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Dean Logan's Blog

Justice Breyer's Visit, v. 3

Posted by David Logan on 11/21/2011 at 03:42 PM

After an [intimate conversation with RWU Law's student leaders](#), Justice Breyer returned to the Appellate Courtroom for the day's grand finale – a revealing “Fireside Chat” (well, actually the fire code doesn't permit a fireplace) with First Circuit Judge Bruce Selya, a valued adjunct and longtime friend of RWU Law, who facilitated the visit.

Judge Selya encouraged the full-house of students, faculty, staff, and alums to think of the event as “a conversation between two old friends” – which, indeed they are. From 1980 to 1994, Breyer was a judge on the United States Court of Appeals for the First Circuit; he was the court's Chief Judge from 1990 to 1994. Selya, who sat on that court—the highest in New England-- from 1986 until 2006 (he is on semi-retired “senior status,” but still hears many cases).

True to Selya's promise, the chat was pleasantly informal: both judges spoke without notes, and punctuated their comments with good-natured joking. Selya, for example, remembered a time he'd been invited to give a lecture and went to Breyer for advice. “I have 45 minutes to tell them everything I know about the law. How do I do that?” Selya asked. To which Breyer deadpanned, “Speak very slowly.”

The two then got down to business. Breyer described the Constitution's genius as “protecting basic human rights” by dividing power both vertically (between the federal government and the state governments) and horizontally (between the three branches of federal government). At the end of the day, he said, the Supreme Court's job is to act as a sort of border patrol, “controlling the frontiers that the document sets.”

The conversation then turned to the relative influence of written briefs and oral arguments. Breyer revealed that 95% of his decision-making process is complete before oral arguments, due to the tremendous volume of verbiage he's already waded through via clerks' memos, party briefs and amicus briefs. “Oral arguments are just for me to ask questions to clarify.”

Breyer mused on the principle of *stare decisis*, by which judges are obliged to respect prior decisions – noting that occasionally the principle must be broken – because even Supreme Court justices are “people like us” – but a reliable rule of law demands that such exceptions should “not [happen] very often.” He

explained that “people base their lives on the law as it is. If you monkey around with that too much, you can easily stir up uncertainty.”

That led seamlessly into the topic of Justice Breyer’s [Con Law II](#) class, in which he discussed the importance of “We the People” and the other branches of government adhering to Supreme Court decisions. He dramatized the point by citing Shakespeare’s Henry IV, Pt. I, comparing the Supreme Court to the rebel Welsh king Glendower, who bragged, “I can call spirits from the vastly deep!” to which Hotspur replied, “Why, so can I, or so can any man; But will they come when you do call for them?” Similarly, Breyer said, the power of the Supreme Court is only as good as the willingness of the citizens of the United States to respect and follow its decisions, no matter how unpopular.

The visit ended on a high note, when the Justice signed books for a long queue of students, faculty, staff and alums – staying well past his scheduled departure time, ensuring that everyone who wanted an autograph – and a little face time with a “Supreme” – got their wish.















