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Introduction to Justice Breyer's Remarks

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THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

REMARKS

INTRODUCTION TO JUSTICE BREYER'S REMARKS 2005 NATIONAL CONFERENCE ON APPELLATE JUSTICE

Oscar G. Chase*

Good morning and welcome again to the 2005 Conference on Appellate Justice. To say that a speaker needs no introduction is not to say that none should be given, for it remains worthwhile to note the special link between the speaker and the occasion. For over a decade, Justice Breyer has graced the Supreme Court with his thoughtful and elegant opinions. At the same time, he continues to produce scholarly writing at a scarcely lesser rate than when he was on the Harvard faculty. His most recent book, *Active Liberty*,¹ is a powerful argument for his vision of Constitutional interpretation.

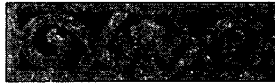
To this Conference, Justice Breyer brings in addition the perspective of his years of service on the First Circuit Court of Appeals, including four years as Chief Judge of that court. Our speaker has been, as it were, in the trenches. Nor should it be

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1. Stephen G. Breyer, *Active Liberty: Interpreting Our Democratic Constitution* (Knopf 2005).

forgotten that Justice Breyer's principal academic interest was the administrative process.

In a recent article, Justice Breyer brought these perspectives together when he wrote that the Supreme Court must take into account "the practical administrative concerns in constitutional decision-making."² The Court's cases, he added, must provide administrative guidance to the lower courts about how to handle a variety of different situations in an effective and efficient manner.³ So Justice Breyer has thought about and experienced the problems that confront us and that are the focus of this Conference, and I'm absolutely delighted to present Justice Stephen Breyer to you.



2. Stephen Breyer, *Judicial Review: A Practicing Judge's Perspective*, 78 Tex. L. Rev. 761, 771 (2000).

3. *Id.* at 772 ("The Court is . . . a small body able to decide only a handful of cases. The legal system is large; those who depend upon it are many; the factual circumstances are various; and the need for speedy decision is great. Were we to use a single notion—say, rational basis—we should have to illustrate its use by applying it in many different circumstances, a common law method. And we should thereby lose the rule-related administrative guidance that even a crude three-tier system can offer.").