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BOOK REVIEW

ONE OF THE GOOD GUYS: *THE MAKING OF A JUSTICE – REFLECTIONS ON MY FIRST 94 YEARS*

Jamal Greene*

John Paul Stevens's first published judicial opinion was a dissent.[1] He joined the Seventh Circuit a few days after the court issued its opinion in *Groppi v. Leslie*,[2] and dissented soon afterward when the court upheld that decision on rehearing. Wilbur Pell, who until Stevens joined was the only Republican among the Seventh Circuit's seven active judges, wrote both *Groppi* opinions.[3] Yet Stevens, brand new to the court, dissented from Pell's opinion on rehearing.[4]

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1. JOHN PAUL STEVENS, THE MAKING OF A JUSTICE: REFLECTIONS ON MY FIRST 94 YEARS 111 (2019).

2. 436 F.2d 326 (7th Cir. 1970), *aff'd on reh'g*, 436 F.2d 331 (7th Cir. 1971). Groppi, a Milwaukee priest and civil rights activist, had led 1,000 people in a raucous sit-in at the Wisconsin Assembly to protest planned welfare cuts. *See* State ex rel. Groppi v. Leslie, 171 N.W.2d 192 (Wis. 1969). Groppi was cited without prior notice for legislative contempt and given a six-month prison sentence, receiving no opportunity to contest the charge. He won his subsequent federal habeas case in the district court but lost on appeal at the Seventh Circuit.

3. STEVENS, *supra* note 1, at 109–10.

4. STEVENS, *supra* note 1, at 109.

There was no reason to think Father Groppi, who was arrested for leading a demonstration that interrupted the Wisconsin Assembly's work, was innocent of legislative contempt, but Stevens believed the Fourteenth Amendment insisted on certain procedural protections before a person's liberty could be denied, whether by a court or a legislature. "At the foundation of our civil liberty lies the principle which denies to government officials an exceptional position before the law and which subjects them to the same rules of conduct that are commands to the citizen," Stevens wrote, quoting Justice Brandeis.[5] "And in the development of our liberty," he continued, "insistence upon procedural regularity has been a large factor. Respect for law will not be advanced by resort, in its enforcement, to means which shock the common man's sense of decency and fair play."[6] Stevens couldn't persuade his colleagues, but the Supreme Court eventually granted cert in Father Groppi's case and unanimously adopted Stevens's position.[7]

Biography is an imperfect predictor of a judge's character and priorities. On reading Justice Stevens's 2019 memoir, published a month after his ninety-ninth birthday and two months before his death, one is overwhelmed at once with the privilege that attended Stevens's childhood. He was born in 1920 into a family of hoteliers. His grandfather, J.W. Stevens, founded the Illinois Life Insurance Company and owned the tony La Salle Hotel in the Chicago Loop. His father, Ernest, ran the Stevens Hotel, the largest in the world when it opened in 1926, and was for a time one of Chicago's wealthiest men.[8]

But a memoir that opens to audiences with Amelia Earhart and Charles Lindbergh, summers at the vacation estate in Lakeside, Michigan, and trips to World Series games at Wrigley

5. Groppi v. Leslie, 436 F.2d 331, 336 (7th Cir. 1971) (Stevens, J., Swygert, C.J. & Kiley, J., dissenting from denial of rehearing en banc (quoting Burdeau v. McDowell, 256 U.S. 465, 477 (1921) (Brandeis, J., dissenting))). Stevens would be appointed to the Brandeis seat five years later.

6. *Id.*

7. Groppi v. Leslie, 404 U.S. 496 (1971).

8. STEVENS, *supra* note 1, at 7. It is sometimes said of the scions of the wealthy that they have their own money. John Paul Stevens had his own swag: Guests at the opening banquet of the Stevens Hotel received gifts of bronze bookends that featured little John Paul and one of his brothers, both naked, next to a large fish. *Id.* at 10.

Field—including, famously, the one at which Babe Ruth is said (including by Stevens) to have called his home run[9]—ends with a lengthy, heartfelt dissent from the Supreme Court's refusal to permit Congress to regulate the influence of big money on elections. Stevens was no populist but he cared deeply about the little guy. He was no iconoclast but he wrote more dissents than any Justice in history. He was the only WASP on the Court he retired from, and the only Justice who wore a bowtie to work, but he was among the least wed to establishment thinking.

Why?

He doesn't say, not directly anyway. Deep introspection isn't the aim here; Stevens mostly sticks to the facts, but there are hints. The book is effectively laid out in two acts. The first quarter or so is more conventionally autobiographical, telling of Stevens's childhood and first home on Blackstone (!) Avenue, his college years at the University of Chicago, his Navy service as a codebreaker at Pearl Harbor, his law school days at Northwestern, his clerkship with Justice Rutledge, his time in practice as a successful antitrust lawyer, and his five-year stint as an appellate judge.

The most bracing passages, and perhaps the most telling, relate to the scandal that engulfed Stevens's father, and the events that followed. In 1933, the Cook County state's attorney charged Ernest Stevens, his brother, and his father with embezzling more than $1 million in connection with a loan the Stevens Hotel obtained from J.W.'s company.[10] Ernest's conviction was eventually overturned for insufficiency of evidence.[11] In the meantime, though, two terrifying incidents shattered whatever sense of security John Paul's wealth and social stature might have supplied him. First, the family chauffeur, Orson Washburne, was kidnapped at gunpoint and interrogated about the location of cash believed to be stashed in the Stevens's home.[12] Shortly thereafter, four armed men claiming to be Chicago police officers burst into the Stevens family home one evening. They ransacked the place, threatened to "mow down" the family and, before leaving, promised

9. *Id.* at 10–11, 12, 18.
10. *Id*. at 19.
11. *Id*. at 24.
12. *Id*. at 19–20.

reprisals against John Paul and his brother if anyone ratted them out.[13]

Whether or not Ernest Stevens was guilty of any crimes, John Paul clearly believed his father had been wrongfully convicted. And whatever the identities of the men who invaded the Stevens home just after that Saturday dinner, Stevens reveals lingering suspicion that they might well have had day jobs as Chicago police officers. Much later in life, just before his appointment to the Seventh Circuit, Stevens led a corruption investigation into members of the Illinois Supreme Court. All of which is to say that Stevens's personal engagements with the criminal justice system could not have inspired unqualified confidence in individual police officers, prosecutors, and judges. Yet, his father was acquitted, and Stevens's investigation led to the resignation of two state Supreme Court Justices. There are bad guys who wield power within the system, but sometimes the good guys win.

The book's much longer second act offers a term-by-term recounting of Stevens's thirty-five-year tenure as a Supreme Court Justice. In this sense this book serves as a valuable trial version of Justice Stevens's papers. No personal records have been released from any Justice for the period after Justice Blackmun's retirement in 1994, and so Justice Stevens gives the desperate researcher a trailer for what they will find when his actual papers become available.[14] Like any good trailer, it contains few spoilers, but there are at least three reveals I view as significant.

The first and perhaps most significant revelation has nothing to do with the cases but rather with the circumstances surrounding Justice Stevens's nomination and confirmation. Stevens was nominated in November 1975 and was confirmed in just nineteen days by a Senate that had a filibuster-proof Democratic majority. In that sense, his confirmation process seems to harken to an earlier time in which Supreme Court nominations were far less a subject of partisan politics.

13. *Id*. at 21.

14. *See* Susan David deMaine, *Access to the Justices' Papers: A Better Balance*, 110 L. LIBRARY J. 185 (2018). Per the terms of Justice Stevens's gift to the Library of Congress, his papers relating to the period prior to October 2005 are scheduled to become public in October 2020. The remainder will be released in 2030. *See id*. at 219.

(Stevens's aside that he shared a glass of bourbon with Mississippi Senator James Eastland[15] in the middle of his confirmation hearing feels straight out of *Mad Men*.) And yet, Stevens reveals that Illinois Senator Chuck Percy—a friend since their college days at the University of Chicago[16]—told him that Senate Democrats made clear that "if [Stevens] were not confirmed before the end of the year, they would delay the process . . . until after the next presidential election."[17]

This tactic might sound familiar. After Justice Antonin Scalia's death in February 2016, Senate Republicans refused to hold a hearing on President Obama's nomination of Merrick Garland, the D.C. Circuit's well-respected chief judge, to fill the seat. Senate Majority Leader Mitch McConnell invoked what he said was a norm of the Senate not filling a Supreme Court seat in an election year.[18] Democrats cried foul, arguing that there was no such norm—to cite two examples, Louis Brandeis was nominated and seated in 1916, and Anthony Kennedy wasn't confirmed until February 1988.[19] Republicans countered that the norm was limited to occasions in which the Senate was controlled by the opposition (as it wasn't for the Brandeis nomination) and in which the vacancy arose during the election year (as it didn't for the Kennedy nomination).[20]

I am unaware of anyone in the course of this debate having referred to the Stevens nomination as a relevant precedent. But surely Republicans would have made great hay of a prior Democratic Senate's promise to hold up a Republican president's uncontroversial nominee solely because the election calendar was about to turn—Stevens was confirmed unanimously just before Christmas, after all of five minutes of

15. STEVENS, *supra* note 1, at 131–32.

16. *Id.* at 107. Percy had recommended Stevens for the Seventh Circuit opening five years before. *Id.* at 107–08.

17. *Id*. at 129.

18. *See, e.g.*, Dave Boyer, *Senate Republicans Tell Obama: No Hearings for Supreme Court Nominee*, WASH. TIMES, Mar. 2, 2016.

19. *See id*.; Timothy S. Heubner, *In Court Fight, History Backs Obama*, N.Y. TIMES, Feb. 16, 2016, at A19.

20. *See, e.g.*, Siobhan Hughes & Kristina Peterson, *Hearings for a Court Pick Are Ruled Out by GOP*, WALL ST. J., Feb. 24, 2016, at A2.

debate.[21] It seems distinctly possible that, by 2016, the machinations around the Stevens nomination were unknown to, or not remembered by, anyone but Justice Stevens himself.

Three other noteworthy revelations concern two of the most controversial cases of Justice Stevens's tenure, both decided shortly before he retired. In *District of Columbia v. Heller*,[22] the Court held that the Second Amendment protects an individual right to keep a handgun in the District. In the book, Justice Stevens calls *Heller* the most "clearly incorrect" decision of his time on the Court.[23] The fact that he had once been held at gunpoint in his own home surely adds some heft to that charge, but he's made similar charges before.[24] Of greater note is a behind-the-scenes tease that might well bear upon the current state of Second Amendment litigation. Stevens writes that he circulated his *Heller* dissent before Justice Scalia circulated what would become the majority opinion. He performed this unusual order of operations in order to persuade Justice Kennedy or Justice Thomas to change his vote. He didn't succeed, of course, but he thought he might have pushed Justice Kennedy to "insist[] on some important changes" to the majority opinion before signing on.[25]

Justice Stevens doesn't identify those changes, but it has long been suspected that portions of Justice Scalia's majority opinion were inserted reluctantly. Specifically, Justice Scalia wrote that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."[26] This curious disclaimer lingers in

21. *See* Lesley Oelsner, *Senate Confirms Stevens, 98-0*, N.Y. TIMES, Dec. 17, 1975, at A1.

22. 554 U.S. 570 (2008).

23. STEVENS, *supra* note 1, at 482.

24. JOHN PAUL STEVENS, SIX AMENDMENTS 126 (2014); John Paul Stevens, Op-Ed, *Repeal the Second Amendment*, N.Y. TIMES, Mar. 27, 2018, *available at* https://www.nytimes.com/2018/03/27/opinion/john-paul-stevens-repeal-second-amendment.html.

25. STEVENS, *supra* note 1, at 485–87 (describing the review of historical sources that preceded Stevens's writing of his opinion and also quoting the cover memorandum circulated with his draft opinion).

26. *Heller*, 554 U.S. at 626–27.

the opinion unsupported by any explanation or analysis. Which mental illnesses disqualify Americans from gun ownership? Why isn't the District of Columbia, the seat of the federal government, a "sensitive place"? If commercial speech is protected by the First Amendment, why aren't gun sales protected by the Second? Justice Stevens's confirmation that Justice Kennedy requested significant changes to the opinion offers a likely explanation for this language.

Moreover, the fact that securing Justice Kennedy's join required some qualifications to the right recognized in *Heller* isn't just a matter of legal historical trivia but might be relevant to modern Second Amendment litigation. It is notable that, with one prominent exception,[27] the Court did not take any Second Amendment cases during the remainder of Justice Kennedy's tenure. Then, barely three months after Kennedy's replacement, Brett Kavanaugh, was seated, the Court granted cert in *New York State Rifle & Pistol Association v. City of New York*,[28] a challenge to a unique city regulation involving the transport conditions imposed upon gun owners who held "premises" licenses, but not "carry" licenses.[29] Justice Kennedy seems to have been holding back the tide.

An additional bit of red meat for Court watchers emerges from Justice Stevens's discussion of *Citizens United v. FEC*.[30] The case was decided in Stevens's last Term on the Court—indeed, the Justice's trouble reading his dissent in the case from the bench alerted him to a minor stroke he had suffered and led to his decision to retire.[31] The *Citizens United* Court struck down a federal ban on certain election-related expenditures funded out of the general treasury funds of a corporation or union, overturning two earlier decisions in the process.[32] Jeffrey Toobin reported in 2012 that Chief Justice Roberts had originally wanted to issue a narrow decision refusing to apply

27. *See* McDonald v. City of Chicago, 561 U.S. 742 (2010).

28. ___ U.S. ___, 140 S. Ct. 1525 (2020).

29. *See* N.Y. State Rifle & Pistol Ass'n v. City of N.Y., 883 F.3d 45 (2d Cir. 2018), *cert. granted*, 139 S. Ct. 939 (No. 18-280) (Jan. 22, 2019).

30. 558 U.S. 310 (2010).

31. *See* STEVENS, *supra* note 1, at 503.

32. *Citizens United* overturned *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and portions of *McConnell v. FEC*, 540 U.S. 93 (2003).

the expenditure ban to Citizens United, an ideological nonprofit seeking to release a movie through video on demand, as distinct from a television advertisement.[33] On Toobin's telling, Justice Kennedy circulated a broader concurring opinion that would reach the constitutional question and eventually attracted significant support among the Court's conservatives.[34] Roberts's decision to allow Kennedy's opinion to be the majority opinion prompted a virulent dissent by Justice David Souter, who objected to striking down Congress's work on its face without proper briefing and argument.[35] Justice Souter's dissent, Toobin says, cowed Roberts into setting the case for reargument the following term.[36] Justice Stevens says nothing of this reporting but he does confirm that Justice Souter circulated a dissent after the first argument. Indeed, he says his own dissent from the eventual decision drew heavily on Justice Souter's.

I clerked for Justice Stevens during the Supreme Court Term that began in October 2006, three years before he retired. I am aware of the risk of hagiography in assessing the work of a revered mentor, especially one who passed so recently. Still, I am confident in reporting that, in three important respects, Justice Stevens was the same principled man who had admirably dissented in Father Groppi's case nearly four decades earlier.

First, Justice Stevens firmly believed that each case stood on its own feet. "General propositions do not decide concrete cases," Justice Oliver Wendell Holmes wrote in his famous *Lochner* dissent. "The decision will depend on a judgment or intuition more subtle than any articulate major premise."[37] The law insists on every case being placed in its own context; this is indeed what principled decisionmaking requires. We often think of principles as unbending but, as the constitutional theorist Robert Alexy has written, principles are "optimization requirements" that, through the exercise of reasoned judgment,

33. JEFFREY TOOBIN, THE OATH 167 (2012).
34. *Id*. at 167–68.
35. *Id*. at 168.
36. *Id*.
37. Lochner v. N.Y., 198 U.S. 45, 76 (Holmes, J., dissenting).

must accommodate competing principles and facts about the world.[38]

Justice Stevens's longstanding suspicion of the Court's multi-tiered approach to the Equal Protection Clause reflects this orientation toward legal standards over hard-and-fast rules. Less than a year into his tenure, the Court heard *Craig v. Boren*,[39] a challenge to an Oklahoma drinking-age law that discriminated against men. Justice Brennan's majority opinion in *Craig* announced the use of "intermediate" scrutiny for laws that discriminate on the basis of sex. Justice Stevens's concurring opinion began:

> There is only one Equal Protection Clause. It requires every State to govern impartially. It does not direct the courts to apply one standard of review in some cases and a different standard in other cases. . . . I am inclined to believe that what has become known as the two-tiered analysis of equal protection claims does not describe a completely logical method of deciding cases, but rather is a method the Court has employed to explain decisions that actually apply a single standard in a reasonably consistent fashion. I also suspect that a careful explanation of the reasons motivating particular decisions may contribute more to an identification of that standard than an attempt to articulate it in all-encompassing terms.[40]

This approach to equal protection cases perhaps allowed Justice Stevens to see factual distinctions that others miss, such as his often underappreciated embrace of forward-looking but not remedial race-based affirmative action.[41] Stevens credits his Northwestern legal education under Dean Leon Green for his strong orientation toward "facts and procedure instead of generally applicable substantive rules."[42] Still, one gets the sense from the book that Stevens's appreciation for common

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38. *See* ROBERT ALEXY, A THEORY OF CONSTITUTIONAL RIGHTS 47–48 (Julius Rivers trans., 2002).

39. 429 U.S. 190 (1976).

40. *Id.* at 211–12 (Stevens, J., concurring).

41. *Compare* Fullilove v. Klutznick, 448 U.S. 448, 538–39 (1980) (Stevens, J., dissenting), *with* Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 313 (1986) (Stevens, J., dissenting).

42. STEVENS, *supra* note 1, at 54.

sense over formalisms is more innate than acculturated. One got the same sense in person.

A second respect in which Father Groppi's case seemed to personify Justice Stevens more broadly is in its display of his independence. Not only was it a dissent in his first published judicial opinion but it was a dissent in a case that, Stevens notes, he was warned by a fellow judge would have political implications affecting who was considered for the Supreme Court.[43] It's unlikely that Stevens's dissent earned him plaudits from Richard Nixon, but he dissented all the same.

Much as Justice Stevens insisted that each case must stand on its own feet, he also wanted judges to make their own decisions. If judges disagreed with the dispositions in particular cases, their duty was not to go along to get along but rather to write separately and explain what the majority got wrong. Indeed, perhaps the single most consequential decision Justice Stevens authored, his opinion for the Court in *Sony Corporation of America v. Universal City Studios*, began as a dissent.[44] In *Sony*, the so-called "Betamax" case, the Court held that using a home recording device to make a copy of a television show for private, noncommercial use did not violate the copyright law. Justice Stevens's dissent helped prompt the Court to set the case for reargument, leading Justice O'Connor to switch her vote and make the dissent a majority opinion.[45]

Justice Stevens's practices in chambers were calculated to preserve his independence. Early on, for example, he declined Chief Justice Burger's invitation to join the "cert pool," a system in which the clerks of participating Justices divide the petitions and write a shared memo summarizing the case and offering a recommendation on whether it should be granted or denied.[46] Justice Stevens borrowed his preference for reading the papers in his own chambers from Justice Rutledge, who did not trust Chief Justice Fred Vinson's clerks fairly to handle *in forma pauperis* petitions, those from (typically *pro se*) petitioners who

43. *Id*. at 111.

44. *See* Sony Corp. of Am. v. Universal City Studios, 464 U.S. 417 (1984); STEVENS, *supra* note 1, at 200–01.

45. STEVENS, *supra* note 1, at 200–01.

46. *Id*. at 137–38.

had obtained waivers of the filing fee.[47] In one such petition that Vinson's clerks had recommended be denied, the Rutledge chambers insisted on a response from the government and the case resulted in a confession of error and a summary reversal.[48] Justice Stevens reveals that something similar happened during his own tenure, in *BMW of North America v. Gore*,[49] a case limiting the scope of punitive damages under the Due Process Clause. Chief Justice Rehnquist did not put the case on the list for discussion at the Justices' conference, but the Stevens chambers added it to the list.[50] It became a grant and then a reversal. Justice Stevens wrote the majority opinion.[51]

In addition to exempting himself from the cert pool, Justice Stevens also eschewed "bench memos" from his law clerks—he preferred to read the papers on his own and discuss the cases orally with his clerks before argument—and he typically wrote the first drafts of his opinions. As with his refusal to rely on shared cert memos from other chambers, both practices mirrored those of Justice Rutledge.[52] Writing the first draft helped to ensure that he was comfortable with his reasoning before falling under the influence of a skilled writer. It also trained his attention on the facts of the case. The book includes the candid, indeed chilling, admission that his outsourcing of the statement of facts in *Jurek v. Texas*,[53] one of five cases through which the Court lifted its moratorium on the death penalty, led him erroneously to vote to affirm the capital sentence.[54]

A third defining characteristic of Justice Stevens, in addition to his attention to facts and his independence, is somewhat more difficult to articulate with precision but leaps off the pages of his book and would be easily recognized by all who knew him. Let's call it "professionalism." A casual

47. *Id*. at 62–63.

48. *Id*. at 63; *see* Marino v. Ragen, 332 U.S. 561 (1947) (per curiam).

49. 517 U.S. 559 (1996).

50. STEVENS, *supra* note 1, at 138.

51. *BMW*, 517 U.S. at 574 (explaining that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose" (footnote omitted)).

52. STEVENS, *supra* note 1, at 62–63.

53. 428 U.S. 262 (1976).

54. STEVENS, *supra* note 1, at 143.

observer could easily accuse Stevens of being a kind of naïf. Notably, in a memoir that runs more than 500 pages and is overwhelmingly devoted to his time on an increasingly polarized Supreme Court, Justice Stevens never—not once—accuses his colleagues of partisanship. He also notes that, consistent with his commitment to the independence of each Justice, he almost never visited his colleagues to try to persuade them to join his opinions.[55] And so it is easy to get the impression of the courtly man in a bowtie and spectacles studying the facts and plugging away one case at a time while clever partisan plots swirl about him, over his head.

Although his optimism in chambers was striking, I think it would be quite wrong to view Justice Stevens's generosity toward his colleagues as guilelessness. This was, after all, a man whose father once, successfully, asked Al Capone to stop crime in Chicago as a personal favor.[56] The memoir gives a hint that Justice Stevens knew exactly what was happening to the Court. The book includes a lengthy discussion of *Bush v. Gore*,[57] in which the Court halted a manual recount of presidential ballots cast in Florida in 2000, effectively handing the election to George W. Bush. Among the several problems Justice Stevens found with the majority's approach, the one that clearly stuck with him was the unspoken assumption that the judges on the Florida Supreme Court who had ordered the recount were partisan operatives. He thus ended his unusually pointed dissent with these words:

> The endorsement of that position by the majority of this Court can only lend credence to the most cynical appraisal of the work of judges throughout the land. It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year's Presidential election,

55. STEVENS, *supra* note 1, at 205. One notable exception is *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837 (1984), his most cited opinion, which he lobbied Justice Brennan to join and therefore make the opinion unanimous. *See id.*

56. STEVENS, *supra* note 1, at 7.

57. 531 U.S. 98 (2000).

> the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law.[58]

As if to actively perform that shaken confidence, for two of the cases discussed in the remainder of the chapter on the October 2000 Term and for one case from the following term, Justice Stevens refers to the Court as "the five-justice majority" from *Bush v. Gore*.[59] The three cases had nothing to do with election law. One involved the Clean Water Act,[60] another the Federal Arbitration Act,[61] and a third the availability of an implied constitutional damages remedy.[62] Observers of the Court will recognize these areas of law as having been in the crosshairs of legal conservatives over the last several decades. Affiliating the conservative decisions in these cases with *Bush v. Gore* is as close to a wink at the camera as Justice Stevens gives in his memoir.

The professionalism one observes in Justice Stevens doesn't, then, speak to naiveté so much as to the kind of role awareness he urged his colleagues to maintain in *Bush v. Gore*. One observes something similar in Stevens's caginess about his own abilities. The book reads at times almost as a *Forrest Gump* for the elite lawyer class. Here he is being invited fresh out of college, as if at random, to help break the Japanese naval code.[63] And there he is winning a clerkship with Justice Rutledge on a coin flip.[64] He's casually asked to be general counsel to Sears after conducting a routine deposition of one of the company's senior officers.[65] (He declined.) Byron White wants him to run the Justice Department's antitrust division, Stevens suggests, because they had met in Hawaii during the war.[66] He acts surprised, just off his bombshell investigation into the Illinois Supreme Court and his election as vice president of the Chicago

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58. *Id*. at 128–29 (Stevens, Ginsburg & Breyer JJ., dissenting).

59. STEVENS, *supra* note 1, at 374, 377, 381.

60. Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159 (2001).

61. Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001).

62. Correctional Serv. Corp. v. Malesko, 534 U.S. 61 (2001).

63. *See* STEVENS, *supra* note 1, at 35.

64. *See id*. at 58–59.

65. *See id*. at 85.

66. *See id*. at 99.

Bar Association, when Senator Percy floats him for the Seventh Circuit.[67]

Don't be fooled. Justice Stevens was as aware of his brilliance as he was of his privilege. But he let it speak for itself. Don't toot your own horn, don't disparage others, trust your judgment, do your job, and you can be one of the good guys.

67. *See id*. at 106–08.