelby County v. Holder*, 679 F.3d 848 (D.C. Cir. 2012), *rev'd*, 570 U.S. 529 (2013), presented a challenge to the constitutionality of a key provision of the 1965 Voting Rights Act. Steve and I again exchanged many memos and met often to discuss the constitutional and statutory issues. Unlike in *Microsoft*, however, agreement eluded us. I mention our conversations not because they were so interesting (they were) or because they significantly narrowed our areas of disagreement (they did), but because of the email from Steve that launched our discussions: “I've read the briefs, and I realize the Supreme Court has hinted where it's headed”—he was referring to the Court's

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decision three years earlier in *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009)—“but I remain uncertain. What’s your view, David?”

Although both cases involved hot-button issues likely to divide most courts ideologically, Steve approached them without preconception, allowing his conclusions to emerge from his own study of the record and the law. Steve craved the intellectual satisfaction that comes from thoroughly exploring complex issues. And to this end, he was sincerely interested in his colleagues’ views—mine in these two cases, and many colleagues’ throughout his decades on the court. To Steve, collegiality meant far more than socializing, although he was very good at that. It meant listening to another’s perspective, sincerely considering it, responding on the merits, and sometimes even changing his mind. Steve truly loved engaging his colleagues, not just for the intellectual thrill, but to produce consensus or, failing that, narrower and more principled disagreements. Once Steve even lamented that we couldn’t publish, along with his opinion and my dissent, the many memos we had exchanged throughout the drafting process in order to show the public, as he put it, “how judges seek consensus.”

Steve especially relished FERC cases. He heard over 250, resulting in 170 reported opinions, over half of which he wrote himself. This former law professor converted each case into a fascinating seminar on economics, regulation, and administrative law. Had we received academic credit for sitting with Professor Williams, we would all have master’s degrees.

Despite Steve’s affinity for dense technical issues, his opinions are lively and engaging, often sparkling with references to Greek history and mythology. Ulysses ties himself to the mast in an antitrust case, hapless youth enter the Minoan labyrinth that is the Clean Air Act, Pericles of Athens weighs in on the constitutionality of barring the press from Dover Air Force Base, and the ever-patient Penelope ravel and unravels her shroud in both an FCC case and a FERC opinion. Steve loved Shakespeare, borrowing lines from *Macbeth* (a First Amendment opinion), *As You Like It* (a FERC opinion), and *King John* (a tax opinion).

Beyond literary references, Steve’s opinions reveal his fondness for animals. Appearing throughout are dogs, cats, horses, elephants, rats, frogs, gorillas, grasshoppers, ants, fleas, and birds of all kinds. The pushmi-pullyu, a two-headed antelope, shows up twice, first in an antitrust opinion and later in a RICO opinion. The pushmi-pullyu highlights still another lovely feature of Williams opinions: references so obscure that only with Google and Wikipedia can one easily discover their meanings. In a criminal contempt proceeding, Steve wrote of a party’s Derrida-like efforts, referring to the French postmodern deconstructionist philosopher. In an opinion reviewing an FCC decision, Steve harkened back to a bill of attainder against the Earl of Kildare during the reign of Henry VIII. And thanks to Judge Williams, it is circuit law that “[a] federal receivership is

not Schroedinger's cat," a reference to the early twentieth-century quantum physicist. (To discover how quantum physics and the Professor's poor cat could possibly relate to federal receiverships, see *Auction Co. of America v. FDIC*, 141 F.3d 1198 (D.C. Cir. 1998).)

Steve had a special way of getting straight to the heart of every issue. "This case," he wrote in one of his last dissents, "is a story of how creative lawyering can unseat settled, useful understandings, not how a court came to properly understand the true intent of Congress." My favorite is Steve's opinion in *Nixon v. United States*, 938 F.2d 239 (D.C. Cir. 1991), *aff'd*, 506 U.S. 224 (1993). Dismissing a claim against the U.S. Senate, he wrote: "If the Senate should ever be ready to abdicate its responsibilities to schoolchildren, or, moved by Caligula's appointment of his horse as senator, to an elephant from the National Zoo, the republic will have sunk to depths from which no court could rescue it."

Writing graceful, well-reasoned opinions didn't keep Steve busy enough. He regularly published scholarly articles on a vast range of issues, including natural gas regulation, interstate trade, water resources, environmental risk, healthcare regulation, unconstitutional conditions, takings, public choice theory, due process—the list goes on and on. And if that weren't enough, Steve learned Russian and wrote two books about reformers in the late Russian Empire. In one, *Liberal Reform in an Illiberal Regime*, he explores the agrarian reform efforts of Piotr Stolypin, Tsar Nicholas II's last prime minister. Steve uses Stolypin's initiatives to consider whether reforms voluntarily undertaken by an autocracy can spur the development of liberal democracy. I won't mislead you—this book isn't *Crime and Punishment*—but it's very interesting and very, very Steve Williams. Who else could have written this sentence: "The process can start with a small group, such as the barons who wrung promises from King John at Runnymede, gradually sweeping in greater portions of society as deals followed between parliament and king in the Hundred Years War and the Glorious Revolution of 1688"? Steve viewed radical land reform as the most promising path to freedom for tens of millions of Russian peasants, or as he wrote, "a new Russian farmer, free from artificial constraints, self-confident, risk-taking, and independent." The book displays Steve's unbounded intellectual curiosity, as well as his abiding faith in both human freedom and the ability of individuals to make wise decisions for themselves. It was this very same passion for individual freedom that anchored his opinions about free speech, the rights of criminal defendants, and what he viewed as excessive government regulation.

After years of reading Steve's opinions and many of his articles, and discussing with him not just law but also politics, foreign policy, history, literature, and life, I am reminded of Edith Hamilton's description of Greek thought:

Foreword

The fundamental fact about the Greek was that he had to use his mind. The ancient priests had said, “Thus far and no farther. We set the limits of thought.” The Greeks said, “All things are to be examined and called into question. There are no limits set to thought.”

Like the Greeks he was so fond of quoting, Steve Williams recognized no limits on thought. For Steve, all things were to be examined and called into question.

In recent years, we have been inundated with articles, speeches, and columns about judicial activism and the role of ideology in the courts. Steve Williams certainly had an ideology, just not the one commentators worry about. He believed that the legitimacy of judicial decisions flows from their faithfulness to constitutional and statutory text, their respect for precedent, and the clarity and coherence of their reasoning. It is this ideology that undergirds all of Judge Williams’s opinions, enriching both the work of this court and the development of the law.

The D.C. Circuit—indeed the entire federal judiciary—is just not the same without Steve Williams.