

# SUPREME COURT OF THE UNITED STATES

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SUPREME COURT OF THE UNITED STATES

JUSTICE JOHN PAUL STEVENS MEMORIAL

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SUPREME COURT OF THE UNITED STATES  
JUSTICE JOHN PAUL STEVENS MEMORIAL

MEMBERS OF THE SUPREME COURT BAR

1:45 p.m.

Monday, May 2, 2022

Upper Great Hall  
Supreme Court of the United States  
Washington, D.C.

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P R O C E E D I N G S

CALL TO ORDER

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

GENERAL PRELOGAR: Good afternoon,  
members of the Stevens family, members of the  
Court, members of the Bar, and friends.

This meeting of the Bar of the Supreme  
Court of the United States has been called to  
honor the memory of John Paul Stevens, who  
served as an Associate Justice of the Supreme  
Court from 1975 until 2010.

In addition to his time on the Court,  
Justice Stevens served his country as a judge  
on the United States Court of Appeals for the  
Seventh Circuit, as counsel to the House  
Judiciary Committee, and as a code breaker in  
the U.S. Navy during World War II.

Over decades on the bench, he  
dedicated his life to the rule of law and to  
the judicial craft. He was a jurist who  
fearlessly exercised independent judgment,  
guided by experience and the essential values  
underlying the Constitution and the American  
Project.

1           He was a person of integrity, blessed  
2           with a singular intellect, pragmatic  
3           temperament, humble nature, and generous soul.  
4           He was a devoted husband, father, grandfather,  
5           and great-grandfather, a beloved colleague, an  
6           inspiring mentor, and an extraordinary figure  
7           in American law. The Court and this nation are  
8           forever better for his service, and we all miss  
9           him greatly.

10           I want today to express my  
11           appreciation to Chief Judge David Barron and  
12           Teresa Roseborough, who co-chaired the  
13           arrangements committee for this meeting, and to  
14           the members of that committee: Stewart Baker,  
15           Preeta Bansal, David DeBruin, Sara Eisenberg,  
16           Jeff Fisher, Ian Heath Gershengorn, Judge  
17           Pamela Harris, Justice Leondra Kruger, Judge  
18           Lewis Liman, Nancy Marder, Judge Randolph Moss,  
19           Judge Alison Nathan, Skip Paul, Teresa Reed  
20           Dippo, Cliff Sloan, and Douglas Winthrop.

21           I also want to express my gratitude to  
22           Jamal Greene and Carol Lee, who co-chaired the  
23           Resolutions Committee, and to the members of  
24           that committee: Diana Amann, Christopher  
25           Eisgruber, Daniel Farber, Jean Galbraith, Abner

1 Greene, Olatunde Johnson, Troy McKenzie,  
2 Eduardo Penalver, Deborah Pearlstein, George  
3 Rutherglen, Adam Samaha, Robert Schapiro, Kate  
4 Shawn, and Sonja West.

5 The meeting today will be chaired by  
6 Chief Judge Barron, and Scott Harris will be  
7 the secretary. I'll now turn the podium and  
8 the meeting over to Chief Judge Barron.

9 CHIEF JUDGE BARRON: Madam Solicitor  
10 General, Mr. Chief Justice, Associate Justices,  
11 members of the Stevens family, Mr. Attorney  
12 General, members of the Supreme Court Bar:

13 It's a great honor to be with you all  
14 to remember a great man, but, in saying that, I  
15 cannot help but think it seems a misleading way  
16 to describe Justice Stevens, not because it's  
17 inaccurate, but because it does not capture  
18 what made him great.

19 That description inevitably calls to  
20 mind an overpowering person, a larger-than-life  
21 person, but Justice Stevens' greatness, his  
22 gift, his example, his superpower, was to show  
23 that gentleness has a power all its own and so  
24 too does humility.

25 The word that most comes to my mind

1 when I think of him, and it has since I first  
2 met with him for my interview for a clerkship,  
3 is timelessness. Time seems slower in his  
4 presence, as if he had access to a longer time  
5 scale than most people do, a sense of the depth  
6 of time, how long it runs back, and how far it  
7 will run into the future, and how important it  
8 is when making decisions of consequence, as  
9 Justice Stevens did for all of his professional  
10 life, to be aware of that time scale.

11 He was a war hero, a pilot, a  
12 superstar law student, an accomplished tennis  
13 player, and I can attest from personal  
14 observation an average golfer.

15 (Laughter.)

16 CHIEF JUDGE BARRON: But he was in all  
17 respects a great person. With his twinkle, his  
18 decency, his embodiment of the very best of our  
19 country just by being who he was, he had his  
20 own kind of overpowering presence in the way  
21 that gentleness and decency uniquely can.

22 Justice Stevens was an absurdly  
23 competent and productive person. He wrote more  
24 separate opinions than any Justice in the  
25 history of the Court and he did it with fewer



1 clerks than he could have had and while writing  
2 the first draft of every opinion.

3 He served on this Court for more than  
4 three decades, and then, as if that were not  
5 enough, he, upon his retirement, wrote three  
6 books and became a regular contributor for the  
7 New York Review of Books, with an appearance on  
8 "The Colbert Report" to boot.

9 The appearance came complete with the  
10 the perfect quip. When asked by Colbert  
11 himself if there were any decisions that  
12 Justice Stevens regretted, other than this  
13 interview, the Justice asked?

14 (Laughter.)

15 CHIEF JUDGE BARRON: Yeah, Colbert  
16 replied. I don't think so, Justice Stevens  
17 said.

18 (Laughter.)

19 CHIEF JUDGE BARRON: He gave new  
20 meaning to lifelong learning and to second  
21 acts. His last reunion with us was held at his  
22 second home in Florida.

23 His daughter, Sue, was there to  
24 accompany him, as were members of his Chambers  
25 staff and almost all his law clerks, numbering

1 more than 100 strong, including those who  
2 served with him while he was on the Seventh  
3 Circuit, a court he loved and that he made sure  
4 we knew to respect.

5 At the event, we held a Q&A with the  
6 Justice. He was by then somewhat faint of  
7 hearing, and his voice, still with his beloved  
8 Chicago in it and always soft, was even softer  
9 then. But his mind was, as always, sharp and  
10 his wit too.

11 He had just written his third book.  
12 He was, to be clear, 99 years old at the time.  
13 The book ran more than 500 pages. But there  
14 was one passage in that book that warranted  
15 special inquiry.

16 It was the portion in which he had  
17 lavished praise on a particular group of  
18 people, his law clerks. This passage we all  
19 thought was of surpassing interest.

20 (Laughter.)

21 CHIEF JUDGE BARRON: And it was in  
22 need of intensive interrogation: Just how  
23 great were we? What exactly were our greatest  
24 features? These were, of course, very  
25 un-Stevens-like questions, but in the moment,

1 we could be forgiven for having lost sight of  
2 his example, and so we asked him, just how did  
3 you go about choosing such a tremendously  
4 gifted group?

5           And here, 99, with a cane to assist  
6 him in walking, the hearing a bit hard, the  
7 voice soft but no less Chicagoan, there was  
8 that twinkle and the perfectly Stevensesque  
9 answer: Case by case, he said.

10           (Laughter.)

11           CHIEF JUDGE BARRON: He knew what he  
12 was saying, that he wanted us to know that he  
13 was not a rules person. He was a case-by-case  
14 person, a context person, a facts person, a  
15 functionalist person, a no-shibboleth person, a  
16 realist person, a Leon Green, Wiley Rutledge  
17 person.

18           One sentence, a few words, and a whole  
19 philosophy of law and of life, well, actually  
20 half of a philosophy, because he was saying in  
21 those few words that he was also an every  
22 person has a unique worth person, an every  
23 person deserves a fair shot person, an  
24 independent-minded person, a fair competition  
25 person, a no one is above the law person, a

1 respect everyone person, and without saying it,  
2 he was also reminding us why he was a person to  
3 treasure person.

4 In the remarks you will now hear from  
5 four of his former clerks and one young  
6 accomplished lawyer who just also happens to be  
7 his granddaughter, we hope you will get a sense  
8 of what made him the great Justice, the great  
9 judge, and the great person that he was and  
10 that he remains to all of us.

11 Our first speaker will be the  
12 Honorable Damian Williams, who is the United  
13 States Attorney for the Southern District New  
14 York and who clerked for Justice Stevens in the  
15 2008 term.

16 REMARKS BY HONORABLE DAMIAN WILLIAMS,  
17 UNITED STATES ATTORNEY

18 FOR THE SOUTHERN DISTRICT OF NEW YORK

19 MR. WILLIAMS: It's an honor to stand  
20 here in this Great Hall and to eulogize a great  
21 man, Justice John Paul Stevens.

22 I have two tasks today: First, I've  
23 been asked to speak as a representative of the  
24 law clerks from the Justice's final years on  
25 the bench. And, second, I've been asked to

1 reflect on the principle -- a principle that is  
2 stitched into the Justice's life and in his  
3 career in the law, that in this nation, the law  
4 is supreme, and no one is above it.

5 Let's start with the light stuff. I  
6 clerked for the Justice in his second-to-last  
7 year on the Court, and by that time, he had  
8 seen the law from every conceivable angle.

9 As a kid in Chicago, he felt the  
10 jagged edge of the law when his father was  
11 wrongfully convicted of embezzlement, an  
12 experience that nearly ruined his family  
13 through and through.

14 He witnessed the law's power to redeem  
15 when that same conviction was overturned on  
16 appeal. He fought for our laws in the Pacific  
17 Theater in World War II.

18 He hung a shingle and he practiced the  
19 law for years. He helped enforce the law when  
20 he investigated corruption in the Illinois  
21 Supreme Court. And, of course, he helped shape  
22 the law as a judge and a Justice on this Court  
23 for decades.

24 So, by the time we started our  
25 clerkship, Justice Stevens had seen it all, or

1 so it seemed. Now this was 2008, the days of  
2 hope and change. A young lawyer from Chicago  
3 had just been elected president and a future  
4 president had been elected vice president.

5 Now one day the Justice walked into  
6 the clerk's office and he stood in the doorway,  
7 and it became clear that he wasn't there to  
8 discuss a case or some legal issue that was on  
9 his mind. Instead, he started telling us about  
10 something in the law that he had never done.  
11 He explained that by tradition the Chief  
12 Justice swears in the new president, but  
13 neither law nor custom dictates who should  
14 swear in the new vice president. And he  
15 explained that in all his years on the bench,  
16 no one had asked him to swear in the new vice  
17 president. And then he turned and he went back  
18 into his office.

19 (Laughter.)

20 MR. WILLIAMS: We didn't know what to  
21 do with that.

22 (Laughter.)

23 MR. WILLIAMS: Was it an offhand  
24 remark? Was it a clue or a bread crumb that we  
25 were supposed to pick up and do something with?

1 We didn't know. But we, the law clerks,  
2 decided all on our own that it was time for a  
3 little off-the-books activity, a scheme to get  
4 Joe Biden to ask Justice Stevens to swear him  
5 in.

6 Now, if you think I'm about to  
7 describe how our little conspiracy worked and  
8 who joined it, you would be wrong or quite  
9 wrong, as Justice Stevens would have put it.

10 (Laughter.)

11 MR. WILLIAMS: Let's just say that a  
12 few weeks later the phone rang in chambers.  
13 Janice Harley answered it. We were in the  
14 other room and could hear. Oh, it's Joe Biden  
15 on the phone. Oh, he wants to speak with  
16 Justice Stevens. We waited.

17 A few minutes later, Justice Stevens  
18 walked back into the clerk's office, stood in  
19 the doorway, and with a smile on his face said,  
20 wouldn't you know, Joe Biden just called me --

21 (Laughter.)

22 MR. WILLIAMS: -- and asked to swear  
23 him in as the next vice president. And then he  
24 turned and went back into his office. He never  
25 asked us if we had a hand in that coming

1 together, but if he had, we obviously,  
2 obviously, would have pled the Fifth.

3 (Laughter.)

4 MR. WILLIAMS: Okay, one more story.  
5 Later in our clerkship, the Justice gathered  
6 the law clerks in the office to talk about  
7 hiring a new batch of law clerks. And the  
8 Justice began to talk about the term and how it  
9 was going and how he felt he was doing, and he  
10 told us that, unlike prior years, he wasn't  
11 planning on hiring his full complement of four  
12 law clerks and that instead he was going to  
13 hire just one. It was time.

14 And even though we knew we were  
15 witnessing a significant moment in history,  
16 everything about it was classic Justice Stevens  
17 -- low-key, plain-spoken, humble -- even when  
18 closing the final chapter in his service to  
19 this nation, a body of service that  
20 consistently sought to preserve and protect the  
21 rule of law.

22 Now the rule of law and the supremacy  
23 of the law were uncontested for much of the  
24 Justice's life. They were just assumed to be  
25 true. It animated so much of his personal



1 story, his rise to this Court, and his work on  
2 the Court. And even though the Justice passed  
3 away less than three years ago, you cannot  
4 possibly measure the distance between then and  
5 now in years. So much has happened. So much  
6 is now up for debate, and so much of that  
7 debate is coarse and cheap. For Justice  
8 Stevens, January 6 was just a date. George  
9 Floyd was just a name. And another land war in  
10 Europe was just inconceivable. And on and on  
11 and on.

12 I think we can all agree that Justice  
13 John Paul Stevens was a man for all seasons,  
14 but I often find myself wondering what he would  
15 make of this season. Our nation stands on  
16 troubled soil today. That is a fact. And  
17 Justice Stevens did not believe in airbrushing  
18 facts, so let's not do that. I think we all  
19 know that before the Justice passed there was  
20 an urgency in his writings, both in his  
21 dissents in his final years on the bench and  
22 also in some of the works that he authored in  
23 retirement. It was not an abandonment of hope  
24 but, instead, a questioning of the durability  
25 of certain principles that he thought were

1 fundamental and true.

2           And I'm sure these past few years  
3 would have upset him, but still I do not think  
4 he would have given up hope. Nor should we,  
5 because his life is all the testimony we need  
6 to know that great things can grow from  
7 troubled soil. This was a man from Chicago, a  
8 city that's best known for its Cubs and its  
9 corruption. This is a man whose family endured  
10 injustice and the Great Depression. This is a  
11 man who went to war to defend democracy.

12           And out of all of that emerged a man  
13 who was chosen for the federal bench because of  
14 his fierce independence and integrity, a man  
15 who was chosen for this Court because of his  
16 unimpeachable character.

17           Corruption, injustice, depression,  
18 war, Watergate, these are not small things.  
19 These are not easy things. These are not happy  
20 things. But they are the soil from which he  
21 grew. They explain him and how we as a nation  
22 got him.

23           His personal story also explains his  
24 belief, a belief that ran bone deep, that in  
25 this country the law is supreme and applies to

1 all: the powerful and the powerless, the rich  
2 and poor, friend and foe. Because of him, a  
3 president, despite his high office, is not  
4 immune from suit, and it is that same belief,  
5 unshakable belief in the supremacy of the law  
6 and that no one is above it, that led him to  
7 dislike official immunity of all sorts,  
8 especially the most notorious of them all,  
9 state sovereign immunity, a doctrine that he  
10 described as, and I quote, "the vainest of all  
11 legal fictions."

12 He was firm in his view that some  
13 English common law principles didn't make the  
14 trip across the Atlantic. Now that's how he  
15 viewed this world as a Justice, but it's also  
16 how he lived his life, gentle and kind to all,  
17 humble and unassuming with all.

18 To borrow from Kipling, he walked with  
19 kings and queens but never lost his common  
20 touch. This was a great man who was also a  
21 good man. And talking about him makes me miss  
22 him even more and miss the days when we had  
23 him.

24 And even though we cannot ask him what  
25 he would make of these days and these times,

1 I'm sure if he were here he would do what he  
2 did when we clerked for him, and that is to  
3 first ask us what we think, and then he would  
4 listen patiently because he believed in us and  
5 was proud of us.

6 The Justice is gone, and the times,  
7 yes, have changed, but the sturdy, stately,  
8 beautiful legacy that he built is still here.  
9 It's in this room. It's in his granddaughter,  
10 Hannah. It's in us. It's in the life that he  
11 breathed into the law for a nation that he  
12 loved.

13 And I believe that Justice Stevens  
14 would expect us, the keepers of his legacy, to  
15 forge ahead, to not lose faith, and to summon  
16 our better angels. John Paul Stevens is and  
17 will always be one of those angels.

18 CHIEF JUDGE BARRON: Thank you,  
19 Damian.

20 Our next speaker is Professor Eduardo  
21 Penalver, who is the president of Seattle  
22 University and who clerked for Justice Stevens  
23 in the 2000 term.

24  
25

1                   REMARKS BY PROFESSOR EDUARDO M. PENALVER,  
2                   PRESIDENT, SEATTLE UNIVERSITY

3                   PROFESSOR PENALVER: Good law clerks  
4 pay close attention to their Justice's  
5 passions. As a Stevens clerk in the 2000 term,  
6 I quickly learned about several things that the  
7 Justice held dear. One was golf. He loved all  
8 sports, to be sure, especially his Cubbies, but  
9 golf held a special place in Justice Stevens'  
10 heart.

11                   He was a devoted, some might say even  
12 a little obsessive, follower of professional  
13 golf. During our term at the Court, computer  
14 terminals were not connected to the Internet,  
15 security reasons, I guess.

16                   Each of us had a single  
17 Internet-enabled computer in Chambers. If you  
18 wanted to use the Internet, you had to go to  
19 that machine. If my kids are watching online,  
20 I'm talking about the dark ages before  
21 smartphones and streaming video.

22                   One of my regular duties as a law  
23 clerk was to log onto that Internet computer  
24 every few days to check on Justice Stevens'  
25 fantasy golf standings.

1 (Laughter.)

2 PROFESSOR PENALVER: Justice Stevens  
3 also loved playing golf. Monday mornings in  
4 Chambers often began with the Justice offering  
5 us self-deprecating accounts of his weekend  
6 golf exploits.

7 But the Justice didn't confine his  
8 golfing to weekends or even to the golf course.  
9 Once my co-clerk, Andy Siegel, walked in on  
10 Justice Stevens and Justice O'Connor testing  
11 their putting skills on the practice green that  
12 the Justice kept conveniently inside his  
13 office.

14 In a more serious vein, another  
15 passion of Justice Stevens was fairness. As an  
16 antitrust lawyer, he had a deep respect for the  
17 power of competition to drive innovation, and  
18 despite being a fierce although always  
19 good-natured competitor, or perhaps precisely  
20 because of that, he richly appreciated the  
21 importance of level playing fields that provide  
22 everyone with the opportunity to compete.

23 There's one final thing I'll mention  
24 that Justice Stevens loved. It quickly became  
25 apparent to me and to my co-clerks that Justice

1 Stevens plainly or, as the Justice might have  
2 said, pellucidly relished jousting with Justice  
3 Scalia.

4           Although both men possessed singularly  
5 brilliant legal minds, their personal and  
6 intellectual styles could not have been more  
7 divergent. Their footnote battles were the  
8 stuff of legend.

9           One of the many issues about which  
10 they found themselves in profound disagreement  
11 was the very meaning of fairness itself. For  
12 Justice Scalia, the central attribute of  
13 fairness was always formal equal treatment.

14           For Justice Stevens, in contrast,  
15 fairness was a complex and contextual concept,  
16 resistant to rigid characterization. On  
17 questions ranging from affirmative action to  
18 criminal justice to antitrust law, Justice  
19 Stevens favored accounts of fairness that  
20 afforded decision-makers the discretion to  
21 depart from strictly equal treatment in the  
22 service of a more substantive kind of fairness.  
23 Flexibility and, above all, judgment were  
24 essential for fairness in his sense.

25           Tellingly, one of Justice Stevens'

1 trademark adjectives for a decision-making he  
2 found to fall short in this regard was to call  
3 it wooden. So, if a case combined questions  
4 about fairness and equal treatment, compelling  
5 subject matter, and Justice Scalia on the other  
6 side, Justice Stevens was sure to be fully  
7 engaged.

8           And so I'd like to spend the rest of  
9 my brief remarks this afternoon talking about a  
10 blockbuster case from the 2000 term that scored  
11 that particular hat trick. No, not that case.  
12 We're not supposed to cite that one.

13           (Laughter.)

14           PROFESSOR PENALVER: The case I have in  
15 mind is PGA Tour versus Martin. Casey Martin was  
16 a professional golfer who suffers from a rare  
17 circulatory disorder that obstructs the flow of  
18 blood in his right leg. For Martin, walking  
19 creates the risk of hemorrhaging, blood clots,  
20 or worse.

21           In college and in competition to  
22 qualify for the PGA Tour, he was allowed to use  
23 a golf cart. When he earned his spot on the  
24 PGA Tour, he asked for permission to continue  
25 doing so, something that's allowed by the rules



1 of the game of golf but not by the PGA's  
2 special rules governing professional  
3 tournaments.

4 The PGA refused, arguing that waiving  
5 the so-called walking rule would fundamentally  
6 alter the nature of the tournament play and  
7 give Martin an unfair advantage since walking  
8 injected the factor of fatigue into PGA  
9 competition.

10 And so Martin sued under the Americans  
11 with Disabilities Act and the district court  
12 ruled in his favor and the Ninth Circuit  
13 agreed. The petition presented fact-bound  
14 error correction, no circuit split. So the  
15 clerks were a little bit caught off guard when  
16 the Supreme Court granted cert.

17 When my co-clerks, Joe Thai and Andy  
18 Siegel, asked Justice Stevens about it, he  
19 explained that sometimes the Court needs to  
20 take a case just because it's fun --

21 (Laughter.)

22 PROFESSOR PENALVER: -- to make up for  
23 all the ERISA cases.

24 (Laughter.)

25 PROFESSOR PENALVER: Ultimately, seven

1 Justices sided with Martin, with only Justices  
2 Scalia and Thomas dissenting, and when the  
3 Chief Justice assigned the majority opinion to  
4 Justice Stevens, he was positively giddy.  
5 Fairness, golf, and Scalia in dissent, the  
6 trifecta.

7 (Laughter.)

8 PROFESSOR PENALVER: I can imagine no  
9 case more perfectly designed to bring out the  
10 essential elements of Justice Stevens' approach  
11 to fairness and to judicial decision-making.

12 Justice Stevens' opinion for the Court  
13 was trademark JPS. He began with a careful  
14 textual analysis of the ADA, including a  
15 reference to Congress's broad intent in  
16 enacting the statute and the legislative  
17 history.

18 (Laughter.)

19 PROFESSOR PENALVER: One purpose of  
20 the ADA, he observed, was to force the  
21 reevaluation of long-standing practices that  
22 have the effect of excluding disabled people  
23 when reasonable accommodations would prevent  
24 that.

25 Fairness requires just these sorts of

1 individualized determinations, not reflexive  
2 references to the way things have always been  
3 done. And as usual, Justice Stevens took  
4 extremely seriously the trial court's factual  
5 findings, particularly its finding that the  
6 fatigue Martin endures from playing with his  
7 disability, even while riding in a golf cart,  
8 was undeniably greater than the fatigue that  
9 other competitors experienced from walking the  
10 course, and this meant that Martin derived no  
11 competitive advantage from the requested  
12 accommodation, even on the PGA's account of the  
13 reasons behind the walking rule.

14 But, to my mind, the persuasive heart  
15 of Justice Stevens' opinion was his take-down  
16 of the notion that walking or, for that matter,  
17 physical exertion is in any sense essential to  
18 the game of golf, even at the professional  
19 level. And golf, he explained, is a  
20 low-intensity activity.

21 (Laughter.)

22 PROFESSOR PENALVER: But not content  
23 with simply stating what for many of us is the  
24 obvious, he observed that the average golfer  
25 expends fewer than 500 calories walking an

1 18-hole course, puckishly pointing out that  
2 even that minimal exertion is spread over a  
3 five-hour period that includes many  
4 opportunities for rest and refreshment.

5 (Laughter.)

6 PROFESSOR PENALVER: Finally, Justice  
7 Stevens took note of the many exceptions the  
8 PGA already makes to the walking rule in  
9 qualifying play but also in professional play  
10 when necessary for logistical reasons.

11 And given this overall context,  
12 refusing to allow Casey Martin to ride in the  
13 golf cart was the antitheses of fairness. It  
14 represented the kind of rigid and exclusionary  
15 insistence on formal equal treatment for no  
16 good reason that the ADA was designed to  
17 prevent.

18 Now, for Justice Scalia in dissent,  
19 the case was an easy one. The very nature of  
20 competitive sport, he said, is the measurement  
21 by uniform rules of unevenly distributed  
22 excellence. This unequal distribution is  
23 precisely what determines winners and losers,  
24 and artificially to even out that distribution  
25 is to destroy the game.

1           Of course, we know from countless  
2 other cases and from their extramural writings  
3 that this conflict between Justice Stevens'  
4 contextual approach to fairness and Justice  
5 Scalia's rigid insistence on equal treatment  
6 was not merely disagreement about fairness in  
7 the game of golf. It reflected a far more  
8 fundamental disagreement about what constitutes  
9 fairness in the game of life.

10           PGA versus Martin exemplified Justice  
11 Stevens' passion for fairness as well as his  
12 appreciation of context, his comfort with  
13 complexity, and his respect for the virtue of  
14 judgment. It was also a fun case about golf.  
15 It was Justice Stevens at his very finest. And  
16 we miss him.

17           CHIEF JUDGE BARRON: Thank you,  
18 Eduardo.

19           Our next speaker is the Honorable  
20 Corinne Beckwith, who is a judge on the  
21 District of Columbia Court of Appeals and who  
22 clerked for Justice Stevens in the 1993 term.

23           REMARKS BY HONORABLE CORINNE A. BECKWITH,  
24 JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

25           JUDGE BECKWITH: Hi, everyone. This

1 is weird. I feel like I should unmute myself  
2 or something -- unmute myself.

3 It is hard to even begin to capture  
4 Justice Stevens in a few words. My co-clerk  
5 and lifelong friend, Sean Donahue, during an  
6 interview on C-SPAN, once tried. He called him  
7 a "deeply curious person," a phrase that  
8 perhaps raises more questions than answers.

9 (Laughter.)

10 JUDGE BECKWITH: What I'd like to  
11 focus on is something of keen interest to me as  
12 I strive and every day fail to come close to  
13 the example Justice Stevens set, and that is  
14 Justice Stevens' take on what it means to be a  
15 judge. He had strong feelings on the subject  
16 and a deep respect for the role of judges.

17 Justice Stevens wanted the public to  
18 have confidence in the even-handedness of the  
19 courts. He cared about transparency. He  
20 cared, and he made sure we cared about process.  
21 And, beyond perception, he cared about getting  
22 it right. To that end, he was unwaveringly  
23 open-minded. He wanted to consider a range of  
24 views, including, for some reason, ours.

25 In soliciting those views, Justice

1 Stevens put people at ease, which was great if  
2 you happened to be completely in awe of the  
3 large marble building he worked in and  
4 intimidated by most of the people in it.

5 When Justice Stevens asked us  
6 questions about the cases we were preparing, he  
7 would often preface it by saying, "If you  
8 know." It was fine if we didn't, though, of  
9 course, we would quickly figure it out.

10 For someone who cracked enemy military  
11 codes and won Bronze Stars and sat on the  
12 Supreme Court of the United States, he was  
13 remarkably down to earth, easy to talk to,  
14 straightforward. When I interviewed with him  
15 for the clerkship, he confused me greatly by  
16 informing me near the end of the interview  
17 that, however things turned out, I like you.

18 (Laughter.)

19 JUDGE BECKWITH: Unfamiliar with his  
20 forthrightness, I was absolutely certain that  
21 meant I wasn't getting the job.

22 I remember Justice Stevens going to  
23 amazing lengths to reserve judgment on the  
24 issues in a case until he had read everything  
25 and heard oral argument. On one occasion, he

1 reprimanded one of us -- okay, it was me --  
2 when we mentioned that of the group of law  
3 clerks who got together to discuss a case that  
4 was coming up for argument, all of them had the  
5 same view of the threshold issue in the case.  
6 It turns out Justice Stevens definitely did not  
7 want to know that. He didn't want to be  
8 swayed.

9           Writing his own first drafts and  
10 staying out of the cert pool were also ways of  
11 preserving the independence that he viewed as  
12 so imperative. Perhaps the clearest  
13 manifestation of his independence was his  
14 penchant for writing separately. And we all  
15 have our favorite Stevens concurrences and  
16 dissents, but one of mine, perhaps in part  
17 because of my prior life as a public defender  
18 before I became a judge, is his concurrence in  
19 *Kyles versus Whitley*. There, the Court held, 5  
20 to 4, that a man's conviction and death  
21 sentence should be vacated where the cumulative  
22 effect of the government's violations of *Brady*  
23 versus Maryland might well have been  
24 outcome-determinative. Justice Scalia wrote a  
25 searing dissent, arguing that the case was too



1 fact-bound to have even warranted the Court's  
2 review in the first place.

3 Justice Stevens joined the majority,  
4 but he wrote separately to respond to Justice  
5 Scalia, as he loves to do. What stands out  
6 about his concurrence to me was his insistence  
7 that there are times when even Supreme Court  
8 Justices have to delve into those dusty record  
9 boxes and decide something inherently factual,  
10 like whether the suppression of evidence made a  
11 difference at a trial.

12 Justice Stevens took that deep dive in  
13 Kyles, and based on his "independent review of  
14 the case," a case where Brady violations were  
15 repeated and flagrant, where the jury in the  
16 first trial had deadlocked, he had significant  
17 doubts about Curtis Lee Kyles' guilt. He  
18 didn't think he was doing anything  
19 extraordinary. He simply thought it was his  
20 job.

21 He wrote that "our duty to administer  
22 justice occasionally requires busy judges to  
23 engage in a detailed review of the particular  
24 facts of a case even though our labors may not  
25 provide posterity with a newly minted rule of

1 law." Particularly given the popularity of  
2 capital punishment, he concluded, "I cannot  
3 agree that our position in the judicial  
4 hierarchy makes such review inappropriate.  
5 Sometimes a performance of an unpleasant duty  
6 conveys a message more significant than even  
7 the most penetrating legal analysis."

8           The flip side of Justice Stevens'  
9 broad view of the Supreme Court's own role in  
10 correcting errors that are within the Court's  
11 purview is his insistence that the Court not  
12 overextend its reach to issues not within its  
13 purview. For example -- and I didn't get the  
14 memo that we weren't supposed to mention this  
15 case -- but in his dissent in Bush versus Gore,  
16 in defending the Florida Supreme Court's own  
17 interpretation of the state legislature's  
18 intent in its election laws, Justice Stevens  
19 rejected what he saw as the petitioners'  
20 "unstated lack of confidence in the  
21 impartiality and capacity of the state judges  
22 who would make the critical decisions if the  
23 vote count were to proceed." Such confidence  
24 in those courts and the people who ran them  
25 was, he wrote, "the true backbone of the rule

1 of law." And he, of course, ended on a weighty  
2 note. He said: "Although we may never know  
3 with complete certainty the identity of the  
4 winner of this year's presidential election,  
5 the identity of the loser is perfectly clear.  
6 It is the nation's confidence in the judge as  
7 an impartial guardian of the rule of law."

8           And, again, what was also perfectly  
9 clear to Justice Stevens was that, in that  
10 case, the Florida Supreme Court simply "did  
11 what courts do."

12           I'd like to end with a quote from  
13 another native son of Illinois, the poet Carl  
14 Sandburg. Exactly 100 years ago this month, in  
15 his poem "Washington Monument at Night,"  
16 Sandburg wrote this line: "The republic is a  
17 dream. Nothing happens unless first a dream."

18           The reason Justice Stevens had respect  
19 for the rule of law and for the role of the  
20 judge is not that he believed our legal  
21 institutions were perfect or even highly  
22 functional. It's that he knew that these  
23 institutions, like the republic itself, were  
24 capable of being great and were worth fighting  
25 for to make them great.

1           And I couldn't agree more with Damian.  
2           If we want to honor Justice Stevens's legacy,  
3           we will continue that work ourselves.

4           CHIEF JUDGE BARRON: Thank you,  
5           Cori.

6           Our next speaker is Skip Paul, who is  
7           Senior Advisor at Centerview Partners and who  
8           clerked for Justice Stevens in the 1975 term,  
9           the Justice's first.

10           REMARKS BY CHARLES S. "SKIP" PAUL,  
11           SENIOR ADVISOR, CENTERVIEW PARTNERS

12           MR. PAUL: Good afternoon. I feel  
13           it's important to correct the record. Chief  
14           Judge Barron mentioned something about Justice  
15           Stevens' golf abilities. I've played a lot of  
16           golf in my life, but the last game I played  
17           with Justice Stevens, in fact, the last year of  
18           his life, was by far the best game, the best  
19           performance by a golfer at the age of 99 I've  
20           ever seen.

21           (Laughter.)

22           MR. PAUL: Now, to turn the clock back  
23           a bit, late morning on the Friday after  
24           Thanksgiving in 1975, the Chicago federal  
25           courthouse was closed. Judge Stevens, my

1 co-clerk, and I were catching up on some  
2 backlog when the phone rang, interrupting our  
3 work.

4           It was President Ford calling to  
5 inform Judge Stevens that he was announcing the  
6 nomination to the Supreme Court later that  
7 afternoon. The judge stepped into our office,  
8 the clerk's office, told us the exciting news  
9 and said it was to be strictly confidential  
10 until late that afternoon. However, he was  
11 going to spend some time taking a walk around  
12 Chicago, starting down by the Art Institute.

13           Judge Stevens' mind must have been  
14 full of Chicago memories as he headed out of  
15 the federal building walking down to the  
16 Lakefront. In reflection back on the Chicago  
17 skyline, he remembered his years of Chicago  
18 education from his grade school and  
19 undergraduate home at the University of Chicago  
20 through Northwestern Law School.

21           Also in that downtown skyline, he  
22 would see the location of the investigation of  
23 the Illinois Supreme Court led by him as a  
24 private citizen. This investigation resulted  
25 in the removal of two Justices from that court.

1 It was a bold result which revealed Stevens'  
2 deep belief that the justice system depends on  
3 lawyers serving the public interest in an  
4 independent and nonpartisan way.

5 The investigation of public service  
6 propelled the lawyer, John Paul Stevens, to an  
7 appointment on the Seventh Circuit. Hopefully,  
8 on that walk, his joy was not broken and his  
9 memories were not turned sour by his eyes  
10 looking to the western horizon and the skies  
11 above Wrigley Field, the home of his beloved  
12 Cubs, with the realization that he'd be leaving  
13 them.

14 Just three weeks after that walk, he  
15 would be confirmed unanimously by the Senate.  
16 Six weeks after that call from President Ford,  
17 Nellie Pitts and I were here in Washington  
18 moving into the new chambers with a stack of  
19 work to, do aided by the addition of a new  
20 co-clerk, George Rutherglen, who joined us from  
21 Justice Douglas' chambers.

22 The warm welcome for Justice Stevens  
23 was actually "welcome back." It was a welcome  
24 back to the Rutledge clerk returning from the  
25 1947 term. His clerkship and close

1 relationship with Justice Rutledge, a former  
2 law school dean, formed the foundation and the  
3 fabric of Stevens' priority on his own  
4 mentorship of his clerks.

5           After my clerkship, I practiced law  
6 for a short time, but then, as Justice Stevens  
7 repeatedly told me, I strayed from the law and  
8 went into a career in the entertainment  
9 business, something -- a risk he clearly should  
10 have known in hiring a law clerk from Los  
11 Angeles.

12           But all through the 40 years after my  
13 clerkship, I never made an important life  
14 decision, an important business decision,  
15 without his thoughtful and caring advice. One  
16 funny thing always happened when I came here  
17 for that advice. Regardless of my age, when I  
18 was in my 40s, 50s, or 60s, a little older than  
19 that now, once sitting in his chambers asking  
20 for the advice and the conversation started, I  
21 became a 25-year-old law clerk and Stevens  
22 became the boss. Time stood still in this  
23 mentorship.

24           After 20 years on the Court, Justice  
25 Stevens began a discussion with some of his

1 former clerks about his own legacy. His  
2 thinking and direction were classic Stevens  
3 guided by humility, a dedication to public  
4 interest, and a belief in mentorship. The  
5 Stevens Public Interest Fellowships were  
6 launched at Northwestern in 1996, initially  
7 funded by clerks and first expanded into law  
8 schools where clerks were on faculties so we  
9 could guide the evolution of the model.

10 When Justice Stevens retired in 2010,  
11 the Stevens Foundation was formed to expand the  
12 existing public interest program. To date, 788  
13 fellowships have been granted and the  
14 foundation is operating in 40 law schools.

15 The fellowships encourage and support  
16 the law students to pursue work in public  
17 interest. This summer, there will be 150  
18 Stevens public interest fellows in law schools.  
19 After graduation, the track record of Stevens  
20 Fellows going into and pursuing careers in  
21 public interest is 74 percent, and the Stevens  
22 fellowships presently are the second largest  
23 summer public interest fellowship program in  
24 the country.

25 The Stevens Fellows have become the



1 next generation and extension of the Stevens  
2 clerk family. His gift to us of mentorship has  
3 produced a legacy of mentorship and a shared  
4 dedication to the importance of supporting  
5 young lawyers pursuing careers in public  
6 interest. One thing has become clear. As with  
7 Justice Stevens' own appointment, a Stevens  
8 clerkship is for a lifetime.

9 Thank you.

10 CHIEF JUDGE BARRON: Skip just  
11 reminded me that I was wrong as I was coming up  
12 here, so let the record reflect that he was a  
13 better-than-average golfer.

14 Thank you, Skip.

15 Our next speaker is Hannah Mullen, who  
16 is a clinical fellow at Georgetown University  
17 Law Center and Justice Stevens' granddaughter.

18 REMARKS BY HANNAH MULLEN,

19 CLINICAL FELLOW,

20 GEORGETOWN UNIVERSITY LAW CENTER

21 MS. MULLEN: Good afternoon. As has  
22 been mentioned, I'm the sixth of Justice  
23 Stevens' nine grandchildren and, perhaps  
24 improbably, the only one foolish enough or  
25 lucky enough to follow him into the law.

1           My grandfather was a great Justice and  
2 a great person. And he was also the greatest  
3 grandpa in the world. He was fun. In Florida,  
4 he swam in the ocean and built sand castles  
5 with us. We faced off for hours playing board  
6 games, trading victories in Scrabble and  
7 backgammon until my mother begged us to come to  
8 dinner, the food was getting cold.

9           Grandpa loved us and he showed it. He  
10 brought my sister and me sugar cookies from our  
11 favorite bakery. He was a patron of our  
12 elementary school chorus concerts. We  
13 would beam at his old-timey grandpaisms like,  
14 well, isn't that something, when one of us  
15 brought home a good report card or won a  
16 lacrosse championship.

17           Grandpa treated his grandchildren as  
18 his intellectual and athletic equals. It  
19 sounds ridiculous, but it's true. He would  
20 gloat after hitting cross-table forehands in  
21 ping-pong. Before a backpacking trip I took as  
22 a teenager, he gave me a copy of Sense and  
23 Sensibility so we could discuss it when I  
24 returned from the woods.

25           (Laughter.)

1 MS. MULLEN: I think he was  
2 disappointed Jane Austen wasn't for me.

3 (Laughter.)

4 MS. MULLEN: When I enrolled in law  
5 school, Grandpa began giving me Law Review  
6 articles to read so we could talk about them  
7 over his morning cup of coffee, and those  
8 articles were often written by his former  
9 clerks. He was so proud of all of you. He  
10 liked reading Jane Austen but not nearly as  
11 much as he liked reading you all.

12 And Grandpa didn't hold forth during  
13 our intergenerational book clubs. He asked  
14 what I thought and listened even though I knew  
15 so little. He was the most brilliant person I  
16 ever met, and yet he could make the people  
17 around him feel brighter rather than dimmer in  
18 his presence.

19 I miss Grandpa every day, but since  
20 graduating from law school and becoming a civil  
21 rights lawyer, I've had the strange privilege  
22 of becoming more familiar with a different side  
23 of the man I knew and loved, the jurist Justice  
24 Stevens.

25 Every time I read one of Justice

1 Stevens' opinions, I see another thing that I  
2 loved about my grandpa. For example, as has  
3 already been discussed, my grandfather is well  
4 known for his attention to the record in each  
5 individual case. He's described as a judge's  
6 judge who looks at each case on its merits.

7           And Grandpa sweated the small stuff  
8 off the bench too. He remembered the names of  
9 my elementary school classmates. He kept  
10 strawberry ice cream in his freezer so that my  
11 sister, who didn't share his love of chocolate,  
12 would always have a dessert she enjoyed.

13           It's easy to knock neurosis, but for  
14 Grandpa, attention to detail was a form of  
15 love, of seeing what was distinct about a  
16 person and their circumstances. It made him  
17 friends everywhere he went, even among people  
18 who disagreed with him.

19           So I smile knowingly when I read an  
20 opinion like Grandpa's partial concurrence in  
21 Illinois v. Wardlow, a Fourth Amendment case  
22 that asked whether someone's unprovoked flight  
23 from police was sufficiently suspicious to  
24 justify a Terry stop. In his separate opinion,  
25 Grandpa praised the majority for rejected --

1 for rejecting a per se rule and then explained  
2 why he believed the facts in that case did not  
3 support a finding of reasonable suspicion. I  
4 admire Grandpa's opinion in Wardlow because he  
5 took special care to explain that different  
6 people may react to police differently, even  
7 when they're not doing anything wrong. He  
8 pointed out that innocent people depending on  
9 their circumstances could reasonably view  
10 police as a sign that danger is near, or  
11 perhaps even fear the police themselves. The  
12 facts of each individual case, he urged, should  
13 determine whether reasonable suspicion existed.

14 I'm similarly filled with nostalgia  
15 when I read one of Grandpa's many separate solo  
16 opinions. A personal favorite is his dissent  
17 in *Scott v. Harris*, if you're looking for some  
18 light reading later. Grandpa did what he  
19 thought was right even when most other people  
20 thought he was wrong. I mean, the guy ate  
21 apple pie for breakfast and he wore bow ties to  
22 work. He wasn't afraid of standing out in a  
23 crowd.

24 And he wasn't afraid of speaking his  
25 mind either. Anyone who has written a college

1 thesis knows how it feels to have your whole  
2 family praise you for something they're  
3 probably not going to read. Grandpa, on the  
4 other hand, read all 30,000 words of my senior  
5 thesis and then told me why he thought I was  
6 wrong.

7 (Laughter.)

8 MS. MULLEN: I've never felt more  
9 kinship with Justice Scalia than in that  
10 moment.

11 (Laughter.)

12 MS. MULLEN: In being fully himself,  
13 he showed us that we could be ourselves, too.

14 The reason I love Grandpa's opinions  
15 is because they show that he was the same man  
16 on the bench and at the coffee table, tenacious  
17 and empathetic and observant and funny. His  
18 belief in spirited competition between equals  
19 was what made him hate bullies. He strove to  
20 see each person and their circumstance as  
21 unique in viewing him with instinctive sympathy  
22 for the underdog.

23 When I advocate for my clients, I  
24 often find myself citing my grandfather's  
25 opinions. I think that's the best way we can

1 honor him, by using his words to try to do  
2 good. And I'm moved to know that generations  
3 of lawyers will continue to get to know him and  
4 inevitably come to love him through the words  
5 he left behind. I hope we make him proud.

6 CHIEF JUDGE BARRON: Thank you,  
7 Hannah.

8 I'd like to invite Teresa Wynn  
9 Roseborough, who is general counsel for the  
10 Home Depot, who clerked for Justice Stevens in  
11 the 1987 term, to join me to move the adoption  
12 of the resolutions to be presented to the  
13 Court.

14 MOTION TO ADOPT COMMITTEE RESOLUTIONS

15 TERESA WYNN ROSEBOROUGH,  
16 GENERAL COUNSEL, THE HOME DEPOT  
17 MS. ROSEBOROUGH: Thank you, David.

18 Thank you to all the eulogists who've spoken  
19 today.

20 As you have gleaned from their  
21 remarks, Justice Stevens was a remarkable man  
22 and a remarkable jurist. All of us, even if he  
23 had not been a Justice of the United States  
24 Supreme Court, would have been just as proud to  
25 work for him and would have been just as

1 enriched by his intellect, his professionalism,  
2 his love for his country and its Constitution,  
3 his sense of fairness, his devotion to the  
4 protection of liberty, his gentle good humor,  
5 and his humility.

6 Justice Stevens was a patriot and a  
7 guardian. Having meritoriously served this  
8 country in war, he possessed a special regard  
9 for what this nation stands for. As Navy  
10 chaplain Captain Judy Malana, who is with us  
11 here today, said in honoring the Justice as he  
12 lay in repose in this hall, he was indeed a  
13 great man from our greatest generation, who  
14 faithfully answered the call to serve our  
15 country when we, the people, needed him most.

16 In Texas v. Johnson, Justice Stevens  
17 famously dissented from the Court's striking  
18 down of a Texas statute barring desecration of  
19 the flag. He said: "The American flag is more  
20 than a proud symbol of the courage, the  
21 determination, and the gifts of nature that  
22 transformed 13 fledgling colonies into a world  
23 power. It is a symbol of freedom, of equal  
24 opportunity, of religious tolerance, and  
25 goodwill."



1           This statement reflects Justice  
2           Stevens's deep devotion to this country as  
3           itself a beacon of freedom, equal opportunity,  
4           religious tolerance, and goodwill. It was not  
5           the flag alone, but this country he could not  
6           bear to see desecrated.

7           Justice Stevens was resolute and  
8           brave, going without fear or restraint where  
9           facts and law led him, with no ambition to --  
10          to tilt the scales to suit his ends or to  
11          incline future decisions to his pleasure or  
12          preferences.

13          For this reason, he's proved a  
14          conundrum for constitutional scholars who have  
15          sought unsuccessfully to identify lines of  
16          ideology that would have allowed the successful  
17          prediction of how he might decide a particular  
18          case or type of case. It may be that Justice  
19          Stevens will face history as an enigma and defy  
20          any characterization.

21          I believe, though, that his record of  
22          dedicated and faithful service to this nation  
23          and its rule of law will force us to create a  
24          new category -- category, not liberal, not  
25          conservative, but simply impartial.

1           The Committee on Resolutions has  
2 prepared resolutions summarizing Justice  
3 Stevens's many contributions to this nation and  
4 its laws, and you have its work before you.  
5 Together with the committee's co-chairs, Jamal  
6 Greene and Carol Lee, I have the honor to move  
7 their adoption.

8           CALL FOR SECOND AND CLOSING REMARKS

9                   HONORABLE DAVID J. BARRON,

10                           CHAIR OF THE MEETING

11           CHIEF JUDGE BARRON: Thank you,

12 Teresa.

13           The resolutions are now before us for  
14 adoption. If adopted, they will be presented  
15 to the Court by the Solicitor General.

16           I now put the resolutions to a vote.

17 All in favor of adopting the resolutions,  
18 please signify by saying aye.

19                   (A chorus of ayes.)

20           CHIEF JUDGE BARRON: Any opposed?

21                   (No response.)

22           CHIEF JUDGE BARRON: No one is  
23 opposed. Hearing no opposition, I declare the  
24 resolutions adopted. And this completes our  
25 work here.

1           I want to say in closing that Justice  
2           Stevens's association with this Court just  
3           barely post-dates World War II, when first he  
4           served here as a law clerk to Justice Rutledge.  
5           It spans the time that he argued here as a  
6           leading lawyer in Chicago, and it includes, of  
7           course, the time he first took the bench here  
8           as a Justice in 1975 and all of the ensuing  
9           three plus decades that followed. It was  
10          always an institution that he admired and  
11          cherished. And we in turn admired and  
12          cherished him.

13                 Before we proceed to the Court  
14          session, I would like to thank counsel to the  
15          Chief Justice, Jeffrey Minear, Marshal Gail  
16          Curley, Clerk Scott Harris, the Court officer  
17          colleagues and their staffs for helping us with  
18          this very meaningful proceeding.

19                 Thank you.

20                 (Whereupon, at 2:46 p.m., the special  
21          meeting of the Supreme Court Bar concluded.)

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25

## Official - Subject to Final Review

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