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My Boss, Justice Stevens

By SUSAN ESTRICH, EDUARDO M. PEÑALVER, JEFFREY L. FISHER, CLIFF SLOAN, DEBORAH N. PEARLSTEIN and JOSEPH THAI

On Friday, John Paul Stevens, the longest-serving Supreme Court justice on the bench, announced that he would retire at the end of the term. The Op-Ed editors asked six of his former clerks to share their memories of working for him.

THE petition came in around 9 p.m. on May 24, 1979. A man named John Spenkelink, convicted in the murder of a fellow hitchhiker in Florida, was scheduled to die that night, and he was fighting to the end. Justice Lewis Powell, who sat as circuit justice for Florida, had already denied the stay of execution.

Those of us in Justice Stevens’s office thought Spenkelink’s lawyers would go to one of the anti-death penalty justices — William Brennan or Thurgood Marshall — but we were waiting just in case. For whatever reason — maybe they knew they would need Justice Stevens’s vote to get a hearing before the court, to get anything other than a few hours. They chose our office instead.

Justice Stevens had already gone home, so my fellow clerk and I, Jim Liebman, got in my car, a beat-up Ford Maverick with no inside light. Jim, who would go on to be one of the nation’s leading death penalty lawyers, brought a flashlight; he read, I drove.

The justice and his wife had recently separated, and he was living in one of those nondescript high-rises that poke out of the landscape in Arlington, Va. The three of us sat on his rented furniture, going issue by issue through the petition.

At one point, Justice Stevens called Justice Potter Stewart, the other “death penalty moderate” on the court. We summarized each of the issues. Were any of them worth being considered by the full court? Justice Stewart didn’t think so. Justice Stevens agreed.

We drove back with the death warrant. Justice Marshall was waiting for us when we got there. He signed the stay, and the court dissolved it in the morning. Spenkelink was executed.

Years later, I talked about that night with Justice Stevens. He had lost faith in the fairness of the death penalty, because no one paid the kind of attention that he had, and Justice Stewart had, and Justice Marshall had, that night long ago. When I asked him why he had changed, he told me that on this, as on so many questions, he had not changed at all. The court had.

— SUSAN ESTRICH, lawyer in Los Angeles and clerk from 1978 to 1979

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DURING my clerkship interview with Justice Stevens, we talked about our hometowns. When I mentioned that I had grown up in a small town near Seattle, he leapt from his chair and pulled a plaque off the wall. It read: “Small Town Lawyer of the Year: Associate Justice John Paul Stevens.” It had been given to him a few years before by the bar association of Poulsbo, Wash.

At the time, I was puzzled that the award was so meaningful to him. I shouldn’t have been. Although Justice Stevens has always practiced law at the highest levels of the profession, his modesty would make him feel right at home in a place like Poulsbo. He may not have actually been a small town lawyer, but he was definitely a kindred spirit.

— EDUARDO M. PEÑALVER, professor at Cornell Law School and clerk from 2000 to 2001

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ONE of Justice Stevens’s trademarks is the courteousness with which he treats the lawyers who appear before the Supreme Court. When he wants to elicit information or make a point during oral argument, he typically interrupts the lawyer with the gentle preface, “May I ask you a question?”

During William Rehnquist’s tenure as chief justice, a lawyer was arguing in the court for the first time. When asked a question by Justice Anthony Kennedy, the nervous lawyer started her response with, “Well, Judge — ”


Shaken, the lawyer continued. A few minutes later, she responded to Justice David Souter by saying, “Yes, Judge.” Chief Justice Rehnquist corrected her again: “That’s Justice Souter.” A couple of minutes later, she called Chief Justice Rehnquist himself a judge.

The chief justice leaned forward, his deep voice now at its sternest, to say, “Counsel is admonished that this court is composed of justices, not judges.”

Before the lawyer could say anything, Justice Stevens interjected: “It's O.K., Counsel. The Constitution makes the same mistake.”

— JEFFREY L. FISHER, associate professor at Stanford Law School and clerk from 1998 to 1999

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JUSTICE STEVENS’S energy amazed me, especially because he always seemed relaxed and unhurried. He’d come to chambers first thing in the morning with a draft of an opinion, which he had banged out or dictated at home earlier that day. And it was never a breezy one-pager in the style favored by his predecessor, William O. Douglas. Whether a majority opinion, a concurrence or a dissent, it would be thoughtful and detailed, complete with footnotes. He would have also gotten in a few sets of tennis that morning.

He loved to come into the clerks’ office to brainstorm about pending cases, delighting in the facts and law of every one, no matter how obscure. One time, a clerk for another justice happened to be there and stayed for the discussion. Later, he gave Justice Stevens his highest accolade: “That was like talking to another clerk.”
In those days, Justice Stevens hired only two clerks, even though most justices hired four, and even though the court decided twice as many cases as today. He didn’t see the need for more help. And, of course, he was one of the few justices who wouldn’t join the “cert. pool,” the collective divvying up of the court’s 7,000 annual requests for review. Better to look at all 7,000 ourselves.

Maybe the best example of Justice Stevens’s energy came a few years ago. I and some other former clerks were planning a clerks’ reunion with Justice Stevens, and one suggested a tennis tournament. Justice Stevens didn’t approve. “Why not?” asked the organizer.

“Most of the clerks aren’t very good,” he responded. He didn’t want to waste his time playing with hackers. He was 85 at the time.

— CLIFF SLOAN, lawyer in Washington and clerk from 1985 to 1986

EARLY in my clerkship, a man was scheduled to be executed late at night, and it was my turn to keep Justice Stevens posted on any final appeals.

As I would soon learn, the last-minute claims this petitioner was raising were common features of capital cases. They had been raised and litigated before, and they presented no novel question of law that would make the case a likely candidate for further review. Nonetheless, the man was about to be executed, and so I called Justice Stevens at home and woke him up.

He was patient as we reviewed the key points. But in the end, he indicated he would vote against staying the execution. I decided to reiterate what I thought was the petitioner’s strongest argument.

“No,” he said firmly, and thanked me for the call. I apologized for waking him and hung up. It was a fairly gentle exchange, but I was at a loss, equally unsure whether I’d been wrong for pushing, or whether I’d failed in making the case.

The justice came to my desk first thing the next morning. Before I could say anything, he apologized, saying he hoped he hadn’t been too short with me. “I forget you get baptized pretty quickly in this business,” he said, shaking his head.

It struck me as a remarkable act of empathy from a man who’d already been plenty patient with a rookie clerk and who had been, it later was clear to me, correct on the merits. But this was par for the course for Justice Stevens: deeply empathetic, and on the law almost always right.

— DEBORAH N. PEARLSTEIN, visiting associate professor at the Georgetown University Law Center and clerk from 1999 to 2000

FOR all the majesty of the Supreme Court, the object in the building that impressed me most during my clerkship was a black leather armchair. That worn armchair sat in the clerks’ office, and the boss sat himself in it whenever he wanted to chat.
Justice Stevens occupied an office on the opposite side of chambers, and never announced when he would walk over. Two clerks worked in the room with the armchair; another was in a makeshift space in the middle, and I had an office down the hall. The clerk in the middle sounded the alarm whenever the justice made a move, and we all scrambled around the armchair.

Once in the chair, Justice Stevens usually broke the ice by talking about sports or current events, or by asking us about our lives. When the conversation turned to cases, he had several habits that stood out.

First, he never disclosed his own views before asking for ours. Second, he always stopped to listen whenever we interrupted him, which I fear was too often. Third, he often brought up points of fact or law that we had overlooked, as well as difficulties with his own views.

Watching Stevens grapple with every case made me a believer in the words he wrote in Bush v. Gore during my clerkship — that confidence in those who administer the judicial system is “the true backbone of the rule of law.” For 35 years, Justice Stevens added backbone to the rule of law — one case at a time, and from a modest black chair in a corner of the Supreme Court.

— JOSEPH THAI, professor at the University of Oklahoma College of Law and clerk from 2000 to 2001