

John Paul Stevens. 2011. *Five Chiefs: A Supreme Court Memoir*. Little, Brown and Company. 292 pages.

In *Five Chiefs: A Supreme Court Memoir*, Associate Justice John Paul Stevens shares the front row seat he enjoyed over the course of 35 years of service on the US Supreme Court. The last half of the 20<sup>th</sup> century has been one of the most tumultuous periods in American jurisprudence especially in terms of how the Supreme Court under Chief Justice Warren expanded application of the 14<sup>th</sup> amendment. Stevens observed and participated in these changes as a law student, Supreme Court clerk, attorney arguing before the Court, and Justice.

A native of Illinois, John Paul Stevens graduated from Northwestern University after serving in the U.S. Navy during World War II, and settled into private practice from 1949 until 1970, when President Nixon appointed him to the 7<sup>th</sup> Circuit Court of Appeals. He served there until 1975 when he was appointed to the US Supreme Court by President Ford. Stevens was Ford's one and only appointment, and extending Ford's legacy all the way until Stevens' retirement in 2010.

Justice Stevens organizes his observations in this book based on each Chief Justices of the United States that he personally experienced. He begins with Chief Justice Fred Vinson (1946-1953) because he clerked at the Supreme Court while Vinson was the Chief. Stevens also includes Chief Justice Earl Warren (1953-1969) because he argued cases before the Warren Court. Stevens actually sat with Chief Justices Warren Burger (1969-1986), William Rehnquist (1986-2005) and John Roberts (2005-present).

One point particularly well made is how the channels to a Supreme Court Judgeship have narrowed in the last 50 years. Stevens himself is one of the last who came from a private practice before becoming a federal judge. Presidents are not appointing political figures as often as they had in the past. Stevens notes that chief justice Earl Warren – an Eisenhower appointee -- was “one of the most popular politicians of the day,” (p. 83) giving rise to the observation of how unusual it would be for a political figure to be appointed in this day and age. Being a government lawyer and then Circuit Court judge is the dominant path in the last forty years taken by Justices like William Rehnquist and John Roberts. The first four Justices who had clerked for the Court who ended up serving on the Court are Justices White, Rehnquist, Stevens, and Breyer. Instead of bringing new ideas and freshness to the Court, these carefully groomed and socialized lawyers with very little real-world legal or political experience are at risk of being too insulated. For example, Chief Justice Warren served as a prosecutor for many years. This experience undoubtedly shaped his approach to the *Miranda* opinion which he authored. No Justice currently serving has any elective political experience at all.

Stevens’ legal observations are interesting, although they necessarily skate over the surface of many important issues and conflicts that occurred during this legally tumultuous time. So much more could be said of various pivotal cases that appeared before the Supreme Court in Stevens’ time on the bench... Interestingly, the first case Stevens ruled on was the key campaign finance case *Buckley v. Valeo*. The experience instilled an “extreme distaste for debates about campaign financing” (p. 137) that carried through to one of his last cases, the controversial *Citizens United* case in which he dissented. Of *Brown*, Stevens notes that seeking unanimity was a bad strategy. When the Court wrote that desegregation must occur “with all deliberate speed,” they were “too tentative” and the soft words encouraged delay (p. 100). Of interest to Oklahomans is Stevens’ brief discussion of Thurgood Marshall and *Sipuel v. Board of Regents of the University of Oklahoma*.

Stevens is at his best when discussing Court procedure because there are so few people that are able to provide details about what *actually* happens behind the bench in oral argument or in the conference room.

For example, each side was allowed one hour in oral arguments until the Burger years when it was cut to 30 minutes per side. During oral arguments Justices have access to a vast law library located just behind the bench. By filling out a slip and handing it to a page, any reporter can be fetched instantly. Most intriguingly, metal spittoons are still placed by each Justice's chair. Stevens confirmed what was reported in *The Brethren* that in judicial conference, Chief Justice Burger mis-assigned opinions to Justices who were not in the majority, although Stevens attributes this fact to poor note taking on Burger's part. Also, Court business was not discussed during coffee breaks in judicial conference or during lunch. Collegiality ruled the day.

Stevens' best chapter legally speaking is probably the one on Justice Rehnquist. Stevens was clearly delighted to be freed from Burgers' administrative *faux pas* during conference, including the poor note taking, bad case summaries, interruptions, and assigning opinions incorrectly. In contrast, Rehnquist was efficient to a fault, sometimes shutting down debate when Justices still had things to say. Stevens was also amused by the appearance of gold stripes on Rehnquist's robe, sardonically describing them as "a surprise" to the rest of the Court (p. 169).

Stevens also noted that the Rehnquist Court, for all its professions of judicial restraint, struck down more pieces of legislation (41) than the term of any other Supreme Court chief justice, ruling aggressively on issues like gun rights, state sovereignty, and the legal rights of Native Americans. The Court's ruling in *Seminole Tribe of Florida v. Florida* (1996), in which the Court – with Rehnquist writing for the 5-4 majority – ruled that the Seminole Nation of Florida could not seek damages for violations of its laws from either the state or federal government, is decried by Stevens as "among the Court's most unfortunate [decisions]" (p. 247). He also gently mocked Chief Justice Rehnquist for his stripes and for *Seminole Tribe*: "Like the gold stripes on his robes, Chief Justice Rehnquist's writing about sovereignty was ostentatious and more reflective of the ancient British monarchy than our modern republic. I am hopeful that his writings in this area will not be long remembered" (p. 197).

*Five Chiefs* is not as scandalous as Woodward and Armstrong's *The Brethren* nor is it as detailed as Jeffrey Toobin's very interesting book *The Nine*. However, Stevens does let his opinion on his Brethren show on a few occasions. For example, he contrasted the "living breathing Constitution" theory favored by judicial activists with a jurisprudence based on original intent:

While Thurgood's jurisprudence reflected an understanding that the Constitution was drafted 'to form a more perfect union' – and thus to accommodate unforeseen changes in society – Justice Thomas's repeated emphasis on historical analysis seems to assume that we should view the Union as perfect at the beginning and subject to improvement only by following the cumbersome process of amending the Constitution" (pp. 187-8).

In his judicial philosophy, Stevens clearly rejected the idea of basing decisions purely on original intent. In writing about the many watershed cases he witnessed as a lawyer and judge, Stevens argued that "reliance on history, even when the interpretation of past events is completely accurate and undisputed, provides an insufficient guide to the meaning of our Constitution" (p. 225).

Stevens' reverence for both the Supreme Court and for rule of law is balanced by his concern for the future direction of the Court. If Lee Epstein and Jack Knight's "strategic model" is correct – and justices are political actors who pursue political goals – then a reader could reasonably conclude that Stevens' ultimate aim is to maintain the Court's legitimacy, preserve collegiality among the justices, and to find efficiency and fairness in decision making.

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