

U.S. Supreme Court

Justice Stevens Decided to Retire After Stumbling During Citizens United Dissent

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By [Debra Cassens Weiss](#)

Justice John Paul Stevens decided to retire on Jan. 21, 2010, the day he [read aloud his dissent](#) in the *Citizens United* case and stumbled in his delivery.

In an interview with the [Atlantic](#), Stevens, now 91, said doctors found no problem, despite a faltering presentation. Nonetheless, "that was the day I decided to resign," he told the publication. "I learned giving that talk that I had a speech problem."

Stevens revealed he is writing a book about the five chief justices he has worked with over the years, as a law clerk, a lawyer, a federal appeals judge and a justice. The possible title is *The Five Chiefs*.

Stevens also commented on oral arguments. "I do think that an unfair amount of time is devoted to questioning that is not seeking answers but is trying to make arguments to influence one's colleagues," he said. "And I think the arguments have moved in a direction of the justices playing the role of advocate more than they should."

[The BLT: The Blog of Legal Times](#) and the [Wall Street Journal Law Blog](#) noted the article.

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U.S. Supreme Court

Stumbles in Justice Stevens' Delivery Spur Retirement Speculation

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By [Debra Cassens Weiss](#)

Justice John Paul Stevens spoke with passion when he read aloud from his dissent for 20 minutes yesterday in a [major campaign finance case](#)—but several reporters noticed a difference in his delivery.

The [Washington Post](#) says the 89-year-old Stevens “read hesitantly”; the [BLT: the Blog of Legal Times](#) says he “spoke haltingly”; and [USA Today](#) says he spoke with “weariness” and “halting speech.”

The words of the 90-page dissent, however, were “razor sharp,” the Washington Post notes. Stevens, joined by three of the court’s other liberals, criticized the majority’s “glittering generality” that the First Amendment bars distinctions based on a speaker’s corporate identity. He argued that the decision striking down restrictions on corporate campaign spending had cast aside legislative efforts to protect elections from corruptive influences, according to the USA Today summary.

The CBS News [Crossroads](#) blog agreed that the language in Stevens’ dissent was forceful. “But it was striking to see him appear to stumble over words as he read it, to mispronounce words like ‘corruption’ and ‘allegation,’ to seem to lose his place in his summary, to often hit the microphone with his hand or his papers.”

The BLT said Stevens “seemed off his game” and confessed “it was a little painful to watch.” But the BLT and Crossroads both allowed that Stevens may simply have had a tough day.

Many of the stories noted that Stevens has [hired only one law clerk](#) for 2010, leading to speculation that the liberal justice will announce his retirement at the end of the term.

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A Conversation With John Paul Stevens

By *Bill Barnhart*

In a rare interview, the former Supreme Court justice talks about the book he's writing and why he decided to retire last year.



Retired Supreme Court Justice John Paul Stevens fiddled with his hearing aids and finally just removed them. He'd turned 91 the day before our interview. It was his first day back in his

chambers at the Court since last November. He'd started using the devices near the end of his nearly 35 years on the Court and didn't especially like them. "I put them on to try them out today, and I think I'll take them off. I'm not accustomed to using them. They make things a little louder."

Since clerking for Associate Justice Wiley Rutledge as a fresh law school graduate in the Court's 1947-48 term, Stevens has heard the full range of volumes on the Court, from hushed to strident. Indeed, over the years, he would occasionally dial up his own soft voice to make a point.

Now, in a forthcoming book, Stevens will tell what he's heard, seen, and thought working with five - *count them, five* - chief justices: Fred Vinson, Earl Warren, Warren Burger, William Rehnquist and John Roberts, the current chief: "I'm writing a book about the five chief justices that I've known, and

I've got it almost done," Stevens said, with the pride of an author whose just pulled off a hefty accomplishment. A book contract is in the works. "I think I'm going to call it *The Five Chiefs*. It's primarily personal recollections of each of the chiefs, and I also have some comments about some of their jurisprudence."

Stevens knew these men as a law clerk, a corporate lawyer, a federal appeals court judge and an associate justice. Contrary to the practice of other Court retirees, he's included a current member of the Court - Chief Justice Roberts - in his review. I wondered about his impressions of Roberts' reign thus far. After all, when President George W. Bush named Roberts Chief in 2005, Roberts spoke warmly at first about the value of collegiality among the nine justices. But he has not been entirely successful in achieving that goal. Indeed, *New York Times* Supreme Court reporter [Adam Liptak](#) has [compared the scene](#) during several oral arguments this year to a "verbal roller derby" and a "catastrophically overbooked cable television show." Stevens said that the trend has become more noticeable in recent years.

In light of the kind of verbal jousting that observers like Adam Liptak have commented on lately, is the tone -- the demeanor -- of the Court at risk today?

I haven't thought of it in that respect. I do think that an unfair amount of time is devoted to questioning that is not seeking answers but is trying to make arguments to influence one's colleagues. And I think the arguments have moved in a direction of the justices playing the role of advocate more than they should. I think that's true. It's always been true that sometimes you ask a question in order to make sure your colleagues would be aware of some point. But my impression is that it has gone further in that direction.

You say that justices are "playing the role of advocate more than they should." Advocates for what?

Often you go into an oral argument and you've made up your mind on a case and you want to convince your colleagues.

Is it ideological advocacy as opposed to fact-based or case-specific?

It could be both.

Are things more ideological now?

Well, I don't know. Of course, I haven't heard the arguments this year. I've read some transcripts.

Associate Justice Ruth Bader Ginsburg has expressed concern that an earlier, longstanding ethos of open-minded cross-fertilization of ideas on the Court seems to be fading and that there's more Balkanization. Is this something you've observed as well? You've seen a lot of history there.

There has always been a certain amount of that. There are some firmly held views that persist case after case and year after year.

The other justices to be covered in Stevens' book may not be as familiar to contemporary readers. Chief Justice Vinson, appointed in 1946 by his political chum President Harry Truman, was an uninspiring, conservative jurist whose appointment ended a loud public feud on the Court about who should be the new chief. Earl Warren, a former Republican governor of California appointed to the Court by President Dwight Eisenhower in 1953, used his political skills to produce a 9-to-0 bombshell decision ordering the racial integration of public schools, as well as a series of liberal decisions on behalf of criminal suspects. Warren Burger, an officious conservative appointed by President Richard Nixon in 1969, was not well liked by his colleagues, who violated the Court's historic secrecy to leak stories about him to reporters. And finally, William Rehnquist, a witty conservative associate justice named chief by President Ronald Reagan in 1986, reversed the liberal slant of the Warren Court on civil liberties while charming critics in the media and elsewhere.*

Stevens spoke with me as well about his decision to retire from active service. Had it arisen from any disappointment with the recent work of the Court, I wondered? He said that it had not. In 1975, he succeeded Associate Justice William O. Douglas, the Court's liberal lion who submitted his retirement letter to President Gerald Ford and blithely predicted that Ford would nominate "some bastard," according to Douglas biographer Bruce Allen Murphy. Although Douglas was by then suffering from serious health conditions -- the aftermath of a major stroke, immobility, deteriorating kidney function, slurred speech - he attempted to hang around for nearly a year as a fill-in justice before finally giving in to the reality of his physical impairments.

Stevens said he retired because, while he still loved the job of judging, he had no desire to linger beyond his physical prime. He had witnessed the final years on the bench of Douglas, Thurgood Marshall and others who should have retired earlier for health reasons. A few years ago, he secretly asked Associate Justice David Souter to tell him when it was time for him to go. But Souter left first, in 2009.

"When he retired, I knew I didn't have any safety valve anymore."

For him, the moment came on Jan. 21, 2010, when the Court announced its decision in the case of *Citizens United v. Federal Election Commission*, in favor of unlimited spending by corporations and labor unions in election contests, a ruling that would roil American politics. Stevens was reading aloud from the bench part of his impassioned dissent when his voice faltered.

Reporters in the courtroom made note of Stevens' "halting" reading, but the Court's press office found no need to issue any statement concerning Stevens' health, and there were no subsequent incidents, Stevens said. His doctor's diagnosis was "no problem."

Nonetheless, "that was the day I decided to resign," he says. "I learned giving that talk that I had a

speech problem."

**The article originally stated that Nixon made Rehnquist chief justice. We regret the error.*

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