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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@portfoliomedia.com

Ex-Law Clerks, Attorneys Salute Justice Stevens

By **Abigail Rubenstein**

Law360, New York (April 09, 2010) -- During his almost 35 years on the U.S. Supreme Court, Justice John Paul Stevens not only left his mark on American jurisprudence, but also had a profound effect on American jurists. Former law clerks and prominent appellate attorneys shared with Law360 the ways Justice Stevens inspired them in their legal careers.

"He was a giant who served his country with enormous distinction, and he is irreplaceable," said former clerk Mark Harris of Proskauer Rose LLP.

Bracewell & Giuliani LLP's Brett Busby, who clerked for Justice Stevens after being hired by retired Justice Byron White, remembered Justice Stevens as "an extremely kind, down to earth, courteous and thoughtful person," who went out of his way to make sure a clerk he hadn't even hired felt like a part of the group.

According to former law clerk Douglas Winthrop, now managing director at Howard Rice Nemerovski Canady Falk & Rabkin PC, Justice Stevens regaled his law clerks with tales of ordinary people who had no idea who he was: the tourists who asked the justice to move out of the way so that they could snap a photo of the courthouse as he mounted its steps; the dentist who peppered him with questions about performing weddings because he had listed "justice" as his profession on a medical form.

While on the court, Stevens earned a reputation as a "lawyer's judge" who demonstrated respect for the process of lawyering and for what lawyers do, attorneys said.

Former law clerk David DeBruin of Jenner & Block LLP described Justice Stevens as "the consummate professional."

"Whether the case is a momentous matter of national importance, or highly technical and seemingly insignificant, the justice approaches it with the exact same passion, thoughtfulness and intellectual rigor," said DeBruin, who recalled that even when Justice Stevens was initially disappointed with the case he had been assigned to write, he found it fascinating by the time he had finished composing his opinion.

"He has an innate and deep sense of what is correct, logical and fair," DeBruin said. "He is always humble and understated in his approach, and yet he focuses like a laser on the heart of every issue."

Mayer Brown LLP's Andrew L. Frey, who argued about 60 cases before the high court during Justice Stevens' term, said that he had been unfailingly impressed by Justice Stevens' extraordinary grasp of the record in the cases before him.

“Whether one agrees with him or not on the substance of particular decisions, his thoroughness, attention to detail and command of nuances of the issues have been inspiring to me,” Frey said.

Several of Justice Stevens' former law clerks noted that his complete understanding of the matters before the court came from putting in the necessary hard work to learn what was at stake in each case.

Many former clerks remarked on Justice Stevens' policy of writing the first draft of each of his opinions, and one noted that he also did not ask his clerks to write bench memos to prepare him for upcoming cases.

Putting in all that effort allowed Justice Stevens to form his opinions based on the merits of each case rather than on overarching legal principles or philosophies, lawyers said.

“Justice Stevens has been a living embodiment of the principle of judicial independence,” said E. Joshua Rosenkranz of Orrick Herrington & Sutcliffe LLP, who has played a leading role in a dozen Supreme Court cases.

Rosenkranz pointed out that when Justice Stevens joined the court in 1975, no one would have predicted that a judge first nominated by President Richard Nixon and then elevated by President Gerald Ford would emerge as a leader of the court's liberal wing.

“He got there not through knee-jerk predisposition, but through hard work and independent thought,” Rosenkranz said.

“He made a habit of understanding before disagreeing,” said University of Oklahoma law professor Joseph Thai, another of Justice Stevens' former clerks. When faced with statutory matters, Justice Stevens not only reread the statutory provisions at issue, he read the entire statute and researched its legislative history, he recalled.

Justice Stevens always listened more than he talked and made more of an effort to identify the holes in his own reasoning than to bring people to it, setting himself apart from his eager 20-something law clerks who tended to talk over each other and even cut off him off, Thai said.

“He helped each of us to become good lawyers just by imitation,” Thai said.