

## Remembering Harold Stevens: The First African American on New York's Highest Court

John Caher: Welcome to Amici, News and Insights from the New York Courts. I'm John Caher.

Fifty years ago, Judge Harold Arnoldus Stevens made history when he became the first “Negro,” and I use that word to describe him because it was a description he preferred, to sit on New York's highest court, the Court of Appeals, in the 128-year history of that Court.

Judge Stevens was born in South Carolina in 1907. His father was a blacksmith. His grandfather, Quash Stevens, had been enslaved, and in fact was a son of a slaveholder and an enslaved woman. After he was freed, Quash Stevens remained loyal to the family that had held him in bondage. The Judge's middle name, Arnoldus, was passed to him through the slave owning side of the family.

When Harold was 19 years old, he was shocked by the lynching in his community of an African American woman and her two brothers who were accused of killing the sheriff. They were dragged from their jail cell and mutilated by a mob. No one was ever prosecuted for these murders. It was at that moment that young Harold decided he wanted to become a lawyer.

There was, however, a problem, *a big problem*. Black people were not allowed to attend law school in the segregated South, so he ultimately enrolled in Boston College School of Law and in 1936 became the first African American and first non-Catholic to graduate from that school. Later, Harold converted to Catholicism, which became a major focal point in his life.

Stevens moved to New York in the late 1930s, beginning his legal career as a clerk in the law office of an assemblyman from Harlem. Gradually, he developed his own reputation as a labor attorney and formed a partnership with another attorney of color. In 1946, he was elected to the State Assembly, representing a district in Washington Heights. He was elected to the Court of General Sessions, a colonial court ultimately subsumed into Supreme Court, where he went in 1955 and was promoted to the Appellate Division, First Department, in 1958 by Governor W. Averell Harriman. In 1969, Governor Nelson Rockefeller named Judge Stevens Presiding Justice, the first “Negro” to ever hold that position. In 1974, Governor Malcolm Wilson appointed Justice Stevens to the Court of Appeals for an interim term.

At that time, the court was an elective bench, and Judge Stevens had to seek election that November. He was one of five candidates seeking two positions, and on election day, he finished third. He returned to the First Department, where he served until his retirement in 1977.

Judge Stevens died in 1990, and regrettably is not here to share his remarkable story. His wife, Ella Myers Stevens, died in 2003 at the age of 95. They had no children. However, the two attorneys who served as his confidential law clerks at the Court of Appeals—Robert McGreevy and Lawrence Zweifach— are with us today to share their impressions of this extraordinary man and his extraordinary, albeit brief, tenure on the Court of Appeals.

Bob, Larry, I can't thank you enough for coming on the program.

We know what's in the public record about Judge Stevens, and I mentioned a bit of it in the introduction, but you two knew him in a way that few others did. What was he like as a person? What was he like in chambers? Bob, why don't you get us started?

Robert McGreevy: He was the same to everybody, whether it was a governor, a judge, a janitor. He treated everybody equally and with courtesy. He was not overbearing or demanding. He was described to me once as a true southern gentleman, and I would say that was a very apt description of him. He was humble, he was unassuming. He didn't walk into a room and say, "Here I am!"

John Caher: Larry, what are your recollections?

Lawrence Zweifach: Well, first, let me say, I agree with everything that Bob just told you. I too thought the Judge was remarkably modest for someone with his extraordinary accomplishments. And if I've learned anything over the years, the modesty and humility that Judge Stevens displayed was very rare in our profession where you have some big egos both for judges and lawyers alike. I thought he was very warm and compassionate, as Bob indicated, and I saw that in the way he interacted with people. He really cared about the parties in the cases before him. He didn't think of them merely as abstractions in a caption, but as real people with real issues that he had to think very hard about. And I also thought he was very outgoing in his own soft-spoken way. Bob and I saw that constantly.

John Caher: Sounds like he's the kind of guy who was the same in public as he was in private.

Lawrence Zweifach: Absolutely, absolutely! And at the same time, the Judge held himself to very high standards, and he likewise expected Bob and I to meet those standards. He was a really hard worker. And in chambers, he was all business. Bob reminded me the first day there we had to be all business because of the extraordinary caseload that we had to deal with. We had to make sure that the judge was fully prepared for oral argument and conferences.

The way that the judge's chambers operated felt similar to a law firm. The Judge was a senior partner. Bob and I were associates, and we had a lot of work to do. So, it was really a 24/7 job and not a lot of down time for stories or chit-chat. We just had to keep our heads down and work very hard. And in some ways, although the Judge was very open, he was also, I thought, a somewhat private person in some ways. As much as I would've loved to have him just regale Bob and me with stories, he was always working at a furious pace. He got to chambers early and left very late at night.

John Caher: Did he reflect often or at all on the fact that he was making history as the first, I guess he would say "Negro," on the Court of Appeals? Bob?

Robert McGreevy: No, I think it was more important or significant perhaps to the Governor and maybe the other judges. Judge Stevens definitely was aware of the fact. I mean, he was the first African American on General Sessions, the Supreme Court, the Appellate Division, PJ at the Appellate Division, and then the Court of Appeals. So, he was a true trailblazer, but he did not wear that on his sleeve in any way whatsoever that I was ever aware of.

He knew that because he was the first "Negro" on General Sessions, that everybody would be sort of keeping an eye on him. And so, he worked very hard. He knew that he was going to be judged, needed to do a good job, and he set out to do that. He did his entire career.

John Caher: Let me step back. I mentioned earlier that Judge Stevens identified as "Negro" rather than "Black" or "African American" or "of color." Why was that?

Robert McGreevy: Well, all of those are fairly recent descriptions. For many years, probably before and after the Civil War, people were referred to as "colored." About 100 years ago in the 1920s, W.E.B. DuBois and other people decided that they preferred "Negro." And so "Negro" became the preferred term until the middle to late sixties when the Black Power Movement came, and Stokely Carmichael and others began talking about "Blacks."

I think it was a generational thing. Judge Stevens was of the generation that was comfortable with describing themselves as a “Negro.”

I'll just give you one little tidbit. There was a case, State Division of Human Rights against Killian Manufacturing, involved a manufacturing plant upstate that had no Negro or Black employees, and a complaint was made. It came to us and he wrote the opinion, which basically remanded it for more proceedings. He referred to “Negroes,” and he got a call from Chief Judge Breitel who said, “Harold, you can't use ‘Negro.’” He says, “You've got to use ‘Black.’” And then the debate was whether you capitalize Black or lowercase Black.

But I think he and others, including Thurgood Marshall, used Negro. Thurgood Marshall, used it last I think in a 1988 Supreme Court opinion. So that's how these descriptive terms have evolved.

John Caher: Well, thanks for the insight and the historical lesson. It was very interesting.

John Caher: Do you think that he was ever bothered about being referred primarily as the first African American in the Court of Appeals, rather than as a very well qualified judge who deserved to be there purely on his legal acumen?

Lawrence Zweifach: I think it's unfortunate that these simplistic, one-dimensional labels are often used by journalists and sometimes politicians to describe complex, multifaceted individuals. And I have to say, I'd be shocked to learn that any of the judges and lawyers with whom Judge Stevens dealt thought of him merely as a “Black judge.” And if I were a lawyer getting prepared to argue before the Judge, I'd be focusing on the fact that he was incredibly smart and had decades of experience and was always well-prepared, and I therefore had better be very well-prepared myself.

And my sense about the Judge, I don't know what Bob thinks about this, is that in his heart of hearts, he knew that his colleagues on the bench, on the Appellate Division and then the Court of Appeals had tremendous respect for him, for his intellect, his depth of knowledge, his deftness in conferring with them on potentially divisive issues. And I just don't think that he thought anyone would just be thinking about him as the “Black judge” and had any concern about that. Now, if there are references like that in the newspapers, I think he would attribute it to the fact that it is merely the nature of the press we have today.

John Caher: Did he talk much about his roots in South Carolina or his family history?

Robert McGreevy: Not so much in the court. As Larry said, when we were working, we were working. I had the opportunity when he was running for election in the fall to spend maybe more time one-on-one with him than Larry, and he would tell me stories.

John Caher: Now at the Court of Appeals, was he treated as a full equal by the other judges, by the staff?

Robert McGreevy: Absolutely, 100%. It was a colorblind experience. It really was. As I say, they got along famously.

Lawrence Zweifach: I completely agree with Bob. And with regard to the esteem that the other judges on the Court held Judge Stevens, I don't think that any of the other judges serving on that court had the same depth of experience and accomplishments that Judge Stevens had as a trial judge, as a practicing lawyer, legislator, and then as an appellate judge on the Appellate Division. If you look at the totality of his experience, I don't think any other judge on that Court had his depth of experience. So I think he was looked upon as just an incredibly valuable member and resource for them.

John Caher: Larry, you told me offline that in those days the judges' secret conferences were recorded for the benefit of the clerks who would help them draft opinions. I imagine you got an earful. What were those conferences like and how did Judge Stevens present himself and hold up with other pretty powerful intellects there — Chief Judge Breitel, future Chief Judge Wachtler, Associate Judges Stanley Fuld and Matthew Jasen?

Robert McGreevy: No, Fuld was gone.

John Caher: Oh, was he was gone by then? Okay. But in any case, how did he stand up in conference with people like that?

Lawrence Zweifach: In my view, Judge Stevens did more than hold his own. He was incredibly bright. He had his own style of persuasion, but using his own style, he was incredibly persuasive and he was able to draw upon years and years of experience he had at the Appellate Division where he saw a really broad range of cases, and as a trial judge where he had deep experience both in commercial cases and criminal cases. So, he was just very adept at speaking his mind. And I think the other judges found him very, very persuasive. I should add also, because when I got to the Court I was so surprised to learn that these conferences were recorded, and I was very surprised when I listened to them because I thought that judges would sound like they did in their opinion, written opinions.

And then all of a sudden I heard these judges talking like real people and talking about the overall equities in the case. Who's the good guy? Who's the bad guy? If it was a criminal case, what was the nature of the crime? What was the defendant like? What was the sentence? Was he or she recidivist? What was discussed were all the real-world issues that you would think would be important for an appeal. But here were the judges talking about all those considerations that might not find their way into an opinion.

John Caher: There's some observers that say that on his one year on the court, his greater contribution was in the field of administrative law. Do you agree with that, Bob?

Robert McGreevy: Well, his best-known opinion is *Pell v. Board of Education*. Anytime you have an administrative law appeal, I would venture to say *Pell v. Board of Education* gets cited in the briefs. That's the one they mention. However, his opinions covered all facets of the law, including human rights, employment issues, the Warsaw Convention, matrimonial and criminal cases.

John Caher: Now, observers have suggested that he was really a swing vote that one year with a tendency to vote along conservative lines. And Judge Stevens in fact described himself as, "Not a total conservative, but not a total radical." What do you think of that, Larry?

Lawrence Zweifach: Look, my view on that is, before I give you the substantive answer, I don't think these labels of "conservative" or "liberal" do a very good job of really capturing the nuanced jurisprudence of appellate judges and particularly Judge Stevens. And as Bob suggested, I never thought of Judge Stevens as being pro-business or pro-individual in commercial cases, or pro-prosecution or pro-defendant in criminal cases, or pro-management or pro-union in labor cases. And the categories that I think are more helpful would be whether either a court or a judge leans towards judicial restraint or judicial activism. And of course, there could be liberal activism or conservative activism, and the same is true for judicial restraint.

My sense is that in balance, Judge Stevens favored restraint when it came to interpreting statutes and deferring to the intentions of the Legislature. And at the same time, I thought he really weighed heavily the importance of abiding by precedents and maintaining those precedents, unless there was a strong reason to overturn them. And I thought in addition, because he spent so much time at the trial level, he knew it was important to give clear guidance to trial courts and the Appellate Division and when it came

to the holdings of the court and the way they were framed and articulated.

He did not believe in grandiose sweeping pronouncements the way some judges do and as reflected in the way they write, where it would sound good, but then the lower courts and litigants would be left clueless as to what it meant, and there would be more litigation flowing out of those opinions. So, I think it was important for him to uphold the legitimacy of the court and its reputation. Although, I know I've heard the term "conservative" applied to him, I just don't think that was accurate. I mean, as Bob said, he decided each case the way he saw them, and you never knew where he was going to come out. But I think in the world of activism and restraint, he leaned towards restraint for purposes of making sure that the court maintained its legitimacy.

John Caher: Chief Judge Wachtler had described him in a somewhat different way and said he brought to the court "a deep understanding of the human condition... which found its way into his decisions." I should probably ask Judge Wachtler this question, but Bob, what do you think he meant by that?

Robert McGreevy: Well, I think, as Larry said earlier, he was very much aware of the fact that these weren't abstract legal exercises. These were cases that involved people and had very serious implications for them. He was very level, I would say. We deal in extremes, but he was moderate. And as Larry said, people tend to stereotype people and say, "Oh, well, he was African American. He must have been a liberal judge." And when he wasn't, he didn't come across maybe to certain people as liberal as they would like him to be, then they would say, "Oh, he's conservative." He was essentially colorblind. He didn't pander.

John Caher: He lost the '74 election. What was his reaction? Was he surprised? Was he crushed? Was he bitter? Did it affect his opinion of the elective versus appointive system of selecting Court of Appeals judges?

Lawrence Zweifach: I think Bob has a better perspective on this than I do because of the time he spent with him trying to assist him during the campaign—at least the limited time he did campaign. My sense was that he was very, very disappointed, but not crushed, not bitter. I think he was a pragmatist and understood that notwithstanding the fact that the prestigious New York City Bar rated him highly qualified and preferred, that might not carry the day with voters. And also, he was with an incredibly hard-working job on the New York Court of Appeals, where, as a practical matter, there was no time to run a full-blown campaign. It's impossible. So, I think he

realistically knew that this was going to be a real challenge, and I think he was not one to, in any way, step away from his duties on the Court to go out and campaign.

John Caher: There are some who suggest that that election was really the straw that broke the camel's back of the elective system and led to the appointive system. Now, under the new appointive system, the court still went another decade before another African American judge. Then Fritz Alexander was appointed to the court in '85.

Lawrence Zweifach: I got to say that in my mind, it was unconscionable that it took till 1974 that there was a Black judge appointed to the New York State Court of Appeals. And then after the Judge lost the election, it took another 10 years for another Black judge to be appointed. So, from my standpoint, there has to be a weakness in this new appointive system that was put in place for that type of gap to take place. And I think it was sad that history was made in 1974, and then you have to wait 10 years for a Black judge to be appointed. So, it's unfortunate.

Robert McGreevy: I think the politics just moved from the local clubhouse to the bar associations.

John Caher: Do you think in any way the 1974 election was the impetus for doing away with the elective system, and going to an appointive system for the Court of Appeals?

Robert McGreevy: Well, I think that it certainly was the beginning, but it wasn't so much Judge Stevens as it was Jack Fuchsberg. I would say for at least 50 years prior to that, and probably even more, judges of the Court of Appeals were selected from among the most distinguished lower court judges. They essentially all had been lower court judges.

Along came Jack Fuchsberg, and he was an interloper. He ran for Chief Judge the year before, in '73, against [Chief Judge] Charlie Breitel, with a very well-financed campaign and came back in '74 and won his seat on the Court. I think it was more that the so-called "establishment" didn't want an instance where any well-financed lawyer could wind up on the highest court in the state. I think that was more the impetus. If it was a different person, or if Stevens had lost to another judge, which in some respects he did—he lost to [future Chief Judge] Larry Cook *and* Jack Fuchsberg. But I think the fact that there was an interloper probably gave it momentum.



'74 was post-Watergate. Nixon had resigned, and the times, they were changing, and they decided that they thought they knew better than the electorate when it came to choosing judges.

John Caher: What did Judge Stevens think of the elective versus appointive system? Did he ever express an opinion on that to you?

Robert McGreevy: No. Because when he went up, he didn't go up with the idea that he had to campaign. The Court of Appeals judges were not expected to campaign. He was told that he should go to the Democratic Convention to get the nomination, and he did.

He and Larry Cook were the nominees at the state convention, but then Fuchsberg primaried them and he knocked out Stevens in the primary, so that Harold Stevens, who was a lifelong Democrat, wound up running on the Republican, Conservative and Liberal ticket in a year that basically resulted in Democratic landslides across the country because of Watergate. It was not a popular time to be a Republican, and he was not well-known outside the legal community or New York City. He actually ran very well upstate as a Republican, but he was swamped in Brooklyn by Larry Cook and Fuchsberg and he didn't win his own county. He didn't win New York County. So, that's politics.

John Caher: I've taken a lot of your time. I'd like to close by asking each of you how Harold Arnoldus Stevens impacted you on both a personal and a professional level. Larry, why don't you get us started?

Lawrence Zweifach: Sure. Well, working for Judge Stevens certainly had a profound impact on me. As I mentioned earlier, Judge Stevens set an extremely high standard, and it's a standard that Bob and I both had to live up to. And it's something that I took with me when I left the Court. I've tried to maintain that throughout my career and everything I learned about that during this formative stage in my career, I learned from Judge Stevens. In addition, there were lessons he taught me that were particularly valuable when I became a federal prosecutor. He taught me about the extraordinary power and responsibilities that prosecutors have in our criminal justice system.

Because of what I learned from the Judge, when I was a prosecutor I tried to exercise prosecutorial discretion wisely and carefully. Whether it was a charging decision or another important decision in a case, I'd always ask myself, what would be fair and just? What would be the just result? Which is something that Judge Stevens always asked in every case. And I think in many ways, he served as a role model for me when it came to

whatever job I ever held, trying to find a just and fair answer to every issue that I had to grapple with. And I think finally, maybe the most important lesson that Judge Stevens taught me, was to remain humble. And I thought if he could remain humble after all that he had accomplished and the barriers he faced, I could certainly remain humble too.

John Caher: Wow, what a great legacy! Bob, how about you?

Robert McGreevy: I would say, I would agree with Larry that he was very fair and he wasn't swayed by what popular opinion might think one way or the other. He called cases and in his dealings with people the way he saw them. Call the balls and strikes the way you see them and decide the case on the merits without any agenda.

John Caher: Gentlemen, thank you for your time and your insight.