

SUPREME COURT OF THE UNITED STATES

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JUSTICE JOHN PAUL STEVENS MEMORIAL

SPECIAL SESSION OF THE SUPREME COURT

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SUPREME COURT OF THE UNITED STATES
JUSTICE JOHN PAUL STEVENS MEMORIAL

SPECIAL SESSION OF THE SUPREME COURT

3:00 p.m.
Monday, May 2, 2022

Courtroom
Supreme Court of the United States
Washington, D.C.

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P R O C E E D I N G S

(3:00 p.m.)

CHIEF JUSTICE ROBERTS: The Court is in special session this afternoon to receive the resolutions of the Bar of the Supreme Court in tribute to Justice John Paul Stevens.

The Court recognizes the Solicitor General.

PRESENTATION OF RESOLUTIONS

HONORABLE ELIZABETH B. PRELOGAR,
SOLICITOR GENERAL OF THE UNITED STATES

GENERAL PRELOGAR: Mr. Chief Justice, and may it please the Court:

At a meeting today of the Bar of this Court, resolutions memorializing our deep respect and affection for Justice John Paul Stevens were adopted unanimously.

Today, the Bar of this Court gathers to pay tribute to Justice Stevens, a model of integrity, independence, and intellectual honesty, who served the nation for 35 years as an Associate Justice of this Court.

Justice Stevens was a lawyer of the highest quality and a human being of the highest character. He was gifted with an agile and

1 curious mind, and he used it well, writing more
2 than 1,000 Supreme Court opinions, three books,
3 and countless articles. He was a patriot with a
4 profound infectious sense of optimism. Yet, his
5 eyes stayed clear, and his pragmatism never
6 waned. Independent to the core and thoroughly
7 decent, Justice Stevens lived a life dedicated
8 to the rule of law and to equal justice under
9 it.

10 John Paul Stevens was born in 1920 in
11 Chicago's Hyde Park neighborhood. For college,
12 he enrolled at the University of Chicago to
13 study English literature. He graduated Phi Beta
14 Kappa with the university's highest honors.

15 Justice Stevens served as a Naval
16 officer during World War II. He spent much of
17 the war stationed at Pearl Harbor, working as an
18 intelligence officer breaking Japanese codes.
19 He was awarded the Bronze Star for his service.

20 After the war, Justice Stevens
21 enrolled in Northwestern University School of
22 Law. Northwestern's emphasis on facts, context,
23 and procedure, rather than legal rules alone,
24 had a lasting effect on his thinking. He often
25 quoted his professor's advice: "Beware of

1 glittering generalities." Justice Stevens
2 became co-editor in chief of Northwestern's Law
3 Review and graduated first in his class with the
4 highest grades to date in the school's history.
5 His brilliant record earned him a Supreme Court
6 clerkship with Justice Wiley Rutledge during the
7 1947 term.

8 Following his clerkship, Justice
9 Stevens returned to Chicago and soon
10 distinguished himself as a leading antitrust
11 litigator. He argued a case before this Court
12 and taught antitrust law at both Northwestern
13 and the University of Chicago.

14 Public service formed a cornerstone of
15 his years practicing law. He served as
16 associate counsel to a House Judiciary
17 subcommittee studying monopoly power. He also
18 served as counsel to a special commission
19 convened to investigate charges of corruption
20 leveled at the Illinois Supreme Court. And he
21 generously accepted pro bono appointments,
22 including a case where he persuaded the Illinois
23 Supreme Court to reverse a conviction procured
24 by beating a defendant until he confessed. That
25 and other experiences influenced his insistence

1 that criminal defendants receive full and fair
2 trials and appeals.

3 In 1970, President Nixon nominated
4 Justice Stevens to the Seventh Circuit, where he
5 served for the next five years. In 1975,
6 President Ford nominated him to this Court.
7 Justice Stevens was confirmed by a vote of 98 to
8 zero just 19 days after his nomination.

9 President Ford chose Justice Stevens
10 for his integrity and his excellence.
11 Plain-spoken and direct, Justice Stevens avoided
12 one-size-fits-all solutions to complex legal
13 problems. He instead grounded his approach in
14 the facts, in our constitutional tradition, and
15 in careful consideration of precedent, context,
16 and common sense.

17 His commitment to the rule of law was
18 second to none, and for him, that meant the
19 conscientious exercise of independent judgment.
20 Indeed, over more than three decades on the
21 Court, Justice Stevens fearlessly exercised
22 independent judgment across myriad areas of the
23 law, too many to recount here. For example,
24 early in his tenure on the Court, he declared
25 his independence from the orthodoxy of different

1 tiers of scrutiny under the Equal Protection
2 Clause, writing that the clause does not make
3 some groups of citizens more equal than others.

4 His independence wasn't limited to
5 constitutional law. In the realm of statutory
6 interpretation, he rejected what he called a
7 purely literal approach and refused to wear, in
8 his words, "thick grammarian spectacles." He
9 didn't ignore the words of statutes. Many of
10 his opinions engaged in close analysis of the
11 specific statutory terms and structure, but he
12 also sought guidance from context, legislative
13 history, and the purpose behind the legislation.
14 He stood by that approach to the end, defending
15 attention to legislative history against
16 textualist critics even after he retired from
17 the Court.

18 Justice Stevens viewed the courts as a
19 refuge for the powerless. His unwavering
20 commitment to procedural regularity took center
21 stage when he authored the Court's opinion
22 holding that the federal habeas statute applies
23 to detainees held in Guantanamo Bay after 9/11.
24 That opinion vindicated the core insight of
25 Justice Rutledge's dissenting opinion from 56

1 years earlier in Ahrens versus Clark, an opinion
2 decided during Justice Stevens' tenure as a law
3 clerk.

4 Decency, independence, and humble
5 brilliance ran through Justice Stevens' work.
6 He was kind, gracious, quick to smile, and
7 unflinching polite. At oral argument, he
8 usually prefaced his questions with a disarming,
9 "May I ask you this?" His clerks adored him,
10 describing him as the best boss they could ever
11 hope to have.

12 To prepare for oral argument, he
13 didn't ask his clerks for bench memos. Instead,
14 after he read all the papers, he would stroll
15 into the clerks' office and settle into a
16 well-worn armchair. He would talk through cases
17 there, aided by his near-perfect recall of
18 earlier precedents.

19 And when he had an opinion to write,
20 he always prepared the first draft himself.
21 Many of these drafts were separate opinions.
22 Indeed, he wrote more dissents than any other
23 Justice in this Court's history and more
24 concurring opinions too. With his fearless
25 independence, he was untroubled by being one

1 against eight, although he wished his colleagues
2 would rethink their votes.

3 Most of his dissents remain dissents,
4 enduring markers of how Justice Stevens believed
5 we could achieve a more just society. But they
6 sometimes paved the way for future change.
7 Justice Stevens dissented in Bowers versus
8 Hardwick, writing that individual decisions
9 about intimate relationships are a form of
10 liberty protected by the Due Process Clause.

11 Seventeen years later, Justice Stevens
12 assigned Justice Kennedy to write the Court's
13 opinion in Lawrence versus Texas, overruling
14 Bowers. The opinion stated: "Justice Stevens'
15 analysis in our view should have been
16 controlling in Bowers and should control here."

17 Justice Stevens dedicated himself to a
18 lifetime of learning. Intellectual curiosity
19 and openness were, in his view, essential
20 virtues of any good judge. Through it all, he
21 remained true to his own incremental and
22 nonideological vision of judging. On the 30th
23 anniversary of his appointment, President Ford
24 put it just right, saying: "He has served his
25 nation well, at all times carrying out his

1 judicial duties with dignity, intellect, and
2 without partisan political concern. Justice
3 Stevens has made me and our nation and our
4 fellow citizens proud."

5 Gathered here together, looking back
6 at his extraordinary life, the members of the
7 Bar of this Court express our great admiration
8 and respect for Justice John Paul Stevens, our
9 deep sense of loss upon his death, our
10 appreciation for his contribution to the law, to
11 the Court, and to the nation, and our gratitude
12 for an example of a life well spent.

13 On behalf of the Bar of the Supreme
14 Court, it is my privilege to present to the
15 Court the resolutions adopted today so that the
16 Attorney General may move their inscription on
17 the Court's permanent record.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 General Prelogar.

20 I recognize the Attorney General of
21 the United States.

22 REQUEST TO ACCEPT MOTIONS,
23 THE HONORABLE MERRICK B. GARLAND,
24 ATTORNEY GENERAL OF THE UNITED STATES
25 GENERAL GARLAND: Mr. Chief Justice,

1 and may it please the Court:

2 Actually, I do not think that
3 traditional prayer is necessary today because I
4 am pretty sure that the request I will be making
5 at the end of these remarks will please the
6 Court.

7 The Bar of the Court met today to
8 honor the memory of John Paul Stevens, Associate
9 Justice of the Supreme Court from 1975 to 2010.
10 Justice Stevens was humble, curious, and
11 generous both as a judge and as a human being.

12 He exemplified open-mindedness,
13 collegiality, and integrity. He was unfailingly
14 well prepared, civil, and intellectually
15 formidable on every case he heard. He modeled
16 the best of the judicial craft and was a proud
17 and tireless guardian of judicial independence.

18 Justice Stevens was born on April 20,
19 1920, in Chicago. He attended the University of
20 Chicago Laboratory Schools for elementary and
21 high school and then the University of Chicago
22 for college.

23 Justice Stevens graduated in 1941 and
24 had begun work on a Master's degree in English
25 when his dean asked him to consider

1 cryptographic work for the Navy. He took the
2 suggestion to heart and he was commissioned as a
3 Naval officer.

4 In his distinguished Navy career,
5 Justice Stevens helped crack codes with
6 important consequences for the war effort. He
7 did this through his knack for seeing angles in
8 problems that others had missed, an ability that
9 would be recognized throughout his subsequent
10 career.

11 When he left the service, Justice
12 Stevens pursued law school at the suggestion of
13 his brother. At Northwestern, he became
14 co-editor-in-chief of the Law Review and
15 graduated first in his class. His outstanding
16 performance and a lucky coin flip with a
17 classmate won him a clerkship with Justice Wiley
18 B. Rutledge.

19 Upon completion of the 1947 term,
20 Justice Rutledge gave Justice Stevens a photo
21 inscribed "To my friend and former clerk with
22 appreciation and affection." Years later,
23 Justice Stevens made a practice of inscribing
24 photos to his own clerks in the same way.

25 After his clerkship, Justice Stevens

1 returned home to Chicago. He became a leading
2 litigator in private practice and argued a case
3 in this Court. He specialized in antitrust law,
4 a subject he also taught as an adjunct professor
5 of law at Northwestern and at the University of
6 Chicago.

7 He accepted important opportunities
8 for public service, including as an advisor on
9 the Attorney General's Advisory Committee on the
10 antitrust laws and as a counsel to a special
11 commission to investigate charges of corruption
12 in the Illinois Supreme Court.

13 He took cases pro bono, including a
14 criminal matter in which he won reversal of his
15 client's murder conviction premised on a coerced
16 confession.

17 In 1970, he became a judge of the U.S.
18 Court of Appeals for the Seventh Circuit, and
19 then, in 1975, President Gerald R. Ford
20 appointed him to the Supreme Court of the United
21 States.

22 My distinguished predecessor, Attorney
23 General Edward Levi, called Stevens, "a
24 craftsman of the highest order whose opinions
25 were gems of perfection."

1 In 2005, former President Ford
2 reflected on the appointment with pride, writing
3 of his own presidency, "I am prepared to allow
4 history's judgment of my term in office to rest,
5 if necessary, exclusively on my nomination 30
6 years ago of Justice John Paul Stevens to the
7 U.S. Supreme Court."

8 As a member of this Court, Justice
9 Stevens was independent, insightful, and
10 prolific. His vast body of opinions touched
11 almost every corner of federal law. It would be
12 impossible to do justice to that remarkable body
13 of judicial work in these brief remarks, so I
14 will limit myself to just a few examples.

15 In the realm of criminal law, Justice
16 Stevens' landmark opinion in *Apprendi versus New*
17 *Jersey* was the first in a line of cases that
18 transformed the law of sentencing, a line that
19 also included Justice Stevens' opinions in
20 *United States versus Booker* and *Gall versus*
21 *United States*.

22 His opinions in *INS versus St. Cyr*,
23 *Rasul versus Bush*, and *Hamdan v. Rumsfeld*
24 protected the writ of habeas corpus as a means
25 of testing the legality of executive decisions.

1 His opinion in Chevron versus Natural
2 Resources Defense Council, holding that courts
3 must defer to reasonable agency interpretations
4 of ambiguous statutes, has chartered the course
5 of administrative law for a generation.

6 And in antitrust law, his first love,
7 his influential opinions in cases like NCAA
8 versus Board of Regents and American Needle
9 versus NFL have guided the principles governing
10 horizontal restraints adopted by associations
11 and joint ventures.

12 Justice Stevens' time on the Court was
13 defined not only by what he contributed to the
14 law but by how he did so. He was kind and
15 unassuming without any airs. He would often
16 preface his questions from the bench with, "May
17 I ask you a question?"

18 He was a warm colleague both on and
19 off the bench. The affection that his fellow
20 Justices felt for him was manifest. He also
21 made good on the words he inscribed on the
22 photos he gave his law clerks. They were both
23 his former clerks and his friends.

24 I first met the Justice just a few
25 years after he came on the Court. As a new

1 clerk for Justice Brennan, I dropped by the
2 Stevens chambers to talk with his clerks about a
3 case. When he heard us talking in the clerks'
4 room, the Justice came in, plopped himself down
5 in an easy chair and immediately entered into
6 the conversation.

7 It was clear that he loved the give
8 and take of the conversation. It was clear that
9 this kind of discussion was central to the way
10 he made up his mind about cases. It was very
11 clear that even though he was very attentive to
12 what we thought, the final decision would be his
13 based on his own independent judgment. And it
14 was also very clear that his clerks loved being
15 part of that process.

16 For a moment, I was jealous of the
17 fact that he had hired only two clerks who had
18 undoubtedly become closer to their Justice than
19 the rest of us in chambers with twice that many,
20 but then I remembered, because they were not in
21 the cert pool, those two clerks would be working
22 on every single cert petition.

23 But, while he was a congenial
24 colleague and boss, Justice Stevens was also
25 fearless in going it alone, whether piloting

1 small airplanes, disputing that William
2 Shakespeare actually wrote the Shakespeare
3 plays, rooting for the Cubs as a south-sider,
4 writing the first drafts of his opinions, or
5 concurring or dissenting solo when his views
6 departed from those of other Justices.

7 He placed a premium on exercising
8 independent judgment and was insistent on
9 explaining the legal reasoning underlying that
10 judgment. He also believed that it was
11 important to change your mind when you concluded
12 that your original position was wrong or even if
13 one of your published opinions was wrong.

14 As he put it just a few years before
15 his retirement, "learning on the bench has been
16 one of the most important and rewarding aspects
17 of my own experience over the last 35 years."

18 Justice Stevens embodied the
19 independence and commitment to judging each case
20 on its own merits. That is essential to the
21 rule of law.

22 When Justice Stevens retired from the
23 Court at age 90, he had been working long after
24 most people his age had retired. Yet he
25 appeared to have become younger each year he sat

1 on the bench. In the words of President Obama,
2 he retired "at the top of his game." Not that
3 he really retired in any conventional sense. In
4 the years after leaving the Court, he published
5 three books, including "The Making of a Justice:
6 Reflections on My First 94 Years."

7 Although he traded tennis for
8 ping-pong and acceded to his family's wishes
9 that he stop swimming in the open ocean on his
10 own, he kept up the kind of pace that made many
11 believe there might well be a second 94 years.

12 In his last days, he flew to Portugal
13 to participate in a conference. His travel
14 companions reported he hadn't lost a step. At
15 the time of his passing in 2019, Justice Stevens
16 had been retired from active service for nearly
17 a decade and yet, in the words of Justice David
18 Souter, he remained "the soul of principle and
19 an irreplaceable friend."

20 Justice Stevens will long be
21 remembered for his extraordinary service to our
22 country, for his commitment to the rule of law,
23 for his fundamental decency, and for the
24 integrity with which he worked and lived.

25 Mr. Chief Justice, on behalf of the

1 lawyers of this nation and in particular the
2 members of this Court's Bar, I respectfully
3 request that the resolutions presented to you in
4 honor of John Paul Stevens be accepted by the
5 Court and that together with the chronicle of
6 these proceedings, they be ordered be kept for
7 all time in the records of this Court.

8 RESPONSE BY THE HONORABLE JOHN G. ROBERTS, JR.,
9 CHIEF JUSTICE OF THE SUPREME COURT
10 OF THE UNITED STATES

11 CHIEF JUSTICE ROBERTS: Thank you,
12 General Garland, General Prelogar, for your
13 presentations in memory of Justice John Paul
14 Stevens. We also extend our appreciation for
15 the resolutions you have read today to Co-Chairs
16 Jamal Greene and Carol Lee and members of the
17 Committee on Resolutions and to Co-Chairs David
18 Barron and Teresa Wynn Roseborough and the
19 members of the Arrangements Committee.

20 Your motion that they be made part of
21 the permanent record of the Court is granted.

22 As you've heard, John Paul Stevens was
23 nominated to the office of United States Circuit
24 Judge for the Seventh Circuit by President
25 Richard M. Nixon on September 22, 1970. And

1 just five years later, President Gerald Ford
2 nominated him to be the 101st member of this
3 Court. As Justice Stevens often noted, his
4 appearance before the Senate Judiciary Committee
5 marked the last untelevised confirmation hearing
6 for a Supreme Court nominee. The Senate
7 confirmed him unanimously, and he took his seat
8 on December 19, 1975.

9 He led an extraordinary life of
10 exemplary service to our country. He was born
11 in Chicago. In the year he was born, Woodrow
12 Wilson was president, and Prohibition had just
13 become the law of the land. William Howard Taft
14 had not yet become Chief Justice, and the
15 Supreme Court did not yet have a building of its
16 own. Young John's parents ensured that he had
17 an extraordinary upbringing. In 1927, he met
18 both Amelia Earhart and Charles Lindbergh at the
19 grand opening of the Stevens Hotel launched by
20 his family in Chicago. Perhaps those encounters
21 influenced his enthusiasm for aviation.

22 Although he grew up in a steadfastly
23 Republican family, his father took John to see
24 President Franklin Roosevelt's acceptance speech
25 on the last day of the Democratic Party's

1 convention in 1932, at which FDR first used the
2 term "New Deal." FDR was just the first of many
3 presidents John Paul Stevens encountered
4 personally. Eighty years later, in another
5 memorable encounter, President Barack Obama
6 awarded Justice Stevens the Presidential Medal
7 of Freedom, citing his "clear and graceful
8 manner in the defense of individual rights and
9 the rule of law always favoring a pragmatic
10 solution over an ideological one."

11 Among other memorable encounters with
12 persons of note, John was in attendance at
13 Wrigley Field when Babe Ruth made his famous
14 "called shot" home run. A life-long Cubs fan,
15 he proudly displayed the box score from that
16 game in his office. In 2006, he became the
17 first Supreme Court Justice to step on the mound
18 at Wrigley Field and throw out the first pitch
19 at a Cubs game. He threw a strike. He called
20 that the high point of his career.

21 (Laughter.)

22 CHIEF JUSTICE ROBERTS: But there
23 were, to say the least, other impressive
24 accomplishments. He attended the University of
25 Chicago and, upon graduation in 1941, enrolled,

1 as you've heard, in a secret program for
2 cryptographic work in the United States Navy.
3 Stationed in Oahu, Lieutenant Commander Stevens
4 was part of a team of signal officers that
5 cracked Japanese codes and hastened the end of
6 the war.

7 After that, he chose to study at
8 Northwestern Law, both for its excellence and
9 because of the opportunity it offered to
10 complete three years of law study in two years.
11 He became co-editor in chief of the Law Review
12 and earned record grades. He paid for his legal
13 education through the GI Bill, and it proved to
14 be an outstanding investment both for Stevens
15 and for the country.

16 John Paul Stevens came to the Supreme
17 Court as a law clerk for Wiley Rutledge, and
18 among the cases decided by the Court that term
19 was Ahrens against Clark, a challenge to postwar
20 deportation brought by German prisoners detained
21 on Ellis Island. Justice Rutledge dissented
22 from an opinion limiting the writ of habeas
23 corpus. In 2004, then Justice Stevens relied on
24 the Rutledge dissent when writing for the Court
25 in Rasul versus Bush, which found that federal

1 courts were not barred from reviewing the
2 constitutionality of detention of terrorists at
3 Guantanamo Bay.

4 He was always confident that a judge's
5 job was simply to articulate the best way to
6 decide each case. And when in dissent, he never
7 seemed to doubt that the Court would eventually
8 see things his way.

9 Following his clerkship, John Paul
10 Stevens returned to practice in Chicago. He
11 initially joined the firm that is now known as
12 Jenner and Block, where he developed a
13 specialized interest in antitrust law. His
14 focus on that field led to his appointment as an
15 associate counsel to the Subcommittee on the
16 Study of Monopoly Power of the House Committee
17 on the Judiciary.

18 In 1952, he co-founded his own law
19 firm. He devoted his time and considerable
20 energy to various public service and pro bono
21 work, observing later that most good lawyers
22 devote a significant amount of time to public
23 service for which they receive no pay.

24 After 18 years in private practice,
25 John Paul Stevens began his career of

1 distinguished service to the judiciary. In
2 nearly 35 years on this Court, Justice Stevens
3 wrote 400 majority and plurality opinions for
4 the Court, beginning with Mathews versus Diaz in
5 1976. On a few occasions, 1,415 to be precise,
6 he wrote a concurring or dissenting opinion or
7 separate statement.

8 In this courtroom, Justice Stevens was
9 universally polite and probing. He consistently
10 asked questions that illuminated aspects of the
11 case others had not spotted. Indeed, Justice
12 Stevens' penetrating perception extended even to
13 matters of civility and grace. In 1980, before
14 Sandra Day O'Connor joined the Court, he was a
15 catalyst for dropping the traditional salutation
16 of "Mr. Justice" in favor of simply "Justice."
17 When he retired in 2010, he noted with
18 satisfaction that a letter written to the other
19 Justices when he joined the Court would have
20 been addressed "Dear Brethren," but he would
21 begin "Dear Colleagues."

22 He did it all with a smile, an even
23 keel, and a warm generosity, not just to those
24 with life tenure or learned in the law but to
25 all people he encountered. His service would be

1 noteworthy alone for its length, the third
2 longest tenure in the Court's history and just a
3 few months shy of the record. But he will
4 remain an enduring inspiration to everyone
5 associated with this Court because he served so
6 well and with such a spirit of decency and
7 kindness.

8 John Paul Stevens said that he hoped
9 his legacy would be to be remembered as an
10 honest judge and a good judge who tried to reach
11 the best result in every case. Perhaps he would
12 have welcomed our affirmation of that sentiment
13 to be the last word today. But I hope he would
14 not mind a concurring opinion from the members
15 of the Court and the members of the Bar of this
16 Court that this one-of-a-kind American will long
17 be remembered for his extraordinary patriotism,
18 humanity, and contributions to the rule of law.

19 If everyone will now proceed to the
20 East and West Conference Rooms for the reception.

21 Madam Marshal.

22 THE MARSHAL: The honorable Court is
23 now adjourned sine die.

24 (Whereupon, at 3:28 p.m., the Court
25 adjourned sine die.)

Official - Subject to Final Review

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