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JUSTICE STEVENS, THE WRITER

SONJA R. WEST*

In any discussion about United States Supreme Court Justice John Paul Stevens, you're likely to hear him labeled in a variety of ways—as a brilliant “judge’s judge,”¹ the highly successful leader of the Court’s more liberal wing,² the prolific “maverick,”³ and a shrewd questioner from the bench.⁴ You might also hear him described simply as a polite and humble Midwesterner, bow-tie aficionado and diehard Cubs fan. Yet while Justice Stevens is and was all of these things, there is another important title he richly deserves yet often does not receive—Justice Stevens, the excellent writer.

When considering Justice Stevens’s writing on the Court, much of the attention is placed on his process rather than his final product. It is well known, for example, that he was one of the only justices on the Court who consistently wrote his own first drafts—a practice, he once explained, that “helps you think through a case, and when you write it out yourself, you often learn things about the case that you hadn’t realized.”⁵ He is also often praised for his in-depth loyalty to the facts⁶ and his resistance to expanding a case into something it is not. As he once stated: “[I]t is not our job to apply laws that have not yet been written.”⁷

But it was at this point, after he parsed the facts and homed in on the legal issues, that Justice Stevens, the Writer, would take over. Having made up his mind regarding the proper outcome of the case, Justice Stevens would

* Otis Brumby Distinguished Professor of First Amendment Law, the University of Georgia School of Law. I am grateful to the many former clerks of Justice Stevens who shared their favorite pieces of his writing. I also owe thanks to our faculty services librarian, T.J. Striepe, for his helpful research assistance.

1. E.g., BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT* 401 (1979).

2. E.g., Jess Bravin, *Stevens Evolved from Court Loner to Liberal Wing’s Leader*, WALL ST. J. (June 30, 2010), <https://www.wsj.com/articles/SB10001424052748703374104575337264290709470>.

3. E.g., Christopher L. Eisgruber, *How the Maverick Became a Lion: Affirmative Action in the Jurisprudence of John Paul Stevens*, 99 GEO. L.J. 1279 (2011).

4. Jeffrey Toobin, *After Stevens*, THE NEW YORKER (Mar. 22, 2010) (quoting former Solicitor General Paul Clement saying it was always Justice Stevens’ questions that put you “on your guard, because he’s probably found the one issue that puts your case on the line”).

5. *Interviews With United States Supreme Court Justices: Justice John Paul Stevens*, 13 SCRIBES J. LEGAL WRITING 41, 42 (2010).

6. Toobin, *supra* note 4 (“Most Supreme Court Justices, if they write first drafts of their opinions at all, concentrate on the legal analysis, which usually includes the flowery language that gets quoted in newspapers and textbooks; it is for their law clerks to write up the facts of the case, the driest part. Stevens always does the facts himself (and says he does all the other drafting, too).”).

7. *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 456 (1984).

masterfully employ the many implements of the writer's toolbox—delightful turns of phrases, creative analogies, memorable word choices and impassioned moments of eloquence—to make his points. Luckily, thanks to his exceptionally long tenure on the Court⁸ and his propensity to author separate opinions, he left us with a treasure trove of his writings to enjoy.⁹

In this essay, I strive to celebrate the unsung writing talents of Justice Stevens. This is by no means meant to be a serious linguistic study of his writings, nor is it an exhaustive overview. My goal, rather, is simply to highlight his skills as a wordsmith with some of the most memorable examples. What follows is a collection of snippets of Justice Stevens's writing drawn from my own reservoir of personal favorites and an informal survey of other former Stevens clerks.

HUMOR

When asked to share favorite pieces of Justice Stevens's writing, many of his admirers first brought up the times when Justice Stevens was funny. Yes, that's right, funny. Of course, anytime someone brings up the subject of Supreme Court justices and humor, it generally requires a slight lowering of the bar for what counts as "funny." This is no doubt because the work of the Court as a whole is very serious. This sober backdrop is precisely why it can be so surprising whenever a justice inserts a moments of lightheartedness. And while the justices do occasionally crack jokes during oral argument,¹⁰ comedy is far less likely to appear in the Court's written decisions. Yet Justice Stevens would, on select occasions, employ humor in his written opinions. And he did so not just to make the reader grin, but often to emphasize the weakness or irrationality of the other side's arguments.

For example, in the 2007 case of *Morse v. Frederick*, the Court addressed the question of whether a public high school violated the free speech rights of one of its students when it suspended him for displaying a banner reading

8. Justice Stevens served on the Supreme Court for thirty-four years and six months, making him the third longest serving justice in the Court's history. *John Paul Stevens*, OYEZ (last visited Mar. 13, 2017), https://www.oyez.org/justices/john_paul_stevens. He was only three days shy of matching the second longest serving justice, Justice Stephen Field, and about two years short of the longest serving justice, his predecessor Justice William Douglas.

9. Justice Stevens is, of course, still writing. Since his retirement he has published two books and is reported to be working on a third (at the age of ninety-seven). This essay, however, focuses on the opinions he authored while serving on the Supreme Court.

10. See Ryan A. Malphurs, "People Did Sometimes Stick Things in my Underwear" *The Function of Laughter at the U.S. Supreme Court*, 10 COMM. L. REV. 48 (2010); Jay D. Wexler, *Laugh Track*, 9 GREEN BAG 2D 59 (2005).

“Bong Hits 4 Jesus” at a school-sanctioned event.¹¹ The majority concluded that there was no constitutional violation, holding that schools can regulate student speech when the student advocates illegal drug use.

Writing in dissent, Justice Stevens took issue with the Court’s ruling, arguing that the majority was upholding a viewpoint-based regulation. But he also was not convinced that the student’s cryptic message was actually advocating illegal drug use. He was further skeptical that any of his classmates would interpret the message that way and, if they did, that it would actually cause them to do drugs. To make his point, Justice Stevens used humor and repurposed the Court’s most famous line regarding student speech rights¹²:

Admittedly, some high school students (including those who use drugs) are dumb. Most students, however, do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it. The notion that the message on this banner would actually persuade either the average student or even the dumbest one to change his or her behavior is most implausible.¹³

In another memorable example, Justice Stevens again turned to humor to expose what he viewed as the absurdity of the opposing position in the 1976 case of *Young v. American Mini Theaters, Inc.*¹⁴ This case considered the constitutionality of city zoning ordinances that differentiated between movie theaters that showed “adult” films and those that did not. Writing for the Court, Justice Stevens held that the zoning ordinances did not violate the First Amendment, because they did not censor such films but simply placed limitations on where they may be shown. He further noted that while political speech went to the core of our freedom of speech, “few of us would march our sons and daughters off to war to preserve the citizen’s right to see ‘Specified Sexual Activities’ exhibited in the theaters of our choice.”¹⁵

In other cases, he appeared to be relying on his own personal experience to frame the joke, such as his dissent in *FCC v. Fox Television Stations, Inc.*, when he noted: “As any golfer who has watched his partner shank a short approach knows, it would be absurd to accept the suggestion that the resulting four-letter word uttered on the golf course describes sex or

11. 551 U.S. 393, 397 (2007).

12. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

13. *Morse*, 551 U.S. at 444 (Stevens, J., dissenting).

14. 427 U.S. 50, 70 (1976).

15. *Id.*

excrement and is therefore indecent.”¹⁶ Another time he seemed to be teasing his younger colleagues’ driving abilities when it came to viewing a video of a high-speed police chase. Dissenting from the Court’s holding that the police officer’s use of deadly force during the chase was warranted, he made this observation in a footnote:

I can only conclude that my colleagues were unduly frightened by two or three images on the tape that looked like bursts of lightning or explosions, but were in fact merely the headlights of vehicles zooming by in the opposite lane. Had they learned to drive when most high-speed driving took place on two-lane roads rather than on superhighways—when split-second judgments about the risk of passing a slowpoke in the face of oncoming traffic were routine—they might well have reacted to the videotape more dispassionately.¹⁷

While he often used humor to strengthen his arguments, Justice Stevens was also not above the occasional well-placed pun for its own sake. In fact, even former President Gerald Ford, who nominated Justice Stevens to the Court in 1975, was an open admirer of the Justice’s “charming wit and sense of humor.”¹⁸ In a letter written in 2005, President Ford noted that he particularly enjoyed his dissent to the 1986 Commerce Clause Case of *Maine v. Taylor* involving a state statute limiting the interstate trade in minnows, which Justice Stevens began with the line: “There is something fishy about this case.”¹⁹

CHARACTERIZATIONS AND IMAGERY

While there are certainly times when a chuckle can be a useful writing tool, Justice Stevens’s skill may have been at its most impactful when he used colorful language to bring into focus the core issue at stake. He did this through vivid imagery and spot-on characterizations or analogies that painted an unforgettable picture in his readers’ minds.

Take, for example, his concurrence in the 2000 case of *Nixon v. Shrink Mo. Gov’t PAC* in which he addressed the question of whether campaign finance regulations can infringe on a free speech right.²⁰ He explained his

16. 556 U.S. 502, 543 (2009) (Stevens, J., dissenting).

17. *Scott v. Harris*, 550 U.S. 372, 390 n.1 (2007) (Stevens, J., dissenting).

18. William Michael Treanor, *Introduction: The Jurisprudence of Justice Stevens*, 74 *FORDHAM L. REV.* 1557, 1559 (2006).

19. *Id.*

20. 528 U.S. 377 (2000).

view on why such comparisons to campaign spending and speech are incorrect by writing:

Money is property; it is not speech. Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.²¹

Justice Stevens frequently turned to succinct analogies to drive home his arguments. In *Carey v. Population Services International*, for example, he explained his opposition to a state law prohibiting the sale of contraceptives to minors by noting that banning contraceptives for teenagers to express the state's disapproval of their sexual conduct was like showing "disapproval of motorcycles by forbidding the use of safety helmets."²² And in the 1985 case of *California v. Carney*, he dissented from the Court's holding that a motor home was subject to the automobile exception of the search warrant requirement of the Fourth Amendment. The proper analogy of a motor home was not a car, he contended, but "the functional equivalent of a hotel room, a vacation and retirement home, or a hunting and fishing cabin."²³ In the 1978 case of *FCC v. Pacifica*, he added a twist to an old Justice Sutherland analogy that a nuisance is "like a pig in the parlor instead of the barnyard"²⁴ by noting the when the FCC "finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene."²⁵

Some of his characterizations were particularly quick and sharp. It's hard to argue, for example, with his observation in *Rita v. United States* that "a district judge who gives harsh sentences to Yankees fans and lenient sentences to Red Sox fans would not be acting reasonably even if her procedural rulings were impeccable."²⁶ Similarly, it is difficult to disagree with his statement that "[a] law conscripting clerics should not be invalidated because an atheist voted for it."²⁷ He likewise managed to concisely describe what he thought was wrong with the Court's expansive

21. *Id.* at 398 (Stevens, J., concurring).

22. 431 U.S. 678, 715 (1977) (Stevens, J., concurring).

23. 471 U.S. 386, 407 (1985) (Stevens, J., dissenting).

24. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

25. *FCC v. Pacifica Found.*, 438 U.S. 726, 750–51 (1978).

26. 551 U.S. 338, 365 (2007) (Stevens, J., concurring).

27. *Washington v. Davis*, 426 U.S. 229, 253 (1976) (Stevens, J., concurring).

view of state sovereignty by stating that “the law would be well served by a prompt rejection of *National League of Cities*’ modern embodiment of the spirit of the Articles of Confederation.”²⁸

Perhaps one of his most brilliant characterizations arose during the Court’s ongoing debate over affirmative action laws. Justice Stevens strongly disagreed with his colleagues’ contention that all race-based regulations should be reviewed under strict scrutiny, regardless of whether the laws were designed to burden or benefit racial minorities. This argument, he wrote in the 1995 case of *Adarand Constructors, Inc. v. Peña*, “disregard[s] the difference between a ‘No Trespassing’ sign and a welcome mat.”²⁹

EMPATHY

Few aspects of Justice Stevens’s writing affected his readers (and reflected his general approach as a jurist) more than his ability to use words as a means to bring marginalized people into the Court’s discussion.

Justice Stevens’s ability to capture the point of view of racial minorities was particularly noteworthy. For example, in the 2000 case of *Illinois v. Wardlow*,³⁰ he dissented from the Court’s ruling that the mere fact that someone ran at the sight of a police officer provided reasonable suspicion for the officer to stop the person. Justice Stevens sought to put his readers in the shoes of those whose view of the police might differ from that of his colleagues. “Among some citizens, particularly minorities and those residing in high crime areas,” he wrote, “there is also the possibility that the fleeing person is entirely innocent, but, with or without justification, believes that contact with the police can itself be dangerous.”³¹

In the 2007 case of *Parents Involved v. Seattle Schools*, the Court’s majority concluded that it was unconstitutional for two public school districts to take race into account as a factor in deciding which school to assign students to attend in an effort to avoid re-segregation of their classrooms.³² Justice Stevens responded:

There is a cruel irony in The Chief Justice’s reliance on our decision in *Brown v. Board of Education*. The first sentence in the concluding paragraph of his opinion states: “Before *Brown*, schoolchildren were

28. *EEOC v. Wyoming*, 460 U.S. 226, 250 (1983) (Stevens, J., concurring).

29. 515 U.S. 200, 245 (1995) (Stevens, J., dissenting.).

30. 528 U.S. 119, 126 (2000) (Stevens, J., concurring in part and dissenting in part).

31. *Id.* at 132.

32. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 709–11 (2007).

told where they could and could not go to school based on the color of their skin.” This sentence reminds me of Anatole France’s observation: “[T]he majestic equality of the la[w], . . . forbid[s] rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread.” The Chief Justice fails to note that it was only black schoolchildren who were so ordered; indeed, the history books do not tell stories of white children struggling to attend black schools. In this and other ways, The Chief Justice rewrites the history of one of this Court’s most important decisions.³³

He even took a final jab at Chief Justice Roberts’ opinion in his citation to this paragraph adding: “Compare *ante*, at 746 (‘history will be heard’), with *Brewer v. Quaterman* (Roberts, C. J., dissenting) (‘It is a familiar adage that history is written by the victors.’).”³⁴

When it came to including women in judicial opinions, his approach was often as simple as a carefully selected pronoun. In the *Young v. American Mini Theatres, Inc.* case discussed earlier, for example, Justice Stevens—in 1976, mind you—referred to marching “our sons and *daughters* off to war.”³⁵ Indeed, in a Justice Stevens opinion, you are likely to find the sole use of female pronouns when generically describing judges,³⁶ lawyers,³⁷ voters,³⁸ and corporate chief executives.³⁹

Justice Stevens’s ability to give voice to groups that are often overlooked was not confined to race or gender. He also spoke up for criminal defendants (“No matter how culpable petitioner Dennison may be, the difference between 11 1/2 months and 5 years of incarceration merits a more principled justification than the luck of the draw.”⁴⁰); children (“It does not require a

33. *Id.* at 798-99 (Stevens, J., dissenting) (citations omitted).

34. *Id.* at 799 (citation omitted).

35. 427 U.S. 50, 70 (1976) (emphasis added).

36. *See, e.g.,* *Rita v. United States*, 551 U.S. 338, 365 (2007) (Stevens, J., concurring) (“After all, a district judge who gives harsh sentences to Yankees fans and lenient sentences to Red Sox fans would not be acting reasonably even if her procedural rulings were impeccable.”).

37. *See, e.g.,* *Harbison v. Bell*, 556 U.S. 180, 188-89 (2009) (“It would require a federal lawyer who obtained relief for her client in § 2254 proceedings to continue to represent him during his state retrial.”); *Montejo v. Louisiana*, 556 U.S. 778, 806 n.2 (2009) (Stevens, J., dissenting) (“A lawyer can provide her client with advice regarding the legal and practical options available to him.”).

38. *See, e.g.,* *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 186 (2008) (“A voter who has photo identification but is unable to present that identification on election day may file a provisional ballot that will be counted if she brings her photo identification to the circuit court clerk’s office within 10 days.”).

39. *See, e.g.,* *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183, 189 (2010) (suggesting a statute could apply to “a single firm’s chief executive telling her subordinate how to price their company’s product.”).

40. *McMillan v. Pennsylvania*, 477 U.S. 79, 104 (1986) (Stevens, J., dissenting).

constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude.”⁴¹); accident victims (“It defies belief—and ascribes to the Members of Congress a perverse, even barbaric, intent—to think that they spent days debating the measure of extraconstitutional compensation they would provide riparian landowners but intended—without a single word of dissent—to condemn the widows, orphans, and injured victims of negligent operation of flood control projects to an irrational exclusion from the protection of the subsequently enacted Tort Claims Act.”⁴²); and prisoners (“Measured by the conditions that prevail in a free society, neither the possessions nor the slight residuum of privacy that a prison inmate can retain in his cell, can have more than the most minimal value. From the standpoint of the prisoner, however, that trivial residuum may mark the difference between slavery and humanity.”⁴³).

Justice Stevens frequently warned against the dangers of classifying groups of people—a practice, he said, that far too often persisted unchecked. In the 1976 case of *Mathews v. Lucas*, involving a statute that burdened some children simply because their parents were never married, he explained: “Habit, rather than analysis, makes it seem acceptable and natural to distinguish between male and female, alien and citizen, legitimate and illegitimate; for too much of our history there was the same inertia in distinguishing between black and white.”⁴⁴

He again cautioned of the threat of tradition as a means to perpetuate discriminatory practices in the 2000 case of *Boy Scouts v. Dale*, involving the group’s expulsion of a gay scout leader. Dissenting from the Court’s decision in favor of the Scouts, Justice Stevens wrote that prejudices against the LGBT community “have caused serious and tangible harm to countless members of the class.”⁴⁵ This harm, he argued, “can only be aggravated by the creation of a constitutional shield for a policy that is itself the product of a habitual way of thinking about strangers.”⁴⁶ Prejudices end, he wrote, through “interaction with real people, rather than mere adherence to traditional ways of thinking.”⁴⁷ He concluded his appeal for equality by

41. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 380 (2009) (Stevens, J., concurring) (quoting *Doe v. Renfrow*, 631 F.2d 91, 92–93 (7th Cir. 1980)).

42. *United States v. James*, 478 U.S. 597, 620 (1986) (Stevens, J., dissenting).

43. *Hudson v. Palmer*, 468 U.S. 517, 542 (1984) (Stevens, J., concurring in part and dissenting in part).

44. 427 U.S. 495, 520 (1976) (Stevens, J., dissenting).

45. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 700 (2000) (Stevens, J., dissenting).

46. *Id.*

47. *Id.* at 699.

powerfully declaring: “If we would guide by the light of reason, we must let our minds be bold.”⁴⁸

ELOQUENCE

In the end, however, it is likely not the humor nor the imagery nor the empathy of Justice Stevens’s writing that has the most long-lasting impact on his readers. It is his eloquence. In cases where Justice Stevens felt passionately about the issue, he found a way to convey that conviction through words. And the topics that often engendered his most powerful writing were the issues he holds most dear—patriotism and democracy.

One of Justice Stevens’s most famous dissents comes from his 1989 opinion in *Texas v. Johnson*, which considered the constitutionality of laws prohibiting the burning of the American flag. While the majority found that such laws violated the First Amendment, Justice Stevens, a World War II veteran and the only former member of the military serving on the Court at the time, disagreed. The American flag, he wrote,

is more than a proud symbol of the courage, the determination, and the gifts of nature that transformed 13 fledgling Colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations. The symbol carries its message to dissidents both at home and abroad who may have no interest at all in our national unity or survival.⁴⁹

He then concluded his dissent with these words:

The ideas of liberty and equality have been an irresistible force in motivating leaders like Patrick Henry, Susan B. Anthony, and Abraham Lincoln, schoolteachers like Nathan Hale and Booker T. Washington, the Philippine Scouts who fought at Bataan, and the soldiers who scaled the bluff at Omaha Beach. If those ideas are worth fighting for—and our history demonstrates that they are—it cannot be true that the flag that uniquely symbolizes their power is not itself worthy of protection from unnecessary desecration.⁵⁰

Whether his readers agreed or disagreed with his vote in that case, it is hard not to be moved by his description of what the American flag meant to him.

48. *Id.* at 700.

49. *Texas v. Johnson*, 491 U.S. 397, 437 (1989) (Stevens, J., dissenting).

50. *Id.* at 439.

More recently, Justice Stevens' passionate disagreement with the majority was on display in the 2010 campaign finance case of *Citizens United v. Federal Election Commission*. He disputed the Court's assertion that corporations have First Amendment rights to independently spend unlimited amounts of money in political campaigns. This rule, he stated, would disturb the most basic process of our elections. "A democracy," he explained, "cannot function effectively when its constituent members believe laws are being bought and sold."⁵¹ In the final lines of his opinion, he returned again to the subject of American democracy and wrote:

At bottom, the court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this court would have thought its flaws included a dearth of corporate money in politics.⁵²

Sometimes Justice Stevens's eloquence arose from the simplicity of his words such as his often quoted statement that "[t]here is only one Equal Protection Clause."⁵³ Other times it appeared in a reference to a famous metaphor like his warning that "[w]henver we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy."⁵⁴ In the *Parents Involved* case discussed earlier, he adopted a nostalgic tenor to express his deep concerns with the damage he felt the majority was doing to the legacy of *Brown v. Board of Education*. He wrote: "It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision."⁵⁵

If, however, there is one piece of Justice Stevens's writing that will be long remembered for its eloquence, it is likely his dissent in *Bush v. Gore*.⁵⁶ This was the case, of course, in which the Supreme Court, by a five-to-four

51. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 453 (2010) (Stevens, J., concurring in part and dissenting in part).

52. *Id.* at 479.

53. *Craig v. Boren*, 429 U.S. 190, 211 (1976) (Stevens, J., concurring).

54. *Zelman v. Simmons-Harris*, 536 U.S. 639, 686 (2002) (Stevens, J., dissenting).

55. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 803 (2007) (Stevens, J., dissenting).

56. 531 U.S. 98, 123 (2000) (Stevens, J., dissenting).

vote, essentially decided the 2000 presidential election by halting the ballot recount that was occurring in Florida. The case brought to an end the five-week-long episode that had engulfed the country with drama, anger, and chaos. As the main dissenter to the Court's opinion, Justice Stevens issued a stern indictment of the Court's ruling and, in particular, stressed how the ruling would damage the integrity of the judicial system. He wrote:

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.⁵⁷

He then concluded the dissent by giving voice to the millions of Americans who felt the Court had overstepped and, in doing so, injured our democratic process. In a few short sentences he captured the complicated and disturbing feelings of so many. He wrote:

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, 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

It is an impossible task to truly capture Justice Stevens's talent as a writer. Nonetheless, it is a task that is surely worth undertaking. Without question, one of the great gifts Justice Stevens has given to us is an abundance of exceptional writing. His clear, concise, and colorful prose made us chuckle or sob or seethe or even roll our eyes. But like any great superhero, he used his powers for good. He employed his knack with words in order to strengthen his arguments, to make complex legal issues comprehensible, and to capture the core values at stake in each case.

And in return for all of this, I have just two words for him: thank you.

57. *Id.* at 128.

58. *Id.* at 128–29.

