

SYMPOSIUM

THE JURISPRUDENCE OF JUSTICE STEVENS*

INTRODUCTION

*William Michael Treanor***

Fordham Law School opened its doors on September 28, 1905, a school with ten students and six faculty members. That day marked a great beginning, and on September 28, 2005, we began a year-long celebration of Fordham Law's history and the law school community's remarkable achievements over 100 years. The heart of any great academic institution is, of course, academics, and, as part of the centennial celebration, we are hosting an extraordinary series of conferences. This issue of the *Fordham Law Review* presents the papers produced by the first of the year's conferences, the Symposium on the jurisprudence of Justice John Paul Stevens that was held at the law school on September 30 and October 1, 2005.

It was a great privilege for us to be able to host this Symposium, which was both of stunning quality and significance and quite literally historic. I would like to thank Professor Abner Greene, a former clerk for Justice Stevens, who conceived and beautifully organized this important event. This conference was the first conference to examine the jurisprudence of Justice Stevens, a Justice who has profoundly shaped the law and whose jurisprudence is uniquely powerful. Justice Stevens joined the Supreme Court of the United States on December 19, 1975, and so the conference occurred shortly before his thirtieth anniversary on the Court. It brought together virtually all of the former clerks for Justice Stevens who are now in academia and other leading legal scholars at Fordham and throughout the country. The participants examined a broad range of topics suggested by Justice Stevens's opinions, and, as you will see, the papers produced were notable for their insight and originality and their serious examination of issues of fundamental importance. Justice Stevens's remarks were a particular high point of the Symposium. Speaking the day after he swore in Chief Justice John Roberts, Justice Stevens thoughtfully examined the ways in which a Justice's views evolve over time.

* This Symposium was held on September 30, 2005, and October 1, 2005, at Fordham University School of Law.

** Dean, Fordham University School of Law.

Justice Stevens holds a great place in American history. That place was established from the moment he was named to the Court. The same week that our conference was held, a memorial service was held for Judge Harold Tyler, the remarkable public servant and lawyer who was Deputy Attorney General during the administration of President Gerald Ford and who held that post at the time Justice Stevens was named to the Court. At the memorial service, a part of the tape of Judge Tyler's oral history played. On the tape, Judge Tyler discussed Justice Stevens's nomination and confirmation:

Shortly [after Justice William O. Douglas's letter of resignation was delivered to the White House], the President called the Attorney General and asked both of us to come that evening at 7:00 p.m. to the Oval Office, which we did. The President looked at me and asked, "You have a list or two, haven't you?" I said, "Yes sir, I have a long list and a short list. Here are both." He took them both and studied them. The President said, "You know I had better sleep on this, but I do want to make up my mind quickly. I don't want this to hang out there unresolved." The next day he called and said that he had picked John Paul Stevens.

The President sent the nomination over right away and as I think I told you off the record, 19 days after he sent the nomination over, the Senate confirmed Justice Stevens. I think there were only one or two votes in opposition.

The process was interesting in another sense. The afternoon of the day the nomination went over to the Senate, Senator Jim Eastland, who was the long time chair of the Judiciary Committee, called me and said, "Would you be able to get the nominee to come in this Sunday and I will get Senator Byrd, who was then the majority leader, Teddy (as he called Senator Kennedy) and Roman (Roman being Roman Hruska who was the senior senator on the minority side of the Judiciary Committee)." I remember thinking to myself, this will end it. If these four people approve, it is all over with. Nobody is going to oppose these men. They have long experience with the Justice Department and great power in the Senate.

The Chairman called that evening. I answered the phone and he said, "Judge, I do think the man has just been confirmed." I said with tongue in cheek, "Wait a minute, the Senate does not sit on Sundays." He said, "Do you believe that the four of us will be overruled. No you don't. It's a done deal. We will try and have the vote tomorrow." Well, they didn't quite make it, but it was very quick.¹

Obviously, much has changed in terms of the judicial selection process over thirty years. But Judge Tyler's oral history reminds us of several things. Justice Stevens was named at a critical point in American history. In the wake of Watergate, faith in the rule of law was under challenge.

1. Judge Harold R. Tyler, Oral History (May 30, 2001) (edited transcript on file with Fordham Law Review).

President Ford decided that the nation needed a truly great jurist. With that standard to apply, the choice for President Ford was clear and the choice was clear to the Senate. History has shown the great wisdom of that choice.

As we were making final arrangements for the conference, I was moved to receive a letter from President Ford, which he had written as a tribute to Justice Stevens on the occasion of our celebration of Justice Stevens's career.² President Ford wrote,

Dear Dean Treanor:

Historians study the significant diplomatic, legislative and economic events that occurred during a Presidential term to evaluate that Presidency. Normally, little or no consideration is given to the long term effects of a President's Supreme Court nominees. Eisenhower's Earl Warren, John Adams' John Marshall and Wilson's Louis Brandeis immediately come to mind; although references to these great jurists are usually absent in Presidential biographies.

Let that not be the case with my Presidency. For I am prepared to allow history's judgment of my term in office to rest (if necessary, exclusively) on my nomination thirty years ago of Justice John Paul Stevens to the U.S. Supreme Court. I endorse his constitutional views on the secular character of the Establishment Clause and the Free Exercise Clause, on securing procedural safeguards in criminal case and on the constitution's broad grant of regulatory authority to Congress. I include as well my special admiration for his charming wit and sense of humor; as evidence in his dissent in the 1986 commerce clause case of *Maine v. Taylor and United States*, involving the constitutionality of a Maine statute that broadly restricted any interstate trade of Maine's minnows. In words perhaps somewhat less memorable than, "Shouting fire in a crowded theater," Justice Stevens wrote, "There is something fishy about this case."

He has served his nation well, at all times carrying out his judicial duties with dignity, intellect and without partisan political concerns. Justice Stevens has made me, and our fellow citizens, proud of my three decade old decision to appoint him to the Supreme Court. I wish him long life, good health and many more years on the bench.

Warmest regards,

GERALD R. FORD

For thirty years we have been truly fortunate to have on the Supreme Court this truly remarkable Justice. At Fordham, we were privileged to be able to honor him and to be able to honor his extraordinary service to the law.

2. Letter from Gerald R. Ford to author (Sept. 21, 2005) (on file with the Fordham Law Review).