

JUSTICE JOHN R. STEGNER: THE VIEW FROM INSIDE CHAMBERS

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ABSTRACT

Mentors can make all the difference. And judges play a unique role in mentoring new legal professionals who serve as their law clerks, through teaching, and modeling professional behavior and expectations. One of retiring Justice John R. Stegner’s legacies is the influence that he has had on the legal profession through the lawyers that he has taught and mentored at the beginning of their careers. Authors Danielle J. Forrest, United States Circuit Judge for the United States Court of Appeals for the Ninth Circuit, and Jaycee Nall, Senior Counsel at United Heritage Financial Group, reflect on the impact that Justice Stegner has had as a mentor over the course of his judicial career on the Idaho trial and appellate bench. Judge Forrest discusses her time working as an extern for Justice Stegner when he was serving as a trial judge in the Second Judicial District of Idaho and the lessons that he taught her about how people should be treated, the duty of public service, and true mentorship. Ms. Nall describes her time clerking for Justice Stegner on the Idaho Supreme Court and the influence he has had on the state’s highest court. Both authors also discuss Justice Stegner’s impact and guiding hand in their careers.

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I. INTRODUCTION: JUDGES AS MENTORS

The American legal profession began with an apprenticeship model. The Founders “read” the law under the supervision of an experienced lawyer instead of attending law school—there were no law schools.¹

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1. Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WIS. INT’L L.J. 335, 341–42 (2006) (“The schools that evolved from these [apprenticeships] were the beginnings of institutional legal training in the United States.”).

While the legal profession in the colonial era was ostracized and deemed unnecessary, by the days of the early Republic, the apprenticeship model helped produce a generation of lawyers who came to be seen as instrumental to the growth of a budding nation.² Modeling themselves after some of the greatest judges of early American history, including Justice John Marshall, lawyers in the early nineteenth century began cultivating the “ideal of the lawyer-statesman, with its emphasis upon the twin virtues of practical wisdom and devotion to the public good.”³

Today, the apprenticeship model has largely gone by the wayside, but its vestiges exist in the judicial clerkship system.⁴ Inexperienced lawyers are selected to work closely with judges helping to research and analyze pending cases and, often, draft opinions and other writings. Both judge and clerk work together to solve interesting and sometimes perplexing problems, which is demanding work because of the responsibility that comes with decision-making authority. The nature of this work and the proximity in which it is done often foster deep relationships that extend beyond the clerkship. Reading, thinking, and wrestling with ideas together engenders a unique understanding of the other person’s beliefs and views about the world. The judge and clerk are intellectual companions. And this companionship necessarily builds familiarity and camaraderie. Indeed, some contend that “a successful friendship ma[kes] the most successful working relationship” for a judge and clerk.⁵

While most law clerks serve for a short time, usually a year or two, the professional connection and benefits can extend long after. The tradition has been, and most judges accept, that part of the judge’s responsibility is to mentor his or her law clerks and instill in them a commitment to excellence and service to the law and the profession. Indeed, judges often play a seminal role in the professional lives of their clerks, not just imparting knowledge and skills as a technician of the law but also instilling the civic virtues of the legal profession.⁶ Judges hope that their clerks will carry on the lessons taught during the clerkship and model professionalism, integrity, and excellence that reflect well on the judge. And clerks hope their judge will help them get jobs and advancement in the profession and continue to serve as a confidant when difficult decisions (professional and personal) arise. It is unique to have a professional decision-maker in your network that can be a sounding board when the need arises!

2. *Id.* at 337, 340.

3. Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: An Historical Framework - A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s*, 39 J. MARSHALL L. REV. 1041, 1045, 1124 (2006).

4. See Todd C. Peppers, *Birth of an Institution: Horace Gray and the Lost Law Clerks*, 32 J. SUP. CT. HIST. 229, 231 n.7 (2007) (citing ARTEMUS WARD & DAVID L. WEIDEN, *SORCERERS’ APPRENTICES: 100 YEARS OF LAW CLERKS AT THE UNITED STATES SUPREME COURT* (2006)).

5. Laura B. Bartell, *A Splendid Relationship—Judge and Law Clerk*, 52 LA. L. REV. 1429, 1434 (1992).

6. Jones, *supra* note 3, at 1153.

When identifying a judge's legacy, often thoughts turn to the opinions that the judge has written or the positions that the judge has held. But another measurement of a judge's legacy is his or her enduring influence on the legal profession through those the judge mentored. Those seemingly fleeting words spoken in day-to-day interactions between judge and clerk, mentor and mentee, set the tone for a new lawyer's entire career. It is in those moments of interstitial dialogue—the debriefs after a case is resolved, the lunchtime roundtables discussing future career plans, the edits to a clerk's draft opinion—that a judge passes on wisdom to the next generation of legal practitioners and scholars. And as those whom a judge has mentored advance in their careers, they pass on the lessons learned to others.

Justice Stegner has had numerous clerks and externs serve in his chambers over the years. They have gone on to private and government practice in Idaho and beyond. Some have started their own law practice. A couple have been selected to serve in the judiciary. We both served in Justice Stegner's chambers, one of us as an extern when he was trial judge in the Second Judicial District of Idaho and one of us as a law clerk when he was on the Idaho Supreme Court. We have both benefitted from his personal and professional mentorship. In marking Justice Stegner's retirement from the bench after 26 years of serving in the Idaho judiciary, we take this opportunity to share the impact that he has had on us and, from our observation, the legal profession.

II. THE EXTERN

When I entered then-Judge Stegner's chambers after my 1L year of law school, I had never been around any lawyers except my professors. I probably expected court to be something like what you see on television because that was my only frame of reference. I don't recall what I thought judges would be like, but whatever it was, Justice Stegner challenged my expectations. Being in his chambers and observing him work opened my eyes to the practice of law and the role of the judge. It was a formative experience that has influenced me at every stage of my career. I gained a dedicated mentor and friend, and I was introduced to the work that would become my future.

I only served in Justice Stegner's chambers for three months, but the lessons I learned from him are many. I share three.

The first lesson I learned from Justice Stegner was how to treat people. He was attentive and respectful to everyone. He was more than just a boss to his judicial assistant and took an interest in her family and life outside of work. He showed gratitude to the staff that supported the court's operations. He was courteous to lawyers and allowed them to advocate for their clients and present their cases without unfair interference or commentary. But most striking to me was how he treated litigants. Sitting in the back of the courtroom observing trials and other hearings, I saw a judge patiently focused on the people whose lives were at issue, deeply concerned about how his decisions would impact them.

One sentencing hearing in particular epitomizes what I observed of Justice Stegner's courtroom demeanor. The defendant was a young man from Southeast Idaho. He moved to Moscow to attend the University of Idaho. He was being sentenced for kidnapping after refusing to let the employees of a fast-food restaurant leave after the restaurant closed on threat of violence. I did not have much sympathy for the defendant. His actions seemed inexplicable. He did not have the problems that many in the criminal justice system face. He had a middle-class, intact family that was present throughout his life and supporting him in court. He also had other community and social supports. He had not experienced abandonment or financial desperation, nor was there any indication that he suffered from mental-health challenges. He just made a series of bad choices, including terrorizing two innocent people. I did not see a basis for extending him mercy.

Justice Stegner saw things differently—a bigger picture. Because the victims were not physically injured during their ordeal and the defendant had no criminal history and significant support, Justice Stegner gave the defendant a path to avoid prison. Justice Stegner spoke forthrightly to the defendant about what was required of him and what would happen if he did not comply. He also spoke to the defendant about the impact of his choices on the victims as well as on those who cared about him. Justice Stegner did not make or accept excuses for the defendant's behavior. But he conveyed hope—that the defendant did not have to be the person he was on the day of his crime and that his choices on that day did not have to define his life. At one point, Justice Stegner had the defendant turn around and look at his family and friends who were present and acknowledge their care and support. The demeanor of the people in the courtroom that day was not contentious or defiant even though the defendant was being held to account. When it was over, I still was not sure that I agreed with Justice Stegner's decision, but I was sure that if a judge's treatment of a criminal defendant can make a positive impact, this defendant probably had it as good as it gets. And to this day, it was one of the most moving experiences that I have ever observed in a courtroom.

In the legal profession we talk a lot about ethics and the proper way to conduct ourselves. We take seminars about treating others with respect and fairness no matter their station. Justice Stegner taught me this lesson simply by living these principles. The lesson I learned from his example has served me well throughout my career, but it was particularly important when I was serving as a state court trial judge. I am not a patient person by nature. When the challenges and chaos that come with state court would start to fray my demeanor, I often thought about Justice Stegner's courteous and even manner and how he would handle the situation. That saved me from doing something I would have later regretted more than once.

The second lesson that I learned from Justice Stegner is the importance of *servicing* the law. He enjoyed grappling with his cases. He studied the factual details presented and the overarching doctrinal principles at play. From watching him, I saw that judicial work requires serving both the individual litigants and the law as an institution: judges must apply the law to individual cases while also ensuring that

their decisions fit within the tapestry of the law. But his service extended beyond deciding cases.

Consistent with his interest in each individual, he devoted significant time to developing and presiding over treatment courts where he helped criminal defendants struggling with addiction and mental illness change their lives for the better. He recently stated that this was “the most gratifying work [he has] done as a judge.”⁷

He also volunteered countless hours to further legal education in Idaho. I remember him handling a full docket of cases during the day and then teaching a class or coaching a student competition team at the University of Idaho College of Law in the evening. He has served on advisory and tenure-review committees for the law school and worked on numerous initiatives seeking to improve legal education and the profession as a whole. Indeed, the College of Law awarded him the Sheldon A. Vincenti Award for Exemplary Service, which recognizes those who provide extraordinary service primarily in terms of “time, ideas, energy, and internal or external support.”⁸ And he has written about⁹ and taught the law to practitioners and judges. Justice Stegner did not do these things because he couldn’t think of other things to do. He has interests outside the law and certainly could have filled his time in other pursuits. He did it because he believes in the law and its role in maintaining a peaceful and prosperous society, and his actions make clear this is more than just a platitude to him.

Justice Stegner introduced me to the Inns of Court, an organization that promotes “the highest level of professionalism through example, education, and mentoring.”¹⁰ And he talked to me about why he felt his “extracurricular” projects with the law school and the Idaho judiciary and bar were important. Working with someone who exemplifies public service is infectious and, because he was my first mentor, and the first practitioner that I knew, I thought everyone would be like him. Of course, I was wrong. But the standard that he held for himself has guided some of my choices because I knew that if I wanted his respect, my work would need to serve interests beyond my own.

7. Elizabeth Fleming & Andrea Chambers, *From Treatment Courts to the Supreme Court: Q&A with Three State Supreme Court Justices*, JUST. CTR., THE COUNCIL OF STATE GOV'TS, (Nov. 28, 2022), <https://csgjusticecenter.org/2022/11/28/from-treatment-courts-to-the-supreme-court-qa-with-three-state-supreme-court-justices/>.

8. *Sheldon Vincenti Award*, ISSUU (2021), <http://issuu.com/uidaho/docs/commencement-spring-2021/s/12278153>.

9. A non-exhaustive list of Justice Stegner’s publications includes: Justice John Stegner, *IDSC Opinion - Homeland Determination* (2019). *In re* CSRBA Case No. 49576 Subcase No. 91-7755, 165 Idaho 517, 448 P.3d 322 (2019); John R. Stegner, *Why I Let Jurors Ask Questions in Criminal Trials*, 40 IDAHO L. REV. 541 (2004); John R. Stegner, *State v. Scotts: Impasse at Rapid River*, 17 IDAHO L. REV. 173 (1980).

10. *Our Vision, Mission and Goals*, AM. INNS OF CT. (2017), https://home.innsforcourt.org/AIC/About_Us/Our_Vision_and_Mission/AIC/AIC_About_Us/Vision_Mission_and_Goals.aspx?hkey=27d5bcde-8492-45da-aebd-0514af4154ce.

Finally, Justice Stegner showed me how to be a good teacher and mentor. Many are in a position to teach, but not all do it well. Justice Stegner's primary teaching method was by example. Although he spoke many lessons and shared many words of wisdom that were meaningful in the moment, I do not remember most of them. But I have not forgotten his actions. That itself has been a significant lesson.

His other primary means of teaching was by involving others in his work and letting the teaching moments present themselves. For example, I learned the basic principles of legal research in law school, but it was in Justice Stegner's chambers that I came to understand why careful research and the study of precedent matters. One of my assignments was helping him with a summary judgment motion. After reviewing the parties' briefs, Justice Stegner asked me to independently research the law governing the key question he had to decide. I found a case on point that the parties had not raised, and that case ended up being significant to Justice Stegner's decision. Seeing the real-world impact that our research had on the outcome of a case grounded what I was learning in the classroom to the practice of law.¹¹ It also showed me how the quality of lawyering can influence the decision-making process.

When I was in Justice Stegner's chambers, we often discussed the issues that he had to decide before heading into a hearing. He expected me to study the issues carefully and share my opinions and the bases for them. When I did so, he listened and asked questions to test my thinking. It has been said that "[i]f [a] law clerk is fortunate and the judge wise, the clerk . . . will be utilized as a sounding board and devil's advocate in the decision-making process."¹² Justice Stegner generously provided me a glimpse of this dynamic even though I was only a student. I have no doubt that my reasoning was often underdeveloped or simply wrong, but he nevertheless treated my contribution as valuable. When I found the missed case in my summary-judgment assignment, he read part of the memorandum I wrote to him during the motion hearing. I was shocked. Why was he relying on something written by someone who only had one year of law school? What if I was wrong?

These experiences, and many others, taught me practical skills and also gave me confidence. Justice Stegner communicated that he trusted me by giving me real work to do and utilizing my work product when it had value, and his faith in me helped me to start believing in my ability. This is the hallmark of teaching. As the adage says: Tell me and I forget, teach me and I may remember, involve me and I learn. I have tried to remember this principle when teaching law students, working with new lawyers at my firm, and now with my own law clerks. And I am certain that

11. See John Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process: Perceptions of the Qualities and Functions of the Law Clerks in American Courts*, 80 MICH. L. REV. 605 (1980) (explaining that the "dialectic between the brashness of youth and the restraint of age, between theories of the classroom and the pragmatism of bench and bar" is a product of the ideal clerkship experience).

12. *Bishop v. Albertson's Inc.*, 806 F. Supp. 897, 900 (E.D. Wash. 1992); see also Rick A. Swanson & Stephen L. Wasby, *Good Stewards: Law Clerk Influence in State High Courts*, 29 JUST. SYS. J. 24, 39–40 (2008).

any measure of success I have had in these endeavors was increased by Justice Stegner's example.

When I reflect on my interactions with Justice Stegner as a student and over the course of my career, I am convinced that he has been a formative influence not only because he has integrity and is devoted to the law and its role in our society, but because he values the individual and has been generous in sharing his time and investing in my learning. Not all judges do this because training law students and new lawyers takes tremendous effort (and some don't place much value on the contribution of law clerks¹³). But teaching new lawyers intellectual rigor, good judgment, and high ethical standards, along with practical skills, improves the legal profession as a whole. Justice Stegner is one of the best. And I have been incredibly fortunate to have had his mentorship from the start of my professional life.

III. THE LAW CLERK

I was a law clerk for Justice Stegner shortly after he was appointed to the state's highest court in 2018. To say that Justice Stegner has impacted my career would be an understatement. Indeed, he began to do so before I was even set foot in his chambers. I interviewed with Justice Stegner at the University of Idaho College of Law's Boise campus, which at the time was located directly across the street from the Idaho Supreme Court. At the time, Justice Stegner was still a district court judge in the Second Judicial District. He asked me why I hadn't applied to clerk on the Idaho Supreme Court. I explained that I was the first in my family to attend university let alone a post-graduate degree, and I did not know how early one needed to apply for those clerkships. Somewhat unbelievably, after finishing our interview, Justice Stegner told me he was going to go over to the Supreme Court and see what he could learn about available clerkships for me. He left our interview, walked over to the Supreme Court building, and tracked me down afterward to tell me that he had tried to see if there were any available positions. I was blown away that this judge would go so far out of his way to help a student he barely knew. I would learn that this was the type of leader and advocate Justice Stegner is. He would make all efforts to help those around him. After he went to such lengths for me, I knew that I wanted to clerk for him if he gave me the opportunity to do so. (Little did we know then that we would both end up working at the Supreme Court building anyway!)

Once I joined his chambers, Justice Stegner's impact on my career continued. He also connected me with Judge Forrest, the co-author of this paper, which led me to clerk for her on the United States Court of Appeals for the Ninth Circuit. Justice Stegner has always been one of my biggest advocates, and I feel very lucky to have learned from him.

While I am certainly fortunate for my experience, Idaho is also very lucky to have had Justice Stegner on the bench for so long. He served on the district court

13. *Bishop*, 806 F. Supp. at 899–900 (“Each judge has his or her own concept of what a law clerk is and does. Some squander talent by relegating clerks to mundane clerical tasks.”).

for 21 years before being appointed to serve on the Idaho Supreme Court. He served on the Idaho Supreme Court for 5 years before announcing his retirement. In that nearly 26 years, he has had a lasting impact on the state of Idaho. Like my co-author, I will share three lessons that I learned from Justice Stegner and how he exemplified those lessons while serving on the Supreme Court.

Justice Stegner often taught through storytelling. I don't credit Justice Stegner with creating these stories. I imagine that many of them exist in the zeitgeist. He would often start by saying, "Did I ever tell you the story of . . ." At the time, I remember thinking—somewhat cheekily—that I was about to get a lecture. With the grace of hindsight, every "lecture" imparted wisdom that I still often think about to this day. (And perhaps recite the same stories or two when the situation calls for it!) While I might not remember the specifics of each story, I remember the lessons. And each story and lesson were illustrative of how Justice Stegner approached his work on the bench.

Lesson one. Justice Stegner once told me a story about a young girl watching her mother bake a ham for a family gathering. The young girl noticed her mom cutting off the ends of the ham before placing it in the oven. The girl asked her mother, "why do you cut off the ends before baking the ham?" The mom said, "I'm not sure. That's just the way your grandma always did it, so I've just always cut them off. It is probably to make it juicier. Why don't you call you grandma and ask?" So, the little girl phoned her grandma and asked, "Grandma, why did you cut off the ends of the ham before placing it in the oven?" Grandma replied, "I'm not sure why either. I learned how to cook from my mom. You should ask her." Again, the girl called her great grandmother and asked why she cut the ends of the ham. The great grandmother informed her "I never had a pan big enough to hold a whole ham, so I had to cut off the ends to make it fit."

Of course, the morale of the story is to assess why something is being done the way it is and to point out thinking errors and false assumptions that are often made. Justice Stegner was never one to do something just because that is the way it was always done. He always wanted to know why a certain process was the way it was or why the law developed in a certain way. Justice Stegner had high expectations for his law clerks. He expected them to be prepared for each case and know the "whys" of things. This fundamentally changed the way I approached a case and has helped me approach cases in a more methodical way in my practice.

During his time on the Supreme Court, he helped institute change and progression, with the goal of overall bettering Idaho's legal community. Since 2019, he chaired the Idaho Supreme Court Education Committee, where he trained numerous judges and collaborated on educational projects across all of the state courts. He also served on various other committees including the Civil Jury Instructions Committee, with the overall goal of updating and creating a more robust catalog of jury instructions for the state of Idaho. Never satisfied with leaving things unexamined and stagnant, Justice Stegner has been a catalyst for thoughtful improvement and change.

Lesson two. On the first day of my clerkship, or at least in the very early days, Justice Stegner told me and my co-clerk that attorneys are not meant to be potted plants and he expected the same from his law clerks. While I am not sure who he

credited with the statement, I believe it was popularized by Brendan Sullivan, who was best known for his defense of U.S. Marine Lieutenant Colonel Oliver North in the wake of the Iran-Contra Scandal.¹⁴ Justice Stegner didn't want a "yes" clerk. He often wanted to discuss the cases with the law clerks before oral argument and during the opinion drafting process. As noted by my co-author, he expected his clerks to share their opinions, even if they didn't match his own. We were expected to speak up if we disagreed with how a case was coming out, or if we thought there was a better analytical path. He expected to be pushed on his thoughts. Justice Stegner always approached each case before him with deliberateness and expected his clerks to do the same.

I think Justice Stegner epitomized this lesson through the use of his dissents. As a chambers, we often discussed the purposes of dissenting, and whether we were accomplishing those goals by writing separately. There are many purposes to dissents that have been discussed at length by scholars that exceed the purposes of this article.¹⁵ However, I think that often a common theme of Justice Stegner's dissents were to avoid being a "potted plant." I believe that Justice Stegner thought that it was a judge's obligation to get the law correct, no matter what, and in the face of opposition. To avoid being a potted plant requires affirmative action to do the best for your client—or in the case of judicial work, the best for the development of the law and the protection of the legal institution.

Former U.S. Supreme Court Justice William J. Brennan Jr. once wrote that "[t]he obligation that all of us, as American citizens have, and that judges, as adjudicators, particularly feel, is to speak up when we are convinced that the fundamental law of our Constitution requires a given result."¹⁶ Justice Stegner took this obligation seriously during his time on the bench, making a notable impact on the development of law in Idaho during his short tenure on the Idaho Supreme Court.

Lesson three. I'm going to diverge from the previous format for lesson three. Like my co-author, I learned from Justice Stegner what it takes to be a good leader and mentor. Good leadership is essential because it makes a difference in the level of engagement and performance of those being led. Justice Stegner strives to be a strong leader and dedicated mentor because he recognizes the need for it in this profession.

Justice Stegner's success as a leader is evidenced by how highly those that have been within his sphere of influence speak of him. "Before you are a leader, success is all about growing yourself. When you become a leader, success is all about

14. *Iran-Contra Investigation Day 25*, C-SPAN, at 1:33 (July 10, 1987), <https://www.c-span.org/video/?c3773322/user-clip-clip-iran-contra-investigation-day-25>.

15. Gene A. Marsh, *A Call for Dissent and Further Independence in the NCAA Infractions Process*, 26 CARDOZO ARTS & ENT. L.J. 695, 717 n.40 (2009) (collecting over two dozen articles on the dissent).

16. William J. Brennan, Jr., *In Defense of Dissents*, 37 HASTINGS L.J. 427, 438 (1986).

growing others.”¹⁷ Justice Stegner has made an active and continuous effort to develop the talent and skills of young lawyers. He makes all efforts to give those who are around him the experience, skill, and independence to succeed. I remember he would often come into the law clerk’s office to discuss a particular deposition technique, how he thought an attorney should have handled certain evidence or argument, and the general “nuts and bolts” of litigation. Given that we were part of an appellate court, this was not the primary function of our job. But he knew that these skills would benefit us in our future positions. At many times, Justice Stegner was both a coach and cheerleader. Every one of his former clerks that I have spoken with expressed how much working for him influenced their life—both professionally and personally. He is, and I’m sure will continue to be, a successful leader in the law.

In sum, I’m incredibly grateful for the two years that I clerked with Justice Stegner. Justice Stegner’s wisdom, humility, and commitment to his community makes him one of the best. I hope that I can be a positive reflection of his efforts during my legal career.

IV. WELL WISHES

We are grateful to the Idaho Law Review for giving us this chance to thank Justice Stegner for his mentorship and the lessons that he has imparted to us. It is our honor to play a small part in his enduring legacy. We wish Justice Stegner the best in his retirement and his next professional adventure. While he is stepping down from the bench, we have no doubt that he will continue to serve the Idaho legal community for many years to come.

17. JACK WELCH & SUZY WELCH, WINNING: THE ANSWERS: CONFRONTING 74 OF THE TOUGHEST QUESTIONS IN BUSINESS TODAY 49–50 (2006).