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SYMPOSIUM ON
THE PRESS CLAUSE

DEDICATED TO JUSTICE POTTER STEWART

The articles contained in this Symposium were prepared prior to the Supreme Court's end-of-Term decisions, including Herbert v. Lando, 99 S. Ct. 1635 (1979), and Gannett Co. v. De Pasquale, 99 S. Ct. 2898 (1979).

FOREWORD: MR. JUSTICE STEWART

Lewis F. Powell, Jr.*

On October 14, 1978, Potter Stewart began his twenty-first year of service as an Associate Justice of the Supreme Court of the United States. He previously served as a judge of the United States Court of Appeals for the Sixth Circuit, having been appointed to that court at age thirty-nine—becoming, at that time, the youngest federal judge in the country. He brought to the federal bench impeccable credentials. He is a graduate of Hotchkiss, Yale, and the Yale Law School. In college he was the editor of the Yale Daily News and in law school served as an officer of the Law Journal—experiences that sharpened his writing skills. Between college and law school, he attended Cambridge on a Henry Fellowship.

Upon graduation from law school in 1941, Justice Stewart commenced the practice of law with the firm of Debevoise, Plimpton, Lyons & Gates in New York, and following active duty service in the Navy during World War II, he returned to his home city of Cincinnati to practice with the firm of Dinsmore, Shohl, Sawyer & Dinsmore. He served two terms on the City Council of

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Cincinnati, one term as Vice Mayor, and was appointed to the court of appeals in 1954.

In his two decades on the Court, Justice Stewart has served with two Chief Justices and seventeen Associate Justices. He was here during the expansive years of the Warren Court and, since 1969, during the more traditional years of the Burger Court. Throughout this period of change, he has been a strong voice for adherence to principle and moderation, and an eloquent advocate of the rights of free speech and press. He also has been steadfast in insisting that ancient traditions within the Court be observed and maintained. Although often referred to as a "swing man" on the Court, I would think it more accurate to say that by judicial temperament and personal philosophy, Potter Stewart has helped to prevent the Court from "swinging" too far from the center of the path appropriate for the judicial branch of our government.

Justice Stewart's opinions are well known to those familiar with the work of the Supreme Court. From the beginning of his tenure, he studiously avoided being labeled either "conservative" or "liberal," recognizing that in these overly simplistic labels lie a multitude of sins—particularly for a jurist. Rather, he carefully has considered each issue to come before the Court in the context in which it arises, without bringing to his consideration an ideological bias that hampers a principled review of the law and facts. It is perhaps all the more remarkable, therefore, that Justice Stewart has fashioned a distinct judicial philosophy, one that often has commanded a strong following in both the judiciary and the academe. Nowhere is the subtle power of his thought better illustrated than in his first amendment writings—as this issue of the Hofstra Law Review attests.

Justice Stewart's care in examining closely the context in which each question comes before the Court reflects his fundamental concern, not only with the substantive legal doctrine to be applied, but also with the proper role of the Court as an institution in our society. He understands that, if the legislative and executive branches of government are to deal competently with the increasingly intractable problems of our time, the courts must avoid laying down inflexible rules that go beyond what is necessary to protect the interests and rights set forth in the Constitution.

Potter Stewart's meticulous analysis of the questions before the Court is evident from the precision with which he selects the language he uses in his opinions. But the preciseness and economy he exhibits in his writing do not lead to a dull and uninteresting product. On the contrary, the first thing one is impressed with upon reviewing Justice Stewart's opinions is the felicity of his prose, and the clarity with which he can convey complicated ideas. He also has a penchant for the vivid phrase. Every law student is familiar with Justice Stewart's resolution of the problems inherent in defining obscenity: It may be undefinable, "[b]ut I know it when I see it." 2 And his statement last Term that a judge "is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity," 3 is not likely to be forgotten.

Justice Stewart's abilities as jurist and author are well documented through some 78 volumes of United States Reports. His written contributions, however, are but one manifestation of the constructive role he has played in the day-to-day functioning of the Supreme Court. He stands ready at all times to confer with Brother Justices; he recognizes the importance, as well as the difficulty, of working out a court consensus; and his contributions to the discussions of difficult issues are precise and insightful. He also has the rare ability to be, at the same time, a forceful advocate and generous judicial companion. In short, he is a constructive team player 4 in an institution where the combination of cherished individualism and overwhelming workload prevents our being a fully collegial group.

Although he often has differed strongly with his Brothers here (as can be said of any judge who serves on a multiple member bench), his differences are professional and never sink to the level of acrimony or personal ill will. I believe he has genuinely admired, no doubt in differing degrees, every Justice with whom he has served; he is generous in describing their contributions to the Court. He was particularly drawn to Mr. Justice Harlan, whom he views as a Justice whose contributions have not yet received the acclaim they deserve. Perhaps the best description of Mr. Justice Stewart comes from his own words in praise of John Harlan: He

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4. Indeed, George F. Will has said of Justice Stewart that he "is the Pete Rose of the Supreme Court Nine." Commercial Appeal, March 15, 1976, at 7, col. 5.
has a “dignity born of modesty and simple self-respect, and fortified by his reverence for the position he [holds] and his love for the profession he serve[s].”

I make no substantive comments on the first amendment decisions of the Court or on Justice Stewart’s significant contributions to this sensitive and peculiarly American area of jurisprudence. I leave this privilege to the quite distinguished group of authors who have contributed the articles in this issue of the Law Review honoring my colleague. It is most appropriate to draw attention to the role and service of Potter Stewart now that he has completed two decades of service. I commend the Hofstra Law Review, and am happy to join in this tribute.