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Judge David Barron
Retired Associate Justice John Paul Stevens
Funeral
Arlington National Cemetery
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My name is David Barron. I clerked for Justice Stevens in the 1995-1996 term. That was 20 years into his life on the Court when – amazingly – he still had more than a decade to go.

I want to talk about the Justice on behalf of my fellow Stevens clerks, more than 100 strong. He loved us. We loved him. That is the essence of it. But I want to give some texture.

Where to begin? Perhaps with a story.

There is what I have come to think of as a genre of stories about the Justice: call this genre, “The Unassuming Justice Stevens” story.

Each of us who clerked for him has one.

How he took a pot of coffee, when a female clerk had been instructed by an older justice to pass it around and said, “I think it is my turn now.”

How, when a litigant referred to a justice as a judge at oral argument, and Justice Stevens interjected to say: “Don’t worry about it, the Constitution makes the same mistake.”

Mine, I recall, happened on my first day with him in chambers. My task was simple: take a floppy disk with a draft opinion that he had prepared -- he always prepared the first draft -- and insert it into my computer's disk drive so I could review it.

I was, sadly, not up to the task. The problem: I could not find the disk drive.

Then I felt a presence behind me. A man about my height. Older. Soon, that presence was bending down. Then that presence was on his hands and knees. Then that presence was gently taking the disk from my hand and inserting it into the disk drive under my desk.

You know who that older presence was. He got up, smiled, and said, “That should take care of it.”

That was not how I hoped it would all begin for me, but I did think to myself: “With a boss like this, this job was going to be very hard to screw up.”

But I want to note, all “Unassuming Justice Stevens” stories also are “Supremely Competent Justice Stevens” stories.

He is passing around the coffee graciously to defuse the tension and extend a welcome; he is remembering the precise words of the Constitution to put a lawyer at ease, not show him up; he is flawlessly inserting a floppy disk into a computer to calm a new clerk, not embarrass him.

It is not as if the protagonist in these stories is spilling the coffee, making the mistaken salutation, or not knowing how to load up a computer. Justice Stevens isn’t likely to do such a thing.

Of course, no great life is as easy as it looks. But there was a lesson that we took from these stories.

You could be unassuming AND supremely competent.

You could put others at ease, not call attention to yourself, and beat clerks more than half your age at tennis, be a champion bridge player, fly to work on the plane that

YOU piloted, moonlight as a substantial Shakespeare scholar, and yes, even help win the war for democracy by cracking the enemy's code as a young service member.

We learned how supremely competent he was up close when, during a conversation with us in chambers, he would sometimes suggest where we could find a precedent that had come to his mind by reeling off – from memory – the volume number and sometimes the page number of its place in the U.S. Reports.

“Really,” we thought, “if we open 327 U.S. 1, we will find it and it will be right on point?” We would.

We learned it, too, while watching him flip through a brief. Have you ever seen someone chuckle while reading a brief in a difficult case?

We have. Justice Stevens chuckled as he read them, because he was fluent in the law in the way that we are fluent in English.

I see him, we all do, batting around a case with us, listening with a slight smile as we made some point that we hoped was novel and clever. A few words in, he would say, “I see the point.” You only needed to hum a few bars for him when it came to law.

But we learned not just about how to treat others with respect and grace, but also how to judge that way.

Justice Stevens had a favorite phrase in his opinions: “quite wrong.” As in, the majority is “quite wrong.” Or, just as often, the dissent is “quite wrong.”

I think it is a perfect Stevensism.

On the one hand, it is polite. The word “quite” is taking the sting off the harshness of the word “wrong.”

But then you think about it. The word “quite” is also doing something else. It is emphasizing just how wrong Justice Stevens thought the position he was rejecting was.

This was an important lesson, too.

You could be kind and polite while being forceful and firm. Justice Stevens dissented as much as any Justice in the modern era. He believed fiercely in independence, in not going along with the crowd, in stating your own views no matter how distinctive, and in the capacity of the country to handle disagreement, even strong disagreement, and to learn from it, if respectfully offered and respectfully received.

This, of course, is all about style. And style mattered to the Justice. He did wear a bow tie after all.

But substance did too.

Justice Stevens cared about outcomes and consequences. He knew how important the work of the Supreme Court is to people.

Still, it is remarkable to me how cases stayed with him even after he left the bench.

Not long ago, I had occasion to call the Justice for some advice. I was greeted with the following: “I was just looking at Hans v. Louisiana again and I really think they misread it in Seminole Tribe.”

He was retired by then, mind you. Many years retired.

We had last talked about Hans -- decided in 1890 -- together in the October Term 95-96, during the Seminole Tribe case itself, which concerned sovereign immunity under the Eleventh Amendment.

I told him I wasn't really prepared to get into Hans in the kind of depth that he clearly was.

But it is not surprising to me that the Eleventh Amendment was still on his mind.

Justice Stevens did not like official immunity of any kind. He was suspicious of unchecked governmental power, though he was profoundly respectful of its democratic exercise.

He had an innate sympathy for the outsider and the gadfly, and he had an intense aversion to concentrations of power.

Antitrust and its original common law principles for teasing out rules of fair competition ran deep within him -- perhaps because he was such a competitor himself.

There is much written by commentators about whether he was liberal or conservative and whether he swung from one pole to the other over time.

I understand the reason to try to categorize him in this way. These cases matter to the people of this country and he knew it.

But I do not think of him in those stark political terms, nor, I would hazard, do any of those who clerked for him.

Justice Stevens operated at a different register, a more timeless one.

Is a Frank Capra movie liberal or conservative?

Is Abraham Lincoln?

Is the American flag?

Questions about right and left are not always the best ones to ask about some of the greatest symbols of American life.

Timeless American figures like the Justice reflect something more profound about the country's values and its traditions. They could see things in ways that, might, in the particular, be susceptible of such political categorization, but that, from a broader vantage, called us (if we would listen) to think beyond the moment and to contemplate principles of justice and union, of integrity and decency, of honor and respect for institutions, of equality and liberty, that endure and thus transcend the particular politics of the day.

Justice Stevens invited us to think that way, too.

We had occasion recently – our clerk family – to have a reunion with him in Florida, thanks to the help of his daughter Sue; one of my fellow former clerks, Carol Lee; and his assistant, Janice Harley, who, with Nellie Pitts and Peter Edwards, had helped welcome us to his chambers over the years.

It was a moving occasion.

He had done so much for each of us throughout our lives in his gentle and unassuming way.

Most recently, in my case, he had reached out when I was nominated to become a judge and my confirmation hearing was looming. In his inimitable manner, he asked me:

“David, do you think they would mind if I attended?”

“Mind?” I thought. “I am pretty sure they'll be fine with it.”

He said in the end he could not really hear most of what was said at the hearing (maybe he tuned it out).

I realized, though, that he probably knew that was going to be the case when he asked to attend.

He was past 90 by then, and his hearing sometimes failed him. He was aware, though, of the stature that he brought to every occasion, that his mere presence would be a reminder to everyone to act a little more dignified, a little less certain, a little more generously.

At our recent reunion, we held a q-and-a with him and one clerk asked him a great question -- and this is my last "Unassuming Justice Stevens" story for now: "What decision are you most proud of?"

We all leaned in to hear. Was it his famous dissent in Citizens United or in Heller or Bush v. Gore or Bowers? Was it his opinion for the Court in Chevron or Term Limits or his opinion striking down the death penalty for people with intellectual disabilities?

Without missing a beat, the Justice knew his answer: "probably the Sony case, he said?"

Sony v. Universal City Studios, Inc., decided by him in 1984. It concerned the proper construction of the fair use provisions of the Copyright Act.

Really, of all the cases?

But the answer is true to who he was.

It is not a case for the headlines. But it is a case about the things he valued: the craft of law, the satisfaction of resolving a difficulty in it, the learning of new things that gave him such great joy in judging, the application of common law principles to technical statutes, the engagement with legislative history, and the articulation of a vision of a country in which principles of fair competition and free and open debate would be advanced on behalf of ordinary people

And then, too, it was a case that he had won, and he saw nothing wrong with winning.

I said at the beginning that we loved our Justice and he loved us. But we know – as we knew even then -- that we were fortunate to work for a great man, who taught us much and the country more. Justice Stevens so valued learning. To do him justice, we need only learn from him.

When our clerkship ended, he would give each of us a photograph of himself. It was inscribed with the same message that his Justice – the new deal champion, Wiley Rutledge – had inscribed on the photo of him that he had given to Justice Stevens when his term as a law clerk on the Court had ended, now more than a half century ago.

The inscription reads, “to my friend and former clerk, with appreciation and affection.”

We, the Stevens clerks, wish to return the sentiment.

“To our friend and former Justice, with appreciation and affection.”