

## Ex-Breyer Clerks Praise Jurist As Consensus Builder

By **Aebra Coe**

*Law360 (January 26, 2022, 4:30 PM EST)* -- U.S. Supreme Court Justice Stephen Breyer, whose impending retirement was revealed Wednesday, has gained a reputation among his former clerks as a consensus-builder, a "statesman" who has looked to build bridges with the overarching goal of preserving the integrity of both the courts and democracy.

Collegial, warm, open-minded, thoughtful, deliberate, and a pragmatist are a few other ways former Breyer clerks characterize the jurist, who is currently one of the longest-serving members on the Supreme Court. Appointed by President Bill Clinton in 1994, he plans to retire at the end of this term after more than 27 years on the bench.

One of the former clerks who shared their memories with Law360 Pulse, Risa Goluboff, who now serves as dean of the University of Virginia School of Law, said she views Justice Breyer as a statesman and believes his legacy will be that he served as "the glue of the

"I think his departure will really be a loss," said Goluboff, who clerked for Justice Breyer in 2001 and 2002. "I think the court is losing a champion for the court, for the work of the court, and for what judges do."

The dean reflected on how Justice Breyer would walk down the hallways of the Supreme Court when she clerked for him, trying to find common ground with his fellow justices.

"His approach to the judicial role was that it is meant to be protective of democracy," she said. He often thought about "the consequences of the cases for democracy and making sure governance can actually work."

Carolyn Shapiro, another former clerk who is now a professor at Illinois Institute of Technology's Chicago-Kent College of Law, says she was also struck by how "extremely thoughtful and deliberate" Justice Breyer was when considering what it meant to be a Supreme Court justice and what role the courts play in a democratic government.

"If you look at his opinions he had a real pragmatic streak; he cared about whether or not the law was going to work, what the real effects of opinions would be," Shapiro said, reflecting on her time as a clerk in 1996 and 1997. "What mattered to him more than anything was whether or not the government, at various levels and in various ways, would be effective in doing the things the government had promised people it would do."

David Louk, a recent clerk for Justice Breyer in 2020 who now works as an associate at Cooley LLP, said that to him Justice Breyer has been "the embodiment of reasonableness and collegiality."

"When I clerked for him, he always listened with an open mind, and however strongly he disagreed on the merits, he only spoke kindly in disagreement," Louk said. "On one particular case, after quite a lot of research, I encouraged him to take a certain position that, after a significant amount of back and forth, he ultimately declined. His response? 'Thank you for this. I learned a lot, and you didn't waste your time.'"

Aileen McGrath, a senior counsel at Akin Gump Strauss Hauer & Feld LLP who served as a clerk to Justice Breyer in 2008 and 2009, said the justice would often tell his law clerks stories about his time working for the late Sen. Ted Kennedy and the impacts that had on him as a jurist and as a person.

He would tell them that every morning when he worked for the senator he would have breakfast with the chief counsel for Sen. Strom Thurmond.

"The purpose of the breakfast was to hash out disagreements and avoid surprises — to try to find areas of compromise and resolve conflicts," McGrath said. "Justice Breyer would often tell us the same thing Senator Kennedy told him — 'work it out' — when we had disagreements with clerks in other chambers."

According to McGrath, Justice Breyer carried that same sentiment with him in his own work on the court decades later.

"He was a proven consensus-builder who always strove to resolve disputes and find middle grounds," she said. "He instilled in all of us a belief in talking things through, seeing things from someone else's perspective, and making compromises — values that have at times gotten lost in our increasingly caustic national discourse."

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## More Thoughts From Former Clerks On Justice Breyer

"Justice Breyer believes passionately in the importance of the court's role in stabilizing and fostering democracy, and in the importance of the court's credibility as an institution committed to rule of law. He approaches each case with an open mind, tries hard to understand the strongest points of each side and has a deep commitment to the power of ideas and dialogue, both to persuade and be persuaded.

**Matthew Price**

Jenner & Block partner

"Justice Breyer is the perfect combination of brilliance about the law, optimism about our institutions and pragmatism about the world around him — all of which may have led to his decision today. It was an honor to clerk for him — the bench will not be the same without him but even in his retirement he will be contributing to the strength of the court."

**Karen Dunn**

Paul Weiss partner

### ON BREYER AS A PERSON AND MENTOR:

"I recall a lunch my co-clerks and I had with the justice in 2009, shortly after Justice Souter announced his retirement. Justice Breyer openly pondered what he would do if he were to retire, because his life was already rich with many pursuits and interests — spending time with his family, studying new languages, learning about architecture, riding his beloved bicycle. That exchange illustrated how the justice never lost sight of the outside world, and always saw himself as an evolving person with the opportunity to learn and grow. The justice taught us that we are more than our work — and that we are better lawyers, and people, when we remain connected to the world around us."

**Aileen McGrath**

Akin Gump senior counsel

"One anecdote I have highlights how personable the justice is. In the early days of the pandemic, the justice discussed his pot roast recipe in a news article, which listed the ingredients, but no spices — although the article later mentioned the need for allspice, cloves and cinnamon. My husband was going to make the recipe, but we were confused. I emailed the justice, and he replied right away: 'I don't know why the spices were left out of the list. You need them: break up a cinnamon stick, about 12 small allspice berries, 4 cloves, and grind them all up in a coffee grinder. That should work. They add a lot of flavor.' And they did."

**Deanne Maynard**

Morrison & Foerster partner