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As Justices Get Back to Business, Old Pro Reveals Tricks of the Trade

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J. Scott Applewhite/Associated Press

Justice John Paul Stevens, who retired last year, in his chambers last week. He spends much of the year in Florida but still keeps up with the court.

WASHINGTON — Justice [John Paul Stevens](#) was always courtly, but he could be a little terse and wary in interviews while he was on the [Supreme Court](#). Since his retirement last year, he has shed some of that reticence, and he was in an expansive and reflective mood the other day as he greeted a visitor to his chambers.

He has come full circle, he explained, returning to the quarters first assigned to him when he joined the court in 1975. His old chambers, now occupied by Justice Elena Kagan, were perhaps a little grander, but there are worse offices in Washington than his current one, which overlooks the plaza in front of the courthouse and has a striking view of the Capitol.

In time for the start of a new term on Monday, Justice Stevens has just published an engaging and candid memoir. It is called “[Five Chiefs](#),” for the five chief justices he has known — as a law clerk, lawyer, judge and justice. Perhaps its most surprising element is the high praise Justice

Stevens has for Chief Justice John G. Roberts Jr., who was often his ideological adversary in the five terms the two men served together.

In the interview, Justice Stevens also offered behind-the-scenes glimpses of how opinions are assigned, and he criticized aspects of *Brown v. Board of Education*, the 1954 decision requiring the integration of public schools.

The book is not a series of puff-piece profiles. Chief Justice Warren E. Burger, who was appointed by President Richard M. Nixon and served from 1969 to 1986, gets fairly rough treatment, for instance, coming off as vain, insecure and in some ways incompetent.

Chief Justice Burger was, Justice Stevens wrote, not very careful in assigning majority opinions.

“A lot of people assumed he was making strategic assignments and that sort of thing,” Justice Stevens said. “I think he was just not as careful a scholar as he should have been, and he didn’t do a careful job keeping track of exactly how everyone voted and the reasons why.

“Burger would sometimes assign an opinion to someone who really didn’t have a majority on every issue,” Justice Stevens continued, leading to confusion, inefficiency and frustration.

Chief Justice Burger was strategic in one sense, though. Alert to the attention paid to First Amendment decisions, he would assign opinions ruling in favor of free speech to himself, hoping for good press.

“If you look through his First Amendment cases, I think you’ll find that when the First Amendment claim was upheld, he might well write it,” Justice Stevens said. “But where it was denied, Byron White would get it.” Justice Byron R. White, who served from 1962 to 1993, did indeed gain a reputation of hostility to the First Amendment.

Chief Justice William H. Rehnquist, who led the court from 1986 to 2005, gets better reviews in the book. Justice Stevens called him able and fair, if at times a little peremptory, cutting off lawyers the moment their time at the Supreme Court lectern expired. And Justice Stevens did not approve of the chief justice’s decision to add [gold stripes](#) to the sleeves of his robes, a move that struck many as frivolous or pompous or both.

Chief Justice Roberts, by contrast, combines the best qualities of his predecessors, Justice Stevens said.

“He’s generally across the board a very competent and personable guy,” Justice Stevens said. “Burger was a fine representative of the court — handsome guy, and he spoke well, and he could be very gracious. I really think John Roberts combines all those virtues — he’s very, very smart, and he’s very, very fair.

“The chief is conscious of granting more time to advocates,” Justice Stevens said of Chief Justice Roberts’s courtesy in occasionally allowing lawyers extra time to respond to the barrage of questions from the justices. “He didn’t put stripes on his robe.”

In his years on the Roberts court, Justice Stevens was the most senior justice, which meant he had the power to assign opinions when he was in the majority and the chief justice was not. He admitted to a little strategic behavior of his own.

“Basically it was who would do the best job writing it,” he said. But he was also savvy enough to know that keeping an interesting case to himself meant that he would avoid being assigned a boring and complicated one from the same batch. “I have to confess,” he said, “that now and then I would take an assignment because I wanted not to be eligible for something that I didn’t want to write.”

And then there was the important task of locking in the crucial vote of Justice Anthony M. Kennedy, the current court’s swing justice. “There were cases I think that I may have asked Tony to write,” Justice Stevens said, “because I thought if he wrote it out himself he was more sure to stick to his first vote.”

A majority is important, Justice Stevens said; unanimity less so. He said the court erred in moving too slowly in the Brown case in order to speak with one voice. The court ended up instructing the states to move toward integration with “all deliberate speed” in a 1955 sequel.

“A more decisive, prompt decision might have avoided some of the resistance that developed,” Justice Stevens said. “I don’t think the world would have come to an end if there had been members of the court who disagreed.”

Justice Stevens said he spends much of the year in Florida now, but he keeps up. "I remain very much interested in the court," he said. "I've read all their opinions, which I wasn't sure I would do."

He added that he is not eager to serve on appeals court panels, a common practice among retired members of the court, who also include Justices Sandra Day O'Connor and David H. Souter. "David and Sandra have enjoyed it," Justice Stevens said. "I kind of like not having to read a lot of briefs and get reversed by my former colleagues."