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A SUPREME COURT  
MEMOIR

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FIVE  
CHIEFS

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JOHN PAUL STEVENS

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# FIVE CHIEFS

*A Supreme Court Memoir*

John Paul Stevens



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# Five Chiefs

*To my beautiful wife, Maryan, with thanks for keeping  
me healthy and happy*

The world will little note, nor long remember,  
what we say here. . . .

— *Abraham Lincoln, Gettysburg, Pennsylvania,*  
*November 19, 1863*

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# Five Chiefs





# Introduction



Professor Nathaniel Nathanson sitting behind his desk and talking to an unidentified student at Northwestern University School of Law.



IT WAS IN THE fall of 1945, when I was a member of the entering class of freshmen at the Northwestern University School of Law, that I first met Nathaniel Nathanson, the professor who taught constitutional law. Nat was to have a profound influence on my understanding of the law during the ensuing years. His students sometimes referred to his class as “Nat’s mystery hour” because he seemed to raise an endless number of questions but provided us with few solutions. He thought it more important to teach us how to find answers for ourselves than to indoctrinate us with his own views. A brilliant and lovable man, he inspired the affection and respect of the entire class. We were also impressed by the fact that in 1934 he had served as a law clerk to Justice Louis Brandeis, a jurist who was then — and still is — considered one of America’s greatest judges.

In later years, events that were then unpredictable gave me a special reason for treating Brandeis as a hero. When Brandeis retired, in 1939, Justice William O. Douglas was selected to fill his vacancy, and after Justice Douglas set the record as the longest-serving justice in history — a record that still stands — he resigned in 1975, and President Ford nominated me to fill his vacancy. I like to think that I inherited not only Brandeis’s seat but also some of his ideas and his respect for the law.

I well remember Nat’s account of the culmination of his first assignment as a law clerk. Justice Brandeis had directed him to prepare a set of memos and deliver them to his home early in the

morning. Instead of ringing the doorbell or knocking, he had been instructed, he should simply slip his work under the front door. He did so, and they were silently withdrawn from within. No conversation was necessary to ensure on-time delivery of future memos.

As a law clerk in 1934, Nat surely had personal contact with Charles Evans Hughes, then the chief justice, and with Associate Justice Harlan Fiske Stone, who would succeed Hughes as chief in 1941. I never set eyes on either of those chiefs, for I was still a first-year law student on April 22, 1946, when Stone suffered a fatal cerebral hemorrhage in open court.

President Harry Truman promptly nominated Fred Vinson — who had already served in all three branches of the federal government — to fill the vacancy. Vinson became the thirteenth chief justice of the United States — and the first with whom I would speak — on June 24, 1946. Over the years following my graduation from Northwestern in 1947, I had personal contact not only with Vinson but also with his four successors, Earl Warren, Warren Burger, William Rehnquist, and the Court's current leader, Chief Justice John Roberts.

My objective in writing this book is to share memories of these men and their work that may enable readers to receive insights similar to those that Nat conveyed to me six and a half decades ago. I do not intend to provide a comprehensive review of their jurisprudence or tenures. Instead, I hope that my recollections will improve public understanding of their work and the office that they each occupied with honor and varying degrees of expertise.

The chief justice of the United States has often been described

as the “first among equals.” He is “equal” because, like each of his eight colleagues, he has only one vote. It takes a majority of equally powerful votes to support a decision on the merits in any case before the Court. To achieve a desired outcome, the chief justice must convince as many colleagues to join him as must any other justice.

For that reason, as Byron White — who served as an active justice for thirty-one years — frequently observed, the confirmation of any new justice creates a new Court with significantly different dynamics than its predecessor. One could argue that 2010, when Elena Kagan joined the Court as its 112th justice, marked the inauguration of the Kagan Court rather than the continuation of the Roberts Court. If so, the Court that Lewis Powell and Bill Rehnquist joined in 1972 would be better termed the Powell-Rehnquist Court than the Burger Court.

But naming conventions are otherwise: Historians treat the story of our nation’s more than one hundred different Courts as though it contained just seventeen chapters, each named after the chief justice whose tenure it tracks. In these memoirs I shall therefore include separate chapters discussing each of the five Courts during which I had some personal contact with the chief justice. Because the entire history of the Court includes only seventeen chapters, I begin with a brief review of the first twelve of those chapters. A full account of the tenure of each of the first twelve individuals who have presided over the Court could fill twelve books, but I will limit myself to a quick glimpse of each. I will then describe the unique duties of the officer whom Congress has described as the “Chief Justice of the United States.” And, having served as the senior associate justice during my last

fifteen years on the Court, I shall close with a few comments on the role of the person who might be dubbed the “second among equals.” Because I shall refer to different provisions of the Constitution so frequently, I have included the entire text of that document in an appendix to this volume.

My reminiscences about Fred Vinson, Earl Warren, Warren Burger, Bill Rehnquist, and John Roberts make up the body of the book. For each of them, my memories primarily reflect a different point of view: that of another justice’s law clerk for Vinson; of a practicing lawyer for Warren; of a circuit judge and junior justice for Burger; of a contemporary colleague for Rehnquist; and of an observer of superb advocacy before Roberts became a colleague. Because of those differing points of view, some autobiographical comments must be tolerated.

# I

## The First Twelve Chiefs



John Marshall, Chief Justice (1801–1835)

Bronze statue of Chief Justice John Marshall by William Wetmore Story. The statue depicts Marshall seated in his judicial robe with his right hand outstretched as if he were discussing the document curled up in his left hand.



