



The Supreme Court, Citizens United II, and the November election [Updated] – Tom Goldstein

Featured
CONTENT

Argument preview: The Constitution and lying – Lyle Denniston

Montana campaign ruling on hold – Lyle Denniston

Editor's Note :

On Tuesday we expect orders and one or more opinions. We also expect opinions on Wednesday. We will be live blogging both days beginning shortly before 10 a.m.



Erin Miller Guest

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Law clerk as quasi-child

Below is an essay by Jeffrey S. Lehman for our thirty-day series on John Paul Stevens. Lehman was a law clerk for Justice Stevens during the 1982 Supreme Court term. The former dean of the University of Michigan Law School and former president of Cornell University, Lehman is currently on leave from the Cornell faculty to serve as Chancellor and Founding Dean of the Peking University School of Transnational Law, which offers mainland China's first American-style J.D. program and aspires to be the first ABA-accredited law school outside the U.S.

One of the more interesting episodes in my career was the experience of being a named defendant in the affirmative action lawsuit of *Grutter v. Bollinger*, by virtue of my role as dean of the University of Michigan Law School. And from the beginning, we worried that Justice Stevens might recuse himself from participating in the case, since I had served as his law clerk twenty years earlier. We had not found a way to have me dismissed as a defendant before the case reached the Court, and so we waited with baited breath to see whether the grant of certiorari would be accompanied by a telltale indication of the Justice's recusal.

The Justice took the question seriously and ultimately referred it to the full conference. Unanimously, his colleagues urged him to stay in the case, and he did. (He subsequently described this process publicly to the Seventh Circuit Judicial Conference.)

When we saw the "clean" grant of certiorari, we celebrated. Even though the Justice had sided with Allan Bakke in the 1970s, our case was sufficiently different from *Bakke* that we were very hopeful that he would deem our policy constitutional. And, as it happened, he ended up joining a five-four majority in our favor.

Privately, however, I did feel a twinge of sadness when the Justice decided not to recuse himself. After all, if the Michigan dean had been one of the Justice's children and not me, he would surely have recused himself. Accordingly, the "victory" of having the Justice remain in the case also marked the painful extinction of a tiny private fantasy "" that, as clerks, we were the Justice's quasi-children.

I suppose many law clerks feel a similar kind of attachment to their judges. But I daresay the feeling for Stevens clerks was more intense, more universal. Whenever you speak to a Stevens clerk, you hear a mixture of affection and reverence.

Part of the reason for that affection and reverence is surely the remarkable demeanor "" the gentleness, the genuine humility, the generosity of spirit "" that Pamela Harris and others have described in this blog. Another part, I think, has to do with the sense that we had private access to a truly special role model. During every minute we spent together, he was exemplifying values that we would want to emulate in our own lives.

For example, on my first day in chambers with my co-clerk Carol Lee, the Justice described our respective roles roughly as follows: "I write my own first drafts not because I think it will produce the best opinions but because it is my way of making sure that I am doing my work as carefully as I can; it is a way of disciplining myself to master the record and to be sure that I have thought through the arguments."

"Your job is to protect me from myself; you are the last guardians between me and the judgment of history "" you have to make sure I have not committed some egregious misjudgment that I will regret forever."

"When you edit my drafts, you do not need to keep a single word of mine. Feel free to start over."

The values that underlay those first comments "" humility, dedication to the craft of judging, infinite capacity for hard work, a willingness to treat his young assistants as if they were his intellectual peers "" were re-expressed by the Justice every day. We were also inspired by the Justice's sheer delight in the law. Every case was interesting. Every case had its puzzle. Every case revealed something about the larger world. Every day the Justice behaved as though he had the best job in the world because it

gave him new opportunities to think and to learn.

The cases from my clerkship year have long since become a blur. I can only partially recall the long battle over fair use and contributory infringement in the *Betamax* case, culminating in the great victory of having the case put over for reargument. I also have dim memories of a case called *Jones & Laughlin Steel v. Pfeifer*, about how lost wages should be discounted to present value. That case sticks with me because at conference Justice Stevens was the lone dissenter, but the Chief Justice nonetheless asked him to write the majority opinion. It was surely a testament to the Justice's persuasive skills that he ultimately found a path to a unanimous result.

But my memories of the Justice remain as crisp as ever. His approach to his work, his approach to everyone he interacted with. He may not have recused himself in *Grutter*, but he will always be a quasi-parent to me.

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