NOMINATION OF JOHN PAUL STEVENS TO BE A JUSTICE OF THE SUPREME COURT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

JOHN PAUL STEVENS, OF ILLINOIS, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

DECEMBER 8, 9, AND 10, 1975

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NOMINATION OF JOHN PAUL STEVENS TO BE A JUSTICE OF THE SUPREME COURT

MONDAY, DECEMBER 8, 1975

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:45 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, McClellan, Hart, Kennedy, Byrd, Abourezk, Hruska, Scott of Pennsylvania, Thurmond, Mathias, and Scott of Virginia.

Also present: Peter M. Stockett, Francis C. Rosenberger, Thomas D. Hart, J. C. Argetsinger, and Hite McLean, of the committee staff.

Chairman EASTLAND. The committee will come to order.

Senator MATHIAS. One of the elements of the Committee's discussion will inevitably be Mr. Stevens' medical record, and I think it would be more appropriate if the committee viewed the medical records in executive session. For that reason, and in accordance with the rules, I move that the committee go into executive session for that purpose.

Senator HRUSKA. Limited to that purpose?

Senator MATHIAS. Yes.

Senator HRUSKA. I amend the motion, Mr. Chairman, to be "and for other purposes" because there are some other purposes. I offer that as an amendment.

Senator ABOUREZK. Mr. Chairman, I think the purposes ought to be stated in the motion.

Senator KENNEDY. Mr. Chairman, would it be limited to the issues that were raised in the letter of December 2, to you? Would that satisfy Senator Abourezk?

[The letter of December 2, 1975, to the chairman, referred to, follows.]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., December 2, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate

DEAR MR. CHAIRMAN: In carrying out the Committee's responsibility to advise the Senate with respect to the qualifications of Judge John Paul Stevens to become an Associate Justice of the Supreme Court of the United States, we are hopeful that the Committee will conduct the most thorough practicable investigation of the nominee.

To this end, we respectfully suggest that the following steps by the Committee at this time would be helpful and desirable to inform the Committee fully with respect to Judge Stevens' fitness for the high office to which he has been nominated.

A request to Judge Stevens for full disclosure to the Committee of his personal health and finances, and for a list of the major clients he represented in his private law practice.

A request to the Attorney General for a complete and thorough investigation by the FBI of Judge Stevens' qualifications.

A request to the Joint Committee on Internal Revenue Taxation for a study and analysis of the Federal and State income and other tax returns filed by Judge Stevens, or returns filed by others which might relate to his income or holdings, for the period beginning with calendar year 1965, and a similar study and analysis by the Joint Committee of Judge Stevens' financial statements for that period.

Requests to the appropriate State and local bar associations, including minority and specialized bar associations, for information relating to the nomination.

As you know, Judge Stevens has already indicated his willingness and desire to cooperate fully with the Committee. We believe that the above information, analyses, and other materials are essential for the Committee to carry out its important responsibilities with respect to the nomination. We also believe that these materials can be provided expeditiously to the Committee, without delaying the Committee's schedule for consideration of nomination, and with appropriate regard for the confidentiality of the information and the protection of Judge Stevens' personal privacy.

We look forward to your favorable action on these requests and to the Committee's early action on the nomination.

Respectfully,

PHILIP A. HART,
EDWARD M. KENNEDY,
BIRCH BAYH.
QUENTIN N. BURDICK,
JOHN V. TUNNEY,
CHARLES McC. MATHIAS, Jr.

Senator ABOUREZK. Yes.

Senator KENNEDY. They have been stated publicly in the press and I believe that if we limit the motion to those matters it will make sense.

Does the Senator so amend his motion?

Senator MATHIAS. Yes.

Senator HRUSKA. What is the letter?

Senator KENNEDY. The letter which was sent by six members of the committee suggesting steps which would be helpful to inform the committee in regard to the nominee's personal health and finances, and the investigation by the FBI of the nominee's qualification. and it also suggested requests to the bar associations, including minority and specialized bar associations, for information relating to the nomination. I ask that the letter be made a part of the record.

Senator HRUSKA. The motion would embrace the matters stated in the December 2 letter to the chairman?

Senator MATHIAS. I so move, Mr. Chairman.

Senator KENNEDY. It would not cover anything beyond those matters.

Chairman EASTLAND. All in favor say "Aye."

[Ayes were heard.]

Chairman EASTLAND. Opposed, "No."

[There was no response.]

Chairman EASTLAND. It is so ordered.

[Whereupon, the committeee went into executive session after which the open session was resumed.]

Chairman EASTLAND. The committee will come to order.

I will place in the record the biographical sketch of the nominee which has been prepared by the Department of Justice.

[The biographical sketch referred to follows:]

BIOGRAPHICAL SKETCH OF JOHN PAUL STEVENS

Born: April 20, 1920, Chicago, Illinois.
Legal residence: Illinois.
Marital status: Married, wife—Elizabeth Jane Sheeren, 4 children.
Education: 1937–41—University of Chicago, A.B. degree and 1945–47—Northwestern University, School of Law, J.D. degree, magna cum laude.
Bar: 1949, Illinois.
Military Service: 1942–45, United States Navy, Lieutenant.
Experience: 1947–48—Law Clerk to Justice Wiley Rutledge, United States Supreme Court; 1948–51—1952—Associate, Poppenhusen, Johnston, Thompson & Raymond, Chicago, Illinois; 1951—Associate Counsel, Subcommittee on the Study of Monopoly Power, Judiciary Committee, U.S. House of Representatives; 1950–54—Lecturer, Northwestern School of Law; 1954, 1955—1958—Lecturer, University of Chicago Law School; 1952–70—Partner, Rothschild, Stevens, Barry & Myers, Chicago, Illinois; and 1970 to present—United States Circuit Judge, 7th Circuit.
Office: U.S. Courthouse and Federal Office Building, 219 Dearborn Street, Chicago, Illinois 60604. Telephone: 312—435–5820.
Home: 8118 Garfield, Burr Ridge, Illinois.

Chairman EASTLAND. I will also make a part of the record a compilation prepared by the Library of Congress of reported decisions of the seventh circuit in which the nominee participated.

(The compilation referred to is printed below at page 85.)

Chairman EASTLAND. The Attorney General is recognized.

TESTIMONY OF EDWARD LEVI, ATTORNEY GENERAL OF THE UNITED STATES

Mr. LEVI. Mr. Chairman, it gives me enormous pleasure to be able to present to you and to the committee, Judge John Paul Stevens who has been nominated for a position on the Supreme Court of the United States.

I have known Judge Stevens for many years. He is not exactly of my generation so I cannot speak of him as Senator Percy will be able to speak of him but I have known of him and of his work and of his stellar performance in everything he has attempted to do since the time he was an undergraduate student at the University of Chicago, and a law student at Northwestern University, and then in the Navy, and then in private practice where he was immediately recognized as one of the outstanding lawyers in the city of Chicago, then as an associate counsel for the Celler committee, the Subcommittee on Monopoly Power in the House of Representatives, and again in his practice, his work as a member of Bar Association official commissions, and finally, and most importantly, his appointment to the court of appeals as a circuit judge in 1970, and I am very familiar with his opinions since that time.

Judge Stevens, if one looks at all of the sitting judges, the Federal judges in the United States, he is truly outstanding. His opinions, in my view, are gems of perfection. He is a craftsman of the highest order. He has a built-in direction system about how a judge should approach a problem fairly, squarely, succinctly. His opinions are a joy to read.

If one has to read as many opinions of court of appeals judges as I have read, let me say that other judges have a very high mark to come up to to compare with his craftsmanship, his innate sense of what a judge is supposed to do, the kind of judicial restraint and forthrightness which makes for a great judiciary.

Mr. Chairman, I am sure that those who know Judge Stevens and his opinions will agree with me, and those who do not know him will come to know him and will understand that this is truly an outstanding nomination of which the country can be proud.

Thank you.

Chairman EASTLAND. Thank you, Mr. Attorney General.

Senator Percy.

TESTIMONY OF CHARLES PERCY, A SENATOR FROM ILLINOIS

Senator PERCY. Chairman Eastland, Senator Hruska, members of the committee, speaking as a member of the generation of John Paul Stevens, and as a 38-year friend of his, I can say that for 38 years I have admired him and respected him and looked up to him as a truly great human being and a great individual.

I am very proud indeed that his wife Betty and his daughter Susan Elizabeth will be in this chamber and be in this hearing room to hear a few of us talk about John Paul Stevens as a human being as a nominee for the Supreme Court of the United States.

It was just over 5 years ago that I presented John Paul Stevens to this committee when he was a nominee for the Seventh Circuit Court of Appeals and I am as confident now as when I presented him then that John Paul Stevens is emminently qualified for the position for which he is nominated. He has clearly demonstrated that he possesses the integrity, the intellect, and the temperament so necessary for a Justice of the Supreme Court.

He has written more than 200 opinions since 1970, all of which are available for review by members of this committee, and which have been earlier referred to the Attorney General.

When I introduced John Paul Stevens to you 5 years ago, I said that I considered him, as I was told by his peers in the profession, a lawyer's lawyer. And today, without any question, his peers consider him a judge's judge. If confirmed, he will prove himself worthy of the President's confidence and, I believe, will distinguish himself in the tradition of his two immediate predecessors, William Douglas and Louis Brandeis.

The selection of John Paul Stevens to fill the vacancy on the Supreme Court was made with one criterion in mind: competence. He was not selected because he reflects a particular political or judicial point of view. I believe Attorney General Edward Levi aptly described the nomination of Judge Stevens when he referred to it as a commitment to excellence. And that is what I feel is needed at this time.

For the record, I wish to note the highlights of Judge Steven's distinguished legal career. He is a 1941 Phi Beta Kappa graduate of the University of Chicago. After 4 years in the U.S. Navy, he entered Northwestern University School of Law in 1945. He graduated first in his class 2 years later in 1947, with the highest record of academic achievement in the history of Northwestern University.

After graduation, he served for 2 years as a law clerk to Mr. Justice Wiley Rutledge, of the U.S. Supreme Court. In 1948 he returned to Chicago to join the firm of Poppenhusen, Johnston, Thompson & Raymond, where he remained until 1951, when he came back to Washington and served as an associate counsel to the Judiciary Sub-

committee for the Study of Monopoly Power in the House of Representatives. Later he returned to private practice in Chicago and was a founding partner in the firm of Rothschild, Stevens, Barry & Meyers, where he stayed until 1970 when he was appointed to the Seventh Circuit Court of Appeals.

During the years he was engaged in private practice he was the author of numerous articles on antitrust law for legal and other journals and he lectured both at Northwestern Law School and the University of Chicago Law School.

As President Ford has said, the nomination of a Supreme Court Justice is one of the most important decisions the President has to make. Equally important is the Senate's responsibility to advise and consent on such nominations. The individual we confirm to this vacancy will participate in deliberations that will relate to some of the most complex and crucial issues in the history of the Court. Those decisions will affect the lives of generations of Americans.

There is no question that the action we take will affect profoundly the course of this Nation's Highest Court. I am confident that your committee will carefully and critically examine Judge Steven's record and judicial philosophy to determine his fitness to serve. Each time I appear before this distinguished committee I am impressed with the fact that perhaps the single greatest responsibility we have in the Senate of the United States is to advise and consent in the selection of judicial appointments.

Mr. Chairman, I sincerely appreciate the opportunity to appear before you today to express my deep affection and my great respect for John Paul Stevens. I have known him as a friend for 38 years. I have no doubt that he is magnificently prepared to render distinguished service on the Supreme Court of the United States.

Chairman EASTLAND. Senator Stevenson.

TESTIMONY OF ADLAI STEVENSON, A SENATOR FROM ILLINOIS

Senator STEVENSON. Mr. Chairman, I am pleased to join the Attorney General and my colleague, Senator Percy, in introducing Justice John Paul Stevens to this committee.

The universality of the judge is evidenced this morning by the support of more generations than there are generations. I represent yet another.

[Laughter.]

I do not recall a nomination to high office in recent years that was as widely acclaimed. The favorable response to the nomination of Judge Stevens is remarkable, and it is, in my judgment, fully deserved.

From his undergraduate days as a member of Phi Beta Kappa to his law school days as a law review editor, to his professional career as law clerk to Justice Rutledge, as practitioneer, scholar, teacher, and jurist, Judge Stevens has earned the respect and the good will of all who know him, so much so that this, his nomination to the Supreme Court, seems not so much a stroke of good fortune as a logical next step in his career.

That career reflects a discipline and intellectual capacity of a high order. In his exercise of judicial authority Judge Stevens is not doctrinaire or judicially adventurous. He is a judge. His record on the

bench indicates that he sees it as his duty to apply the law and not to make it.

This nomination, Mr. Chairman, would be widely acclaimed at any time. It is a most propitious nomination today. A large space exists in the Court. I believe that John Paul Stevens can fill it. And therefore, Mr. Chairman, I urge this distinguished committee to act favorably and with as much dispatch as the gravity of its duty permits on the nomination of John Paul Stevens to serve as an Associate Justice of the Supreme Court.

Chairman EASTLAND. Thank you, Senator Percy and Senator Stevenson.

Are there any questions?

The Chair hears none.

Judge Stevens, will you stand please?

TESTIMONY OF JOHN PAUL STEVENS, NOMINEE TO BE A JUSTICE OF THE SUPREME COURT

Chairman EASTLAND. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Judge STEVENS. I do.

Chairman EASTLAND. Senator McClellan.

Senator MCCLELLAN. Thank you very much, Mr. Chairman, for yielding to me.

First, Judge Stevens, I wish to congratulate you upon receiving this high honor and great distinction.

I am confident that you realize fully the responsibilities, that are the gravest responsibilities in government in my judgment, to be a member of the Highest Court in the Nation and to undertake to resolve the many highly complex and difficult issues that come before the Court.

Mr. Chairman, with your permission, I will read a very brief statement, and then I will leave for Judge Stevens a few questions which he can answer for the record at his leisure.

I will not be able to remain, Mr. Chairman, during the rest of the hearings today because I must preside at a conference with Members of the House of Representatives on the Defense appropriation bill.

Because some of the questions I have may require somewhat lengthy answers, out of deference to my colleagues I will read a brief statement and submit the questions for the judge to answer for the record.

Mr. Chairman, on other occasions I have expressed the view that in considering the confirmation of a nomination to the Supreme Court there are three basic questions pertaining to the nominee's qualifications that must be answered in the affirmative.

First, does the nominee have personal integrity?

Second, does he have professional competence?

And third, does he have an abiding fidelity to the Constitution?

Out of proper deference to the nominee himself, and to the judgment and choice of the President of the United States, the strongest possible presumption that the nominee possesses all three of these fundamental qualifications should be indulged, and in this instance, as to Judge Stevens, I entertain no expectations whatsoever that there will be any discoveries or developments during the course of these hear-

ings and in the other proceedings on his confirmation that will in any way vitiate that assumption.

After personal integrity and professional competence, what is most important, in my judgment, is the nominee's fidelity to the Constitution, to its text, to its intent, and to its development through judicial interpretations and precedent throughout the history of our Nation.

The record of Judge Stevens on the U.S. Court of Appeals Seventh Circuit during the past 5 years will give us some insight into his powers of reason, his judicial wisdom, and his philosophy.

I have not yet had the opportunity to examine that record thoroughly, but I expect to do so before this committee takes action upon his confirmation. In the meantime, I would like to explore briefly and in a general way, your understanding of the role of the Court and what should be the attitude of the men who serve on it as the ultimate guardians of the Nation's basic charter.

Judge Stevens, I will submit to you the following questions. Some of them, I think, require discussion, and I will ask you, after answering the question, to discuss the subject matter fully because I think they are basic and fundamental to a proper judicial temperament and attitude with respect to our Constitution and how it should be interpreted and administered. I will appreciate your doing that, and I will also appreciate, when you prepare the answers, your sending a copy to me when you send the answers to the committee.

Thank you very much, Mr. Chairman, and thank you Judge Stevens. Should the hearings continue beyond today, I hope I will be able to return and I may have some other brief questions. But I do not think that would take very long.

Thank you very much, Mr. Chairman.

[The questions submitted by Senator McClellan and the replies subsequently received from Judge Stevens follow:]

QUESTIONS SUBMITTED BY SENATOR MCCLELLAN

(1) As a member of the Court, would you feel free to take the text of the Constitution and particularly such broad phrases as "due process" and "unreasonable search and seizure"—just as illustrations—and read into it your personal philosophy either liberal or conservative?

(2) Do you believe that a member of the Court should disregard the intent of the framers of the Constitution in giving interpretation to its meaning and in its application in order to achieve a result that he thinks might be desirable in, or for, our modern-day society?

(3) To phrase it another way, if you believe that a particular interpretation or construction in keeping with the intent of the framers of the Constitution would not get the results that you felt were more desirable and advantageous for our modern-day society, which factor would be most persuasive with you in arriving at your decision—the intent of the framers of the Constitution or that which would be most desirable or advantageous in our modern-day society?

(4) One former Associate Justice of the Supreme Court has said:

"In interpreting the Bill of Rights, I willingly go as far as a liberal construction of the language takes me, but I simply cannot in good conscience give a meaning to words which they have never been thought to have, and which they certainly do not have in common with ordinary usage. I will not distort the words of the [Fourth] amendment in order to 'keep the Constitution up to date' or to bring it into harmony with the times; it was never meant that this Court have such power, which in effect would make us a continuously functioning constitutional convention." (Mr. Justice Black in *Katz v. United States* 389 U.S. 347, 373 (1967)).

May I most respectfully ask, "Do you share this philosophy? Would you be willing to give a new interpretation, not previously thought of, to change the impact of the Constitution simply to try to "keep the Constitution up to date" or to bring it into "harmony with the times," please discuss fully.

(5) In *Mapp v. Ohio*, 367 U.S. 643, 686 (1961), Mr. Justice Harlan stated:

"I am bound to say that what has been done is not likely to promote respect either for the Court's adjudicatory process or for the stability of its decisions.

He further said:

"I regret that I find so unwise in principle and so inexpedient in policy a decision motivated by the high purpose of increasing respect for constitutional rights. But in the last analysis I think this Court can increase respect for the Constitution only if it rigidly respects the limitation which the Constitution places upon it, and respects as well the principles inherent in its own processes. In the present case I think we exceed both, and that our voice becomes only a voice of power, not of reason."

There is one school of thought today that holds that the Supreme Court, whenever it feels that the Constitution as written or as it has been interpreted is not adequate to deal with today's social conditions, ought to give it a different interpretation to "get it into the mainstream" of modern society. Do you believe that the Court or a member thereof, under the Constitution, has the power or duty to do that?

Please discuss fully.

REPLIES TO QUESTIONS SUBMITTED BY SENATOR MCCLELLAN

DECEMBER 8, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to the questions submitted in writing by Senator McClellan, I am pleased to state the following:

(1) Neither as a Member of the Court of Appeals nor as a Member of the Supreme Court, would I feel free to construe the broad phrases of the Constitution on the basis of my own personal philosophy. To the best of my ability, I will contiune in every case to subordinate my personal predilections to my understanding of the law applicable to the case before me.

(2) It is never appropriate for a judge interpreting the Constitution, or indeed interpreting a statute, to disregard the intent of its authors to the extent that such intent can be fairly ascertained.

(3) There have been occasions during my work on the Court of Appeals when I have decided cases contrary to my own views as to what would be most advantageous or desirable in our modern day society. A judge must do so if he is to be faithful to his office. I will continue to follow the law even when it does not accord with my own ideas about sound policy.

(4) In the process of construing the Constitution or an act of Congress, a judge should not give the words used in such a document a meaning other than the meaning fairly intended by its authors. It is not a proper judicial function to amend either the Constitution or the statutes enacted pursuant thereto.

(5) The fact that a Justice of the Supreme Court feels that a particular constitutional provision is not adequate to deal with today's social conditions is not a sufficient basis for placing a construction on that document which is not warranted by its language or by the course of decisions interpreting it.

Respectfully,

JOHN PAUL STEVENS.

Chairman EASTLAND. Judge Stevens, there have been two field investigations of you by the FBI and from what other information I get, you are a very fine lawyer, a very fine judge, a man of high morals. The only thing that I think anyone could put their hands on about you would be your health.

Now, you had an operation——

Judge STEVENS. Yes, that is correct.

Chairman EASTLAND. Explain to the committee what that was and what has been your recovery.

Judge STEVENS. In the fall of 1973, in the early winter when the cold weather came on, I began to experience some pain in my left shoulder and my chest and I underwent a series of tests that resulted in the diagnosis of it being angina pectoris. More specifically, there was a

blockage in one artery leading to or from the heart, I am not sure which. So I was advised to get the best surgical treatment, specifically Dr. Norman Shumway of Stanford University.

I went out to Stanford in July, I believe it was, in 1974 and entered the hospital on Sunday. It was the week in which the President resigned. I do not remember the exact date. And I was operated on on Tuesday.

They, of course, subject you to anesthesia, but they open your chest and remove a vein from your thigh and bypass the blocked artery. That was done on the morning of this Tuesday.

I was in intensive care for about a day and a half, as best I remember. I was discharged from the hospital on Sunday of that week, 5 days after the operation. Dr. Shumway told me at the time that I had made the fastest recovery of any patient he had operated on up until that time. He also told me to stay in Palo Alto for about a week at the Holiday Inn so he could check me over later to be sure my recovery was progressing normally.

Mrs. Stevens and I stayed there for the following week, and we were checked out at the end of the week, and he then told me that assuming all continued to go as it had up until that time, there would be no restrictions whatsoever on my physical activity. I could play tennis, I could ski, I could work in the garden, play golf, whatever physical activity seemed appropriate.

Chairman EASTLAND. You fly a plane, do you not?

Judge STEVENS. Well, I will have to explain that. I do fly a plane, but I am temporarily grounded because of the history, not because of my health situation, but there is a period of time after a health situation in which your flying is restricted. But I have been flying regularly, most recently with an instructor, but the doctor tells me that is hardly necessary from my physical point of view.

But in any event, I returned to Chicago under the advice of Dr. Hare, who had diagnosed me the first time, and I made a normal recovery, and I do not remember the exact period of time, but maybe 8 or 10 weeks later, I was back at work, and I have been working fulltime ever since.

I think this is an appropriate area of inquiry for the committee so in response to requests—I have not seen the letters—I gave an authorization to four different doctors who have examined me since the operation to correspond with the committee, and I believe such letters were forwarded although I have not read them.

I had a flight physical about a month ago, and the doctor at that time told me that as far as he was concerned, I was in perfect health, and there is no reason I should not fly a plane.

I have one other item that I have not supplied to the committee because I had not located it. About 6 weeks ago, a bulletin went out to all Federal employees in Chicago that they were invited to participate in a heart attack prevention program. And I signed up, as did many others in my age group—the marshalls and bailiffs—it was not just the judges.

I went down on October 23, before any of this started, and I took the tests that everyone else took, including blood pressure and so on, and filled out a history in order to, in effect, participate in this program, to see if there were any reason to be concerned about my health.

I received a response in due course which I just found the other day, and I would just like to read, if I may, a sentence or two from it.

After identifying the date—and it is on the Rush-Presbyterian St. Luke's Medical Center multiple risk factor intervention trial letterhead—it says:

Dear Sir:

As we indicated to you at that visit, only men with certain risk characteristics would be invited into the Program. The results of this examination and our method of measuring risk indicate that your risk levels do not reach the risk requirements of the Heart Attack Prevention Program. Consequently, we are unable to enroll you into the program. We have put an asterisk on any of the results which in our opinion suggest potential problems that you should discuss with your personal physician to find out their meaning.

And there are no asterisks on the report. I was denied permission to participate. I might say that in the course of the investigation, no one saw my scar and they were not aware of my operation. So, it was a completely neutral appraisal.

Two other things I would like to say on this subject, because I do think it is an appropriate subject for the committee to consider: My family has a history of longevity. My mother is now 94 years of age, and she is still alive. My father died about a week before his 88th birthday. Their parents had similar histories. But, most important, is that I would like to assure the committee that if I had any doubt whatsoever about my physical capacity to accept this responsibility—I have very much in mind what Senator McClellan said about the importance of the position—I can assure you if I had any doubt I would not be sitting here today.

Chairman EASTLAND. I will put in the record at this time the letter from Dr. Lewis A. Hare, of Oak Lawn, Ill. He is your regular doctor, is he not?

Judge STEVENS. Yes; he is.

Chairman EASTLAND. And the letters from Dr. Frank C. Bender, of Plainfield, Ill.; Dr. Robert W. Jamplis, executive director, Palo Alto Medical Clinic, and Dr. Norman E. Shumway, of Stanford, Calif. Dr. Shumway performed the operation?

Judge STEVENS. Yes; he did.

Chairman EASTLAND. They will go in the record at this time.

[The letters referred to follow:]

LEWIS A. HARE, M.D.,
Oak Lawn, Ill., December 2, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SIR: I have been requested by Judge John Paul Stevens to provide information relative to his health.

Judge Stevens has been a patient of mine since June 1955. Prior to that, Mrs. Stevens' family had been patients of mine prior to World War II. I have known them quite intimately as patients for a number of years.

Judge Stevens' health had been remarkable up until the episode that brought him to my office and for which he was subsequently hospitalized with ischemic heart disease characterized by anginal pain of mild intensity. He was seen on December 20, 1973 with symptomatology relative to this condition and subsequently hospitalized. A complete cardiovascular workup was performed and a bypass surgical intervention was recommended.

Upon my advice he was seen by cardiovascular surgeon Dr. N. Shumway who is chairman of the Department of Cardiovascular Surgery at Stanford University Medical Center and is acclaimed as one of the leading cardiovascular surgeons in the world.

Dr. Shumway concurred in my recommendation and Judge Stevens decided to have him and his group do the surgical intervention which was performed on August 6, 1974. A saphenous bypass graft was implanted between the aorta and distal left anterior decending coronary artery. I quote in part Dr. Shumway's report to me: "The cardiac muscle looked very strong in this patient. There were many excellent branches coming over to the anterior surface from the large and unobstructed left circumflex coronary artery. The LAD was a vessel of substantial size and it was possible to implant a very satisfactory saphenous vein graft into the distal LAD."

Judge Stevens remained at a Holiday Inn in Palo Alto for a week after surgery to convalesce. He was subsequently seen by me after he returned to Chicago. He continued to recover at a rapid pace. I had difficulty in restricting him from flying his own plane which he did unknown to me one month after the surgical intervention.

At the time of his original examination I discovered that the patient had a polyp of the sigmoid colon which subsequently was removed and the hospitalization was from January 27, 1974 through February 3, 1974 by colonscope with no untoward affect. The lesion biopsy was benign.

Judge Stevens has continued his former pace of work with no untoward effects and was last seen by me in my office several months after the last surgery. He has remained in good health up to the present time and I hopefully anticipate no further difficulty relative to the prior problem.

If I may add my own personal opinion relative to this nomination for Supreme Court Judge, I feel that he is the finest individual that could be recommended for this position.

FRANK C. BENDER, M.D., S.C.,
Plainfield, Ill., December 2, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, U. S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I have been requested by Judge John Paul Stevens to provide relevant information regarding his health. I performed a physical examination on Judge Stevens on 11 Nov., '75 at which time he gave a history of a coronary bypass in August of 1974 and the removal of a colon polyp in May 1975. I found him to be in excellent physical condition and advised him that I considered him very fit.

PALO ALTO MEDICAL CLINIC,
Palo Alto, Calif., December 2, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN: Judge John Paul Stevens first consulted me at the Palo Alto Clinic in the late spring of 1974. He had been experiencing anterior chest pain on exertion and angiograms taken in Chicago showed that one of the three vessels to the heart was blocked. Dr. Joel Friedman of our cardiology department and Dr. Norman Shumway, who is professor of surgery at Stanford University, were consulted, and the three of us felt that surgery was indicated. The Judge underwent successful surgery the first week of August 1974, the coronary bypass being performed by Dr. Shumway. Only one bypass was done, namely to the anterior descending coronary artery. He had a very large circumflex artery and the right coronary artery was small, but normal.

He had a very remarkable recovery leaving the hospital about six days postoperatively and his convalescence was unremarkable. It is my opinion that because he had only one vessel disease and because the heart muscle itself was good, his prognosis is excellent for a long and productive life.

If there is any further information which you desire, please do not hesitate to contact me.

Sincerely yours,

ROBERT W. JAMPLIS, M.D.
Executive Director.

STANFORD UNIVERSITY SCHOOL OF MEDICINE,
DEPARTMENT OF CARDIOVASCULAR SURGERY,
Stanford, Calif., December 2, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN: Judge John Paul Stevens underwent successful cardiac surgery at the Stanford University Hospital on 6 August 1974. He had entered the hospital on August 4, 1974 and the date of discharge was August 11, 1974. A single reverse segment saphenous vein aortocoronary bypass graft was implanted between the ascending aorta and a large distal left anterior descending coronary vessel. The myocardium appeared strong, and there were many branches emanating from the large and unobstructed left circumflex coronary artery. The right coronary artery, although perfectly normal, is relatively small.

The postoperative course was negotiated in record time, and the convalescence was similarly uneventful. At the present time Judge Stevens is fully and unrestrictedly active. His prognosis for continued good health is excellent.

If there is any further information that would be of help to the Committee, please be in touch with me.

Sincerely yours,

NORMAN E. SHUMWAY, M.D.,
Professor and Chairman.

Senator HART. I really do not envy you the nomination, but I do envy you your medical record.

Judge STEVENS. Thank you, Senator.

Senator HART. I have no questions. But I would like to make a brief comment. A number of us, under the leadership, really, of Senator Kennedy, directed a letter to the chairman asking for some specifics and I would hope, inasmuch as we now have a nominee where the further we pursue, if you will, the better will he look, that we will establish in this hearing a set of standards that will apply hereafter. The committee over the years has developed certain procedures and never really formalized them. It is our hope that, as a result of the procedure that we apply in the nomination of Judge Stevens, that is hereafter we have a nominee where there is a feeling that the further we pursue, the more trouble we will get, that we will nonetheless have these standards to follow.

The inquiries we make of you, Judge, are made not in anticipation of getting bad answers, but in the constant belief we will get good answers. Whether the press believes it or not, I think no member of the committee, certainly not I, ever enjoyed dismantling any of those earlier nominations. It is nice to anticipate that we will not have that happen, that we will not have any trouble.

Finally, it is not the Senators on this committee that have to worry as much as the staff members. The staff of the Antitrust Subcommittee, for example, tell me that they have read all your antitrust opinions, and they report all the good things that have been said about you, the clarity of expression, the balance with which you present the different points of view, and the restrained conclusions to which you come. They gave me no mean questions to ask you.

I will not even ask you to respond to Senator Stevenson's comment in his introduction when he said your record on the bench indicates that you see it as your duty to apply the law and not to make it. Certainly that would be expected of you as an appellate judge. But if you want to comment upon what the role of the Supreme Court Judge is with respect to making law, you could do it.

Judge STEVENS. I would only comment to this extent, Senator, because I think it is a fair question, that I recognize there is a difference between the kind of work that must be done there and the kind of work that must be done in the court of appeals. There are, I suppose, a larger proportion of the decisions where you do not have as clear guideposts as you do in the court of appeals. We work in a more restricted framework in the court of appeals. There is no question about that, and there are times when you must face up to questions to which there are no clear answers.

Senator HART. The Attorney General said in his introduction that your opinions are a joy to read. I was going to ask him if all the litigants in those cases before you found that to be true. [Laughter.]

Judge STEVENS. He might be about half right on that.

Senator HART. Thank you, Mr. Chairman.

Chairman EASTLAND. Senator Hruska.

Senator HRUSKA. Mr. Chairman, this is the third time I have had the pleasure of sitting at a hearing to listen to the testimony of the nominee. The first time was in October of 1970, when there was a hearing on his nomination to the circuit court. A second time was in June of 1974, in Chicago, Ill., where this nominee and some of his colleagues appeared to testify before the Commission on the Revision of the Federal Court Appellate System. Today makes the third time.

The work that has been done by this nominee as a lawyer and as a judge has been very thoroughly canvassed. I wish that I had had the time to read more of his opinions and other legal writings than I have. But I have read enough of them to confirm in my own mind the judgment that seems to be quite general as to the excellence of his work.

So, Mr. Chairman, I have formed a judgment and come to a conclusion that is in line with that of those who have known him so long and who have testified as to their high estimate of his qualifications, of his professional competence, his loyalty to the Constitution, and his integrity.

It is my intention to support and to vote for his confirmation in the committee and in the Senate.

I might observe, Mr. Chairman, that for both you and for me, with the confirmation of the next Justice to the Supreme Court, we will have sat in confirmation hearings on the entire membership of the Supreme Court. That also is true, I believe, of Senator McClellan. That also may be true of you, Senator Hart.

Judge Stevens, I want to take this occasion to wish you well in your work. It is an exacting and demanding position, as I am sure you are as fully aware as anyone.

I congratulate you once again on your nomination.

Judge STEVENS. Thank you, Senator Hruska.

Chairman EASTLAND. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

I want to welcome the nominee and congratulate him on his nomination to the Supreme Court of the United States. I think it is an enormous personal tribute to you, Judge Stevens, and one which I am sure is appreciated by the American people in the respect that the nomination recognizes the extraordinary excellence in law and the pinnacle of professional achievement it carries with it, along with a lifetime of responsibilities and opportunities.

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So I want to congratulate you on your nomination and to welcome you here.

Judge STEVENS. Thank you, Senator Kennedy.

Senator KENNEDY. Senator Hart made reference to some of the procedures in which a number of us joined in requesting so that the committee might have certain information. You have been all too willing to comply with the requests, and to your great credit have demonstrated since your nomination was announced, your forthrightness, candor, and willingness to share with this committee and with the American people any requests made by the committee.

I am sure you understand the nature in which many of these requests have been made. Some of us wish institutionalized some of the procedures for consideration to the highest judicial office to this country and the most thorough kind of review which we are expected to conduct as members of this committee and under the Constitution of the United States. And, as Senator Hart has indicated, the further we review your own background and experience, I believe the stronger your nomination becomes. I feel that the American people will have a strong sense of sharing in the appointment that the President has made.

It has been in that spirit that these requests have been made.

Two weeks ago, a few of the members of this committee made a request of the committee to try examining the criteria which should be used in terms of fulfilling our responsibilities under the Constitution and performing the role of advice and consent. It was the decision of the committee at that time not to do this in a formal manner; but Senator Mathias, Senator Abourezk, and myself held an informal meeting in which we invited some distinguished constitutional authorities and a former president of the Bar Association, Robert Meserve, to examine with us some of the criteria that might be considered. Ultimately I am sure it will all be criteria which is subjective in nature and perhaps follow the guidelines that the Bar Association has set out; but I found the meeting useful and informative.

One of those who appeared on that panel was Professor Howard of Virginia Law School, and he summarized what he considered to be some criteria. If I could, I will state these three areas that he mentioned. First, the professional qualifications, which are the integrity, professional competence, judicial temperament, legal, intellectual and professional credentials. Then second, he mentioned the nominee's being a public man, one whose experience and outlook enables him to mediate between tradition and change and preserve the best of social law and social heritage while accommodating law for a change in needs and change in perception. Third, he should in some ways provide a mirror of the American people, to whom people with submerged aspirations and suppressed rights can look with confidence and hope.

I am wondering whether you care to comment on these observations?

Judge STEVENS. I think, of course, all of those qualities are desirable. I think it is perhaps impossible to get everything that one wants in any one individual but I certainly would subscribe to an effort to find a person who meets all three of those criteria, as well as strictly professional criteria. I have had little to do with the selection process myself, so I do not know that I can say more than that. But I certainly would not rule out any of those factors.

Senator KENNEDY. Well, do you see yourself, not necessarily restricting yourself to the words of Professor Howard, as one to whom those with submerged aspirations and suppressed rights would be able to look to with confidence and hope?

Judge STEVENS. Well, it is kind of interesting—let me just answer it this way—among the mail I have received, complimentary mail, has been from inmates in prisons, who have said they were writing to their Senators asking them to vote for my confirmation. I suppose they are about submerged as any element of our society. So I think perhaps I may supply that particular need to some degree, at least.

Senator KENNEDY. I too believe that is a strong indicator of their feeling about the sense of justice you have administered on the court. Are you aware there have been some of those involved in the various women's movement who have analyzed your opinions and have expressed some concern? I know there are one or two groups who have actually requested to testify before the committee on this issue. Could you share with us your general view on whether you believe that women have obtained equality in America, whether they should, or what role the law and the court should have in the process?

Judge STEVENS. Well, I am satisfied that they have not achieved full equality and that they are marching definitely in that direction.

I think the standard that I will apply in any litigation involving a sex discrimination question would be the same whether the claimant was of the male sex or the female sex. I am aware of the two cases that they specifically criticized: my dissent in the *Bridgeport Brass* case and the *Sprogis* case. I re-examined them a few days ago, and I would not write them differently. I think my simple standard that I was applying was would the person have fared better in the particular situation that was involved had he or she been of the opposite sex, and I concluded one way and my colleagues concluded another. But I think a fair reading of those opinions will not find any bias whatsoever.

I should say that I am aware of a total of five cases which arguably involve sex discrimination issues in which I participated, and those two are the ones in which I came down on the side of denying the female litigant relief, and there are two others in which I participated on a panel in which additional relief was ordered in favor of the female litigant; and there is a fifth in which there was a partial victory and a partial defeat for the female. So if one were to determine impartiality by results, it just so happens that I think I come out about 50–50. But I do not think that is the correct way to analyze a judge's performance because it depends entirely on the mix of cases that one gets.

But I can assure you that I am free of prejudice against either sex and believe I can rule impartially when members of one sex are engaged in litigation involving their rights to employment or other opportunities.

Senator KENNEDY. As a private citizen, what are your views on the equal rights amendment?

Judge STEVENS. Well, I don't really know, Senator. I must confess that, other than the symbolic value of the amendment, I am not entirely clear how much it will accomplish beyond the equal protection clause of the 14th amendment itself.

Senator KENNEDY. How often has that been extended to cover women?

Judge STEVENS. Well, there are about three cases I remember that the Supreme Court has had to face up to that question, and the law in that area is developing, both statutory law and constitutional law.

Senator KENNEDY. Do you feel that equal rights to women would definitely fall within the 14th amendment?

Judge STEVENS. Certainly, in certain situations.

Senator KENNEDY. Isn't it a fact that throughout history, when those matters have been raised in the courts, they have been extremely reluctant to apply the 14th amendment?

Judge STEVENS. I was not under that impression, Senator. In recent years, as you know, Congress has been just as slow as the judiciary about getting into this area, and once Congress acted, then the judiciary moved swiftly and effectively in enforcing the statutes Congress enacted. Prior to the basic statutory changes which included women as a protected class, or members of both sexes as members of the protected class, there was little litigation in this area. There is no question about it.

Senator KENNEDY. Is it your position that rights and interests of women are achieved through an equal rights amendment or expansion of the 14th amendment? Should equal rights for women be achieved?

Judge STEVENS. Well, Senator, I must be very careful about what we say when we say they should be achieved. I think women should have exactly the same rights under the law as men. I think they should have the same economic opportunities. But I do not think they should win every case they file.

Senator KENNEDY. What would be your assessment of the kinds of discrimination against women, prior to the time of either the equal rights amendment or recent times? Do you find that your review of various statutes, whether they be State, local, or Federal, that discrimination has been the case in the past?

Judge STEVENS. I'm afraid I do not understand the question.

Senator KENNEDY. Would you conclude that maybe retrospectively there has been a series of local statutes, even State laws, that violate the rights of blacks in this country over the last 25 to 50 years?

Judge STEVENS. If you are asking me if there has been a history of discrimination which we would all reject today, that nevertheless is part of our history, it is true in the racial area; it is true in the sex area; it is true in many areas. I do not wish that kind of history to survive, of course. But it is part of our past.

Senator KENNEDY. I'm just trying to find out how concerned you are about the question of sex discrimination. Would you say that you have been more disturbed by discrimination against blacks rather than women? Or, are you equally disturbed about both? Is this a matter that you feel that the American people are very much interested in and concerned about? What can you tell us of your own views about the subject?

Judge STEVENS. Well, I am certainly concerned, and I agree that the American people are and should be concerned. I have not thought in terms of placing priorities; two wrongs, both of which we want to eliminate completely, if we possibly can. I suppose, if I am asked to do so, I would be more concerned about the racial discrimination because I think they are a more disadvantaged group in the history of our country than the half the population that is female.

Senator KENNEDY. You recognize, though, the emerging consciousness and interest among women and their role in the society. In many respects, I believe this interest has been reflected in the support for the equal rights amendment. I am just wondering whether on that basis you feel that you would support it?

Judge STEVENS. I really wonder if it is appropriate for me to support or oppose the equal rights amendment. I did have a case that involved the question of procedure, as to whether the amendment had been duly ratified in Illinois. But our consideration of that case had nothing to do with our views as to the merits of the amendment, because the issue would be the same regardless of what the subject matter of the amendment might be.

I just have not, frankly, taken a position on the equal rights amendment, and I am not in the habit of expressing opinions about something that I have not really thought through. I think it has symbolic importance; but as far as its legal importance, I am just not really sure of its significance.

Chairman EASTLAND. We will recess now until 2:30.

[Whereupon, at 12:35 p.m., the committee recessed, to reconvene at 2:30 p.m. the same day.]

AFTERNOON SESSION

Chairman EASTLAND. The committee will come to order.

Judge Stevens, I will ask you to stand aside temporarily while we take the testimony of Mr. Warren Christopher.

Mr. Christopher, please identify yourself for the record.

TESTIMONY OF WARREN CHRISTOPHER, CHAIRMAN, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON THE FEDERAL JUDICIARY

Mr. CHRISTOPHER. My name is Warren Christopher. I am a practicing lawyer in Los Angeles, Calif. I am chairman of the American Bar Association's Standing Committee on the Federal Judiciary, and it is in the latter capacity that I appear here today.

Chairman EASTLAND. You were Deputy Attorney General of the United States, were you not?

Mr. CHRISTOPHER. Yes; I was in 1967 and 1968.

Chairman EASTLAND. Proceed.

Mr. CHRISTOPHER. Mr. Chairman and members of the committee, may I first thank you on behalf of the ABA and our committee for this opportunity to appear here. We value it and we appreciate it.

Our committee investigated Judge Stevens in 1970 at the time that he was nominated for the Seventh Circuit Court of Appeals. At that time, Mr. Chairman and members of the committee, we found Judge Stevens to be well qualified for the appointment.

At the time of his nomination and in the weeks preceding it, we conducted an entirely new inquiry regarding him in connection with this nomination that is now before the committee. Our new investigation and our new evaluation involved a consideration of all of his opinions on the court of appeals, interviews with all the judges on the seventh circuit, and with a large number of other judges in that circuit and around the country, interviews with judges and lawyers not only in

the Chicago area but around the country, interviews with law deans and law professors throughout the country, and finally, Mr. Chairman and members of the committee, an interview with Judge Stevens himself.

I have filed with the committee a letter summarizing the results of our investigation, and I shall not repeat it in detail here.

[The letter referred to follows:]

AMERICAN BAR ASSOCIATION,
Chicago, Ill., December 8, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is submitted in response to your invitation to the Standing Committee on Federal Judiciary of the American Bar Association to submit its opinion regarding Honorable John Paul Stevens of Illinois who has been nominated to be an Associate Justice of the Supreme Court of the United States.

Our Committee is of the opinion, based upon the investigation described below, that Judge Stevens meets high standards of professional competence, judicial temperament and integrity—the Committee's highest evaluation for potential nominees for the Supreme Court. To the Committee, this means that from the viewpoint of professional qualifications, Judge Stevens is one of the best persons available for appointment to the Supreme Court. It should be noted that the Committee does not attempt to comment on political or ideological matters.

Our Committee investigated Judge Stevens' qualifications in 1970 when he was appointed to the United States Court of Appeals for the Seventh Circuit and we then reported that Judge Stevens was Well Qualified for appointment to that judicial position. Our Committee's current inquiry regarding Judge Stevens included the following:

(i) Surveys of Judge Stevens' opinions were made for our Committee by practicing attorneys and by professors of law.

(ii) All of the members of the Seventh Circuit Court of Appeals were interviewed. In addition, the Chief Judge of each of the District Courts within the Seventh Circuit was interviewed as were a number of other federal and state court judges within the Seventh Circuit.

(iii) More than fifty lawyers within the Seventh Circuit who are in active practice and who would be most likely to be familiar with Judge Stevens' reputation and work were interviewed.

(iv) A number of judges and lawyers outside the Seventh Circuit were interviewed.

(v) The deans or members of the faculties of law schools in the Seventh Circuit who were most likely to know or be familiar with Judge Stevens' work were interviewed. In addition, deans and professors of law in law schools outside the Seventh Circuit were interviewed.

(vi) A member of our Committee interviewed Judge Stevens.

PROFESSIONAL BACKGROUND

Judge Stevens has a distinguished record as a student, a practicing lawyer, and as a judge. He received his B.A. from the University of Chicago in 1941, graduating Phi Beta Kappa. Following service in the Navy, he attended Northwestern Schol of Law, where he received a J.D. in 1947. He was first in his law school class, co-editor of the *Law Review*, and a member of the Order of the Coif. After graduating, he served as a law clerk for one year to Mr. Justice Rutledge on the United States Supreme Court.

From September 1948 to March 1951, Judge Stevens was associated with the law firm of Poppenhusen, Johnston, Thompson and Raymond (now Jenner & Block) in Chicago. Then, from March 1951 to January 1952, he was Associate Counsel to the Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary of the United States House of Representatives in Washington, D.C. Thereafter, he organized and became a meber of the firm of Rothschild, Stevens and Barry when it was formed on July 1, 1952, and remained with that firm until appointed to be a judge for the United States Court of Appeals for the Seventh Circuit in 1970.

While a practicing attorney, Judge Stevens engaged in general civil practice and gained extensive experience in litigation and antitrust law. During his years of practice, Judge Stevens was a part-time member of the faculty of Northwestern University Law School (1952–1954) and the University of Chicago Law School (1955–1956), teaching courses in Trade Regulation. Prior to going on the beach, Judge Stevens authored a number of published articles concerning the antitrust laws and was a member of the Attorney General's Committee to Study Antitrust Laws in 1952.

In his practicing years, Judge Stevens was active in the bar associations, serving as chairman of the several committees of the Chicago Bar Association and as a member of the Association's Board of Managers; he also served on a committee of the American Bar Association. Had Judge Stevens remained in practice, he would have become, in 1972, the President of the Chicago Bar Association.

The year before Judge Stevens was appointed to the federal bench, he served as general counsel to the Special Commission appointed by the Supreme Court of Illinois to investigate the integrity of the judgment of the Court in *People* v. *Isaacs*. He acted as the Commission's counsel during the hearings that thereafter ensued in connection with that inquiry, as a result of which two Justices of the Illinois Supreme Court resigned.

I. SURVEY OF JUDGE STEVENS' OPINIONS

Judge Stevens has authored approximately 215 opinions since he went on the federal bench in 1970. All of these opinions were examined for our Committee by a group of practicing attorneys. In addition, six professors at the Harvard Law School each read 30–35 of Judge Stevens' opinions. Both the practicing lawyers and the academicians expressed admiration for the outstanding quality of Judge Stevens' opinions.

Judge Stevens' opinions cover almost every field of federal law, including civil rights, criminal law, securities law, tax law, antitrust law, labor law, patent law, administrative law and federal procedure and jurisdiction. The opinions are of consistently high quality in each of the substantive areas of law involved. Several of the law school professors who evaluated Judge Stevens' opinions noted the excellence of particular opinions dealing with legal subjects in which they are expert. One professor characterized an opinion on federal jurisdiction as a "model of analysis"; one observed that Judge Stevens' opinions in complicated statutory interpretation cases are "excellent", and sometimes "brilliant"; an antitrust teacher pointed to "very thoughtful, sound and creative" antitrust opinions by Judge Stevens; and another professor called attention to "very good" tax opinions. This consistent excellence in opinions ranging over a broad spectrum of substantive areas indicates that Judge Stevens would be highly qualified to deal with the many complex issues which reach the Supreme Court.

Overall, Judge Stevens' opinions are well written, highly analytical, closely researched, and meticulously prepared. They reflect very high degrees of scholarship, discipline, open mindedness, and a studied effort to do justice to all parties within the framework of the law.

II. JUDGES IN THE SEVENTH CIRCUIT

Judge Stevens has been unanimously endorsed by all of his colleagues on the Seventh Circuit to sit on the United States Supreme Court; several of his colleagues described him as one of the best Circuit Judges in the United States. The judges of the Seventh Circuit, in evaluating him, have used such terms as "spectacular", "outstanding", "excellent", and "tops".

Our Committee also interviewed other federal district judges in the Seventh Circuit and state court judges in the Circuit. All of the judges interviewed expressed professional praise and admiration for Judge Stevens, his ability, and his integrity. It is noteworthy that the federal district judges in the Seventh Circuit know him not only by reading his opinions but as the judge of the Seventh Circuit often designated to make presentations to all the judges of the Seventh Circuit at their conferences concerning recent landmark decisions.

III. LAWYERS

Most of the lawyers interviewed practice in and around Chicago where Judge Stevens is best known. Those interviewed included a wide spectrum of lawyers, among them lawyers who represent minority groups, labor unions, large corpora-

tions, plaintiffs and defendants in personal injury work, and persons charged with crimes. Some were United States Attorneys and others were engaged in civil rights cases. Without exception, the lawyers describe Judge Stevens as being fair-minded and compassionate, as having perception of legal and factual issues, and as having judicial temperament. All praise his legal ability. Our Committee received no adverse opinion about Judge Stevens in connection with any of its inquiries from practicing lawyers although some of them have had cases decided against them by the Judge.

IV. DEANS AND PROFESSORS OF LAW

Our Committee spoke to either the deans or members of the faculty of the major law schools in the Chicago area and to deans and professors on faculties throughout the country who might know Judge Stevens or his work. Many of those we spoke to knew Judge Stevens personally because of his past service as a law school lecturer on the antitrust laws. All those interviewed spoke in high terms concerning Judge Stevens' accomplishments, ability, and integrity, and all indicate that he has excellent qualifications for appointment to the Supreme Court.

V. JUDGES AND LAWYERS OUTSIDE THE SEVENTH CIRCUIT

While Judge Stevens is not so well known outside the Seventh Circuit, a number of judges and lawyers contacted by the Committee either know him or are familiar with his work. The uniform reaction of those who have a basis for opinion is highly favorable. It is undoubted that Judge Stevens has made an affirmative impression on those who have become acquainted with him or his work.

VI. INTERVIEW WITH JUDGE STEVENS

Judge Stevens was interviewed by a member of our Committee. Judge Stevens is a modest, friendly and even-tempered man, devoted to his family, the law, and to judicial excellence. He is thorough and fair-minded, and looks to his new position, if confirmed, with dedication, humility and enthusiasm.

During the course of inquiries concerning Judge Stevens, the Committee learned that in 1974 he underwent open heart surgery. During our interview with Judge Stevens, he was asked about his physical condition. He reported that he had made a complete recovery from his heart surgery and that he is in excellent health. His Seventh Circuit colleagues confirm that he has enjoyed a full recovery, that his health appears excellent, and that he carries a normal workload. Judge Stevens gives every appearance of being alert, vigorous, and without physical impediment. (We also understand that Judge Stevens has cooperated fully with Administration officials in enabling them to obtain a medical evaluation of his physical condition.) Based upon the information supplied to us by Judge Stevens and his colleagues, we believe that he has the health and stamina necessary to discharge the duties of a Justice of the Supreme Court.

In the personal interview with Judge Stevens, our Committee inquired about his financial holdings and off-bench activities. While he was a practicing lawyer, Judge Stevens served as a director or officer of several companies but he resigned all such positions when he was appointed to the bench in 1970. He has held no such position since he has been a member of the United States Court of Appeals for the Seventh Circuit.

Judge Stevens has filed statements of interest required of him as a federal judge and he advises us that his answers to questions concerning possible conflict of interest were all negative. He also states that he has sold most of his securities during the time he has served as a circuit judge.

Four speeches given by Judge Stevens subsequent to the time he became a sitting judge have been examined and none of them expresses an opinion on matters that were either before Judge Stevens or might come before him as a sitting judge.

CONCLUSION

During the course of our investigation (which was necessarily compressed into a relatively short period of time), our Committee attempted to inquire into all facets of Judge Stevens' career which would be relevant from a professional standpoint. Based upon this inquiry, a restudy of our Committee's 1970 report concerning Judge Stevens, the examination of his judicial opinions, and a personal interview with him, our Committee is unanimously of the view that Judge Stevens meets high standards of professional competence, judicial tempera-

ment and integrity—the Committee's highest evaluation. To repeat, this means to the Committee that from the viewpoint of professional qualifications, Judge Stevens is one of the best persons available for appointment to the Supreme Court.

This report is being filed at the commencement of the Committee's hearings. We will, as a matter of routine, review our report at the conclusion of the hearings and notify the Committee if any circumstance has developed to require a modification of our views.

Respectfully submitted.

WARREN CHRISTOPHER, *Chairman.*

Mr. CHRISTOPHER. I would like, however, to comment upon one aspect of our investigation, and that is our survey of Judge Stevens' opinions.

As you have heard earlier this morning, Judge Stevens has written more than 215 opinions since he went on the Federal bench in 1970. All of these opinions were examined for and by our committee by a group of practicing lawyers. In addition, six professors at the Harvard Law School each examined between 30 and 35 of Judge Stevens' opinions. Those opinions by Judge Stevens cover almost every field of Federal law, criminal law, securities law, tax law, civil rights law, antitrust law, labor law, patent law, administrative law, and Federal jurisdiction.

The striking fact that comes through from a survey of the opinions is their consistently high quality, regardless of the substantive area involved. Several of the law school professors who, I might say, are not an uncritical audience, noted excellence in these opinions in the particular areas in which they teach. One professor characterized an opinion on Federal jurisdiction as being a model of analysis. One professor observed that Judge Stevens' opinions in complicated statutory interpretation cases are excellent, often brilliant. An antitrust teacher pointed to a very thoughtful, sound, and creative antitrust opinion, and this was echoed with respect to other opinions. Another professor called his tax opinions very good.

This consistent excellence, Mr. Chairman and members of the committee, in opions ranging across a broad spectrum of Federal law, gives high promise that Judge Stevens will be able to deal with the very complex issues that are before the Supreme Court at almost every argument session.

Overall, the view of our committee is that Judge Stevens' opinions are well written, highly analytical, closely researched, and meticulously prepared. They reflect a very high degree of scholarship, discipline, open mindedness, and a full effort to do justice to all the parties within the framework of the law.

In summary, Mr. Chairman, and to try to abbreviate my testimony, during the course of our committee's investigation, which was necessarily abbreviated because of the relatively short period of time, our committee attempted to inquire into all facets of Judge Stevens' career, which would be relevant from a professional standpoint.

Based upon this inquiry, a restudy of our committee's evaluation in 1970, an examination of his judicial opinions, and a personal interview with him, our committee is unanimously of the opinion that Judge Stevens meets high standards of professional competence, judicial temperament, and integrity, and that is our committee's highest evaluation. To our committee this means that from the standpoint of professional qualification, Judge Stevens is one of the best persons available for appointment to the Supreme Court of the United States.

Thank you very much, Mr. Chairman.

Chairman EASTLAND. Thank you, Mr. Christopher.

Senator Kennedy.

Senator KENNEDY. Mr. Chairman, may I just welcome Mr. Christopher to the committee. I think that under his leadership the American Bar Association is well served. He has been a distinguished public servant in the Justice Department as well as with the bar association and, as I am sure the nominee knows, this is very high praise from someone for whom we have learned through experience to have a great deal of respect. We are delighted to have you back here.

Mr. CHRISTOPHER. Thank you very much, Senator Kennedy.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Judge Stevens, I would like to congratulate you upon your nomination to the Supreme Court, and I would also like to congratulate President Ford upon selecting you to fill that high position.

I have studied some of your decisions, and have been greatly impressed with the quality of your work. Your decisions show an ability on your part to single out the issues in the case, to bring together the facts and the applicable law, and to state succinctly the conclusion with brevity and exactness. Your style of legal writing indicates you are capable of ascertaining the narrow issue which must be decided, and confining your decision to that specific area. This is an ability which is refreshing, and I certainly commend you to a position on the Supreme Court.

I was pleased to note that the American Bar Association's Committee on the Federal Judiciary reported that you meet high standards of professional competence, judicial temperament and integrity, and gave you their highest evaluation. Your record, as I have been able to ascertain it, indicates that you believe in deciding the case on the law and the facts. I believe you will do your best to uphold the Constitution of the United States and to show fairness to all and partiality to none.

I believe that is all we can ask of a Supreme Court justice, and I shall be pleased to support your nomination.

Judge STEVENS. Thank you, Senator Thurmond.

TESTIMONY OF JOHN PAUL STEVENS, NOMINEE—Resumed

Chairman EASTLAND. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Judge Stevens, I would like to return, at a later time, to the issue of women's rights. I do not know how long I will be able to continue, as other members of the committee have questions, but I would like to cover, at least in a preliminary manner, some other areas of interest and then come back to that area later.

Would it be agreeable with you to provide the committee with a financial statement that could be made available to both the committee and to the public? Justice Blackman did this for the committee, and I wonder whether you would be willing to make that available for the committee and the public?

Judge STEVENS. Senator Kennedy, that information has already been made available.

[The financial statement released by the chairman follows:]

Financial statement of John Paul Stevens, Dec. 2, 1975

Assets:	
Cash in checking account [1]	$1,400
Cash in savings account [1]	37,000
$40,000 face amount West Virginia Turnpike revenue bonds, 3¾ percent, due December 1989 (63½)	25,400
$10,000 face amount State of Connecticut 5½ percent bonds, due September 1, 1985 [2]	9,484
Home in Burr Ridge, Ill.[1]	125,000
1967 Cessna single-engine airplane	7,500
1971 Pontiac automobile [2]	1,500
1973 Fiat automobile [2]	1,000
Cash surrender value of life insurance—estimated	12,000
Total assets	220,284
Liabilities:	
Mortgage on home	39,000
Loan on insurance policies	10,000
Total liabilities	49,000
Net worth	171,284

[1] Owned jointly with wife, Elizabeth
[2] Owned by wife, Elizabeth. Wife owns no other property.

Senator KENNEDY. I know it has been made available to the committee but will you make it public?

Judge STEVENS. The committee can do with it as it pleases. It is up to you. If you think it is appropriate to make it public, that is your decision to make. No one wishes to have personal details made public, but I have no objection. I will leave it to the good judgment of the committee as to whether to make it public or not.

Senator KENNEDY. Well, I am distinguishing between the tax forms and tax material and a general kind of financial statement. I agree with you that the committee has the complete authority and the power to release that information. But I am wondering whether on your own you would be willing to make a general financial statement available to the public as Justice Powell and Justice Blackman did without regard to the action or the determination of the committee?

Judge STEVENS. I would think that is a question for the committee to decide. I have nothing to withhold, but I have turned everything over to the committee and I have no objection to your doing whatever you see fit with it, including making it public, and that is true of everything I have supplied to the committee. It is in the good judgment of the committee. I think it is for you to decide because you are running the hearings and I am trying to cooperate in every way I can.

Senator KENNEDY. But there is a broader dimension, is there not? Judge Stevens, we are not trying to do this just to satisfy the members of this committee. We are trying to perform a public function as well. We obviously have the power and the authority to release that information.

Judge STEVENS. If you think that will facilitate the performance of your public function, go right ahead.

Senator KENNEDY. Well, we are not doing this just as members of the committee but for the American people. We are trying to act as their representatives. Would you be willing, as Justice Blackman and Justice Powell have done on their own, to give a financial statement? I gather from your remarks that you made to the committee, that unlike either Justice Blackman or Powell, you are not prepared to make a public financial statement.

Judge STEVENS. I have read the transcripts of the hearings with respect to the justices whom you name, and it is my impression that I supplied a great deal more detail than any of them did. I was not aware of the disclosures that you describe because I did not find them in the record. But I certainly have no objection to doing whatever any other justice of the Supreme Court would do or any other nominee. I have nothing whatsoever I wish to withhold.

I do not want to bypass the committee procedure. I think it is your decision to make as to what is in the best interest in the way of disclosure, and I will cooperate fully and give you any information you want on any subject.

Senator KENNEDY. I am sure that in your review of the hearings on the nomination of Justice Blackman you observed on pages 22–24 the various lists of stocks and the transfers of stocks. Justice Powell in subsequent hearings did the same.

Judge STEVENS. I gave you much more detail than is shown on those pages.

Senator KENNEDY. I know. But I would like to know whether you would be willing to provide such financial information as a matter of public record rather than waiting for the committee to act. No one doubts the power of the committee to act.

Judge STEVENS. You have my authority to release whatever you think would be in the public interest.

Senator KENNEDY. If we could go on an issue of crime in this country. Probably outside the issues of the economy, unemployment, inflation, energy, I would think that to people in many of the urban areas crime is the No. 1 problem.

In your own review of various cases, what do you think are really the primary causes that have led to the growth of crime in our society?

Judge STEVENS. I really do not think one can judge from the records of the cases that come before us because we deal with the facts of the crimes themselves rather than the background and social conditions that produce the hardship and unhappiness that often lead one to a life of crime. I could not evaluate on the basis of my work the hierarchy of causes of this most unfortunate situation in our society, and it really would be presumptious of me to try to speak as an expert on really a sociological question.

Senator KENNEDY. Well, this is something that I imagine most people can express some view about. Why do they think that there is a growth of crime? This has been an issue that has been talked about and debated. It is a matter in the national political campaigns and has been discussed widely over some period of time. I would think that as a citizen you could help us a bit in how you view this matter of the growth of crime and what you think are some of the principal causes for this growth.

Judge STEVENS. Well, I think certainly one rather obvious cause is the extent of unemployment in the country. No doubt it is a significant contributing factor. Another factor, that is difficult to evaluate, is changes in statistical methods of reporting and keeping track of crime. Sometimes what appears to be a growth in crime is a difference in keeping records and reporting what happens. I really do not know why we have as much crime as we do. It is a very sad social situation.

Senator KENNEDY. Do you think that the bottleneck in the courts has been a factor?

Judge STEVENS. I think the failure of the Congress to give adequate numbers of Federal judges is a contributing factor in the failure of the judges to deal with the criminal litigation as promptly as they could. I think the speed with which cases are disposed of in the Federal system compares very favorably with the speed with which they are disposed of in the various State systems. But there is always room for improvement. There is much room for improvement in the judicial system, of course, at the Federal level and at the State level.

I personally think that one of the most unfortunate phases of our overall judicial system is the practice of electing State judges. I think that if that were changed, the whole system might change.

Senator KENNEDY. As you pointed out, the backlog in State court systems is really a national tragedy. I would use stronger words than you might want to use; but a review of this backlog, particularly in the urban areas, indicates that it is extremely difficult for an accused to receive a speedy trial, for the innocent to be freed, and for the guilty to be brouhgt to justice.

Would you agree with that as a general proposition or would you want to make any comment based upon your own experience?

Judge STEVENS. I think generally there is much more delay in the judicial system in the administration of criminal justice than there should be. It is not only in bringing the indictments and bringing the cases to trial. There are continuances because the judges are busy and they do not have adequate facilities. There is no doubt about that. There is much that can be done, and I think what also is tragic is that because the urban areas, indicates that it is extremely difficult for au accused most jurisdictions give priority to criminal matters, which they should, civil matters fall farther and farther behind, so that this problem accelerates and feels upon itself. There is no doubt about that, and there need to be improvements in procedures. There need to be improvements in personnel. There need to be improvements in methods of selection. There are all sorts of things that can be done.

Senator KENNEDY. Do you think a speedy trial and the surety of punishment for the guilty would make some difference in terms of discouraging crime?

Judge STEVENS. I do not think we should look at the desirability of a speedy trial simply from the deterrent standpoint. I think it is part of the process. A criminal proceeding is a serious matter to the State, is a serious matter to the defendant. Both sides are entitled to a prompt disposition. I think we should approach it that way, not just simply in terms of deterrents, but in terms of rendering justice in an important matter.

Senator KENNEDY. How much of a problem is it? I do not think anyone would disagree with you from an academic point of view, but

is that the reality today in the urban centers of this country? What is the court situation in these areas?

Judge STEVENS. There are backlogs.

Senator KENNEDY. There are serious backlogs, are there not?

Judge STEVENS. Yes.

Senator KENNEDY. How long a time on the average does it take to try a criminal case in Chicago?

Judge STEVENS. I do not have any figures on the average delay, I have looked at them from time to time, but it is more than it should be, I know that.

Senator KENNEDY. In considering the problem of crime, obviously we will be seeking a number of remedies here in the Congress. But, I would like to know your feelings on capital punishment. Do you believe it serves as a deterrent?

Judge STEVENS. Senator, if I can digress for a moment, I do not think I should answer the question about capital punishment. As I understand it, that is a matter that will be before the Supreme Court, and I think it would be inappropriate to comment on that. But with respect to this whole concept of speedy trial, I do think it is important that when Congress addressed the question of the speedy trial statute or advancing trials, that it also think of the cost of doing so and think in terms of providing the adequate number of judges and facilities and the supporting matter that are needed to implement the statute.

You cannot simply say that we must try the cases in a shorter period of time and expect that to be done without the wherewithall to do the job. The Chief Justice has spoken on this many times.

Senator KENNEDY. I could not agree with you more. In terms of the Federal response, I hope that we can, through the LEAA or through separate legislation, provide direct support to the courts. I am hopeful that we can fashion some legislation soon in that area.

But I know that capital punishment is going to be considered in the Supreme Court. I am not asking at this time, nor would I at any time, for you to give us a judgment as to the constitutionality of it. But, I am asking you to comment on whether you think an effective case has been made showing that capital punishment serves as a deterrent to crime?

Judge STEVENS. I do not know whether an effective case has been made. I would assume that if one contemplated that he would be punished by having his life terminated, that would have some deterrent effect. But I do not know anything about the case that has been made because I am not prepared to talk about that.

Senator KENNEDY. Do you think that it does serve as a deterrent?

Judge STEVENS. I don't know. I suppose you have to ask to whom, with respect to what crimes, and so on.

Senator KENNEDY. Do you think it serves as a deterrent for any crime?

Judge STEVENS. Do I think it does now?

Senator KENNEDY. I am asking you only for your general views on this issue.

Judge STEVENS. I really don't think I should discuss this subject generally, Senator. I don't mean to be unresponsive but in all candor I must say that there have been many times in my experience in the last 5 years where I found that my first reaction to a problem was

not the same as the reaction I had when I had the responsibility of decisions and I think that if I were to make comments that were not carefully thought through they might be given significance that they really did not merit. I am not trying to be evasive. I am trying to be honest.

Senator KENNEDY. Well, I can appreciate the question about the implications in terms of the constitutionality of a particular issue, but I think that giving us your own general views about this issue is appropriate for inquiry. Justice Blackmun talked at some length about this issue before the committee at the time of his nomination. He talked at some length about his own views on capital punishment.

Judge STEVENS. Senator Kennedy, I have the greatest respect for Justice Blackmun and for all other members of the Court, but each of us really has to face for himself the question of whether he thinks it an appropriate subject for him to discuss when he is a potential member of that Court.

I honestly do not think it is appropriate for me to give you a philosophical discussion of what I might do if I were a legislator. I do not intend to be a legislator, and my policy thoughts are really not what would be controlling when I face the adjudication of these matters later on. I think in good conscience I should do my best to avoid saying anything that might have an impact on the impartial treatment of this issue when it comes before the Court.

I am afraid that if you lead me on this way I may be led to say something that might make it more difficult to have whatever I do later be accepted as a completely impartial analysis of the question. That is how I see it.

Senator KENNEDY. Let us take an issue that is peripheral to capital punishment. It does not relate directly to you and whether you approve or disapprove of capital punishment. It is the issue of the applicability in terms of whether capital punishment can be applied fairly and equitably. That is a very significant issue that has caused enormous concern among many people as it has to me. Any fair review of its application over any period of time would have to indicate that whether the statute is constitutional or unconstitutional it has been used and has generally been applied more heavily to the poor and to the black people of this country. I wonder about that particular issue in terms of your own concerns about the applicability of the capital punishment statute.

Judge STEVENS. Senator, I think that is a fair question, and I would say that with respect to this punishment, as well as with respect to any sanction of the law, it is always of paramount importance to be concerned with evenhanded administrations of law, without regard to the character of the particular individual, who happens to be the litigant before the Court. I think that is a fair question.

Senator KENNEDY. I am very sorry, my attention was distracted.

Judge STEVENS. Senator, I just tried to say that whether it is capital punishment or any other sanction the law might impose, I would agree with the thrust of what your question seems to suggest, that we must always be concerned with the impartial administration of the law and that it should not be differentially applied to one group as opposed to another.

Senator KENNEDY. Do you think from your study of the law that in some cases certain laws have been applied more to one group than to others?

Judge STEVENS. No such situation comes to mind in the work I have done in the seventh circuit, but I am sure that where human beings are involved that sort of thing, unfortunately, happens from time to time.

Senator KENNEDY. Well, generally what has been your feeling about the kind of protection that the poor get in our system of justice in our society?

Judge STEVENS. I think in our circuit, I think there is much done to make sure they have counsel available when they cannot afford it and proceedings available to help them with the appellate process and the indigent defendant is provided with counsel. They are provided with transcripts. There are many things that are done.

Senator KENNEDY. Do you think that this is generally true in the country as a whole? Do you think that assigned legal defenders—and I know that there are some outstanding ones—can compete on an equal footing with those attorneys hired by defendants who have no financial problem?

Judge STEVENS. The one about which I am most able to speak is the Federal Defender Office in Chicago, run by Terence McCarthy, and I think it can compare with any fine law office in the United States. It is an excellent office. It is well run and the young lawyers do a fine job. It is an excellent office. I doubt if they are that good in every place in the country because it is an exceptionally good office, so there no doubt are shortcomings that have to be remedied from place to place, but I do not have the factual details to speak in any helpful way about it I am afraid.

Senator KENNEDY. But there is nothing else you want to add with regard to the equal protection argument of the capital punishment statute as it might relate to the poor and blacks, when the history of the applicability of capital punishment shows rather clearly that in far too many instances the poor and the blacks have been the ones who have experienced the brunt of the application of the statute?

Judge STEVENS. I am familiar with the argument as it was presented in the case that was decided 4 or 5 years ago, and I agree it is an appropriate argument to advance, but I do not think I should comment on whether it should have controlling force or not.

Senator KENNEDY. How much weight would you give it?

Judge STEVENS. That is exactly what I do not think I should say without more careful study.

Senator KENNEDY. To what extent do you believe that the decisions of the Warren Court in relation to criminal law have contributed to the rise in crime?

Judge STEVENS. Well, the only thing one can say is that those decisions took place at a certain point in time and there is more crime than there was before, but I do not think that necessarily proves a causal connection. Sometimes there are byproducts of procedural improvements, sometimes men——

Senator KENNEDY. You think there have been in this case?

Judge STEVENS. I really do not know. I think probably the causal connection is overemphasized. There is a period of adjustment when changes like that are made, and sometimes when things settle down, such temporary loss as may have taken place tends to be replaced by adjustment.

Senator KENNEDY. Is there anything you want to add to what you think Congress can do to help in dealing with and combating crime?

Judge STEVENS. Of course, really, I think the heart of the criminal judicial administration problem lies in the State judicial systems where most of the criminal justice is administered, so, unfortunately, I really do not think it is a problem that can be most effectively addressed by the Congress, apart from what the various State legislatures and State judicial systems might do. I do not favor continuing expansion of Federal criminal jurisdiction. I am afraid that we must always keep in mind the danger of overburdening the court so much that they will no longer be able to do an effective job; that is, the Federal courts, that they are now doing. There are areas where we are approaching crisis points in the administration of justice in the Federal system.

Senator KENNEDY. There are a number of areas that are of very great concern to Americans, as you can well imagine. In the last few years, the people of this Nation have been bombarded almost daily with news accounts of Government violations of individuals rights, intrusions of individuals' privacy by the CIA and the FBI, the IRS and Watergate. And in light of this, do you think that the courts in general, and perhaps the Supreme Court in particular, have special responsibilities with regard to protecting individual liberties?

Judge STEVENS. Well, you know, I think Congress acted very wisely in the way in which it focused the responsibility in the wiretap area which, of course, is a very important part of what you describe, by imposing the responsibility for authorizing the wiretap in the first instance under the Attorney General of the United States, and I think if the country has confidence in the man who occupies that office, it can have equal confidence that the power will not be abused.

I think we are extremely fortunate today to have the kind of individual in that responsibility that we do. I think that, perhaps, there is more protection to the country as a whole from the kind of violation about which you are concerned by reason of the kind of Attorney General we now have than the court could do or sometimes even Congress could do.

Senator KENNEDY. I do not think you will hear anything but high praise for Attorney General Levi. But I would like to get back to the area of concern on the minds of many Americans, and that is: When there is such a perversion of governmental authority, how are their rights going to be protected? I am interested in your view about the role of the courts in this area.

With all respect, the Attorney General can't be policing the FBI and the CIA, the IRS, and other agencies in this area. I'm just wondering whether you are sufficiently concerned about the protection of individual rights and liberties; and whether you feel the courts of this country, and certainly the Supreme Court, have to be particularly concerned about the protection of those rights. I gather from your earlier response that you feel that should be the case now that we have Edward Levi as Attorney General.

Judge STEVENS. I was directing that particularly to the wiretap problem, which I would assume would be at the heart of what your concern was, and, of course, also responsibility for directions to the FBI, which I had understood to be the focus of your question, but if you assume in other areas, such as CIA or something like that——

Senator KENNEDY. Under the chairmanship of Senator Ervin we heard from the Department of Army about its intelligence branch's invasion into citizens' privacy and a wide range of similar activities conducted by other agencies. What I am trying to elicit from you is some kind of expression of concern for individual rights and liberties and what you believe should be the Supreme Court's role in protecting these rights and liberties.

Judge STEVENS. Of course, the way in which the Court can function, and this is true of any court, to protect an individual right or liberty that has been transgressed is in the particular case that comes before it. It must adjudicate specific cases. It cannot undertake a roving commission to reform all the sins of the executive branch of the Government. We must decide cases as they are presented to us, and if cases arise which result from perversions of the function—I think that is the predicate to your question—of one of those agencies which in turn infringes upon the rights of an individual, I would assume that any court would react appropriately to any such set of facts, including the one on which I sit.

Senator KENNEDY. Do you think the courts should be more alert today than they were when you were in law school? Is it the same threat? You make that comment as though nothing has happened in the last 10 years.

Judge STEVENS. I would have thought when I was in law school that the court would have had the same duty to respond to abuse of powers that it has today. Maybe the abuse of power had not yet become part of a record to which a court could react because that was not disclosed, but if it exists and if it arises through litigation the court should deal with it.

Senator KENNEDY. You don't believe that the overcrowding in the courts presents an adequate reason to inhibit Congress from expanding entry into the Federal court system for people who are wronged by Government action?

Judge STEVENS. Well, I think right now the gates are wide open. The Federal courts are wide open to persons who are wronged by governmnetal actions. Section 1983 of the Civil Rights Act is a remedy for persons who suffer wrong by agencies of the State and there is a provision for when Federal officials commit similar wrongs. There has been a tremendous growth, as you know, in the volume of civil rights litigation in the last several years and I think in the main the court has dealt sympathetically with those claims.

Senator KENNEDY. I was thinking, for example, about areas where we might provide attorney's fees for persuit of particularly worthwhile cases as Congress has done in a number of statutes. Senator Mathias and I have introduced legislation in that area and there are proposals relating to standing and class action suits as well. I think there has been generally movement in the Congress, though not supported by all, but certainly supported by a majority, to insure full protection of individual interests impacted or affected by governmental decisions, by the agencies I've mentioned, but also by a wide variety of other agencies as well: the various regulatory agencies. I was just trying to gather from you whether the rights of persons who are being impacted by government are of a sufficient concern to you to want to insure adequate protection of these rights in the courts, and whether you are very much bothered by it.

Judge STEVENS. Am I bothered by the fact that we do not have more class action litigation? I don't think I am right now, no.

Senator KENNEDY. Well, that is taking a question I hadn't asked you specifically and answering it. That is, perhaps, one of the most precise answers I've gotten this afternoon.

Judge STEVENS. That's the most precise question I've been asked.

Senator KENNEDY. How serious do you think the conflict is between a defendant's right to a fair trial and the press's right to report criminal cases?

Judge STEVENS. Very serious, Senator. I think that is a very serious problem. We have under consideration in the seventh circuit now—and I must be very careful in what I say because of that fact—a case which involves a challenge based on the first amendment to the disciplinary rules that inhibit the rights of lawyers to comment on a pending matter, and, of course, there is a greater power in the Government to curtail the rights of lawyers who are participants in the judicial process than there is of the press, but that is part of the problem. You first have to decide what information the lawyers can give to the press and then what the press can give to the public.

Generally speaking, you would have much more latitude in what the press may publish than what the lawyers may say, and I would be, I am always, very concerned with any inhibition on the opportunity of the press to report freely whatever they can discover. But this is a serious problem because of the risk that the reporting may impair a defendant's ability to obtain a fair and impartial trial. You get into the problem of sequestering juries more often than you might. There are all sorts of byproducts of this. It is a complex and very serious problem.

Senator KENNEDY. What do you suggest be done, if anything, about that? We may be considering some legislation affecting this in S. 1, and I would be interested in, not getting into constitutional questions, but what you might say on that? Obviously, you have given some thought to the way we should proceed.

Judge STEVENS. I am inclined to think that this is one area in which the courts are going to have to make critical decisions in the first instance in evaluating the local rules which regulate what lawyers may say in comment about pending legislation. I think it is unlikely that it would be appropriate for the Congress to pass legislation that would tend to restrict the right of the press to comment upon a trial. I think the solution may be in controlling the release of information, which should, in a professional way, be kept out of the public domain until it appears in the record of the trial itself.

Senator KENNEDY. What standard would you use on the Supreme Court about excusing yourself on various cases?

Judge STEVENS. Yes, that is a very fair question.

I talked at some length—well, they're all fair questions. I don't want to imply anything else. That's absolutely fair, and I don't mean to be disrespectful at all.

I have followed a standard in the seventh circuit which is, perhaps, more strict than should be applied in the Supreme Court. I have followed the advice of Judge Hastings, whom I respect as I respect few men, and early in my career he suggested to me that if you have

a question about whether you should excuse yourself, then that is a sufficient reason for doing so , and so whenever there has been even what might seem a fairly trivial reason I have tended to recuse myself if I was aware of the fact that made it appropriate.

There have been two or three instances in which I did not realize that there was a disqualifying circumstance until I participated to a certain extent in the matter.

I think and I should say that in the court of appeals especially, where the judges are sitting in one place, as they do in our circuit, we are all located in Chicago, the disqualification of one judge imposes a relatively minor cost upon the court as a whole because it is easy to substitute another member of the panel. You just take somebody else's assignemnt instead or another assignment is given to you. But in the Supreme Court perhaps one should not be quite so strict because you sit only as a nine-man court and there is a cost to the system whenever a judge does recuse himself. I think there is a greater duty to face up to the difficult questions and participate when one is sure that there is not a factor present that would, in fact, impair his judgment or create an appearance of partiality which might cause the public to lose confidence in the system.

So what I am saying is that I have been quite strict in the court of appeals. I am rethinking the problem as it might apply to the Supreme Court, I have somewhat of an open mind about what I might do in situations comparable to those that I faced in the court of appeals.

Senator KENNEDY. Then there is nothing you can tell us about pending Supreme Court cases from which you might feel obligated to recuse yourself? I guess Justice Blackburn excused himself a half a dozen times the first year on different cases, and I am wondering whether you have anticipated similar situations that might involve yourself?

Judge STEVENS. Well, I am sure there are some that have been in our court that I should perhaps not sit on. I do not think of any offhand. I would not sit, at least it would not be my present intention to sit, at least for some further period of time, in those cases in which the lawyer was a former partner of mine or if the case involved a former client, if it was one of those obvious relationships. But I am not sufficiently familiar with the docket to identify those cases which I would now say that I would not sit on. But I am sensitive to the problem.

Senator KENNEDY. How would you label yourself? Would you label yourself as an activist or a strict constructionist?

Judge STEVENS. I would not label myself, Senator, and that is not a contrived position by any means. I thought, perhaps, something like that might be asked. It is almost a characteristic of my entire professional life. As a small firm back in the early 1950's we followed the practice differently from many firms of taking cases on either side of the controversy. We did negligence work for defendants and plantiffs. We were not known as either a plaintiff or defendant's firm. In the antitrust field I represented defendants and I represented plaintiffs. As you may know, other than our firm, and a relatively small number of others, firms tended to become identified either as plaintiffs' firms or defendants' firms. That was not true of ours. We felt that the law was a profession and we could handle professional work in a professional way without trying to get involved in the policy judgments that

underlie the statutes, so I just don't think it's appropriate to try to place a label that might turn out not to fit.

Senator KENNEDY. I would like to return briefly to the Equal Rights Amendment. Earlier, we talked a little about your views on the ERA amendment and the patterns and practices of discrimination that have been visited upon blacks in this country. I believe at the time of our recess, my colleague, Senator Hart, pointed out that all one has to do is to look up here at the Members who are questioning you, or at the press desk, or at the audience to see the lack of representation of those groups in our society.

The courts over a period of time in decisions which have affected blacks have not been satisfied with striking down the discriminatory statutes alone, but have required some affirmative actions, and those have brought some painful experiences to many communities. For instance, even my own city of Boston is undergoing difficult times at this very moment, but the court decisions are, I believe, quite clear. The courts have decided that it is not enough just to strike down the existing judicial statutes but that there is a responsibility to reach the issue at its very roots. I am wondering whether you feel sufficiently concerned about the type of discrimination that has been visited upon women in this society that you would feel that kind of action would be necessary to insure their full participation in the mainstream of society?

Judge STEVENS. Senator, I think as a judge, of course, one must decide the cases as they come, and one does not really get the opportunity to address the problem in society at large. In a particular case, if he has a particular violation of a serious magnitude that gives rise to an extreme remedy, a district judge, at his discretion, may feel that the way to solve this particular problem is to take some extreme, remedial action which would not normally be appropriate, and then the question on appeal is whether he has abused his discretion, and normally one does not find an abuse of discretion.

There are many, many cases in which such affirmative remedies are found to be appropriate and would be sustained on appeal. One of the cases to which I alluded this morning was a case in which the court of appeals felt the district judge had not gone far enough and sent it back for additional relief on behalf of the female employees. But you are correct, it is an appropriate thing to do in appropriate cases.

Senator KENNEDY. Well, you recognize that the affirmative remedies have been really the record of the Supreme Court in attempting to provide some equal protections under the law to blacks in this country, do you not?

Judge STEVENS. Senator, I am really not sure whether it was the Supreme Court that took the initiative or whether it was lower courts which did and then the cases eventually found their way up the ladder and were affirmed. There is a difference. These things really depend on the facts of the given situation. It is very difficult to generalize, particularly in the field of equitable remedies.

Senator KENNEDY. But it was the law of the land, was it not? Would you say that in any kind of fair consideration of the law of the land at the present time—when it comes to examining discrimination against the blacks in this country—the courts have gone beyond striking down the narrow statutes themselves?

Judge STEVENS. Frequently that is true.

Senator KENNEDY. When there has been the application of discretion for securing greater opportunities for blacks, have you been troubled by that action of the courts?

Judge STEVENS. Not if the violation justifies that kind of relief and there are certainly cases in which it does.

Senator KENNEDY. Would you use that same standard for women's rights as well?

Judge STEVENS. Yes.

Senator KENNEDY. I was just trying to give you some opportunity to express more of your view than just yes so we could determine some of your philosophy. You are no doubt aware this kind of exchange is helpful to us in better understanding your views on some of these issues and to balance the Congress' and the public's interest in getting your philosophy in the record on court decisions and issues.

Judge STEVENS. Well, I would like to emphasize what I regard as my primary obligation, to deal with litigants impartially, to deal with groups of litigants impartially, and not to suggest to you that I would place certain litigants in a favored class because I would not.

Senator KENNEDY. That may not be inconsistent with the recognition that there may very well be unfavored litigants. Certainly in court decisions in the area of civil rights courts have recognized that because of a long-time pattern of discrimination against these citizens judges at the local level because of Supreme Court decisions—have recognized positive affirmative remedies to eliminate discrimination against blacks. I believe, quite frankly, that the decisions affecting blacks in this country in most instances in the Supreme Court have reflected that.

You may not be a scholar in this area, but I believe any review of that would be recognized and respected.

I think the decisions were based upon the sound reason that these citizens had been denied full participation in the American system for far too many years. There are many Americans who feel that women, too, have been discriminated against. I was trying to get a statement or comment from you—which I must say has not been forthcoming to this point—that would at least show some sensitivity to this particular kind of a problem. If the answer that you are going to apply the law equally to every citizen is the way you want to leave it, then that is the way the record will stand. However, I believe it is not going to satisfy great numbers of people in this country who feel as I do that there has been a broad sector of our society that has been denied certain rights because there are statutes, ordinances, and regulations which discriminate on the basis of sex. If you want to leave the record just saying that you are going to apply every law equitably that is the way it will stand.

Judge STEVENS. I'd be proud to have the record stand that way.

Senator HRUSKA. Would the Senator yield for a question?

Senator KENNEDY. Surely.

Senator HRUSKA. I would like to speak out for the minority. There are two members of the committee here who have not had a chance to address questions to the witness. We have now listened to about 45 or 50 minutes from one Senator—who is doing a fine job for his side—but can we find some opportunity for others to be heard?

Senator KENNEDY. I indicated earlier that I could come back to this issue. I will be glad to yield. I appreciate your indulgence.

Senator SCOTT of Virginia. Thank you.

Judge Stevens, I am inclined to vote favorably on your nomination. I hope that does not prejudice you with other members of the committee. [Laughter.]

We have all listened to your responses to the questions by our distinguished colleague from Massachusetts with regard to decisions you might make on equality of rights of minority groups. Certainly women who were mentioned are not in the minority in this country, but I would ask you, just as a general proposition, might not your decisions with regard to equality be based on the Constitution and the laws of the country, and the facts developed in a specific case, rather than on your own opinion as to what is right or wrong?

Judge STEVENS. Yes, Senator, if you include in it, and I think you did in your question, the statutes enacted by the Congress, which, of course, would be a part of that.

Senator SCOTT of Virginia. And the facts as developed in the specific case?

Judge STEVENS. Definitely.

Senator SCOTT of Virginia. Now, Judge, I enjoyed your visit to the office and I did ask you a number of questions. I have been informed as to the results of the FBI investigation and the report of the Standing Committee on the Federal Judiciary of the American Bar Association and the investigation of your financial situation and the condition of your health, so when I say I am favorably inclined it is from an informed point of view.

Let me ask you, as I did while you were in the office and just for the benefit of the record, if we go back to our very elementary concept of government and the basic division of powers within our Government, would it be your understanding that the legislature makes the laws, that the Executive administers the laws, and that the courts interpret the laws? In a broad sense, would you be in general agreement, or would you attempt to make laws from the bench?

Judge STEVENS. No, I would be in general agreement, Senator. I think we must recognize that there are statutes which have somewhat ambiguous portions in them that must be flushed out by judicial decision, and there are Executive actions that must be implemented through administrative regulations from time to time, but the basic framework, as you described it, is certainly one with which I would agree.

Senator SCOTT of Virginia. Now you are saying, are you not, Judge, that sometimes the Congress makes broad, general provisions in the law and it does not fill in the details and sometimes the Court has to interpret because of the failure of Congress to be as comprehensive as it might be or the State legislatures?

Judge STEVENS. Yes, that is true, and it is not necessarily a failure because sometimes problems cannot be described in as great detail as would be necessary to anticipate every possible issue that would arise, but, yes, that is what I am trying to say.

Senator SCOTT of Virginia. Judge, I would compliment you on your restraint in answering some of the questions with regard to capital punishment and other matters that might come before you in the event of your confirmation and your sitting on the Supreme Court.

Now I have a concern because all our Federal judges have lifetime tenure. I have sponsored legislation, that I am not very hopeful will

be enacted into law, which would provide for 10-year tenure because you know once someone gets on the Federal bench there is no way in the world that we can get rid of them. Any impeachment is just theoretical. We are stuck as far as the Congress is concerned. So I ask you, and I think it is entirely proper to ask, when you become a member of the Supreme Court—and I have no real doubt that you will—is it your intention to exercise judicial restraint?

Judge STEVENS. Yes, it is, Senator. I think it is the business of a judge to decide cases that come before him. From time to time, in the process of deciding cases, important decisions are made and the law takes a little different turn from time to time. But it has always been my philosophy to decide cases on the narrowest ground possible and not to reach out for constitutional questions. I think that is the tradition, that is in the finest tradition of the work of the Supreme Court and I think the Court is most effective when it does its own business the best.

Senator SCOTT of Virginia. I would ask one final question by way of summary of some of the questions that were asked by our colleague from Massachusetts with regard to blacks and women and minority groups. You do agree with the phrase that is inscribed on the front of the Supreme Court building: "Equal Justice Under Law"?

Judge STEVENS. Yes.

Senator SCOTT of Virginia. Thank you very much.

Chairman EASTLAND. Senator Fong.

Senator FONG. I have just returned from Hawaii with the President and so I have not had an opportunity to meet you personally. I have asked my staff to look over some of your decisions and to give me a report as to what they thought of them because I have not had time to go over many of them. I also have before me the American Bar Association's report stating that six Harvard Law School professors have gone over approximately 215 opinions of yours, each of them taking 35 or so. Having gone to Harvard Law School, I have quite a high regard for its professors and am willing to take their word that your decisions have been well written and of very high quality.

From all reports, I am satisfied that you will make a fine Justice. I want to congratulate you on your appointment.

Judge STEVENS. Thank you, Senator Fong.

Chairman EASTLAND. Senator Hart.

Senator HART. Senator Kennedy had to leave, but as a follow-up on the discussion you had with him on the basis for recusing: I am advised that in a case involving a public official in Chicago, Tom Keane, you did recuse yourself. What was the reason for that?

Judge STEVENS. I am glad you asked because the press has been asking me for several days and in an effort to maintain my commitment not to have interviews in advance of the hearings, I have not answered the question before.

The reason I excused myself in that case: there are really four parts to it. I might say, by way of background, you may have heard a comment I made about Judge Hastings' standards for disqualification and the modest cost to our court of having one judge step aside and not sit.

I might say our procedure in the court is to distribute lists of cases before they are assigned so that a judge may indicate that he will not participate before the assignments are made and before any difficulty to the system arises by reason of having to make changes too late in the system.

Some years ago I was retained by George Keane, Tom Keane's brother, in a piece of litigation involving Hudson Motors and Courtesy Motors, and Jim Moran, the Courtesy Man, was the name of the dealer. It's a very large automobile dealer who was sued by a group of smaller dealers for violation of the Robinson-Patman Act. I handled the antitrust aspects of that litigation. It was a significant matter for a relatively young lawyer, and at that time I formed, I mean I had a professional association with the firm, and I met Tom Keane during the course of that work, who also did work for that same client, I believe.

Sometime later I was retained by the same firm in connection with the termination of an automobile franchise of a Ford dealer and I performed that work on a professional basis. Not long before I went on the bench, when I worked on the Special Commission, I was Chief Counsel to the Special Commission to investigate the integrity of the judgment of the Illinois Supreme Court, and on a volunteer basis my chief assistant was a lawyer named Jerome Torshen, who performed a magnificent service in that particular investigation. He happened to be Tom Keane's lawyer, so there were these three circumstances, not any one of which was really sufficient to cause a disqualification, but I thought in view of the public interest in the trial that the better part of valor would be to avoid any possible suggestion that any background might taint my appearance of impartiality, and in that connection by pure coincidence, I was reading The New York Times this morning, and there is a quotation from one of my opinions, actually from my dissent in the *Barrett* case, in which I had said, and I did not recall this, that I felt it particularly important in the notorious public trial to avoid even the slightest suggestion of impropriety, and this was that kind of a case.

So that is the reason I disqualified myself.

Senator HART. Thank you.

The question I am about to ask does involve an area in which you are eminently qualified.

Do you believe that the Robinson-Patman Act continues to serve a useful purpose?

Judge STEVENS. I have grave doubts, Senator. As you may notice from some of my writings, I think there is some tension between the Sherman Act philosophy of free competition and the somewhat regulatory philosophy of an antidiscrimination statute. I think it is close to something like motor carrier regulations, so I do not have some doubts about the longrun desirability of that kind of legislation.

Chairman EASTLAND. We will recess now until 10 o'clock tomorrow morning.

[Whereupon, at 3:50 p.m., the committee recessed, to reconvene at 10 a.m. the following day.]

NOMINATION OF JOHN PAUL STEVENS TO BE A JUSTICE OF THE SUPREME COURT

TUESDAY, DECEMBER 9, 1975

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:05 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Hart, Kennedy, Burdick, Byrd, Tunney, Hruska, Scott of Pennsylvania, Mathias, and Scott of Virginia.

Also present: Peter M. Stockett, Francis C. Rosenberg, Thomas D. Hart, J. C. Argetsinger, and Hite McLean, of the committee staff.

Chairman EASTLAND. The committee will come to order.

Senator Byrd.

Senator BYRD. Judge Stevens, you have served as a Federal judge for 5 years on the Seventh Circuit Court of Appeals. You indicated that your work as a Supreme Court Justice would differ from the kind of work that was yours as a member of the circuit court of appeals. You indicated that there would be a more restrictive framework within which you would have to work.

Would you approach cases any differently constitutionally than you did as a circuit judge?

Judge STEVENS. No, Senator, I would not.

I just think I have to recognize the fact that, by virtue of the flow of cases through the court of appeals, as compared with the flow in the U.S. Supreme Court, that there is a much larger precentage of the caseload in the court of appeals where the result, really, is quite clear because there is a body of precedent, or statutory directives, that we must follow, whereas in the selection process in the granting of certiorari as a discretionary matter, he Supreme Court takes an unusually difficult group of cases, very often presenting open questions as to which the answer is not often as clear as it is in the court of appeals. It is just that the case makeup is somewhat different, and the responsibility I have to recognize is such.

Senator BYRD. How did you as a circuit judge view the doctrine of *stare decisis?*

Judge STEVENS. I think it is an important part of our jurisprudence because it is an aspect of the development of law which tends to give certainty and predictability to the law.

There have been occasions, I should frankly concede, however, Senator, where we have felt that there had been an earlier decision in our circuit which had misconstrued the statute, and we have felt obliged to overrule it. I think that happened a few times in my recollection.

Our practice, when that was done, was, in advance of the publication of the opinion, to circulate the proposed opinion to the entire Court so that the entire Court would have an opportunity to decide whether or not the desirability of reaching the result different from one in the past outweighed the factor of stare decisis and the consideration of certainty and predictability that we all recognize as having importance.

Senator BYRD. How would you view the rule of stare decisis as a member of the Supreme Court of the United States?

Judge STEVENS. I think in much the same way.

I think there would be times when the Court might be called upon to reexamine earlier decisions which might have been incorrectly decided. But I think it is still an important value and perhaps particularly so at the national level because there is so much more reliance on past decisions in the Federal system when it is a decision of the U.S. Supreme Court.

So I would think your basic considerations are much the same, that there is important value in a system of law which is largely developed on a case-by-case basis to give appropriate respect to that which has been decided before, but yet there are occasions when the desirability of certainty and predictability is outweighed by other factors.

Senator BYRD. Would you say that precedent is entitled to a great deal of respect on constitutional questions before the Supreme Court?

Judge STEVENS. Yes.

Senator BYRD. How much would you feel bound by the precedents that the Supreme Court has established on constitutional questions?

Judge STEVENS. Well, Senator, the word bound is a little difficult for me to apply accurately. I would say that I certainly would weigh very carefully any decision that had already been reached by a prior Court and I would be most reluctant to depart from prior precedent without a clear showing that departure was warranted.

I would feel bound, but not absolutely 100-percent bound; I think I could not, in good conscience, say that. I think there are occasions, particularly in constitutional adjudication, where it is necessary to recognize that a prior decision may have been erroneous and should be reexamined.

Senator BYRD. To which would you give greater weight, prior recent precedent or prior earlier precedent, where the two might conflict?

Judge STEVENS. Well, I suppose if you assume a direct conflict between the two, the more authoritative precedent would be the more recent one because, presumably, it would have overruled the earlier one. But if you have two different situations where they are not directly in conflict, I really don't know. I don't think one can judge entirely on the basis of time. I think, if it was an opinion by a Justice such as Justice Holmes or Justice Brandeis, one would think very carefully before tending to disagree with him. If it were some Justice that had commanded less respect from the profession, one might be more willing to do so. I think it is not simply a question of age, Senator.

Senator BYRD. Would the division of votes have any weight?

For example, if a recent precedent was by a 5-to-4 decision, and the earlier one was by a 9-to-0 decision, and the two were in conflict; would this have any weight?

Judge STEVENS. I think it would. But again, there is a caveat—and I want to be as straightforward as I can about it—it is my understanding

that decisions that appeared to be unanimous in prior years were not, in fact, always so. There are private papers of some of the Justices that indicate that it was more customary then than it has been in recent years for Justices to go along with the majority opinion rather than to voice dissent. So sometimes the unanimous opinion is somewhat deceptive and I think one has to be a little bit careful about overstating reliance on the factor of unanimity.

But I would agree that to the extent that the decision was unanimous rather than closely divided you would tend to give more respect to it and feel more comfortable in figuring that it really did command a unanimous view. And also I think in the 5-to-4 decisions usually the countervailing argument is spelled out in some detail so you have, right on the face of the decision, reasons to consider the opposite conclusion as well.

Senator BYRD. How do you feel about the idea that there should be unanimity on any constitutional question when some of the Justices may be prone to dissent or disagree?

Judge STEVENS. Well, it has been my practice—and this is not a universal practice among appellate judges but it has been the topic of discussion in appellate seminars and the like—it has been my practice to dissent whenever I disagreed with the majority. That is one reason why you may find a larger number of dissents among my opinions than you do for some other judges.

I know there is one school of thought that the appearance of unanimity tends to add stability and respect to the law. My own view is that it actually facilitates the fair adjudication process if everyone states his own conclusion as frankly as he can. I think it also serves the purpose to let the litigants know that they have persuaded one or two judges, and I think they are entitled to know that. They are entitled to know that their arguments were understood and they were persuasive to some even though not to all. And I found in my court, although I did dissent a great deal, that if it is done in a forthright way it does not stimulate dissension within the court.

We had a very harmonious working court, notwithstanding the fact that we all felt free to dissent whenever we simply did not come to the same conclusions as the majority did. My practice is to dissent when I disagree.

Senator BYRD. A dissenting view often becomes the majority opinion in time, does it not? It often becomes the majority view at some future time?

Judge STEVENS. It does in those cases in which the later generation of judges is persuaded that the merits of dissent, as opposed to the merits of the majority, outweigh the desirability of stability and uniformity in the law, which is the value of the stare decisis theory. So there is always that balance.

Senator BYRD. It seems to me the desire to have unanimity, if it is too overriding, can breed disrespect for the court's opinions.

Judge STEVENS. I think there is that danger. I would agree, Senator.

Senator BYRD. What is your view of the idea that the Constitution had a fixed and definite meaning when it was adopted and that the same fixed and definite meaning prevails today but that it must be applied to changing circumstances and interpreted and construed in the light of those circumstances?

Judge STEVENS. Well Senator, any attempt to write rules, whether they be a Constitution or in a statute or in any process of formulating rules by which we must govern ourselves, inevitably leaves areas of open questions that require study and analysis before the basic document can be applied to a specific factual situation.

The more fundamental the charter is, the more it must, necessarily, contain open areas that require construction and interpretation. And to the extent that open areas remain in our Constitution, and inevitably a large number do—I must say, I don't mean to digress too much, but I have been constantly surprised in my work how many questions have not yet been decided, statutes, Constitution, all the rest—where there are open areas, the judge, I think, has the duty, really, to do two things. One, to do his best to understand what was intended in this kind of situation, and yet to realize that our society does change and to try to decide the case in a context that was not completely understood and envisioned by those who drafted the particular set of rules. So there is an open area within which the judge must work.

I think he has to be guided by history, by tradition, by his best understanding of what was intended by the framers, and yet he also must understand that he is living in a different age in which some of the considerations that happen today must inevitably affect what he does.

So you just do the best you can with all the factors that you put together in a particular case.

Senator BYRD. Do you feel that a Supreme Court Justice should allow his personal views of the law to override longstanding precedents because he feels they have been ineffective in dealing with social problems that might happen to be a matter of controversy at the time?

Judge STEVENS. No, Senator, I do not.

In the area of policy judgments, I think the legislative branch is the branch which should make the policy judgments. Now again I think we have to be realistic and recognize the fact that when you get into these open areas, that I have mentioned, no matter how hard one tries to subordinate his own philosophy sometimes it may not be completely possible.

I can say, though, in all sincerity and without the slightest hestitation, that there have been many cases on which I have sat as a court of appeals judge in which I have voted for a result which I did not personally consider to be the wisest way to handle a particular problem but which was, in my judgment, clearly the result which was required by legislation or prior decision or the Constitution. Certainly you do not have a charter of freedom to substitute your own views for the law.

Senator BYRD. You do not view the Supreme Court, then, as a continuing constitutional convention, or as a legislative body?

Judge STEVENS. No; I do not.

But again I have to say there are decisions which inevitably have a lawmaking character to them. I think some of that is inevitable.

Senator BYRD. But where those are areas in which the legislature should act, and has the clear responsibility to act, you do not feel it would be the responsibility of the Court to act in such a way as to legislate?

Judge STEVENS. Definitely not.

Senator BYRD. If you were confronted as a Supreme Court Justice with a case that dealt with the same legal principles as a case that came before you as a judge on the Seventh Circuit Court of Appeals, how hesitant would you be to decide the case in a different manner than while serving as a circuit judge?

Judge STEVENS. Well, I must answer that in two parts, Senator, because I have some concern about the extent to which I should sit on cases which present precisely the same issue I might have ruled on as a court of appeals judge.

Clearly I should not do so if I sat on a particular case, and one of the canons refers to avoiding cases where one has a fixed idea about the merits or something like that. So I am kind of uncertain about how that applies to cases raising issues similar to those on which I have sat.

I am in the process of thinking that through, to be quite frank about that.

But would I feel free as a Supreme Court Justice—I think it is most unlikely that I would as a Supreme Court Justice come to a different conclusion, because I would think that the reasons that persuaded me that the law required result A in the earlier case would be equally persuasive to me when I sat on the other tribunal.

Senator BYRD. Although there might be conflicting decisions by other circuits that you would consider as a Supreme Court Justice which might have come along subsequent to the case on which you sat as a circuit judge?

Judge STEVENS. If they raised arguments that I had not considered then I certainly would reappraise the issue in the light of the arguments I had failed to appreciate. But the mere fact it was another court of appeals making arguments I had already considered, I doubt if that would be particularly persuasive to me.

Senator BYRD. Would your prior decisions as a circuit judge have a strong influence on cases that you might hear before the Supreme Court?

Judge STEVENS. Well, Senator, not simply because they were prior decisions but it is usually true that after I have taken the time one takes in the court of appeals to come to a conclusion, I am pretty well convinced that is the result the law requires. I think it would be highly probable that the same process of reasoning would bring me to the same result again.

But there have been occasions on which, upon further study in depth of a case, I have changed my view from what I originally thought the correct result was and I would not hesitate to do so if I was persuaded I was wrong the first time.

Senator BYRD. What is your view of the role that the Supreme Court should play in adjusting the rights of society and the individual in the administration of justice?

Judge STEVENS. Senator, I think I may have said this before, and I don't mean to be repetitive, but I really think that the business of the Supreme Court—as it is the business of other courts—is to decide cases, to decide specific controversies that the Court has jurisdiction to decide pursuan t to article III of the Constitution. In the process of adjudication certain law is made and changes develop but the changes really, I think, are initiated by the litigants putting forth new claims some-

times found to have merit and sometimes rejected. I do not think it is the function of the Court to search for issues or to regard itself as sort of commission to reform the law or something like that. There is plenty to do in simply deciding the cases that the litigants bring before the Court and that process the law does develop.

Senator BYRD. Do you feel that a Supreme Court Justice should interpret the Constitution in accordance with his own personal views on economic and political and sociological questions?

Judge STEVENS. Well, Senator, again I think I would make much the same answer that I did before: that one must study the document, the language used, and the intent of the framers, and the way in which one thinks the framers would have sized up the problem now presented. One should always subordinate his own personal views, whether they be economic, social, political, or whatever they may be, because when you are talking about your own views you are only one of millions of individuals in the country. When you are interpreting the law, perhaps you have a special skill and special training that does give you the right to pass on these questions. I have to confess that in this open area, sometimes inevitably, a man is the product of his own background and he may be somewhat influenced. But I will do my very best to subordinate those considerations because I think that is the duty of any judge.

Senator BYRD. Would you have any hesitancy in getting into political questions?

Judge STEVENS. The term "political question" is used in many different ways, Senator, and I want to be sure I answer them fairly.

If the term political question is used in the judicial sense of a question which is appropriately to be resolved by another branch of the Government, such as the legislative or executive, then I would not merely hesitate, I simply would say the Court has no jurisdiction because there is a jurisdictional doctrine that the Court has no business deciding political questions in that sense.

There are, however, cases that come before the Court which involve political ramifications, such as a contest for election between two candidates for the office of U.S. Senator, or something like that, which the layman would characterize as political issues. In those cases, the fact that it is political, as far as I am concerned, makes it no different from any other case. We have to face up to the question and decide the legal question, then we must do so. We decide it on the basis of law, not, of course, on political affiliation of the litigant or anything of that character which would be irrelevant.

Senator BYRD. Where statutes are sometimes vague and unclear, do you think that the Supreme Court would have a duty to expand the stautes so as to apply to a circumstance that is clearly beyond the original intent of Congress if the Court felt that the statute did not go far enough?

Judge STEVENS. No.

Senator BYRD. In your opinion, do the difficulty and the great time that are involved in amending the Constitution justify the Supreme Court in changing established interpretations of the Constitution?

Judge STEVENS. Well, Senator, I do not think that is a factor which affects the decisions on particular issues. As I indicated, there are times when the course of decision necessarily changes somewhat, but I do not think one could say that because of the difficulty in amending the

Constitution, that it would be a proper function of the Court to assume that it had the authority to amend the document itself. I would think clearly it does not.

Senator BYRD. The Constitution says that each House shall determine the elections, returns and qualifications of its own members. Do you view the Supreme Court as having any role? Would you say that there was any appeal from a decision by the Senate, let us say, in determining the returns in the election of one of its own Members?

Judge STEVENS. This happens to be an area in which I have written an opinion, and I think the law is quite clear that that would be a political question with respect to which the Court would have no jurisdiction.

Senator BYRD. In the event of an impeachment of a President of the United States and the conviction upon trial by the Senate of the United States of that President, do you feel that there is any appeal from the decision of the Senate?

Judge STEVENS. I will answer that question but I should preface my answer by saying that I have not studied the issue with care. I, of course, was conscious of the issue during the last period of time. I would say my first reaction to the issue was that there would be no appeal but I really would not want that to be interpreted as a considered judgment of the issue because I have not studied it. I think it is not inappropriate for me to respond to it because I consider it so unlikely that the issue will arise during my term on the Court that I do not hesitate to respond to you as best I can.

Senator BYRD. Well, I am pleased at your response on both of the last two questions. As you know, we have had occasion to look into both of these matters in recent times, and I have expended a considerable amount of time on both questions. I feel as you do as expressed by your responses to my questions.

The Constitution, in article III, after enumerating many categories of cases over which the Supreme Court has jurisdiction, goes on to say: "In all of the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact with such exceptions and under such regulations as the Congress shall make."

Have you ever pondered that particular subject with reference to the possibility of Congress, perhaps, taking some action to create exceptions and to make such regulations as are contemplated?

Judge STEVENS. I recall pondering that section during law school, and I recall pondering that section when I was considering a case involving the right of the defendant to demand a jury trial in a housing discrimination case. But I have not thought about all of the ramifications of the section, and I am not quite sure how much in-depth thinking I would have to do to answer your last question.

Senator BYRD. Do you feel that there may come a time and circumstance in which the Congress would be wise to use that power?

Judge STEVENS. Well, certainly Congress has such power, and, of course, whether it is wise for Congress to exercise that power is really for Congress to decide, not for me to decide. But if the power exists, I must assume there may be the occasion when it would be wise for it to be exercised. I think that is about the best I can do.

Senator BYRD. Judge Stevens, you may have gone into this area yesterday in response to questions that were asked—I was unable to be present throughout the afternoon—and if you have, please say so.

63-774—75——4

What are your feelings on the Federal Government's use of various surveillance methods, including wiretapping; first, as to their use in protecting national security interests; second, as to their use in the preventing of Federal crime; and third, as to their use for general surveillance where there is neither a demonstrable danger to national security nor a danger of an imminent crime being committed?

Judge STEVENS. There was some discussion yesterday, Senator, about this, but I have no hesitation in restating as briefly as I can the substance of what I understand to be——

Senator BYRD. If you have already laid the answer on the record, you do not need to repeat it now. If the question is different to a degree——

Judge STEVENS. They do differ to a degree, Senator, and I would not want you to think I had answered that completely.

I think in the third area that you describe, general surveillance and the use of wiretapping, I do not think there is now statutory authority for that type of thing. I think that, of course, there is an extremely important interest in privacy that must always be evaluated before any such law enforcement technique is applied.

In the second—and I am going backwards through your three areas—in the second area, crime detection and enforcement generally, I indicated yesterday my very firm belief that Congress was wise in having the checks on the use of that technique, that it has, specifically, the requirement of an approval by the Attorney General and then approval by the judges.

In that connection, I made a point which I would really like to emphasize. I think that throughout the system, it is just as important to be sure that we get people we can trust in high office as it is to write laws because laws have to be administered. The confidence in the people administering the laws is something we must always value and keep in mind. We have that kind of confidence today and I think it is a very important factor in society.

In the national security area, I really am not prepared to comment, Senator. I understand that somewhat different considerations are involved. I understand the Court has had one case in that area but I am not sure I can go beyond what I have said.

Senator BYRD. What are your general thoughts in the area dealing with prior restraint on the media of the United States. You may have been asked this question yesterday.

Judge STEVENS. No; I was not, Senator. There was one question in which the tension between the fair trial interests of the trial procedure as opposed to the free press interests were involved. I place a very high value on the first amendment and I place a great respect for the informing function that the newspapers perform and the press generally performs and I think you would find that I would be quite sensitive to claims predicated on the first amendment. I think perhaps a general statement of my views is enough but if you want more I would be glad to enlarge on it.

Senator BYRD. Would you say that the first amendment is the highest and best protection that the media can have? In other words, that no law that Congress could enact would ever improve on that first amendment phraseology?

Judge STEVENS. I think that is correct. I think that this is a fundamental aspect of the Bill of Rights. It is one of the fundamental things that makes democracy work the way it does. I think it is of great importance. I think the fact that I have been reluctant as a Judge to communicate generally with the press should not be taken as any lack of interest or sympathy for the very important work they perform. It is just that in my particular office it is inappropriate for me to make statements about policy.

Senator BYRD. Serious violations of law by the media have been dealt with by punishment after publication of material. What are your thoughts in this regard?

Judge STEVENS. I may not have quite understood your question, Senator. I am sorry.

Senator BYRD. I said that there have been violations of law by the media that have been dealt with by punishment after the publication of certain material. What are your general thoughts?

Judge STEVENS. Well, if the law is a constitutional law and does not go beyond the limitations imposed by the first amendment, I would think the violation of the law by the press could be dealt with just as the violation of law by any other segment of society should be dealt with. I would not say they have any immunity from compliance with statutory law to the extent that statutory law is constitutional.

Senator BYRD. Yesterday, you indicated that the Congress should act to increase the number of judges in order to meet the problem of overcrowded dockets and so on. Can you think of any other improvements that would aid in improving the situation?

Judge STEVENS. Yes, I can, Senator. I did not expect to address this subject in this forum, but I would like to identify what I regard as a problem which approaches crisis proportions. It is the salary situation for Federal judges. I am personally aware of many qualified people who have been asked to assume the bench, and who would have performed magnificently on the bench, who have been unwilling to do so, when they feel they have an obligation to their families, because of the dramatic disparity between what they can earn in their private practice and the relatively modest salaries that are paid to Federal judges. I really think that the quality of justice in the country is at stake when Congress does not face up to its responsibilities to pay these men what they are entitled to receive.

Senator BYRD. Judge Stevens, do you know what the retirement pay is for a Federal judge?

Judge STEVENS. If he qualifies he draws his full salary.

Senator BYRD. Do you know how much he pays into a retirement fund?

Judge STEVENS. No. I know what my paycheck is each month.

Senator BYRD. I understand that he pays nothing into a retirement fund.

Judge STEVENS. I also know he is paid less than State judges in most States in the Union now.

Senator BYRD. I also know that I could form a line from one end to the other of this building of very capable individuals in both political parties who would just be delighted to be appointed to a Federal district judgeship.

Judge STEVENS. And that line, Senator, would include men who have accumulated great wealth. It would include young men who are not now making the salary a Federal judge makes. It would not include very many qualified individuals who have families to raise and who can make double that money in private practice.

Senator BYRD. I could fill the line with qualified people.

Judge STEVENS. I could give you a line of men who have rejected the appointment in large metropolitan areas. I could cite to you the names of judges who were performing magnificent service who have resigned. I think it is tragic.

Senator BYRD. I think there is some merit to what you say. If we would couple an increased salary with the requirement that they pay into a retirement fund and that the retirement they would receive would be commensurate with the retirement that Members of Congress receive then there might be a balancing of the equities here.

Judge STEVENS. Well, most of us——

Senator BYRD. And may I say that I have to hold Congress to blame for these inequities that prevail.

Judge STEVENS. I think that most of the men that you want on the bench would prefer not to be thinking primarily of retirement but rather of how they are going to perform when they are on the bench and when they are in the most productive years of their lives.

Senator BYRD. That is very true. But there comes a time when we all have to retire, if we live long enough. We have to plan for it.

There is also a view—and I think there is some validity to it—that many judges do not spend enough time on the bench.

Judge STEVENS. That is not true in the seventh circuit, Senator. We have a very hardworking court. Let me just give you one statistic. I read the transcript of Justice Blackmun's hearing. I have the greatest respect, as I said yesterday, for Justice Blackmun. In the 10½ years that he served on the eighth circuit, and that was a busy court during those years, he did less work in terms of output of opinions and sitting on cases than each of our judges in the seventh circuit has done in the 5 years that I sat on that court.

And he was paid in terms of the real value of dollars a salary that was about twice as much—well, that is an inaccurate statement, but our salary has been declining each year in terms of the real value of dollars as our workload has been going up. In each of the last 3 years we have disposed of more cases than the number of new cases filed and the number that are filed is more than double what it was a few years ago.

They are a hard-working group of judges. There are some judges, perhaps, who do not work hard, but that has not been my experience with the Federal judges with whom I have had contact. And I have had contact with those in other circuits as well.

Senator BURDICK. We have provided another judge for the seventh circuit.

Judge STEVENS. I wish they would provide another judge for the northern district of Indiana. The judges there are so loaded with criminal work that the civil litigants just cannot get to trial.

Senator BYRD. What is your view as to the workload of the Supreme Court? I realize that you are not yet a sitting member, but you certainly have a long-distance view of that work and the time that is taken

by the Justices as most of us are able to view it. Do you feel that they are overworked?

Judge STEVENS. It was my view as a law clerk back in 1947—and I should correct the record in one detail, I was a law clerk for only 1 year and not 2—it was my view then that the Justices worked very hard, all of the Justices on the Court. I think it is still true. I do not think it is a part-time job. I think it is a full-time job. I think that no matter what the caseload is, the men who sit there recognize the responsibility to give the best they have. I am not really sure the workload there is any harder than it is on our court.

I think that the attention that has been given to the serious workload problem in the U.S. Supreme Court has tended to divert attention from other problems of equal importance to the entire judiciary, specifically the terrible strain at the court of appeals level and in many districts at the district court level. I mentioned the northern district of Indiana. In the western district of Wisconsin, Judge Doyle, one of the very fine judges, is just swamped with work. He can hardly keep up. This is true in many places in the country.

Senator BYRD. Undoubtedly, also, the situation is that the work would not be behind and the dockets would not be so overcrowded if all judges spent more time at their work. Would you agree with that?

Judge STEVENS. That may be true, but as I say, the judges that I have seen working do not fit that description. I do not really think there are very many in the Federal system. There may be some. No doubt there must be. In any system, there are bound to be some shortcomings from what we would desire. I think if you took people at random out of the line who are waiting for this job that you are talking about that might be true.

Senator BYRD. Judge Stevens, I have been a Senator for 17 years and I know something about that line I am talking about.

Judge STEVENS. Senator, I must say that for the last 5 years the job that they are doing is quite different from what it was during the first 10 or 12 years of that 17-year period.

Senator BYRD. I agree with that and the same can be said about the problems and issues that we are dealing with in Congress.

Judge STEVENS. I agree completely, Senator. I would not depart a bit from that. I think we are all swamped with work and that is one of the tragedies of the situation today of having inadequate time to do the work the way we want to do it.

Senator BYRD. You have written several articles on antitrust matters. You have written two published nontechnical works. One is a book review and the other is a chapter on Justice Rutledge in the book entitled "Mr. Justice." In your book review of Richard F. Wolfson and Philip Kurland's second edition of Robertson and Kirkham's "Jurisdiction of the Supreme Court of the United States" you discuss a change in the attitude of the Supreme Court on appeals from State courts—cases that were dismissed for want of a substantial Federal question with the dissent of one or more Justices. You point out that despite four votes being necessary to grant certiorari, often the court had granted the writ if two or more Justices felt the case should be heard. At the present time do you feel that it would be advantageous for the Court to grant certiorari in such cases when less than four Justices feel the case should be heard?

Judge STEVENS. Senator, I must confess I do not recall the book review from which you are quoting but I will not fail to answer the question for that reason. I simply have no recollection of it.

Senator BYRD. I think it was in the New York University Law Review, volume 27, in 1952.

Judge STEVENS. I am sure I must have written it if it is there but I simply have no recollection of it whatsoever. But in any event to answer your question, I really have a feeling this is a subject on which it might be somewhat unseemly for me to speak. I would say this much, that I think generally an institution such as the Court should have a rule that normally governs its procedures but those things can sometimes be taken care of by the respect which one Justice has for another. In other words, if there were three votes to grant certiorari and one of them felt especially strongly that the case should be heard, often, as a matter of courtesy, I think another Justice might say, Well, I will cast my vote with the three in order to grant certiorari. I think there has to be a certain flexibility and informality in the administration of that kind of rule. I don't know if I could go much beyond that.

Senator BYRD. In 1956 you contributed a chapter on Justice Rutledge to the book "Mr. Justice."

Judge STEVENS. Yes I recall that.

Senator BYRD. Edited by Dunham and Kurland. On page 340 of that book, you state:

> Neither the purpose to curb inflation during war, nor to settle a coal strike that was threatening a national economic crisis, would justify the use of a court as an instrument of policy.

Was this a statement of Mr. Justice Rutledge's view, or was it a view that you held personally?

Judge STEVENS. It would be my own view. I think it would also be Mr. Justice Rutledges' view. I have a recollection that I refer in that article to his statement that no man or group is above the law, or words to that effect, which I think I was surprised to find him use twice in the same opinion. He was known for writing long opinions. That was sort of a small example of his, perhaps, writing more than he needed to, but it was an important point worth making twice.

Senator BYRD. Do you now personally feel that a serious national crisis would justify the use of any court and especially the Supreme Court as an instrument of policy?

Judge STEVENS. No; I do not.

Senator BYRD. In "Mr. Justice" you also stated:

> Read in the context of the entire United Mine Workers dissent, the implication is strong that the Supreme Court itself was in the Justice's mind when he twice said—and this is the quote by Justice Rutledge—"no man or group is above the law."

Do you presently share the view that no man or group, including the Supreme Court of the United States, is above the law?

Judge STEVENS. Very definitely.

Senator BYRD. Were you Justice Rutledge's law clerk in the *Yamashita* case in 1946?

Judge STEVENS. No; I was not.

Senator BYRD. You end your chapter on Rutledge with a quote from the Justice's ringing dissent in the *Yamashita* case:

> More is at stake than General Yamashita's fate. There could be no possible sympathy for him if he is guilty of the atrocities for which his death is sought. But there can be and should be justice administered according to law. In this

stage of war's aftermath it is too early for Lincoln's great spirit, best lighted in the Second Inaugural, to have wide hold for the treatment of foes. It is not too early, it is never too early, for the nation steadfastly to follow its great constitutional traditions, none older or more universally protective against unbridled power than due process of law in the trial and punishment of men, that is, of all men, whether citizens, aliens; alien enemies or enemy belligerents. It can become too late.

This long-held attachment marks the great divide between our enemies and ourselves. Theirs was a philosophy of universal force. Ours is one of universal law, albeit imperfectly made flesh of our system and so dwelling among us. Every departure weakens the tradition, whether it touches the high or the low, the powerful or the weak, the triumphant or the conquered. If we need not or cannot be magnanimous, we can keep our own law on the plane from which the defeated foes' never rose.

Twenty-nine years have passed since those words were written. I am curious as to how you would respond philosophically to the opinion in this case. Is this a concept of law you would take with you to the Supreme Court if you are confirmed?

Judge STEVENS. Senator, when I wrote that chapter on Mr. Justice Rutledge, I felt I could not improve upon his language at the time it was written and I could not do so now.

Senator BYRD. It would be difficult to improve upon that language.

You were concerned with a lack of procedural safeguards in getting a conviction in the *Yamashita* case. Do you feel now that strong public opinion can cause a due process problem in cases before the courts, especially before the Supreme Court?

Judge STEVENS. I think that the danger that press comment on the criminal trial would cause a due process problem primarily exists at the trial court, that is where there is the greatest danger that an unsequestered jury may be influenced by a matter outside the record. I would not think that the same danger exists in the appellate courts because judges should be able to separate out what is properly before them in the court record and what they read in the press.

Senator BYRD. Do you see any way to lessen the problem of lack of proper time for preparation on the part of the Supreme Court Justices when they are faced with a case on which the Court feels it must reach a quick decision due to various pressures?

Judge STEVENS. No, I think when you are given the predicate that they feel there must be a decision within a given period of time, by hypothesis it must be done within that period of time, but I certainly think that the decision that it should be decided at a particular time, should be very carefully made.

Part of Mr. Justice Rutledge's dissent in the *Yamashita* case was really an objection to the accelerated schedule which he did not think, and I think quite properly, justified any deviation from what otherwise would be proper procedure.

Senator BYRD. Have you been an officer, director, proprietor, or partner in any business firm or enterprise other than your old law firms?

Judge STEVENS. Not since I have been on the bench, Senator. I had been a director of some companies before I assumed the judgeship. In private practice, yes, but not since I have been a judge. I provided a list of those to, I believe, the Department of Justice when I first went on the bench and I have resigned from all of them.

Senator BYRD. And I take it you have not received any benefits from any business firm or enterprise since becoming a Federal judge?

Judge STEVENS. With this qualification, Senator. There were some payments made to me pursuant to my separation agreement with my firm on account of services performed before I went on the bench. I have received no compensation, no extrajudicial income on account of any activities since being a judge.

Senator BYRD. And was that information also provided to the Justice Department?

Judge STEVENS. It was in connection with this nomination, not in connection with the prior nomination because the negotiation of our separation took place after my nomination. But all those details were provided and they had been disclosed to everyone with an interest in the matter.

Senator BYRD. Would you state again the response to my question as to whether or not you have received any benefits from any business firm or enterprise? You indicated that you had, but that they had not been for services performed after you became a Federal judge?

Judge STEVENS. That is correct. Apart from the payments made by my former law partners to me on account of services performed before I went on the bench, I have received no extrajudicial income except in the form of either dividends, for a brief period of time when I still held some stock—I have no stock now—and interest payments on some bonds that I hold and interest on a savings account. I have no business income of any kind.

Senator BYRD. And you have no ties with any business firm or enterprise?

Judge STEVENS. No.

Senator BYRD. None?

Judge STEVENS. None.

Senator BYRD. Thank you, Judge Stevens.

I congratulate you on your nomination and I commend you on your responses to my questions.

Judge STEVENS. Thank you, Senator.

Chairman EASTLAND. Senator Burdick.

Senator BURDICK. Judge Stevens, I want to add my voice to those of the other members of the committee who have congratulated you on your nomination.

Before I get into my questions, I would like to advise you that this committee has recommended an additional circuit court judge for the seventh circuit. We have also recommended an additional judge for western Wisconsin and for northern Indiana. The circuit court judge bill has been passed by the Senate and is in the House. I think you will be pleased to hear that.

Judge STEVENS. I am indeed pleased, and I will, of course, also be pleased when the existing vacancy is promptly filled.

Senator BURDICK. Well, that's not in our department.

Judge STEVENS. I understand that.

Senator BURDICK. Like Senator Hart, I have had assistance from my staff in reviewing a hundred or more of the opinions which you have written or participated in while in the Seventh Circuit Court of Appeals. Generally speaking, these efforts have not prompted me to ask any questions about your views in any particular opinion you have written. However, I would like to ask you about your general impressions about a subject which affects the overall problems of judicial administration.

As you know, we have 400 district court judges and 97 circuit court judges. The committee has recommended legislation which would create 45 new district judges and 15 more circuit judges. Some studies have been made by the Federal Judicial Center which forecast a need for 1,129 district judges and 250 circuit judges by the year 1990, if the rate of increase in new case filings continues at the same pace. Do you have any conclusion about what problems there would be in the Federal judicial system if our only solution to increased caseloads is to increase the number of judges in proportion to the increased caseload?

Judge STEVENS. If this becomes necessary—and hopefully the explosion in the volume of cases will not continue at the same pace, it may or may not, we really can't be sure yet—but if an increase in the number of judges of the magnitude that is projected becomes necessary, and, of course, it may, I would think it would necessarily follow that we would have to start dividing the circuits and have a larger number of circuits and divide the larger circuits, such as the ninth and the fifth now, at least in half and gradually reduce the geographical area that they have jurisdiction over. I think a court as large as the fifth or the ninth probably does not function as effectively as one of about eight or nine judges. I have the feeling—and maybe that is just because I worked in such a court and it seems to have been an efficient judicial unit—I think you need several judges to take care of the conflict problem I discussed yesterday when someone can lean over on the side of recusing himself. But when you get too many judges you have a problem if you have en banc hearings, administrative problems, and I think it is also unfortunate in other circuits that the judges do not live in the place of holding court. I think we have an advantage by being in Chicago. I think there is an advantage derived from efficiency that way. I think that perhaps the first thing that would have to be done with a larger number of judges is to increase the number of circuits.

Senator BURDICK. There has been much testimony before the Subcommittee on Improvements in Judicial Machinery that to have an efficient court you need to keep it to about 15 judges. This would seem to be a general conclusion of the judges who appeared before us, that a court should not have more than 15.

Judge STEVENS. I would think even that is a little large, but perhaps I should defer to the judges on the fifth circuit on that. I do not think you should get larger than that certainly.

Senator BURDICK. In the case of *T.P.O.* v. *McMillan*, 460 Fed. 2d. 348, the seventh circuit held that a magistrate, the office we created 3 years ago, did not have the power to decide a motion to dismiss or a motion for summary judgment. While you did not participate in that decision and while I am not questioning the decision, I would be interested in your views about the advisability of clothing a judicial officer with certain powers to make proposed findings which would be referred to a judge of the court for ultimate decision. What are your general views on this question and what do you think about the jurisdiction of the magistrate?

Judge STEVENS. Of course, I am familiar with Judge Sprecher's opinion in that case. It did involve his interpretation and the panel's interpretation of the statute primarily. I think the power of the magistrate can be enlarged somewhat. I doubt if it can be enlarged to the extent of ruling on matters such as motions to dismiss. It seems to me

when you are talking about the legal sufficiency of the claim, that should be a matter for the judge, but I think there are areas in the supervision of discovery and in a preliminary investigation of facts, and the presentation of tentative findings of fact, in which the magistrate could appropriately be given additional authority which would be helpful to the judge and help solve the overload problem.

Senator BURDICK. Testimony indicates that the magistrates have been very helpful to the district judges.

Judge STEVENS. I think that is right.

Senator BURDICK. You are aware of the problem, and you are also aware, I presume, of the attempt of this committee, at least, to give a little more authority to the magistrates?

Judge STEVENS. Yes. I think I would generally support that.

Senator BURDICK. Judge, I understand why you declined Senator Kennedy's invitation to attach any label as to your judicial philosophy. At the same time, you can appreciate that members of this committee, and in fact all Senators, like to know something of the nominee's judicial philosophy before voting on confirmation.

You furnished me a copy of the speech made at Northwestern Law School about a year ago on Law Day, and I will now read a portion of that speech:

> Every decisionmaker, whether he he an umpire at the World Series, a legislator, a corporate manager, a member of a school board, or a federal judge, is fallible. But if he has earned the right to make decisions through an acceptable selection process, it is safe to predict that most of his decisions will be acceptable. Sometimes he will violate a rule that commands universal obedience, and such error must be corrected. But we should not attach undue importance to the occasional mistake. For the potential error—indeed the inevitable prevalence of a domest amount of error—is an essential attribute of any decisional process administered by human beings.
>
> The prevalence of widespread potential for error among other decisionmakers is one of the factors that repeatedly prompts invitations to federal judges to substitute their views for the erroneous conclusions of others. Sometimes I think federal judges have succeeded in creating an illusion that they are wiser than they really are because their self-imposed limitations on their jurisdiction must have left many losing litigants convinced that if only the federal judge had reached the merits, surely he would have ruled correctly and, of course, the winning litigant knows how wise the judge is. Be that as it may, the temptation to accept an invitation of this kind is always alluring, but whenever the federal judiciary does accept, three things inevitably happen. First, our workload increases and our ability to process it effectively diminishes. The risk that we won't have time to finish the exam becomes more and more real. Second, the potential for diverse decisions by other decisionmakers iu dminished and another step in the direction of nationwide uniformity is taken; for after all, we are federal judges. And third, we substitute our mistakes for the mistakes theretofore made by others. Sometimes that price is well worth paying; it is, however, a cost of which we should always be conscious.

My question is this. Does the statement I read fairly reflect part of your judicial or legal philosophy, or do you want to expand or add to that statement?

Judge STEVENS. Yes; it does, Senator. I should, perhaps, explain that in the first paragraph, if I remember the speech, I recited the fact that I had obtained a commitment from Dean Rahl at Northwestern that what I said would never be published because I was speaking in a very informal way and taking little time to prepare, but I have reread the speech because I was told you might ask me about it, and I stand by what I said in the talk. I think it does fairly reflect my view.

I think that there are costs to having judges reach out for issues that need not be decided to dispose of litigation before them, and the cost is greatest when it is the Federal court that does that because of the implication of the Federal decision having a nationwide impact. So, that speech does, in sort of a rough, informal way, indicate the reasons why I think judges should impose on themselves the discipline of deciding no more than is really required to adjudicate controversies.

Senator BURDICK. Finally, Judge Stevens, Chief Justice Taft, at one time when he was testifying before this committee for proposed legislation to give the judicial councils of the circuits certain supervisory powers over district judges, made the following statement about the indifferent judge, and I quote: "He thinks that the people are made for the court, not the courts for the people." Judge Stevens, does that phrase of Chief Justice Taft suggest anything to you, that the indifferent judge thinks that people are made for the court instead of the courts for the people?

Judge STEVENS. I would have thought it was the other way around. Maybe I did not hear it correctly, that the people are made for the courts? I would say the courts, the business of the courts is to serve the people, and, of course, our society as a whole.

Senator BURDICK. That is what I was asking. Thank you very much.

Chairman EASTLAND. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

Judge, prior to the time that President Ford nominated you for the Supreme Court, a number of members of the press were very curious as to the kind of standards that the Senate raised for judicial nominations. They called me and said, what do you think the test ought to be? I finally came up with a very simple one, that the candidate should be honest and that he should understand the spirit of the Constitution, the essence of the Constitution. I believe that is the test, and from all I know about you I think you meet that test and I am confident that our hearings will ratify my own judgment and you can be confirmed.

Chairman EASTLAND. There is a rollcall vote in the Senate. When Senator Mathias finishes his question, we will recess for the vote and then be right back.

Senator MATHIAS. That does not mean that every member of this committee and of the Senate has to agree with every decision that you have handed down, or that we would necessarily decide the same cases in the same way. What I think it does recognize is your integrity, your intellectual capacity, and your understanding of the spirit and substance of the organic document which has guided this republic for so many years.

When we return from the rollcall vote, I do have a few questions in some specific areas of the law as they approach the Constitution that I would like to examine with you. I hope you will excuse us for a few minutes.

[A brief recess was taken.]

Chairman EASTLAND. Let us have order.

Senator MATHIAS. Judge, I would like to raise with you what might be called the question of the firstness of the First Amendment and what sort of priority you would give to the First Amendment when it collides with other rights. We hear a lot these days about the right of

privacy and the right to a fair trial, and I wonder how you balance these colliding or conflicting concepts of law?

Judge STEVENS. I place the highest possible value on the interests protected by the First Amendment. I also place an extremely high value on the interests protected by the due process clause insofar as it guarantees fair procedure to every defendant. It is awfully hard to say in the abstract, Senator, which priority would govern in a particular case because the facts do vary from case to case. I certainly would not suggest at all that there was any constitutional provision of greater importance than the First Amendment, but I don't think that I could say that whenever there is a conflict between the First Amendment and the Fourteenth that you can count on me to rule for the First because the facts might not quite fit that formula.

Senator MATHIAS. I am not asking you to try to prejudge cases in which the fact situations have not been presented, but I think your answer is what I was groping for, which is that in a situation where everything else was equal, you would put the First Amendment first.

Judge STEVENS. I would think that is right, and I think I have recognized the values protected by the First Amendment in some First Amendment cases where my colleagues have not. I think those cases can be found and could be identified. I do not think you will have any trouble with my high regard for the values protected by that portion of the Constitution.

Senator MATHIAS. In a somewhat related vein, I would be interested in how you feel about State actions under the Fourteenth Amendment and where you draw the line? Whether it is a narrow line or a broad line, and perhaps the kind of classifications that might be adopted in order to develop some line of State action?

It has been held over the years that if there is some rational basis for a classification, that might rebut a presumption that discrimination was involved in State action. More recently classifications have been suspect. For instance, a classification which involves a racial question is now a suspect classification even though some rationale might be advanced to support it. The case of sex classification is, I think, not yet fully determined in the law. I wondered how you would feel when these questions impact on the Fourteenth Amendment?

Judge STEVENS. I think there are three parts to your question, if I may be as precise as I can.

Senator MATHIAS. You are very astute. There were precisely three as I had it written down.

Judge STEVENS. First, there is the question of whether there is sufficient State action to warrant Federal intervention at all, the kind of Federal intervention where you would reach the merits of a particular controversy. It is in that area that I, perhaps, have written some opinions which are somewhat more restrictive than other Federal judges have written.

I have required, and there are a number of these cases, it perhaps would not be best to talk about them specifically but I think that, to the extent that you can generalize, I have felt that consistent with my philosophy of trying to keep the work of the Federal courts within manageable bounds, so that it continues to perform with a degree of excellence that I think has characterized their work in the past, there is a strong interest in placing reasonable or recognizing the existing limitations on the scope of Federal jurisdiction.

So I have written a few opinions in which I have come to the conclusion that in the particular facts the State participation in the matter of which the plaintiff complained was not sufficiently direct to warrant Federal intervention, and some of those opinions are the subject of criticism by those who have suggested that I shoud not be confirmed. But once you get over the hurdle and into the area of where the Federal court does have jurisdiction, you must address the merits.

Then you have pointed out where there is a classification problem in the racial discrimination cases, and I understand you to be asking me if I would find a rational basis, a sufficient basis, for a classification on racial grounds. Clearly I would not. I think the law is well settled, and properly so, that a much heavier burden, perhaps almost an insurmountable burden, exists in order to justify any classification on any such factor.

And now you turn to the question of sex discrimination. I think you were asking me whether the heavy burden test or the lesser burden test should apply in sex discrimination cases.

Senator MATHIAS. Whether you have a similar approach to the racial?

Judge STEVENS. I am not sure, Senator. I am not sure whether the same test would apply or not. I don't think the court—the court has dodged and fenced a little bit on that question. They have made it clear, as I think I indicated yesterday in response to one question, that the classification is one that is subject to the equal protection clause, but that the standard of review may or may not be the same as it is in racial discrimination areas. And I suppose on reflection I have thought a little bit about Senator Kennedy's question. That may be something that the Equal Rights Amendment might accomplish. It might define the standard of review, but I am not sure when one reads the amendment that it does. So I am not sure you would have a different standard after the amendment is adopted.

I should say another factor that goes into the equation of whether the amendment is something that should be adopted is the extent to which the goals of the amendment can be ahcieved by statutory enactment. To the extent that they can be achieved by statute, is it really wise to go through the cumbersome process of amendment, which is not really necessary? That is part of my uncertainty about the problem.

Senator MATHIAS. I think it is an honest doubt which is not exclusive to you. I think that there are many people who have that question, but at least you face it as a doubt.

Judge STEVENS. Yes; I do.

Senator MATHIAS. In the *Cousins* case you wrote very eloquently of the necessity for prohibiting all invidious discrimination, and I don't think anyone can quarrel with that, but what about the remedies that you would apply if you have a case of discrimination which is clearly based on color, let's say, an injustice created by racial discrimination. Is there any kind of a colorblind remedy that is appropriate for the courts to apply? I suppose really what I come down to is what is the role of the court in helping to erradicate a racial discrimination?

Judge STEVENS. Senator, I think I may have made some comment on this problem already, but the role of the court is different from the role of the Congress in addressing that area of concern because presumably, on the hypothesis we are talking about, there has been a

finding of violation and there has been proof that discrimination existed and was supported by State action that made the matter appropriate for Federal review. That having been established by the record, what should the judge do about it? Well, there the trial judge may appropriately go beyond merely a colorblind remedy and require in certain circumstances affirmative action to redress the past injustice, but the extent of such affirmative action would always be a function of, and be related to, the kind of factual situation disclosed by the particular case.

So I could not fairly say that in every case affirmative action would be an appropriate remedy, nor could I fairly say that it would never be appropriate. It really has to be done on a case by case basis because there is a wide range of variation in cases of this kind.

Senator MATHIAS. I would like to ask a question which I am not entirely sure is a fair question because it really deals more with our function than with the function of the judicial branch, but I think maybe it is within the realm of fair examination here, and that is the question of amendments to the Constitution. This committee has had to entertain a number of suggestions for amending the Constitution in recent years. Some of them were directed at longstanding goals such as the Equal Rights Amendment. Others have been directed at more current controversies.

Archibald Cox wrote recently that one fundamental objection to the proposal in the case on which he was writing, which was the proposal for an amendment to ban busing, is a very great danger inherent in adopting specific constitutional amendments on specific questions of immediate public and political interest. One of the prime values of our constitutional system is the fact that the Constitution speaks in fundamental principles and has an enduring generality, and this characteristic, coupled with the power of the Supreme Court to project great fundamental issues upon particular occasions, gives our political ideals a permanence not subject to alteration by violent, short-run surges of public feeling or the desire of officeholders for political advantage.

Now in the light of that statement by Archibald Cox, I wondered what your general philosophy is about amending the Constitution and what you feel is the danger of really tampering with the organic law?

Judge STEVENS. Well, I think it is a power which should be exercised rarely. I think the difficulty in the amending process indicates that the authors of our Constitution did not expect it to be used frequently, on casual or relatively unimportant matters, and I would think generally that to the extent that goals can be achieved by other means without the costs that are associated with the laborious amending process that is desirable, and I would wonder if something as specific, say, as the 18th amendment, was wise when it could have, perhaps, been handled by legislation, at least as it is now construed I wonder if it was appropriate for amendment.

But I certainly would not say that there should be no tampering with the Constitution. It has to be changed from time to time, otherwise there would be no need for an amending power, so I would say that I would regard it as an important power to be sparingly used.

Senator MATHIAS. In propounding the question, I am not oblivious to the fact that the Constitution is amended not only in this body, but that the Court itself has played a role in some alterations of view in the way that the Constitution would be enforced.

Judge STEVENS. That is true, Senator, but I am not sure it is fair to characterize changes in the developing body of law as amendments to the Constitution. They, perhaps, have somewhat of that effect.

Senator MATHIAS. It is a change of view or a change of perspective which comes about other than amending the terms of the Constitution itself.

Judge STEVENS. Yes.

Senator MATHIAS. I am wondering to what extent and under what circumstances you feel that national security becomes an overriding question which affects the power of the Government to engage in certain activities, search and seizure, surveillance, which would otherwise not be permissible under the Bill of Rights?

Judge STEVENS. Well, Senator, I would think that one who relies on national security as a justification for action that otherwise would be impermissible bears a very heavy burden, but I think that we must face the fact that even in the area to which we attach the highest priority, namely, the first amendment area, there are occasions when restrictions are justified by reasons of national security, and I have in mind specifically the question of the prohibition of publications about troop movements and ships and the like, which even in *Near* v. *Minnesota* was recognized as exceptions to the absolute right of the press to publish what it would.

So, not trying to be evasive, you do have to consider the particular case; bnt I would certainly agree that the burden is on the Government when it seeks to justify for such a reason to show that this is a valid reason and to be prepared to make such a demonstration.

Senator MATHIAS. Let me give you a very simple example. I believe it is no longer in very active litigation, or maybe it is, and if it could have some bearing on some active litigation in a peripheral way, perhaps I should not ask you that question. I would have no problem with the examples that you give of troop movements and that kind of thing. But the problems of surveillance, personal surveillance, breaking and entering to obtain information without a warrant, and this kind of activity which we have been viewing in the Senate with great concern, for which the only justification was a rather vague statement about national security, is I think a far more difficult question than the ones which are really the Government in the exercise of its war powers.

Judge STEVENS. Well, there is no question that there are privacy interests we must always keep in mind in any of these problems, whether they be national security or even less extreme matters such as simple detection of crime.

Senator MATHIAS. But you rest on your statement that you feel that the Government bears a very heavy burden. I believe I quote you correctly.

Judge STEVENS. I would think so, and I would think, again, perhaps when a particular case comes up I might find that I have spoken somewhat loosely, without sufficient reflection, but my general reaction would be that A, it bears a heavy burden, and B, it bears some burden of factual presentation to enable a factfinder to know that this is not merely a formula of words that is being used to justify something other than a real national security interest.

Senator MATHIAS. Judge, we again have a rollcall vote, and we must go to the Senate floor. We will return in a few minutes.

I will put to you the affidavit of Anthony Robert Martin-Trigona, which makes certain allegations about previous conduct on your part, and I will ask for your comment on that when I return.

[The affidavit referred to follows:]

AFFIDAVIT OF ANTHONY ROBERT MARTIN-TRIGONA

Anthony Robert Martin-Trigona, being first duly sworn, states and deposes as follows:

1. He maintains a business office address at One IBM Plaza Suite 2910A, Chicago, Illinois and is a resident of the City of Chicago, Illinois.

2. For the reasons which he sets out in greater detail in this affidavit he believes there are certain prior activities of John Stevens, Esq. which raise possible doubts as to his fitness to serve as a Justice of the United States Supreme Court.

3. He believes there is a basis to conclude an extensive investigation is warranted to examine Mr. Stevens' prior activities with particular regard to his actions while serving as Chief Counsel to a special commission of the Illinois Supreme Court.

4. That in 1969, in Chicago, certain allegations appeared in various news media concerning unlawful and improper activities of some Illinois Supreme Court judges, charging in substance that sitting judges had accepted bank stock to influence their decisions on the Illinois Supreme Court.

5. In response to the public accusations and discussions, the Illinois Supreme Court appointed what it called the Special Commission in Relation to Docket Number 39797 (hereafter in this affidavit referred to as "Special Commission").

6. The Special Commission was charged with investigating the public charges and accusations which were being made and had been made concerning sitting justices of the Illinois Supreme Court.

7. John Stevens, Esq. acted as Counsel to the Special Commission and personally conducted and supervised substantially all of the investigatory activities of the Special Commission.

8. Jerome Torshen, Esq. served as Assistant Counsel to Mr. Stevens and participated in substantially all of the same investigatory activities of the Special Commission with Mr. Stevens.

9. On numerous occasions I discussed Mr. Torshen's work and role within the Special Commission with him and his working relationship with Mr. Stevens.

10. My discussions with Mr. Torshen as per paragraph (9) above took place in Mr. Torshen's office at 11 S. La Salle Street, Chicago, where we were meeting in connection with his service as my attorney.

11. Mr. Torshen was representing me in connection with my efforts to secure admission to the Illinois bar. I had received a Juris Doctor degree from the University of Illinois in 1969 and passed the Illinois Bar Examination in 1970.

12. Because Mr. Torshen viewed me as a future lawyer, we developed a close working relationship, more in the nature of lawyer to lawyer than attorney/client: for example, on at least one occasion he entertained me in his home for dinner with his family. Our discussions frequently ranged over a variety of topics completely unrelated to my bar admission case.

13. Mr. Torshen had hanging on one wall of his office a reproduction of the front page of one of the Chicago Newspapers (I believe it was the Chicago Daily News) announcing the report of the Special Commission and the resignation of the justices. My prior knowledge of the case and its novel aspects prompted me to question Mr. Torshen about the front page on the wall and this led to a series of discussions which Mr. Torshen and I had over a period of time relating to his service on the Special Commission.

14. Mr. Torshen and I discussed his work as Assistant Counsel to the Special Commission on numerous occasions. One of the reasons I repeatedly broached the topic was that I was frustrated that my bar admission had been inexplicably delayed, while Justice Solfisburg who had resigned in disgrace had not been disciplined and was again practicing law. We also discussed Mr. Torshen's work on the Special Commission because of the impact which it would or could have on the ultimate decision by the Illinois Supreme Court in my case.

15. Mr. Torshen assured me I would be admitted to the Illinois Bar because of his special influence with certain members of the Illinois Supreme Court. On one occasion I kidded Mr. Torshen that his claim of special influence was

no more than lawyer's bragging of a type that is characteristic of Washington lawyers claiming special influence.

16. Mr. Torshen assured me that his claims were in no way bragging and revolved around his knowledge of damaging evidence concerning some of the Illinois Supreme Court justices who were still on the Court, which knowledge and information he had gained as a result of his service as Assistant Counsel on the Special Commission.

17. Mr. Torshen assured me on numerous occasions that if the full and complete record of investigatory materials which had been assembled by himself and Mr. Stevens had been released, at least two additional judges (in addition to the two who did in fact resign) would have been forced to resign from the Illinois Supreme Court.

18. Mr. Torshen mentioned the specific name of one judge and stated in words to the substance of "He would be off the Court today if it were not for the fact that we restricted the scope of our report and limited the findings to the specific area of our mandate, and kept our mouths shut about other information which we developed as a result of our investigatory activities." Mr. Torshen also referred me to the actual report of the Special Commission to note the careful manner in which key passages of the report had been drafted to limit the scope of the disclosure being made. Mr. Torshen did not direct me to any specific sections of the Report of the Special Commission, but I did read the Report and formed at that time my own views as to areas of the Report which were in conformity with his claims.

19. Mr. Torshen also gave strong indications as to the identity of the second sitting Judge who would have been removed if the full record of the investigation had become public.

20. During the scope of our conversations Mr. Torshen repeatedly referred to Mr. Stevens and discussed the investigations the two men had jointly conducted.

21. I was particularly interested in Mr. Stevens role and informally probed his role because a member of Mr. Stevens' law firm, Mr. Donald Egan, was serving on a committee or sub-committee of the Bar which was investigating my own application for admission to the bar.

22. During the spring of 1972 Mr. Torshen and I disagreed concerning a number of issues relating to his representation of my interests. In particular, he made certain demands concerning payment of fees which I was not in a position to meet, since I had already paid him several thousand dollars in legal fees as per a modification of our earlier and initial agreement that no fees were to be due until the end of the case.

23. As a result, Mr. Torshen and I terminated our attorney/client relationship and our contacts generally ceased. Mr. Torshen refused to return to me my files. During subsequent hearings relating to my admission to the bar, Mr. Torshen testified in a manner which I would characterize as adverse-to-ambiguous concerning my interests. Mr. Torshen also sent a letter to the Chief Judge of the Illinois Supreme Court and did not advise me of the fact that he had sent such a letter although the letter arose out of our attorney/client relationship.

24. In the spring and summer of 1972 I began my own investigatory efforts into the work of the Special Commission.

25. As a result of my investigations I became convinced that Mr. Torshen had told me the truth, and that the complete truth concerning the discoveries of the Special Commission had not reached the public. In addition, neither of the judges who had been found to have committed "positive acts of impropriety" by the Special Commission had returned the stock profits to the State of Illinois.

26. On September 14, 1972, I filed in the United States District Court for the Northern District of Illinois a complaint against the sitting and former justices of the Illinois Supreme Court and John Stevens, Esq. docketed as case number 72 C 2290. A copy of the complaint is attached to this affidavit as Exhibit A.

27. The case was assigned to Judge Richard McLaren, who had been appointed a federal judge while serving as Assistant Attorney General in the Nixon Administration under circumstances that later prompted the Judge to admit he had participated in certain activities relating to ITT. Judge McLaren apparently was a friend of Mr. Stevens as both had been prominent antitrust lawyers in the City of Chicago.

28. Judge McLaren dismissed the case without even allowing the summons to be issued. His action was appealed to the United States Court of Appeals for the Seventh Circuit and docketed as Appeal Number 73-1527. The case was argued before the Court of Appeals on December 4, 1973, and the action of

Judge McLaren was immediately reversed from the bench and the Court of Appeals on the same day entered its order reversing and remanding the case for further proceedings; a copy of the order is attached as Exhibit B.

29. The case was snbsequently assigned to District Judge Richard Austin after strenuous efforts to remove Judge McLaren from the case were successful.

30. After receiving briefs from the parties, Judge Austin dismissed the case on August 6, 1974 and it was again appealed to the United States Court of Appeals for the Seventh Circuit.

31. On October 31, 1975, the Seventh Circuit affirmed Judge Austin's dismissal of the case in an order pursuant to (Local) Circuit Rule 28 which is unpublished and which cannot, by rule, be cited as precedent in any other case; a copy is attached hereto as Exhibit C. At no time did the Court of Appeals reach the merits of the controversy and at all times the Court ruled on preliminary procedural matters in sustaining a dismissal of the action.

32. Mr. Stevens had defended against the action on the grounds that he was immune from suit because of the duties he had performed for the Illinois Supreme Court.

33. I believe that Mr. Stevens concealed from the people of the State of Illinois, information which he assembled as a result of duties which he himself characterized as qnasi-judicial, and which would have caused, if released to the public, the resignations of two additional members of the Illinois Supreme Court. Mr. Stevens apparently did so with the purpose and intent of restricting the scope of disclosures generated by the Court scandal and with the knowledge that he was restricting from disclosure information which tended to cast doubts on the legality and propriety of actions of certain members of the Illinois Supreme Court in addition to those who had been accused of unlawful conduct in news media reports. In acting as he did, it is my opinion that Mr. Stevens deprived the citizens of the State of Illinois of the loyal, honest and complete services of an individual (Stevens) who claimed that he was acting in an official, quasi-judicial capacity.

34. I believe the record in case number 72 C 2290 and related appeals will fully establish that I bear no personal animus against Mr. Stevens. Indeed, both my original complaint and subsequent briefs carefully circumscribed the allegations made against Judge Stevens (see page four of Appellant's Brief in case number 74–2042 reproduced as Exhibit D). I have uever met Mr. Stevens.

35. I respectfully request that using the resources and supoena powers available to it, the Committee on the Judiciary of the United States Senate conduct a full and complete investigation of the allegations and matters contained in this affidavit with particular respect to receiving all materials still existing relating to othe investigatory efforts of the Special Commission so that the truth of my allegations can be established with reference to the actual documentary materials.

36. I respectfully request that I be called as a witness in any hearings conducted on the nominatiou of Mr. Stevens to be a Jnstice of the Supreme Court of the United States Supreme Court and affirm my willingness to assist the Committee on the Judiciary in any way in which I am able to do so.

37. For the record, I served as a temporary employee of the United States Senate in 1966 when I was on the staff of United States Senator Paul H. Douglas.

38. I have read the foregoing affidavit and the same is true and correct to the best of my knoweldge, information aud belief.

ANTHONY R. MARTIN-TRIGONA,
One IBM Plaza Suite 2910A,
Chicago, Ill.

ACKNOWLEDGEMENT

STATE OF ILLINOIS,
County of Cook, ss:

Dorothy Gannaway, a Notary Public in and for the County and State aforesaid, hereby certifies that Anthony Robert Martiu-Trigona appeared personally before her and stated that the foregoing affidavit is true and correct to the best of her knowledge, information and belief, for the uses and purposes therein set forth.

DOROTHY GANNAWAY,
Notary Public.

[SEAL]

Senator MATHIAS. The committee will stand in recess.

[A brief recess was taken.]

Senator MATHIAS. Judge, when we took a recess for the last roll-call vote, I stated that I would question you about the affidavit of Anthony Robert Martin-Trigona.

Before I go to that affidavit, I have a press release that apparently was issued today by Mr. Martin-Trigona which raises some question about the thoroughness of our examination and of my questions because one of the allegations of today's press release is that:

> Moreover, the question of how Mr. Stevens practiced law for 20 years and managed to amass only a miniscule net worth remains to be answered.

On any basis of fairness and impartiality, that question might also be asked of me, and I may be thought to have an undue sense of affinity with you. I will take whatever risks are involved. [Laughter.]

[The press release referred to follows:]

> **While Washington press corps snoozes and snores and Senate Judiciary Committee seeks to muzzle witness seeking to disclosure germane testimony, an award-winning Chicago Daily News investigative reporting team is continuing to break new leads in the questions of ties between John Stevens and the Daley machine.**
>
> In an atmosphere reminiscent of Watergate, the Washington Press corps is asleep and a Senate Committee is seeking to muzzle witnesses while an out of town newspaper continues to break new disclosures on a matter of major public importance.
>
> The Chicago Daily News, in its morning editions will carry reports of additional land trust connections between the Stevens law firm and the Daley Machine. Specifically, some years ago, Mr. Stevens senior partner Rothschild was an investor to the tune of almost $120,000 in a Tome Keane inspired and managed land grab of property from the City of Chicago. Mr. Rothschild also invested funds on behalf of an anonymous nominee through an apparent land trust relationship. The nominee may be Stevens.
>
> Moreover, the question of how Mr. Stevens practiced law for twenty years and managed to amass only a miniscule net worth remains to be answered. Despite the fact that Justice Powell was forced to disclose assets in the names of family members which had been generated as a result of his efforts, no such requests have been forthcoming from Judiciary Committee on this occasion. Thus, the American people are being led to believe that a leading antitrust lawyer in Chicago after twenty years ended up with a net worth of only $170,000, a per year figure of less than $10,000 in net asset accumulation.
>
> Anthony Robert Martin-Trigona has again advised the Judiciary Committee that he feels he is being muzzled and disclosures coming out of investigative reporting in Chicago are being ignored in an attempt by the Ford Administration to steamroller the nomination of John Stevens without adequate disclosure and examination.

Mr. Stevens, let me ask you first: Are you familiar with Mr. Martin-Trigona's affidavit?

Mr. STEVENS. Senator, during the recess I scanned it. I had previously been told about the substance of these charges. I think I am sufficiently familiar to answer anything that you wish to inquire about and I can say the same about the press release. I am prepared to answer any question you care to pose about either of those.

Senator MATHIAS. In substance, the affidavit says that in connection with the Special Commission in Relation to Document No. 39797, you were guilty of what might be called in today's vocabulary a cover-up. Would you like to tell us about that?

Judge STEVENS. It is sort of ironic because I am inclined to think that the performance of the work of that Special Commission is the

real reason why the course of events developed to bring me here today. That happened shortly before my original appointment, and I think it was because of a good deal of public attention that my name came to the attention of the people who were trying to find people, who might fill a vacancy.

But as I understand the substance of Mr. Martin-Trigona's charges, he says that Mr. Torshen, who was my assistant counsel, told him in a conversation that the commission—and specifically I suppose myself as general counsel—had information that two justices of the Illinois Supreme Court were guilty of misconduct which would have justified their removal, and that we had such information and we withheld it from the public and took no action with respect to it. This is simply not true.

We investigated charges of impropriety with respect to a particular case, *People* v. *Isaacs*, and as a result of very hard work in a very short period of time, with a very dedicated staff, uncovered factual information which justified a report by this special commission of five eminent lawyers of the city of Chicago, not all of the city of Chicago, but the bar of Illinois, it was not simply Chicago lawyers.

Senator MATHIAS. Could you supply in the near future the names of the members?

Judge STEVEN. We have, Senator. We have supplied the report of the special commission which identifies the five commissioners. They were the then president of the Illinois Bar Association, the then president of the Chicago Bar Association, and three other members selected by them.

But the substance of the report was that the evidence uncovered by the commission disclosed a significant appearance of impropriety by two members of the Supreme Court of Illinois and it recommended that those justices resign voluntarily. There was a dissent by one member who felt that the committee as a whole had exceeded its task by making that recommendation, that the assignment of the commission was merely to make a report on a particular matter.

But I had urged the commission, as its counsel, to make the recommendation. They did so and the justices ultimately resigned. We had no evidence of wrongdoing by any other member of the Illinois Supreme Court.

I know, I have not spoken to him myself but I am told, that Mr. Torshen, to whom these remarks are attributed by Mr. Martin-Trigona, has denied under oath that he said anything even remotely approaching what Mr. Martin-Trigona quotes him as saying. I am sure that Mr. Torshen would not have said we had evidence because we simply did not have such evidence and had we done so I am sure we would not have withheld it.

[A letter by Jerome T. Torshen follows:]

JEROME H. TORSHEN, LTD.,
ATTORNEYS AT LAW,
Chicago, December 5, 1975.

HON. JAMES EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: The undersigned was privileged to serve as assistant counsel to Judge John Paul Stevens on the staff of the Special Commission of the Illinois Supreme Court ("the Commission"). As a result of the report of

the Commission, two Justices of the Illinois Supreme Court resigned. Subsequently, in an unrelated matter, our office, for a time, represented one Anthony R. Martin-Trigona in connection with Mr. Martin-Trigona's application for admission to practice law in the State of Illinois. We withdrew from that representation prior to the hearings resulting in denial by the Illinois Supreme Court of the said application. See *In re Martin-Trigona*, 55 Ill.2d 301, 302 N.E. 2d 68 (1973) (a copy of which opinion is attached hereto).

We have been advised that Mr. Martin-Trigona has submitted a document to your Committee which, in effect, charges that the undersigned advised Mr. Martin-Trigona that the Commission had obtained evidence sufficient to cause the resignation of two Justices in addition to those who had resigned, but that this evidence was, in some manner, suppressed. Apparently, it is charged that Judge Stevens was involved.

These charges are false, malicious and scurrilous. No such statements were ever made to Mr. Martin-Trigona. Moreover, no material was obtained by the staff of the Commission which indicated any impropriety, much less illegal conduct, on the part of any members of the Illinois Supreme Court other than those two Justices who resigned. I shall be pleased to so testify under oath before your Committee to remove this taint on the good name of Judge John Paul Stevens, if in your Committee's judgment, it is necessary or desirable.

I have known Judge Stevens for almost twenty years as a lawyer, as a colleague on the staff of the Commission and as a judge. He is a superb legal craftsman, a gentleman of impeccable character and deep sensitivity, and a man of the utmost integrity. His fitness for judicial office is, if anything, exemplified by the performance of his function as counsel to the Commission.

It is unfortunate that these charges were made. They are totally untrue and defamatory. They should not, in any way, mar the outstanding record of Judge Stevens or adversely affect the deliberations of your Committee in this most important matter.

Very truly yours,

JEROME H. TORSHEN.

Judge STEVENS. There is no basis whatsoever for a charge that the Commission or any of its staff, or I am sure myself either, failed in the discharge of the duties assigned to us. I think that the Commission, and I say this as a member of a team, did a magnificent job which I regard as one of the principal important professional achievements of my life.

Secondly, Mr. Martin-Trigona has released a press release which in substance says I have not made a full disclosure of my financial situation.

I am reminded that in addition to the letter of denial by Mr. Torshen, there is also a letter of denial by Mr. Pitts and by Mr. Greenberg, two letters of denial, one by each, the Cochairman of the Commission, who also substantiated what Mr. Torshen says.

[Affidavits by Mr. Pitts, Mr. Greenberg, and Mr. Torshen appear at pages 194, 197, and 198.]

Judge STEVENS. The press release, as I understand it, says I have not made an adequate disclosure of my financial circumstances, specifically, I have not disclosed the assets of my family and that I may have secret interests in some properties held in trust by others. I have no assets other than those which I have disclosed to the committee.

Our disclosure includes everything which I own, everything which my wife owns, and everything which I own as the trustee for the benefit of my two young daughters, with one inadvertent exception. Each of them has a savings account of approximately $500 which we inadvertently overlooked.

The charge in the affidavit also suggests that I have some business connections with Mr. Keane who was identified in questions yesterday.

who is a litigant in a matter with respect to which I disqualified myself. I was called last night by Senator Hruska who asked me if I could tell him what I knew about, I think it was the MC or NC company, something like that. I told him I did not recognize the name, which was true. I had no knowledge of it whatsoever.

Upon inquiry I found that the NC entity, whatever more precisely it is, was represented by my former partner, Edward Rothschild, who also was a nominee for certain members of his family in that business venture. Mr. Rothschild advises me that Mr. Keane had no interest whatsoever in that particular venture. I know I had no interest in it whatsoever, neither did any member of my family, nor to the best of my knowledge, anyone with whom I had any association whatsoever, other than Mr. Rothschild, and as I say, he was associated with the matter in a professional capacity, and also as he advises me, was a nominee for a minority interest which I understand were those of his children. But in any event, I think this is a matter that dates back to 1964, sometime like that. I certainly had no occasion at that time to have a nominee serve for me in any capacity.

It is a particularly sensitive area because the investigation that I ran emphasized certain judicial conduct where nominees did hold interest for judges and I am conscious of the fact that that is a method of concealment that has been used by others in the past. It has never been used by me and it never will be used by me.

Senator MATHIAS. But in any event, you are not, as the press release suggests, the nominee of Mr. Rothschild in any blind trust?

Mr. STEVENS. I am not, nor is he my nominee, and I should also say that, as you have observed, Senator, and I appreciate your comment, it is somewhat embarrassing to have to acknowledge that one's net worth is as small as it is. But I would like to point out that that is my net worth today. It is not my net worth when I went on the bench, and I did not have significant long-term advance notice of the possibility I might go on the bench. I think had I known 3 or 4 years in advance that I would be going on the bench and had time to make the adjustment, perhaps the figure would be different.

And as I say, if questions occur to any members of the committee either now or in the future about this matter, I have no reluctance whatsoever to discuss it with you. I might say also for the record I do not intend to respond to inquiries from the press about this or any similar subject, although I will respond to the Senators at any time, even subsequent to the close of the hearings, if you feel there is any reason to question the thoroughness of our disclosure.

Senator MATHIAS. I appreciate your very candid response. It is my understanding that the Chairman is going to provide some appropriate opportunity for Mr. Martin-Trigona to be heard, but I thought it was appropriate while you were before the committee to have an opportunity to express your own point of view on this subject.

Mr. Chairman, I have no further questions at this time.

Senator KENNEDY. We will recess until 2 o'clock.

[Whereupon, at 12:30 p.m., the committee recessed to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator TUNNEY. The committee will come to order.

Judge Stevens, I join with my colleagues in welcoming you to the committee and congratulate you on your nomination to the court. Like my other colleagues that I have heard speak before me, I have had an opportunity with the help of staff to peruse your opinions on the court and your record and there is no question but that you have an extraordinarily distinguished career and it is clear that you have great ability.

I would like to ask you a few questions because I take very seriously the duty which is thrust upon the Senate by the Constitution in article 2, which states that appointments to the Supreme Court must be made with the advice and consent of the Senate. And I, as Chairman of the Judiciary Committee's Subcommittee on Constitutional Rights, feel that a few areas ought to be probed, with the recognition, of course, that you do not want to commit yourself on specific issues which may come up before the court. But I am more interested in your general philosophy and how you approach these problems and I feel that it will be useful to me in understanding your attitudes.

Judge, what do you understand the present state of the law to be on avoidance techniques, that is, when there is a possible nonconstitutional ground of ripeness or mootness, etc.?

Mr. STEVENS. As a general proposition, I think the doctrine has been pretty universally adhered to by the Supreme Court that it is our duty to avoid decision on a constitutional ground if there is a sufficient basis for deciding the case without reaching the constituitonal ground. I think you may have in mind the fact that in recent years the court appears to have expanded somewhat the doctrine of mootness and restricted somewhat the doctrine of standing and has perhaps reached fewer constitutional issues than come thought they could appropriately have done on the basis of past history.

So there seems to be a little area of narrowing the field of adjudication by these procedural techniques. I would not want to comment on any specific decision but I do recognize that there is some change that appears to be going on and it is in the way of perhaps reaching even fewer constitutional issues than the Court has in times in the past.

Senator TUNNEY. Is that trend one that you are in sympathy with generally?

Judge STEVENS. I really do not know how to answer that. I don't like to think of it in terms of a trend. I must confess there were some of those decisions, and I would not want to name them, but there were some in which I would have thought the Court would not have found mootness.

Well, I think I might mention one specifically.

I was surprised at the law school reverse discrimination case. I would have thought the court would have reached that issue on the basis of the facts. I think it is kind of hard to generalize on a trend but I think these are rather difficult technical questions sometimes and there is room for argument on both sides.

Senator TUNNEY. Well, in deciding whether standing exists or whether a class action properly lies, should the Supreme Court or a Justice take into account his belief, assuming he holds it, that the courts are too congested, that their dockets are too crowded?

Judge STEVENS. That is one of those factors, Senator, that perhaps unconsciously is always applying some built-in pressure against a judge. We are all concerned, and it is true and I think we have to be frank about it, we are all concerned about the overload problem. It affects us every day of our working lives and it inevitably may exert an unconscious pressure against us.

I think if one can disassociate oneself from that problem, one should, because really the issue should be addressed on the merits apart from those factors that affect our working conditions. So I do not think it is a proper factor, but I do not think we can deny the fact that it may have some input into the decisional process.

Senator TUNNEY. With regard to certiorari policy, how much discretion does the court have in deciding whether or not to take a case presented to it? Do you think it makes any difference whether the case comes to the court as an appeal or a petition of certiorari?

Mr. STEVENS. I think it makes some difference but not very much. That would be my impression because the Court seems to exercise a somewhat different form of discretion in processing appeals as of right. Instead of denying certiorari, it may summarily affirm or dismiss for want of substantial Federal question with maybe a one-line opinion or a citation of a case or something like that.

In a strict interpretation of the law, such action will have precedential effect, whereas the denial of certiorari does not. So there is a legal difference between the two.

My tentative conclusion, just based on watching the way the court works, is that there probably is not a very significant difference between the two. I think it would really be more orderly in the long run if the jurisdiction were entirely discretionary. I think the appeals as of right really do not serve any important interest.

Senator TUNNEY. What factors do you think a justice should take into account in deciding whether or not to cast his vote in favor of certiorari?

Mr. STEVENS. The principal factor would be the importance of the issue presented by the case to the country at large. I would think that is the major factor, and of course there one has to evaluate importance by whatever standards he can.

Senator TUNNEY. What do you consider to be the present state of the political question doctrine and do you see a trend?

Mr. STEVENS. We talked about that very briefly this morning and I pointed out what I am sure you are well aware of, Senator, that the term political question is used in two different senses: one, the jurisdictional sense and the other, the more or less popular sense. I think that really ever since *Baker* v. *Carr* the political question objection to Federal jurisdiction has been narrowed.

I mean the court has taken more cases that would previously have been considered political questions. But it is still very definitely a viable doctrine and there are still areas within our framework of Government where it is quite clear from the Constitution that final decision of the matter was intended to be placed in another branch of Government, other than the judiciary.

A simple example is the declaration of war. Clearly the Court does not declare war and there are matters that are clearly committed to other political departments, and then the judiciary should not, it has no jurisdiction to participate.

Now the second phase of it is that there are controversies that have political overtones and ramifications but nevertheless represent justicable issues and in those areas the court has the responsibility to act just as it does with respect to other litigation.

Senator TUNNEY. Regarding lobbying in the Court, do you think it is appropriate for members of the Court to lobby their brethren as to how they should vote and the position they should take in cases that are pending before the Court?

Mr. STEVENS. Well, I hope the first amendment applies to the Supreme Court as well as to other branches of Government. I would certainly not feel there was any, that a Justice should have any inhibition about stating frankly to a colleague how he analyzes an issue.

It happens to be the practice in our court, as a matter of custom, and I think personal preference of all the judges, that we do not discuss cases in advance of argument. We find that we like to come with free, independent appraisals of the issue and we first have an opportunity to discuss it really with counsel in oral argument and then after in our conference. We think that is a healthy approach.

I really do not know what the tradition is on discussing the merits within the Supreme Court, but I do not see anything inappropriate about discussions by less than the entire membership of the Court on a particular matter.

Senator TUNNEY. Regarding dissenting and concurring opinions, how does a Justice decide when to dissent or concur and what contribution, if any, do you feel that dissents and concurring opinions have made in the development of doctrine in the Court?

Mr. STEVENS. Senator, I spoke very briefly to that subject this morning.

Senator TUNNEY. You do not need to repeat it if you have already addressed it. Have you already covered that this morning?

Mr. STEVENS. Well, let me be sure, because I do not want you to read the record and feel that it is incomplete. It is not that extensive.

My own personal philosophy, which is not shared by all judges, is that if I do not agree with the result of the majority, I dissent, even if it may be a very brief dissent, or if I find something in the reasoning that is unacceptable, I try to write a brief concurrence. I think the litigants are entitled to know how the judges appraised the arguments and to be sure that all of them understood the arguments that were presented.

And I think preserving in the record of the opinion of the case itself the fact that there was a diverse point of view, of points expressed in the Court, may make a record that will help at a future date when the same issue may be again presented for reexamination.

So I think dissenting opinions do perform an appropriate and important function in the entire process.

Senator TUNNEY. Judge, I was not able to be here at the time that Senator Mathias was questioning you about your financial connections, but I did have a member of my staff present, and as I understand it you were asked this morning by Senator Mathias about any financial con-

nections that you might have with Tom Keane and a former partner, Edward Rothschild, in which one of you acted as a nominee for the other and you denied that there was any such a relationship between you and them. Is that correct?

Mr. STEVENS. Let me state it precisely. I have had no business transactions with Tom Keane whatsoever. As I explained a day or two ago, I was retained by his firm in two matters. But these were not as a principal or investor, these were a matter of litigation. I was not a participant in any way, shape, or form in the entity, the name of which I do not recall at the moment, that was formed back in 1964, as I understand it. And I am advised by Mr. Rothschild that neither was Mr. Keane.

Mr. Rothschild handled the legal work for this particular investment group and, as I understand it, on the basis of what he told me this morning, he was also a participant to the extent of a very small percentage as a nominee for his children.

He was not a nominee for me, nor I for him.

Senator TUNNEY. Were there any other types of financial involvement at any time between you and Tom Keane?

Mr. STEVENS. I do not like the word other, Senator, there was none.

Senator TUNNEY. Was there any connection between your family business and Keane?

Mr. STEVENS. I have no family business.

Senator TUNNEY. Or members of your family and Tom Keane?

Mr. STEVENS. No.

Senator TUNNEY. What about your former partner, Rothschild, and Tom Keane, is there any connection there?

Mr. STEVENS. I think not. As I say, the entity about which questions were raised was one for which he performed legal services and I think an assumption was made that Tom Keane was an investor in the entity.

I have no knowledge one way or another, but Mr. Rothschild assures me that Tom Keane had no interest in the venture whatsoever.

Senator TUNNEY. And Mr. Rothschild has told you personally that there was no connection?

Mr. STEVENS. Today, he told me that, that is correct.

Senator TUNNEY. I understand that yesterday you explained why you recused yourself in Tom Keane's case. I believe that it appears in the transcript at page 75 (printed hearing page —).

Yet, I am informed that you sat in several redistricting cases involving plans drawn by Tom Keane during his tenure with the city council.

Is that report which was made to me accurate or inaccurate?

Mr. STEVENS. I sat in the case entitled *Cousins* v. *Wigoda* which did involve a redistricting plan of the city of Chicago, with respect to which Tom Keane is one of the leading members of the council, he was a witness, and was an important participant in the enactment of the ordinance that gave rise to the litigation.

I do not recall whether he was a party to the case or not. And frankly, the thought of disqualifying myself on that case never—had never occurred to me on the basis of the quite remote connection I had had with Mr. Keane.

I looked at it much more closely in the case in which he was a defendant in a criminal proceeding and as I think I also mentioned in my answer yesterday, it was more in the category of the notorious criminal trial in which there really is a compelling interest of avoiding even the slightest suggestion of any appearance of impropriety, and I simply did not think of the problem when the *Cousins* case was before the court.

Senator TUNNEY. Mr. Chairman, Senator Mansfield has sent word that he wants me to be on the floor to offer my amendment at 2:30. It will take me only about 10 minutes and I will be back.

Would it be all right if I now reserve the balance of my time and come back in about 15 minutes?

Chairman EASTLAND. Certainly.

Senator TUNNEY. Thank you very much, judge. I will have a few more questions on substantive issues.

Chairman EASTLAND. How much more time do you neeed?

Senator TUNNEY. I would think about 20 to 25 minutes. I have some questions on substantive issues which I would like to ask. The judge is very succinct in what he says and I think, therefore, it would not take any more than about 25 minutes.

Chairman EASTLAND. That is not a filibuster, is it? [Laughter.]

Senator TUNNEY. Well, I hope that my questions are succinct too.

Senator SCOTT of Pennsylvania. Judge, I think the whole aspect of the hearings and your background and your experience indicates your qualifications for this post.

I have only one question: In the event that any constitutional amendment were enacted, would your opinions, your prior opinions regarding the substance of that amendment have any impact on your judicial handling of the interpretation of that amendment, should it come before you?

Mr. STEVENS. I should think not, Senator. It is difficult to conceive of a situation in which a prior opinion construing something other than the amendment before us would be relevant on the construction of an amendment which was not even part of a law in the earlier case.

I suppose sometimes the thinking you do about an issue carries over when you have to analyze a similar issue, but certainly you must approach it with a fresh mind and I am sure I would do so.

Senator SCOTT of Pennsylvania. Well, I think your presentation of your views has been impressive and I will not use up any more of the committee's time.

Thank you.

Judge STEVENS. Thank you, Senator.

Chairman EASTLAND. We will recess now to the call of the Chair.

[A short recess was taken.]

Senator TUNNEY. The committee will come to order.

Judge, before I left the room to go to the floor of the Senate, I indicated I intended to ask you some substantive questions and I would just like to touch on a few areas.

Capital punishment. I know that Senator Kennedy questioned you about this earlier, but what do you understand *Furman* v. *Georgia* to have held? What questions do you think the decision left unresolved for the Court?

Judge STEVENS. Senator, I read *Furman* v. *Georgia*, which I recall is a case in which each of the nine Justices wrote a separate opinion, in the summer after the decision was announced, and the opinions are, I think, more than a hundred pages in length if my memory serves me right. I have not read the case since the summer after it was announced.

I know that a consensus of the five Justices that comprised the majority was that the capital punishment in the particular cases before the Court should not be carried out. Now I think it would be most unwise for me to try to extrapolate from these separate opinions on the basis of a 5-year-old recollection, on what I think the precise holding of the case is.

I think it would be given attention and importance which would be highly unwarranted.

Senator TUNNEY. I understand.

Assuming that the question is one of cruel and unusual punishment, how does one go about deciding whether punishment is cruel or unusual? Have you thought in those terms? That is, what is the relevance of history or of the framers' thinking or of contemporary moral sentiment or public opinion or political philosophy that is current at the time?

Judge STEVENS. Senator, as I recall the interpretation of the eighth amendment, there are basically two kinds of arguments that are made in support of a claim that punishment is cruel and unusual.

One is that the particular punishment is so disproportionate to the particular offense, such as a death sentence for possession of marihuana, that it might seem to be disproportionate and one might apply such an argument.

On the other hand, another kind of argument is that in absolute terms, certain kinds of punishment, such as, I think whipping is an example that is given, are considered so barbaric by present-day standards that they would be considered cruel and unusual within the meaning of the amendment.

And I think there is certainly some truth to the notion that one has to consider both the social conditions at the time the amendment was adopted or the intent of the framers and the background in which a particular punishment is being given out today. That is about as much as I can say.

Senator TUNNEY. What about the first amendment? I know you addressed this in one of the questions, and we hear many catch-word phrases regarding our first amendment coverage: clear and present danger, preferred status under the first amendment, absolutes, and so forth.

Just how does the Court go about deciding a first amendment case today? Does it balance, in your view, or should it balance?

Judge STEVENS. Yes. I think even in the first amendment area, there is some balancing that must be done because cases are not, do not arise in neat pigeonholes. There is a question as to whether what is regulated is merely the time and place of speaking as opposed to the content of speaking. And there is quite a different approach depending upon what kind of issue is raised.

You have to look both at the interest of the speaker and the public interest in having the communication become a part of the public

domain. There are various factors and I think you will find in my opinions some recognition of both sides of the public interest in communication. I think you might find that in some of the cases involving the rights of prisoners for example.

Senator TUNNEY. Do you care to indicate what you think are some of the most important factors in balancing a decision in a first amendment case?

Judge STEVENS. Yes; I would say that a most important factor, I would not want to limit myself to this as a formula for deciding all first amendment cases, bnt a significantly important factor—and I guess that is pretty redundant—is the question of whether there really is communication involved and whether it is communication as opposed to conduct or overt conduct.

We find on a scale which sometimes involves gray areas, between communication and conduct, where it falls. If it is within the area of communication, then perhaps you get to the question of whether there is any element of appropriate regulations in the area of time, place or manner of speaking, because, of course, the Court many times has said that this is a permissible area of control. Certainly I imagine you might resent it if someone strode into this room and started making a speech about baseball or something of that nature. So there are restrictions that must apply.

But the paramount consideration is, I think, that the judge's evaluation of the right to speak and the right to communicate should be divorced entirely from his own appraisal of the substance of what is said. It is not for him to either sympathize or be unsympathetic to the message which is transmitted. But rather he should be concerned with the channels of communication so that, be it one which he detests or supports, it is able to find itself in the free marketplace of ideas.

Senator TUNNEY. If a trial judge, let us say in a State court, has entered an order restricting what the press may publish about a pending case, what factors enter into the Supreme Court's review of such an order? What interests do you think are at stake, and how does one go about resolving them—without asking you to resolve them today?

Judge STEVENS. Well, again, of course, I have to avoid any comment about the particular case that has been in the press lately. But very simply, the two rights at stake are, on the one hand, the interests of society in knowing what is happening in a public trial and, on the other hand, the interest in procedural fairness to both litigants, the State which is bringing the proceeding and the defendant which must receive a fair trial. So there is a very difficult clash of interests in these cases but those are the easily identified conflicting interests in this area.

Senator TUNNEY. Do you see any trends in the Supreme Court's first amendment decisions?

Judge STEVENS. Yes. I might say something for the record here because I have received some support on a basis that is not entirely warranted. It has been said that I have never been reversed.

I was reversed in a case called *Gertz* v. *Welch* which involved the extent of protection to the press afforded by the so-called New York Times rule, and on the basis of the decisions up to that point, we concluded that a claim of libel was foreclosed by the first amendment protection. The Supreme Court reversed this, and I think changed the law rather substantially in a direction of narrowing the first

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amendment protection from libel and slander liability that prevailed heretofore.

I do not know if one case makes a trend, but it was a recent case that goes in the direction I have described.

Senator TUNNEY. What about the obscenity cases, for example, *Miller* v. *California*, in which, apparently, judging from the standards in that case, they generally made prosecution easier. Is that your impression of *Miller* v. *California?*

Judge STEVENS. Yes; I would say that that decision seems to have led to additional prosecutions and therefore those with prosecutorial responsibility have apparently concluded that the decision does make it easier. I think, again, I have not had an obscenity case since those were decided. So, again, what I say is based simply on reading the options when they came out. But unquestionably, they represent some change in the law and some lessening of first amendment protection in the obscenity area.

Of course, there are pros and cons involving the desirability of extending that protection in that particular area.

Sentator TUNNEY. What about the doctrine of substantial overbreadth which makes attacks on the face of a statute more difficult?

Judge STEVENS. That doctrine is sometimes misunderstood as having application to all kinds of broad statutes. I think, properly interpreted, the doctrine applies only to statutes which are overly board in their interference with the right to communicate, in other words, in the First Amendment area. I think that sometimes the doctrine is misapplied in the areas other than the First Amendment area.

And of course, the underlying rationale of the doctrine is that the great interest in fostering free speech and not having statutory deterrents to speech justifies departure from the traditional rule that decisions will only be made adjudicating the rights and interests of the particular litigant before the court.

And in the over-breadth area, because of the high value placed on the First Amendment, the Court has, on occasion, held invalid statutes which are over-broad in the sense that they chill the exercise of free speech. I think the Court has been rather consistent in this area although there is some confusion in the opinions between that doctrine and the doctrine of vagueness, as applied in the Fourteenth Amendment area. I think it is really a separate problem.

Senator TUNNEY. I understand that yesterday, I was not here, in answer to a question from Senator Kennedy, you said that the tension between fair trial and free press might be handled by, quote, "control of release of information" close quote. Is that correct?

Judge STEVENS. Let me try to state it again.

The Senator was asking me, if I recall correctly, about the desirability of legislation limiting the right of the press to comment on trials, and I suggested that, to take the problem by separate parts, perhaps we should first address the problem of the appropriate extent of control which might be imposed by court rule, or by professional disciplinary rules, on the kind of comment that either the prosecutor or the defendant's attorney migh make about the subject matter of the trial and try to let the facts find their way into the record in an admissable way and an orderly way. And then the press would have its first opportunity to comment after the record was made.

I think that the particular undesirable thing that happens is that, on the basis of partial information and hearsay and secondhand suggestions, the press, in effect, makes statements, not intending to do so, which seriously hamper the ability of the defendant to receive a fair trial because the public gets an impression of what the facts are before all the evidence is heard. And that is what we are trying to avoid.

I said that I thought that if it is approached that way, it perhaps is a matter which the courts and we drafters of court rules and disciplinary rules should address in the first instance. And then maybe there would be something left that Congress needs to address. But I sort of think this is one that we have to tackle first.

Senator TUNNEY. Were you thinking of sealing criminal records or shutting off preliminary hearings to the public when you were talking about the control of release of information?

Judge STEVENS. No. The sort of thing I was thinking about would be a representative of the enforcement agency making a press release to the effect that we have obtained a confession and we are sure the man is guilty, or a premature announcement of a confession before the voluntariness of the confession has been determined in the adversary proceeding, comments on the evidence when it is not sure the evidence is admissible or reliable, and things of that character.

I did not have in mind the possibility of impoundment of public records. There are some times in the juvenile area where that may be appropriate. There may be areas where the damage by public comment on a young man is unfortunate, and that weighs the interest of a public debate.

I would not want to go beyond that, but I would not want to foreclose entirely the possibility of some area where we might want to put some limit on what we put in the public domain.

Senator TUNNEY. At the present time, I am sponsoring legislation to require the up-dating of criminal arrest information and, among other things, to deal arrest records of individuals who have not committed an offense for 7 years after their last supervision. Under my bill, law enforcement agencies could continue to have access to the information, but others could not, on the theory that the statistics demonstrate that a person who has gone for 7 years without committing a crime is highly unlikely to commit a second crime. And there generally is a sense, on the part of some, that a person is entitled to a second chance.

I wonder if you have had a chance to think about this problem. The press had contact with my office and they are deeply concerned that somehow they are being denied an opportunity to get what they think is important information as it relates to individuals.

Do you have any impressions with respect to the general problem?

Judge STEVENS. Senator, of course I should not try to address the merits of a bill I have not studied, but I think I could say this, that I have had occasion to write at least one opinion in what was a rather severe attempt by the prosecutor to make use of information in an arrest, or maybe he was trying to use a misdemeanor, for impeachment purposes which we thought was clearly improper, and I have also written an opinion on the subject to the extent to which a prior conviction is properly used for impeachment purposes when the defendent elects to testify in his own behalf, and we have expressed concern about the use of convictions.

Now this is, of course, even more severe than arrests which are, I believe more than 10 years old is the time suggested in the Federal rules, basically on the theory that, I suppose, underlies your legislation, that once a man has paid his debt to society, if he has a blameless record thereafter, he is entitled like everyone else to the presumption of innocence.

So I think you could find something that is somewhat sympathetic to the thrust of what you are suggesting.

Senator TUNNEY. It is a difficult problem.

Judge STEVENS. Yes. And I have to say that, of course, in those opinions, there is no countervailing first amendment problem that I recognize you are sympathetic to too.

Senator TUNNEY. Well, if a person has a national security job, there is the argument that can be forcefully made that his entire life history ought to be known, and that if a person holds himself out for public office his entire record should be scrutinized by the voters.

Judge STEVENS. I am familiar with that problem.

[Laughter.]

Senator TUNNEY. Yes, I am too. I will be more familiar with it next year.

[Laughter.]

Senator TUNNEY. Judge Stevens, with regard to the fourth amendment, search and seizure warrants, and so forth, what trends do you see in the Supreme Court's fourth amendment decisions of recent years? Let us start off with consent.

Judge STEVENS. I take it you are asking whether there should be something akin to the *Miranda* warnings as a precondition to a consent to a search, or something of that kind?

Senator TUNNEY. I am not asking for your value judgment as to what ought to be and what ought not to be as much as I am asking what you think the trend is in the Court at the moment.

Judge STEVENS. Well, sometimes it is hard to evaluate with precision because sometimes things are taken as a trend which are merely the arresting of a prior trend. In other words, a refusal to extend the law even further than it has been extended in the past is sometimes interpreted as a reversal and that really is not necessarily the case.

For example, the admissibility in a grand jury proceeding of illegally seized evidence, it had simply not been passed upon before the *Calandra* case, I think was the name of it, and when the Court addressed that, it expressed concern with the importance of a broad investigory power for the grand jury and said that that interest was sufficient to overbalance the fourth amendment interests.

I do not know whether I would say that represents a trend or really a refusal to extend the law further.

Similarly, in the right to counsel area, the Court—this is not really responsive so I should not go into that.

Senator TUNNEY. Leaving that aside for the moment, have you had any decisions on the consent issue? Have you personally written opinions on consent?

Judge STEVENS. The closest one that I can recall was a case involving the execution of a search warrant which pursuant to a statute authorized entry into a domicile if entry had been refused. The officers knocked on the door, and a few seconds later, busted it down, and entered a home and conducted a search.

We found that the waiting of an interval of 2 or 3 seconds did not constitute consent. I think that is perhaps about as close as I have written on the precise point.

Senator TUNNEY. How about the exclusionary rule which makes unconstitutional the product of illegal search and seizures? Some say this has come under increasing attack in the Court. Do you have any views with respect to this rule?

Judge STEVENS. Well, yes, I think it has come under attack and I think the attacks are increasing. I think it is true that the public sometimes has difficulty understanding why evidence which tends to establish guilt in a fairly convincing way must be excluded from a trial, it is somewhat inconsistent with the truth determining function of the trial, but of course the countervailing value at stake is the great interest in the privacy of the citizen and the concern that, unless the exclusionary rule is enforced, there may not be an adequate deterrent to police conduct which none of us would approve. So again there is tension here. I am not sure I should go beyond that. I have never had to address the question of whether there should be an exclusionary rule and this perhaps is an example of a difference between the job of a court of appeals judge and a Supreme Court Justice. It is part of the framework of the law which I accept, as the data with which I work, that we have such a rule in the law now. It is part of what I work with every day.

Now if an appropriate case requires that it be rethought, I suppose I would have the duty to think of it in terms that I have not yet been called upon to do.

Senator TUNNEY. If Congress were to enact a statute giving damages to those who had been the subject of unlawful searches and seizures, do you think this might be a factor in the course of deciding whether or not to retain or abolish the exclusionary rule?

Judge STEVENS. Well, I think, Senator, there is already such a statute, at least with respect to such searches by State agents, in section 1983 of the Civil Rights Act, the Ku Klux Klan Act, authorizing the damage remedy. I think part of the concern is not really the absence of some remedy, but concern as to whether or not the remedy is effective, because of the natural tendency of the jury to understand the sincere motivation of an officer's conduct in trying to get evidence to establish guilt and the disinclination to award damages to one who may be, appear to be, guilty of a crime. So there is a question of whether even though the remedy exists it is effective in accomplishing the purpose for which it is intended. I am more or less parroting the arguments that have been made and I have heard, but I want to avoid trying to state anything in the nature of a final conclusion.

Senator TUNNEY. What trends do you see in the Supreme Court right-to-counsel cases of recent years? You started to go into it.

Judge STEVENS. Well, of course, the major case is *Angler*, I think is the name, which extended the right to counsel in misdemeanor cases, which was a profoundly important case in making sure that in any case which might involve incarceration of the defendant that he or she would be represented by counsel. There has not been the same extension, as I recall, to the provision of counsel in the discretionary appellate review. I frankly am not sure as I sit here whether the Court has held that there should not be counsel or it is just under consideration.

Senator TUNNEY. I think that in *Moss* v. *Moffett* which distinguished *Douglas* v. *California*, the court has refused to extend that.

Judge STEVENS. So those two cases can be cited with the trend going in both directions at once. The right to counsel has been extended to misdemeanor cases but not extended to discretionary review.

Senator TUNNEY. Do you have anything that you would care to express on the general subject of right to counsel that might help the committee in any future action?

Judge STEVENS. Yes; I don't hesitate in saying that I think one of the most important aspects of procedural fairness is availability of counsel to the litigant on either side. I could not overemphasize the importance of the lawyer's role in the adversary process and it is unquestionably a matter of major importance in all litigation.

Senator TUNNEY. Judge, I want to thank you very much for the answers that you have given to my questions. I appreciate the fact that your answers were not only direct but also I felt extremely erudite. They demonstrate to me that you are a man of great fairness and great understanding as well as great intellectual capacity. I am very pleased that we have had the opportunity to talk about some of these problems and to have laid out a bit of a record as to what your thinking is on some of these key issues that are going to be coming before the court.

Again I want to congratulate you on your nomination.

Judge STEVENS. Thank you, Senator Tunney.

Chairman EASTLAND. Judge, you are excused.

Judge STEVENS. Thank you, Mr. Chairman.

Chairman EASTLAND. The National Organization for Women. Who represents them? Would you identify yourself for the record, please?

TESTIMONY OF MARGARET DRACHSLER, NATIONAL ORGANIZATION FOR WOMEN (NOW)

Ms. DRACHSLER. My name is Margaret Drachsler. I am here representing the National Organization for Women.

Chairman EASTLAND. You may proceed.

Ms. DRACHSLER. Thank you.

The National Organization for Women (NOW) is an organization of 60,000 women, with over 700 chapters throughout the country.

I am here this afternoon to express my grave concern regarding both the nomination of John Paul Stevens to the Supreme Court and the manner in which it was accomplished. First of all, this appointment was made by a President who has not been elected to the Presidency and who was never elected to any office by a constituency larger than a congressional district.

In contrast, each member of this committee has a statewide constituency.

At the outset, NOW wishes to express the feelings of millions of women and men today, it is time to have a woman on the Supreme Court. After 200 years of living under laws written, interpreted, and enforced exclusively by men, we have a right to be judged by a court which is representative of all people, more than half of whom are women. The President owes us a duty to begin to eliminate the 200 years of discrimination against women. In our judicial system this

could be partially accomplished by appointing a woman to the Supreme Court. He has failed us. Now it has been predicted that the Senate will ignore our plea for justice and confirm yet another man to rule on cases concerning the Nation's majority, women. I urge the committee to exercise great caution in reviewing this nomination. The committee's responsibility is all the greater in these unique circumstances.

The entire process by which Judge Stevens was selected has been dominated by men. The President's policy advisers were all men. Only after extensive public outrage did the President even bother to add the names of two women to the list of candidates referred to the American Bar Association for evaluation.

The American Bar Association committee which reviewed the President's list of candidates does not have one woman among its 11 members, although in 1974 women made up 7 percent of all lawyers and judges in the Nation and almost 20 percent of law school enrollees. Just as in Civil Rights Act title VII cases, the courts have increasingly recognized the potential for bias in evaluations of minorities by whites and of women by men, so, too, the ABA committee, dominated by white men, cannot be inferred to be without sex or race bias. Thus it is not surprising that in view of the all-male selection system, women who are distinguished members of the judiciary and practicing bar were overlooked in the search for an appointee, nor is it surprising that the exceedingly few women who were submitted by the President for evaluation were not given the top score as was Judge Stevens. Nor further is it surprising that the man chosen by them has a record of consistent opposition to women's rights. In case after case, Judge Stevens has expressly opposed women's interests. These cases are important, and they warrant review.

In—for ease of reading I am going to eliminate the citations which were included in my typewritten testimony—in *Rose* v. *Bridgeport Brass Co.*, Judge Stevens erroneously construed the law and revealed his lack of understanding of sex discrimination. In *Rose*, the plaintiff alleged that she had been the victim of discrimination when a job reclassification by the defendant employer resulted in reducing the percentage of women in the job from 55 to 10 percent. Under title VII, an employment action or practice which is seemingly neutral, but which operates to exclude or adversely impact on a group by race or sex, such as the action involved in this case, is prima facie unlawful. When the plaintiff showed that an employment practice excludes proportionately more women than men, as here, then the burden shifts to the employer to come forward with evidence showing that the practice is compelled by business necessity. The term "business necessity" in the title VII context means necessary for the safe and efficient operation of the enterprise.

In *Rose*, the plaintiff's statistical showing should have shifted the burden of proof to the defendant employer; however, the Federal district court erroneously granted summary judgment to the defendants after erroneously assessing this burden. The majority of the Court of Appeals for the Seventh Circuit reversed and permitted the case to go to trial on the disputed facts, stating that the statistical information "surely raises the possibility that the job reclassification has a discriminatory effect."

Judge Stevens stated in his dissent from the majority that he would have affirmed the district court's decision even though he, himself, acknowledged that the lower court had applied the wrong procedural standard in granting summary judgment for the defendant. Judge Stevens was so bound and determined to decide against the plaintiff that he would have denied her her day in court. Instead, ignoring that the record before him was on a motion for summary judgment and even while acknowledging the improper procedure applied by the district court, Judge Stevens accepted the self-serving declarations of the company and ignored the affidavit of the plaintiff which place these declarations into question. Despite the reduction of the number of women working in the plant from 55 percent to 10 percent, which the majority found to be sufficiently suspicious, that together with plaintiff's allegations, entitled it to a trial on the disputed facts, Judge Stevens would have required a showing of a discriminatory motive although the Supreme Court had found such a showing unnecessary.

Two years earlier the Supreme Court had stated in *Griggs* v. *Duke Power Co.*, a title VII race discrimination case, that the existence of discriminatory intent is not a prerequisite to making out a title VII violation. Judge Stevens rejected this guidance.

In 1973, the Supreme Court in *Roe* v. *Wade* and *Doe* v. *Bolton* held that a woman has an absolute right to choose whether to have an abortion during the first trimester of pregnancy and a qualified right thereafter. The guarantee of this constitutional right has not been forthcoming, however, to hundreds of thousands of women who live in areas where the only available medical facilities close their doors to women and their doctors seeking to exercise this right.

Judge Stevens is partly responsible for this tragic development. Some 6 months after the Supreme Court's landmark decision, Judge Stevens ruled in *Doe* v. *Bellin Memorial Hospital* that a women 2 months pregnant, trapped by a severe snowstorm in her own town, which contained only private hospitals which refused to allow her doctor to terminate her pregnancy, was not entitled to relief. Bellin Memorial Hospital was regulated by the State of Wisconsin and had received extensive Federal funding under the Hill-Burton Act, as well as other Federal programs.

In a case challenging race discrimination by a private hospital with Hill-Burton funds, the Court of Appeals for the Fourth Circuit found in 1963 that there was sufficient State government involvement—that is, State action—to extend the constitutional prohibitions against race discrimination to the hospital. The fourth circuit has applied this rule to the question of a woman's right to choose to bear children. The Court of Appeals for the Sixth Circuit has found a private hospital to reflect sufficient State action on a slightly different rationale. But Judge Stevens seems to bend over backward to limit this basic right to all women and rejected the fourth circuit precedent, finding the amount of State involvement insufficient to require Bellin Memorial Hospital to open its doors to the plaintiff's doctor.

The courts of appeals are currently divided on this issue, and the Supreme Court has recently declined to review the question. Thus, the law remains unsettled. Nevertheless, it cannot be overemphasized that the women of this Nation will view a vote to approve Judge Stevens

as a vote to limit the rights of many women to choose whether to have a child.

Another case was *Cohen* v. *Illinois Institute of Technology* where Judge Stevens again demonstrated his propensity to find against a female plaintiff. This was a case in which a woman repeatedly was denied tenure, alleged sex discrimination by a private higher education institution receiving Federal and State funds. In his opinion, Judge Stevens denied the plaintiff any discovery rights to establish facts supporting her State action claim on the grounds that she had failed to allege that the State had "affirmatively supported or expressly approved any discriminatory act or policy or even had actual knowledge of any such discrimination." Judge Stevens thus requires civil rights plaintiffs to show affirmative conduct by the State as important to discrimination. However, the Supreme Court, in *Burton* v. *Wilmington Parking Authority*, took a position far more supportive of civil rights when it found mere acquiescence by the State in the discrimination to be sufficient. I am quoting from the *Burton* v. *Wilmington* decision:

> By its inaction, the Authority, and through it the State, has not only made itself a party to the refusal of service to blacks, but bas elected to place its power, property, and prestige behind the admitted discrimination.

Moreover, the burden imposed by Judge Stevens on the woman in this case went far beyond that required by other courts of appeals considering similar claims by women asserting their rights to equal employment.

The opinion of Judge Stevens in *Dyer* v. *Blair* provided another example of this opposition to women's rights. The facts were that the Illinois Senate had voted on the equal rights amendment during the 77th general assembly, and on the strength of a simple majority entered in its journal that ERA had passed and referred ERA to the house of representatives. The house did not act during that session. When the 78th general assembly was convened, opponents of the ERA engineered a procedural change in rule 42. Rule 42 required proposed amendments to the Federal Constitution to be passed by a three-fifths vote, rather than a simple majority. When the vote was taken in the house, ERA received more votes than required for a simple majority, but fewer than three-fifths. It was declared to have failed. Judge Stevens upheld the three-fifths rule, the practical effect of which was to defeat ERA in the State of Illinois.

In *Sprogis* v. *United Air Lines*, rehearing en banc denied, the Seventh Circuit Court of Appeals was presented a fact pattern which most laypersons would have found sex discrimination. Mary Burke Sprogis, a stewardess with United, had been discharged for violating the company's rule that stewardesses must be single and remain so in order to continue their jobs. The company had no such rule regarding male stewards, nor did it apply the policy against marriage to any other female employees. In other words, all women who worked as cabin attendants were prohibited from marrying, and all men who worked as cabin attendants were permitted to marry and retain their employment.

The Equal Employment Opportunity Commission, charged with responsibility of enforcing title VII's mandate, and having a regulation that covered the situation, had no trouble finding sex discrimina-

tion. Similarly, the trial court had not trouble finding sex discrimination and thus granted plaintiff's motion for summary judgment. Nor did the majority of the court of appeals have any trouble in finding sex discrimination in this case.

The majority held section 703(a)(1) of the Equal Employment Opportunity Act is not confined to explicit discrimination based solely on sex, noting a congressional intention to eliminate the "irrational impediments to job opportunities and employment which have plagued women in the past" and that "the effect of the statute is not to be diluted because the discrimination adversely affects only a portion of the protected class."

The majority rejected United's claims that the no-marriage rule reflected a bona fide occupational qualification, and in so doing, it followed the precedent of *Diaz* v. *Pan American World Airways, Inc.*

Judge Stevens, dissenting from this, found no discrimination and revealed an extraordinary lack of sensitivity to the problems women face in the marketplace, as well as an extraordinary lack of sensitivity to the Equal Employment Opportunity Act.

This lack of sensitivity makes his nomination to the uniquely powerful Supreme Court unacceptable to women. Judge Stevens found no discrimination present in this case, asserting that United had discriminataed in favor of women since it hired more female attendants than male. He appeared totally unaware that in most of the worst cases of race discrimination, for example, blacks had been disproportionately hired in specific jobs, a phenomenon which has been given the name "affected class" in the law of employment discrimination.

He argued in addition that United did offer defrocked stewardesses ground jobs if their seniority and qualifications permitted. This argument obviously fails to meet the central issue of any discrimination, mainly the disparate treatment. If substitute employment has any bearing at all, they can only go to the question of damages.

Next he glossed over the disparate treatment afforded female cabin attendants by viewing the no-marriage rule, rather than as an invasion of a fundamental freedom, as an employment qualification. At no time in his argument did he analyze the central question: did the so-called qualification have any rational connection with job performance.

Finally, he questioned the deference the majority paid to the regulations of the EEOC which were squarely in point. Finding that Ms. Sprongis had not been discharged because of her sex, he dispensed with the contrary EEOC regulation in one sentence. To do so, of course, runs counter to the authority of the Supreme Court itself.

The Supreme Court had spoken to this point in *Griggs* v. *Duke Power Co.* some 3 months before argument was even heard in the *Sprongis* case. Judge Stevens did not attempt to distinguish the language of the Supreme Court. He made no mention of it whatever, despite the fact that the majority from whom he dissented cited it. This past summer the Supreme Court reaffirmed this point in *Moody* v. *Albemarle Paper Co.*

Thus, the Supreme Court has never espoused, nor does it now espouse, the Stevens position.

We also note that the case list prepared by the American Bar Association has incorrectly credited Judge Stevens with writing a majority opinion in the *Sprongis* case, whereas in point of fact he wrote a lone dissent.

The important thing to remember about Judge Stevens' participation in *Rowe* v. *Colgate* is that the real decision in this case had been made by the Court of Appeals before his appointment. Therefore his silent acquiescence to the unanimous court's opinion on the limited and secondary issues presented when *Rowe* v. *Colgate* was appealed the second time cannot be taken as evidence of sensitivity to women's issues.

Judge Stevens has never been the author of an opinion on behalf of a woman litigating a woman's issue in the 240 opinions he has written during his tenure. To prove this point, some discussion of the *Rowe* opinion is necessary. In 1967 the trial court had received this case in which the employer had permitted women to work in only 4 of its 17 departments. In these four departments the highest pay available was equal to the lowest pay in the 13 other departments where only men were employed.

The trial court found discrimination and awarded damages to 12 plaintiffs. When it was appealed to the Seventh Circuit Court of Appeals, the appellate court expanded the class entitled to recovery and held the defendant was also committing an unlawful employment practice, in its exclusion of women from jobs requiring the lifting of more than 35 pounds. The trial court then issued an injunction which opened all jobs without discrimination as to sex, affected certain changes in seniority, and awarded back pay to some 54 females.

Some of the class members were satisfied with the trial court's remedies, but others were not and appealed a second time. It was only at this juncture that the case came within the purview of Judge Stevens, 6 years after the pretrial finding of discrimination had been made by the trial court, and 4 years after the appellate court had enlarged the class and established the additional ground.

The second time the basic issues were only whether: One, to order plant seniority to replace departmental seniority which the circuit court declined to do and two, that the trial court had correctly computed back pay, and there some modifications were ordered.

The point is clear. Judge Stevens was not sitting when the basic issues came to the court and should not be credited for them. When the case returned to the court, his most positive role was that he refrained from dissenting on the disposition of the minor issues presented at that time.

In conclusion, the National Organization for Women believes that this record of antagonism to women's rights on the part of Judge Stevens is clear. We oppose his confirmation. We oppose his confirmation not solely because of his consistent opposition to women's rights but, more importantly, because Judge Stevens has demonstrated that his legal opinions on women's issues are based on an apparent personal philosophy and not on the facts and laws of the cases before him.

The fact that he has consistently opposed women's rights in all these decisions in which he participated while sitting in the circuit court raises the question of whether he can fairly, judiciously, and impartially review those cases which will reach him as a Justice on the Supreme Court, and whether he could render fair and impartial decisions governed by the laws and facts applicable to each case.

His history as circut judge clearly indicates that he cannot. In many of his decisions he has been at odds with his own circuit and

other circuits. More importantly, he has rejected guidance from the Supreme Court decisions on these issues by which decisions he was bound as a circuit judge. His decisions have flown in the face of the applicable law as duly passed by Congress, elected by the people, both men and women.

Thus, NOW believes that Judge Stevens lacks the vision and impartiality requisite for appointment to the Supreme Court of the United States.

I thank you for listening to this testimony and if there are any questions I will be happy to answer.

Senator TUNNEY. Just one question. I was wondering if you could tell us to what extent your view on this nomination is colored by the fact that you would have preferred to have had a woman appointed to the court by the President? The reason I ask the question is that I know that there were many women who were very disappointed that the President did not name a woman to the court. The arguments that were advanced by you and others are understandable. The question of course is whether or not a nominee designated by the President should be rejected just on the grounds that the person is not a woman. And so I am curious to know to what extent you feel that your view is colored by the fact that Judge Stevens is not a woman?

Ms. DREXLER. Senator, we are not opposing Judge Stevens only because he is a man. That is of secondary importance. The reason we are opposing this nomination and the ground on which this man is disqualified from being a member of the Supreme Court of the United States is because of his consistent opposition to women's rights and the fact that his decisions seem to be colored by his own personal philosophy. We would not be down here opposing just anyone who who was nominated to the court just because that person was a man. We are here specifically because of Judge Stevens' stands on these legal issues.

Senator TUNNEY. Thank you.

Chairman EASTLAND. Thank you.

We will recess now.

[Whereupon, at 4 p.m., the committee recessed to reconvene subject to the call of the Chair.]

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COMPILATION OF REPORTED DECISIONS OF 7TH CIRCUIT IN WHICH
JUDGE JOHN PAUL STEVENS PARTICIPATED
OCTOBER 14, 1970-NOVEMBER 25, 1975

PREPARED BY

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AMERICAN LAW DIVISION
DECEMBER 9, 1975

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
428 F. 2d-434 F. 2d	NO CASES					
435 F. 2d 18 (1970)	<u>United States ex. rel. Mazenis</u> v. <u>McBee</u>	x				Armed Forces-Classification of Inductee

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
436 F. 2d 1342 (1971)	McCann v. Kerner	x				Appeal from denial of Injunction by 3 Judge Ct.
436 F. 2d 951 (1971) cert. den. 402 U.S. 907 (1971)	United States v. Raymond					Tax-responsibility for payment of dealer tax
436 F. 2d 331 (1971) Reversed 404 U.S. 496 (1972)	Groppi v. Leslie				x	Habeas Corpus-punishment of contempt by State Laws
436 F. 2d 423 (1971) cert. den. 404 U.S. 824 (1971)	NLRB v. Economy Furniture, Inc.	x				Application for enforcement of NLRB decision

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
437 F. 2d 736 (1971)	Collins v. Daly					Tax-Relative to Wagering tax
437 F. 2d 946 (1971)	Hart Metal Products Corp. v. C.I.R.		x			Tax-Upheld IRS disallowance of Capital Loss
437 F. 2d 781 (1971) cert. den. 404 U.S. 827 (1971)	Speight v. Miller		x			Limitation of Actions Diversity
437 F. 2d 832 (1971)	United States v. Ayres					Armed Services. C.O. Failed to report for alternate work.
437 F. 2d 928 (1971)	United States v. Davis		x			Crim. Law-Confession
437 F. 2d 1191 (1971). cert. den. 402 U.S. 1009 (1971)	United States v. Gallagher					Crim. Law-Conspiracy to defraud
437 F. 2d 740 (1971)	United States v. Joyce					Armed Forces Draft Register
437 F. 2d 1166	United States v. Reid	x				Crim. Law-Arrest custodial interrogation
437 F. 2d 1103 (1971)	United States v. Tallman					Crim. Law, Timely Appeal

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION: PER CUR.	OPINION: MAJ.	OPINION: CONC.	OPINION: DIS.	TYPE OF CASE
438 F. 2d 468 (1971) cert. den. 402 U.S. 977 (1971)	United States v. Castro		x			Crim. Law . Importing Marijuana
438 F.2d 461 (1971)	United States v. Jones					Crim. Law. Evidence Sale of Drugs

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JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
439 F. 2d	NO CASES					

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
440 F. 2d 911 (1971)	Files v. City of Rockford					Courts-Denied Request for extension of time of appeal
440 F. 2d 535 (1971)	United States ex. rel. Crossman v. Pate		x			Habeas Corpus denied Rapist claimed inadequate counsel
440 F. 2d 315 (1971)	Harris v. Pate		x			Civ. Rts. remanded to Dist. Ct. to allow prisoner to prepare case.
440 F. 2d 497 (1971) cert. den. 404 U.S. 855 (1971)	Illinois State Trust Co. v. Terminal R. Ass'n of St. Louis					Removal of cases. State to Fed. Afm'd court dismissal of action
440 F. 2d 557 (1971) rev. 406 U.S. 487 (1972)	International U. of Op. Eng. Loc. 150 v. Flair Builders, Inc.				x	Labor Rel. Ct. upheld court's dismissal of Union suit to compel arbitration.
440 F. 2d 307 (1971)	Kelly v. C.I.R.		x			Upheld taxpayer's claim for med. deduct. Had been disallowed at tax court
440 F. 2d 1216 (1971)	Trans-Cold Express, Inc. v. Arrow Motor Transit, Inc.		x			Diversity-Evidence
440 F. 2d 354 (1971) cert. den. 404 U.S. 912 (1971)	N.L.R.B. v. Drives, Inc.		x			Lab. Rel.-Unfair Labor practices
440 F. 2d 312 (1971) cert. den. 404 U.S. 916 (1971)	Tinch v. United States					Crim. Law-upheld guilty plea
440 F. 2d 300 (1971) cert. den. 404 U.S. 836 (1971)	United States v. Blue					Crim. Law-Denial of severance in Trial Affirmed Dist. Ct.
440 F. 2d 651 (1971) cert. den. 404 U.S. 1014 (1972)	United States v. Deutsch		x			Crim. Law-Affirmed Conviction Conspiring with Bank Office[illegible]
440 F. 2d 521 (1971)	United States v. Smith				x	Crim. Law-Reversed Dist. Ct. Plea Bargain discussion problem

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
441 F. 2d 47 (1971)	Bailey v. Logan Square Typographers, Inc.		x			Copyright-Intellectual Property
441 F. 2d 1219 (1971)	Schofield v. United States					Crim. Law - Affirmed Guilty Plea

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
442 F. 2d 56 (1971)	Consolidated Freightways Corp. of Delaware v. Admiral Corp.			x		Carrier-Suit for Unpaid Freight Charges
442 F. 2d 210 (1971)	Fredman v. Harris-HUB Company		x			Patent infringement suit
442 F. 2d 712 (1971)	Kiess v. Eason		x			Ex-SH/holder-Pres. suit Aga. Corp. for Stock/Compensation
442 F. 2d 92 (1971)	N.L.R.B. v. International Molders and Allied Workers Union, Local 125.					Suit for enforcement of C&D Orderre fine Assessment for Union Activity.
442 F. 2d 310 (1971)	U.S. v. Altobella		x			Crim. Law-Conspiracy-Racketeering-use of mails-victim's check lack of Federal Jurisdiction.
442 F. 2d 316 (1971)	U.S. v. McCormick	x				Lottery-Use of Mails-Local contacts-Conviction Reversed
442 F. 2d 1289 (1971)	U.S. v. Sangster					Crim. Law-Bank Robbery conviction-sufficiency of Evidence-Judicial questioning of Witness.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
443 F. 2d 326 (1971)	U.S. ex. rel. Stewart v. Pate					Crim. Law-Guilty Plea-Defendant Adequately Admonished Re consequences

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	 MAJ.	 CONC.	 DIS.	TYPE OF CASE
444 F. 2d 1270 (1971)	Brotherhood of Rail Signal v. Chicago M., St. P. & P.R.Co.		x			Labor Relations
444 F. 2d 1020 (1971)	Nibur Building Corp. v. C.I.R.					Corporate Tax
444 F. 2d 1394 (1971)	Robinson v. United States	x				Crim Law-Pleading
444 F. 2d 1194 (1971) cert. den. 404 U.S. 991 (1971)	Sprogis v. United Airlines, Inc.				x	Civ. Rts.-Sex Discrimination
444 F. 2d 1037 (1971) cert. den. 404 U.S. 868 (1971)	United States v. Lauchli					Crim. Law-Nat. Firearms Act-Search & Seizure
444 F. 2d 1071 (1971)	United States v. Matos				x	Crim.Law-Burden of Proof-Self-incrimination.
444 F. 2d 1082 (1971)	United States v. O'Brien					Jencks Act-Crim. Law-Racketeering.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
445 F. 2d 412 (1971)	Bright v. Isenbarger	x				Civil Rights
445 F. 2d 36 (1971)	Jeralds v. Richardson					Con. Law, Social Security & Public Welfare
445 F. 2d 19 (1971)	Kenner v. Commissioner of Internal Revenue				x	Evidence
445 F. 2d 84 (1971)	LaSalle v. McCormick & Henderson, Inc.				x	Patents, Monopolies
445 F. 2d 134 (1971) cert. den. 404 U.S. 853 (1971)	Rumfelt v. United States					Burglary, Crim. Law
445 F. 2d 1326 (1971)	Shelby v. Phend		x			Habeas Corpus
445 F. 2d 126 (1971)	U.S. v. Dichiarinte				x	Crim. Law- Search & Seizure
445 F. 2d 587 (1971)	U.S. v. McCarthy		x			Crim. Law-Witnesses, Indictments
445 F. 2d 6 (1971)	U.S. v. Shaheen		x			Courts, Writs ne exeat
445 F. 2d 918 (1971)	U.S. v. Van Pickerill & Sons, Inc.					Internal Revenue
445 F. 2d 109 (1971)	Wright v. Ingold		x			Armed Services, Habeas Corpus

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
446 F. 2d 847 (1971)	Davis v. United States	x				Crim. Law-Sentencing
446 F. 2d 815 (1971) cert. den. 404 U.S. 1059 (1972)	System Council v. NLRB					Labor Relations

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	 MAJ.	 CONC.	 DIS.	TYPE OF CASE
447 F. 2d 680 (1971)	American National Bank & Trust Co. v. Aetna Insurance Co.					Insurance, Courts-Instructions
447 F. 2d 41 (1971)	Anderson Co. v. United States					Excise Tax
447 F. 2d 945 (1971)	Atlantic Richfield Co. v. Oil, Chemical and Atomic Workers International Union, AFL-CIO		x			Courts-procedure Labor Relations-injunction
447 F. 2d 607 (1971) cert. den. 416 U.S. 986 (1974)	Charm Promotions, Ltd. v. Travelers Idemnity Co.					FRCP-Summary judgement Insurance
447 F. 2d 569 (1971)	Eastern Petroleum Co. v. Kerr-McGee Corporation		x			Gas-contracts
447 F. 2d 694 (1971)	Hirshfield v. Briskin					FRCP-Corporations
447 F. 2d 872 (1971)	Hoffman-La Roche, Inc. v. Greenberg		x			Trover, Conversion Conspiracy
447 F. 2d 809 (1971)	Malsbary Manufacturing Co. v. ALD, Inc.				x	Patents
447 F. 2d 847 (1971)	Mark v. McDonnell & Co., Inc.		x			Const. Law, Licenses, Evidence
447 F. 2d 639 (1971) cert. den. 404 U.S. 991 (1971)	U.S. v. Mendell			x		Criminal Law-venue testimony
447 F. 2d 826 (1971)	U.S. v. Parker		x			Criminal law, perjury witnesses
447 F. 2d 806 (1971)	U.S. ex rel. Kendzierski v. Brantley		x			Habeas Corpus

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
447 F. 2d 503 (1971)	NLRB v. Brake Parts Co.					Labor Relations
447 F. 2d 383 (1971)	NLRB v. Tom Wood Pontiac, Inc.					Labor Relations
447 F. 2d 647 (1971)	Pace v. Redmond					Corporations, FRPC Compromise & Settlement
447 F. 2d 1025 (1971) vacated 408 U.S. 940 (1972)	Shirck v. Thomas				x	Schools, school districts
447 F. 2d 529 (1971)	Will v. Immigration and Naturalization Service					Aliens

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
448 F. 2d 134 (1971) cert. den. 404 U.S. 1039 (1972)	U.S. v. Nowak					Criminal law-conspiracy
448 F. 2d 604 (1971) cert. den. 404 U.S. 858 (1971)	U.S. v. Lee		x			Searches & Seizures-gaming operations
448 F. 2d 609 (1971)	Pomrening v. United Air Lines, Inc.					Armed Services-pilot training pgm.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION			TYPE OF CASE
			MAJ.	CONC.	DIS.	
449 F. 2d 82 (1971) cert. den. 405 U.S. 922 (1972)	Mueller v. Korholz		x			Corporations, Licenses.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
450 F. 2d 985 (1971) cert. den. 405 U.S. 928 (1972)	U.S. v. Catalano					Criminal-Jury
450 F. 2d 999 (1971) cert. den. 405 U.S. 921 (1972)	Brennan v. Midwestern United Life Insurance Co.				x	Federal Civil Procedure

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
451 F. 2d 1381 (1971)	United States ex. rel. Mayfield v. Pate			x		Courts - Habeas Corpus Searches & Seizures

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
452 F. 2d 70 (1971)	Business Forms Finishing Services, Inc. v. Carson		x			Patents- Federal Civil Procedure
452 F. 2d 579 (1971) cert. den. 405 U.S. 1066 (1972)	Kearney & Trecker Corp. v. Giddings & Lewis, Inc.		x			Patents-Equity
452 F. 2d 649 (1971)	Knarr v. Board of School Trustees of Griffith, Indiana					Schools- School-Districts.
452 F. 2d 223 (1971)	Matusiak v. Finch					Social Security Public Welfare
452 F. 2d 147 (1971)	Moser v. Buskirk		x			Interest on Personal injury recovery
452 F. 2d 49 (1971)	Sinclair Oil Corp. v. Oil, Chemical & Atomic Wkrs. Int. Union					Labor Relations
452 F. 2d 274 (1971) cert. den. 405 U.S. 964 (1972)	United States v. Cerone					Gaming, Criminal Law Constitutional Law
452 F. 2d 249 (1971) cert. den. 405 U.S.1016 (1972); cert den. 407 U.S. 909 (1972); rehear den. 409 U.S. 1002 (1972)	United States v. Holmes		x			Violation of Federal narcotics laws
452 F. 2d 630 ,(1971)	United States v. Martin	x				Armed services
452 F. 2d 455 (1971)	United States v. Stonehouse		x			Criminal law - gaming

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
453 F. 2d	NO CASES					

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JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
454 F. 2d 1324 (1972)	Associated Gen. Contr. of Ill. v. Illinois Conf. of Team.		x			Labor Relations
454 F. 2d 545 (1971)	Hodgson v. Lodge 851, Int. Ass'n. of Mach. & Aerospace Wkrs.				x	Labor Relations
454 F. 2d 510 (1971)	Mogge v. Dist. 8, Ass'n of Machinists Int. Ass'n					Courts Award Labor Relations
454 F. 2d 467 (1971) cert. den. 408 U.S. 925 (1972)	Nickols v. Gagnon		x			Criminal Law Arrest
454 F. 2d 313 (1971)	Rinehart v. Locke					Judgment Limit of Actions.
454 F. 2d 531 (1971)	Skolnick v. Campbell					Injunction, Grand Jury Judges
454 F. 2d 788 (1971)	Trans-Car Purchasing, Inc. v. Summit Fidelity & Surety Co.					Insurance-Courts
454 F. 2d 1357 (1972) cert. den. 405 U.S. 1072 (1972)	United States v. Adams					Criminal Law- Receiving Stolen Goods
454 F. 2d 1360 (1972)	United States v. Brewbaker		x			Criminal Law
454 F. 2d 386 (1971)	United States v. Cullen		x			Armed Services Criminal Law
454 F. 2d 601 (1971)	United States v. Rogers					Criminal Constitutional Armed Services
454 F. 2d 585 (1971) cert. den. 406 U.S. 909 ~~(1972)~~	United States ex. rel. Wilson v. Rowe					Habeas Corpus

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	 MAJ.	 CONC.	 DIS.	TYPE OF CASE
454 F. 2d 657 (1971)	<u>United States</u> v. <u>Ponto</u>				x	Criminal Law Armed Services
454 F. 2d 739 (1972) cert. den. 405 U.S. 935 (1972)	<u>United States</u> v. <u>Nordlof</u>					Order
454 F. 2d 647 (1971)	<u>United States</u> v. <u>Ponto</u>				x	Courts Criminal Law

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
455 F. 2d 101 (1972)	Air Lines Stewards, etc., Loc 550 v. American Airlines					Federal Civil Procedure
455 F. 2d 123 (1972)	Parrent v. Midwest Rug Mills, Inc.			x		Licenses Limitations of Actions
455 F. 2d 230 (1972)	Comulada v. Pickett	x				Criminal law Habeas Corpus

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
456 F. 2d	NO CASES					

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE		OPINION			TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
457 F. 2d 402 (1972)	Employer's Liability Assurance Corp. v. Ends Coal Corp.					Insurance
457 F. 2d 255 (1972) cert. den. 409 U.S. 858 (1972)	Estrada v. United States	x				Const. Law Jury
457 F 2d 314 (1972)	Frantz Manufacturing Co. v. Phenix Manufacturing Co.		x			Patents
457 F. 2d 456 (1972)	Hanover Tp. Fed. of Teach.L. 1954 v. Hanover Com. Sch. Corp.		x			Civil Rts.
457 F. 2d 116 (1972)	United States v. Merle A. Patnode Co.		x			U.S.-Action against surety on Miller act payment bond
457 F. 2d 181 (1972)	Kingsberry Homes v. Corey				x	Corporations
457 F. 2d 435 (1972) cert. den. 409 U.S. 889 (1972)	Lasch v. Richardson					Social Sec. Public Welfare
457 F. 2d 790 (1972)	Masko v. United States	x				Crim. Law
457 F. 2d 274 (1972) cert. den. 409 U.S. 887 (1972)	Milnarik v. M-S Commodities, Inc.		x			Securities Regulation
457 F 2d 279 (1972) cert. den. 409 U.S. 1037 (1972)	Napolitano v. Ward					Const. Law- 5th Amend. Jud. Dismissal
457 F. 2d 787 (1972)	United States v. Sicilia	x				Criminal law
457 F. 2d 828 (1972) cert. den. 409 U.S. 888 (1972)	United States v. Ware					Search and seizure

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
457 F. 2d 308 (1972)	Scarver v. Allen					Federal Civil Procedure
457 F. 2d 260 (1972)	United States v. Bishop					Criminal law - drugs
457 F. 2d 447 (1972)	United States v. Fullmer					Criminal law - search & seiz. Fed. Firearms dealer doing bus. on premises not so licen:
457 F. 2d 299 (1972); cert. den. 409 U.S. 856 (1972)	United States v. Hampton					Criminal law- appointed counsel adequacy-evidence
457 F. 2d 373 (1972)	United States v. Harper					Criminal law- admissibility of evidence

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
458 F. 2d 933 (1972)	Duncan Foundry & Machine Works, Inc. v. N.L.R.B.		x			Labor Relations
458 F. 2d 704 (1972) cert. den. 409 U.S. 880 (1972)	Eaton v. United States					Criminal Law
458 F. 2d 1241 (1972) cert. den. 405 U.S. 1041 (1972)	Fisons Limited v. United States		x			Courts-Corporations
458 F. 2d 927 (1972)	Halverson v. Covenient Food Mart, Inc.					Attorney & Client
458 F. 2d 975 (1972)	In Re H.R. Weissberg Corporation					Courts-Bankruptcy
458 F. 2d 251 (1972)	Littleton v. Mardigan					Workmen's Comp.
458 F. 2d 942 (1972)	Macon v. Lash		x			Crim. Law Habeas Corpus
458 F. 2d 1320 (1972)	McTaggart v. Sec. of Air Force		x			Armed Services Pension bens.
458 F. 2d 1068 (1972) cert. den. 409 U.S. 1060 (1972) Reh. den. 412 U.S. 914 (1973)	U.S. Ex. Rel. Meyer v. Weil					Habeas Corpus
458 F. 2d 1036 (1972) cert. den. 407 U.S. 911 (1972)	United States v. Pritchard					Criminal Law Witnesses
458 F. 2d 726 (1972) cert. den. 409 U.S. 878 (1972)	Zegers v. Zegers, Inc.		x			Patents

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
459 F. 2d 939 (1972)	Arnold v. Carpenter				x	Schools-Dress Codes
459 F. 2d 190 (1972)	Dombrowski v. Dowling		x			Civil Rts. Conspiracy
459 F. 2d 811 (1972)	Moore v. Sunbeam Corporation		x			Labor Relations Civil Rts.
459 F. 2d 431 (1972) cert. den. 414 U.S. 1006 (1973)	U.S. v. Esquer					Crim. Law Homicide Witnesses

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	 MAJ.	 CONC.	 DIS.	TYPE OF CASE
460 F. 2d 1293 (1972)	<u>United States</u> v. <u>Comiskey</u>					Criminal Law
460 F. 2d 1360 (1972)	<u>United States</u> v. <u>Doughty</u>					Criminal Law Internal Revenue Witnesses
460 F. 2d 1287 (1972) cert. den. 407 U.S. 914 (1972)	<u>United States</u> v. <u>McGee</u>					Armed Services Witnesses Criminal Law
460 F. 2d 1344 (1972) cert. den. 409 U.S. 873 (1972)	<u>United States</u> v. <u>Springer</u>				x	Criminal Law Attorney-Client

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
461 F. 2d 1 (1972)	United States v. McGarr	x				Criminal Law-Narcotics
461 F. 2d 11 (1972) cert. den. 408 U.S. 925 (1972)	Dasho v. Susquehanna Corp.		x			Procedure-Shareholders v. Corp.
461 F. 2d 293 (1972)	Stearns Electric Paste Co. v. Environmental Protection Agency		x			EPA authority under Insecticide, Fungicide and Rodenticide Act
461 F. 2d 321 (1972)	United States v. Hager					Criminal Law-Witnesses
461 F. 2d 317 (1972) cert. den. 409 U.S. 948 (1972)	United States v. Stevens					Criminal Law-Amnesia
461 F. 2d 331 (1972)	Continental Chemiste Corp. v. Ruckelshaus		x			Poisons-Federal Insecticide Fungicide & Rodenticide Act
461 F. 2d 521 (1972) rev. 409 U.S. 100 (1972)	United States v. Cool					Criminal Law-Counterfeiting
461 F. 2d 1087 (1972)	United States v. Siemzuch	x				Aliens: citizenship oath requirements

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	MAJ. (OPINION)	CONC. (OPINION)	DIS.	TYPE OF CASE
462 F. 2d	No cases					

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
463 F. 2d 499 (1972) cert. den. 409 U.S. 1116 (1973)	American Civil Liberties Union v. Laird		x			Courts: U.S. S.Ct. Ruling on Army's Domestic Spying
463 F. 2d 512 (1972)	Louis-Allis Co. v. N.L.R.B.				x	Labor Relations
463 F. 2d 552 (1972)	United States v. Lambert					Criminal Law-witnesses
463 F. 2d 579 (1972)	Vitale v. Immigration & Naturalization Service					Aliens-Deportation
463 F. 2d 611 (1972)	Citizens Bank v. Penn. Central					Railroads-Injury
463 F. 2d 603 (1972)	Cousins v. Wigoda	x				Courts: Challenge to Political Party Delegates
463 F. 2d 966 (1971)	Business Forms Finishing Service Inc. v. Carson	x				Courts-Adequate Record
463 F. 2d 1055 (1972)	Pughsley v. 3750 Lake Shore Drive Coop. Bldg.		x			Civil Rights-Discrimination
463 F. 2d 1061 (1972)	United States v. Thomas				x	Criminal Law-jurors' exposure to prejudicial evidence
463 F. 2d 1216 (1972)	United States v. Panzeca					Constitutional Law-Due Process at Bail Revocation Hearing

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
464 F. 2d 1375 (1972)	Continental Coatings Corp. v. Metco, Inc.		x			Patent Infringement: unreasonable delay in bringing suit
464 F. 2d 1380 (1972)	United States v. Auto Driveaway Company					Common Carrier tariff provision

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
465 F. 2d 58 (1972)	United States v. Atlantic Richfield Co.					Criminal Law: Probation
465 F. 2d 163 rev. 411 U.S. 216 (1973)	United States v. Indrelunas					Courts: Jury verdict
465 F. 2d 227 (1972)	United States v. Pratter		x			Searches & Seizures: Time necessary for constructive refusal of entry
465 F. 2d 246 (1972)	Standard Oil Co. (Indiana) v. Com'nr Internal Revenue		x			Income Tax
465 F. 2d 282 (1972)	Tallman v. United States					Telecommunications: Constitutionality of law to prohibit obscene language
465 F. 2d 327 cert. den. 409 U.S. 1108 (1973)	Associated Gen. Contr. of Am., Evansville Chapter Inc. v. NLRB					Labor Relations: Union Coercion
465 F. 2d 431 (1972)	United States v. Fiorito					Criminal Law: Failure to correctly state offense

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
466 F. 2d 555 (1972)	In Re Womack	X				Refusal to testify before grand jury
466 F. 2d 593 (1972)	Morgan Guaranty Trust Co. of New York v. Martin	X				Indispensable Parties under F.R. Civ. P. 19
466 F. 2d 629 (1972)	Betts v. Board of Education of City of Chicago					Constitutional Law: Due process
466 F. 2d 638 cert den 409 U.S. 1114 (1973)	Lucas v. Wisconsin Electric Power Co.		X			Civil Rights Act.-Constitutional Law discontinance of electricity
466 F. 2d 705 (1972)	Aberto-Culver Co. v. Andrea Dumon, Inc.		X			Copyright protection
466 F. 2d 718 (1972)	James v. Twomey					Habeas Corpus: New code provision applied by judge instead of old
466 F. 2d 722 (1972)	Diamond Shamrock Corp. v. Lumbermen's Mut. Cas. Co.					Insurance
466 F. 2d 759 (1972)	Huerta-Cabrera v. Imm. & Nat. Serv.	X				Aliens - Illegal entry
466 F. 2d 765 (1972)	Armour & Co. v. Swift & Co.		X			Patents
466 F. 2d 830 cert den 409 U.S. 893 (1972), 420 U.S. 992 (1975)	Cousins v. City Council of Chicago				x	Constitutional Law: 14th Amendment: Voting districts redrawn
466 F.2d 1035 cert den 409 U.S. 1041 (1972)	Securities & Exchange Commission v. 1st Securities Co. of Chicago					Banks & Banking
466 F. 2d 1163 (1972)	Bargain Car Wash, Inc. v. Standard Oil Co. (Indiana)					Antitrust practices

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JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
467 F. 2d 205 (1972)	United States v. Gardner	X				Search & Seizure: Search Warrant necessity
467 F. 2d 262 cert. den, 411 U.S. 933(1973) reh. den 412 U.S. 923 (1973)	United States v. Kelly					Criminal Law: Indigency-Post Office: Mail fraud
467 F. 2d 969 rev. 412 U.S. 434 (1973)	United States v. Strunk					Criminal Law: Speedy Trial
467 F. 2d 1027 (1972)	United States v. Taranowski	X				Armed Services: Dependency classification
467 F. 2d 1089, cert. den 410 U.S. 983 (1973)	United States v. Powers				X	Tax Evasion & Mail Fraud
467 F. 2d 1110 Aff'd: 415 U.S. 189 (1974)	Rogers v. Loether		X			Civil Rights: Right to jury trial
467 F. 2d 1126 (1972)	United States v. Smith					Telecommunications: Obscene language: scienter
467 F. 2d 1235 (1972)	Vann v. Scott		X			Constitutionality of Juvenile Court Act
467 F. 2d 1269 (1972)	Johnson v. Illinois Citizens Dept. of Public Aid					Civil procedure-due process
467 F. 2d 1397 (1972)	Illinois Citizens for Broadcasting v. FCC					Telecommunications: FCC jurisdiction

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
468 F. 2d 11 (1972)	Bullard v. Aluminum Co. of America					Bankruptcy: Fraudulent transfer
468 F. 2d 43 cert. den 410 U.S. 934 (1973)	United States v. Borkenhogen					Criminal Law-Armed Services: Draft case.
468 F. 2d 128 (1972)	In re Chase				X	1st Amendment v. Contempt of court
468 F. 2d 141 (1972)	Chase v. United States		X			Criminal Law: Selective Service record vandals: jury discrimination in choosing
468 F. 2d 225 cert. den. 411 U.S. 965(1973)	Panther Pumps & Equipment Co. Inc. v. Hydrocraft Inc.		X			Patent Infringement
468 F. 2d 336 (1972)	Haythe v. Decker Realty Co.					Civil Rights: Discrimination
468 F. 2d 522 cert. den. 412 U.S. 953(1973)	Hoellen v. Annunzio		X			Franking Privilege
468 F. 2d 796 (1972)	Starks v. Klopfer					Courts: Valid constitutional issue
468 F. 2d 963 vac. 411 U.S. 912 (1973)	NLRB v. Bachrodt Chevrolet Co.				X	Labor Relations-union representation
468 F. 2d 1027 vac. 412 U.S. 936 (1973) reh den. 414 U.S. 883 (1973).	United States v. McGrath					Entrapment
468 F. 2d 1146 cert. den. 410 U.S. 910(1973)	NLRB v. My Store Inc.					Labor Relations: Backpay

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
469 F. 2d 14 (1972)	Thill Securities Corp. v. New York Stock Exchange					Courts - appealable orders
469 F. 2d 531 (1972)	Tcherepnin v. Campbell	X				Mandamus
469 F. 2d 1277 (1972)	McFarland v. Pickett	X				Criminal Law
469 F. 2d 1288 (1972)	Bledsoe v. Richardson		X			Social Security - disability benefits
469 F. 2d 1294, cert. den. 409 U.S. 989 (1972)	United States v. Hessler					Criminal Law: Witness List
469 F. 2d 1301 (1972)	Denison Mines Ltd. v. Michigan Chemical Corp.		X			Sales: Anticipatory breach of contract
469 F. 2d 1356 (1972)	United States v. Benson					Armed Services: Draft

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION: PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
470 F. 2d 18 cert. den. 410 U.S. 930 (1973)	United States v. Waitkus					Internal Revenue: Due process

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
471 F. 2d 39 (1972)	Community Currency Exchange v. NLRB					NLRB jurisdiction
471 F. 2d 69 cert. den. 411 U.S. 964 (1973)	United States v. Grizaffi					Criminal Law: Evidence, indict ment requirements
471 F. 2d 165 (1972)	NLRB v. Roseyln Bakers, Inc.				X	NLRB: Lockouts
471 F. 2d 191 cert. den. 411 U.S. 986(1973), rev. 415 U.S. 143(1974)	United States v. Kahn				X	Wiretaps
471 F. 2d 207 (1972)	United States v. 105.40 Acres of Land, Etc., Porter City, Indiana					Eminent Domain
471 F. 2d 301 cert. den. 411 U.S. 906 (1973)	R & M Kaufmann v. N. L.R.B.	X				Labor Law: Conflict of intere between union & trade associa tion
471 F. 2d 350 (1972)	H & H Tire Co. v. United States Dept. of Transportation			X		Requirements for issuing safety standards for tires
471 F. 2d 375 (1972)	United Transp. U., Lodge No. 621 v. Illinois Terminal & Co.			X		Railway Labor Act
471 F. 2d 495 cert. den. 412 U.S. 938(1973)	United States v. Gaus					Criminal Law: Interstate tra portation of fraudulent check
471 F. 2d 782 (1972)	Wecker v. Kilmer		X			Medical Malpractice
471 F. 2d 801 rev. 418 U.S. 323 (1974)	Gertz v. Robert Welch Inc.		X			Libel

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE		OPINION			TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
472 F. 2d 890 (1973) cert. den. 411 U.S. 967 (1973)	Buford v. Southeast Dubois County School Corp.		X			Schools and School Districts
472 F. 2d 927 (1973)	Papercraft Corporation v. F.T.C.		X			Trade Reg.-Admin. Law & Procedure
472 F. 2d 642 (1973)	United States v. Malasanos	X				Robbery-Criminal Law
472 F. 2d 100 (1973)	United States Ex Rel. Wilson v. Coughlin		X			Infants, Federal Criminal Procedure, Judges, Habeas Corpus
472 F. 2d 923 (1973) cert. den. 413 U.S. 921 (1973)	Wimberly v. Laird		X			Armed Services

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
473 F. 2d 1217 (1973)	Clark Oil & Refining Corp. v. United States					Internal Revenue
473 F. 2d 561 (1972) cert. den. 410 U.S. 928,410 U.S. 943(1973)	Illinois State Employees Union, Council 34 v. Lewis		X			Fed. Civil Proced.-Officers
473 F. 2d 1383 (1973)	Fuller v. State of Florida	X				Constitutional Law-Habeas Corpus
473 F. 2d 1372 (1973)	Premier Electrical Const. Co. v. United States		X			U.S. contractor-warranties extra compensation
473 F. 2d 1381 (1973)	United States v. McCreery		X			Criminal Law
473 F. 2d 1282 (1973)	United States v. Wasko					Criminal Law
473 F. 2d 983 (1973)	Wheeler v. Glass					Viol. of Civil Rights under 8th and 4th Amendments

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
474 F. 2d 90 (1973) Aff'd. 414 U.S. 31(1973) reh. den 414 U.S. 1147 (1974)	United States v. Waldron					Armed services - conscientious objector status
474 F. 2d 759 (1973)	United States v. Tenesi					Armed services - hardship deferment status
474 F. 2d 928 (1972) cert den 411 U.S. 972 (1973)	Clark v. Holmes	X				Civil Rights - Con. Law Academic Freedom in the Class-room for Teachers

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
475 F. 2d 251 (1973)	United States v. Maenza					Criminal Law-Fraudulent Statements to obtain FH loan insurance.
475 F. 2d 308 (1973) cert den 414 US 865 (1973)	United States v. Sicilia					Criminal Law - Searches $ Seizures Miranda rights.
475 F. 2d 428 (1973) cert den 414 US 828 (1973)	In re O.L.Schmidt Barge Lines, Inc.					Admiralty - collision liability

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
476 F. 2d 234 (1973)	Herreman v. United States					Tort Action vs. U.S. Wrongful Death of Nat'l. Guardsman.
476 F. 2d 249 (1973)	United States v. Jackson					Criminal Law - Self-in-crimination, Evidence of guilt.
476 F. 2d 307 (1973)	United States v. Singacola				X	Criminal Law, elements of substantive criminal statute on recpt. of stolen goods.
476 F. 2d 1067 (1973) cert den 414 U.S. 1001 (1973)	United States v. Abrams					Armed Services - Draft Induction Order.
476 F. 2d 1091 (1973)	United States v. Fowler					Criminal Law - Miranda warnings
476 F. 2d 1111 (1973)	United States v. Nasser				X	Criminal Law - 5th Am. vagueness, Out-of-Ct. statements, Attorney-client relation

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION: PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
477 F. 2d 128 (1973)	Ewert v. Wrought Washer MFG. Co.	X				Armed Services Vacation pay
477 F. 2d 236 (1973) cert den 414 U.S. 840(1973)	U.S. v. Ingram					Criminal Law - Drugs & Narcotics Indictment & Information
477 F. 2d 310 (1973)	U.S. v. Cleveland		X			Criminal Law - Tax Evasion Jury voir dire; Evidence
477 F.2d 767 (1973) cert den 414 U.S.846 (1973)	U.S. ex rel Little v. Twomey					Habeas Corpus; Con Law - Criminal Law.
477 F. 2d 818 (1973)	L.F. Strassheim Co. v. Gold Medal Folding Furniture Co.		X			Patent Infringement Atty. fees

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
478 F.2d 1001 (1973)	United States v. Foster					Criminal Law - Robbery Arrest
478 F.2d 1019 (1973) cert den 414U.S.857 (1973) reh. den. 414 U.S. 1087 (1973)	United States v. Hunter		X			Gaming Conspiracy; Crim. Law
478 F. 2d 1340 (1973)	In re Cybern Education, Inc.	X				

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
479 F. 2d 52 (1973)	Wright v. General Motors Corp.					Negligence - Products Liability
479 F.2d 131 (1973) cert. den. 414 U.S. 1040 (1973)	Russell v. Continental Ill. Nat. Bank & Trust Co. of Chi.		X			Banking- Open-end mutual funds
479 F. 2d 242 (1973) cert. den. 414 U.S. 944 reh. den. 414 U.S. 1088 (1973)	Durovic v. Richardson					Federal Food & Drug régulation ["Krebiozen"]
479 F. 2d 435 (1973)	Orito v. Powers					Habeas Corpus, Obscenity
479 F. 2d 701 (1973) cert. den. 414 U.S. 1146 (1974)	U.S. ex rel. Miller v. Twomey		X			Prisoner's Rights; Con Law-Civil Rts.-Procedural Safegds.
479 F. 2d 756 (1973)	Doe v. Bellin Memorial Hospital		X			Abortion, Constl. Law (use of private hospl. facilities)
479 F. 2d 936 (1973)	United States v. Wilson					Criminal Law; arrest, search & seizure, hearsay, poss. of firear[illegible]
479 F. 2d 1259 (1973)	King v. Kansas City Southern Industries, Inc.	X				Class Actions

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
480 F. 2d 88 (1973)	Ganz v. Bensinger		X			Criminal Law - Con. law, Rt. to counsel in parole proceedings.
480 F. 2d 1310 (1973)	United States v. Booker		X			Crim. Law -vdr dire of jury.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
481 F. 2d 104 (1973)	U.S. v. Cleaners & Farmers Co-Op Elevator Co.					Secured transaction
481 F. 2d 133 (1973) cert. den. 414 U.S.1009(1973)	U.S. v. Clay		X			Criminal Law - procedure delay between arrest & Indictment

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION: PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
482 F.2d 439 (1973) cert. den. 414 U.S.909(1973)	<u>U.S.</u> v. <u>U.S. Steel Co.</u>					Environment - Refuse Act of 1899, Navigable Waters
482 F. 2d 842 (1973)	<u>Mobil Oil Co.</u> v. <u>N.L.R.B.</u>		X			Labor Relations - Rt. to Representation at Fact - Finding Interview

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
483 F. 2d	NO CASES					

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JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
484 F. 2d 707 (1973)	Int'l. Trading Co. v. C.I.R.					Internal Revenue [Carry-over of losses for Corp.]
484 F. 2d 734 (1973) cert. den. 414 U.S. 1070 (1973)	United States v. Lewis					Criminal law, Armed Services Draft Classif'n.
484 F. 2d 740 (1973)	United States Ex Rel. Allum v. Twomey		X			Criminal Law - Habeas Corpus - Evidence - Collateral attack
484 F. 2d 777 (1973)	Continental Oil Co. v. Witco Chemical Corp.		X			Patents
484 F. 2d 802 (1973)	Walker v. Kruse		X			Courts - Negligence Malpractice Act. v. Lawyer
484 F. 2d 879 (1973)	United States v. Silvern			X		Criminal Law Proc. - "Allen charge."
484 F. 2d 889 (1973)	Blew v. Richardson		X			Welfare case - presumpt. of Death
484 F. 2d 894 (1973)	United States v. Teresi					Criminal Law - Judges - Sentencing
484 F. 2d 954 (1973)	L.C. Thomsen & Sons, Inc. v. United States		X			Internal Revenue Ser. (Insurance Proceeds.)
484 F. 2d 1057 (1973)	Northern Petrochemical Co. v. Tomlinson					Torts; Trade Regulation (Trade secrets)
484 F. 2d 1108 (1973)	Peerless of America, Inc. v. N.L.R.B.					Labor Relations
484 F. 2d 748 (1973)	United States v. Article of Drug	X				Constitutional Law - Drugs and Narcotics

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
484 F. 2d 549 (1973)	United States v. Kraase					Criminal Law - Weapons - Sale of firearms
484 F. 2d 572 (1973)	Wambach v. Randall					Secured transaction
484 F. 2d 577 (1973) cert. den. 418 U.S. 905 (1974)	Arias v. United States		X			Criminal Law, - Proc. - Narcotics, Conspiracy
484 F. 2d 585 (1973)	Protectoseal Co. v. Barancik		X			Monopolies Fed. Civil Procedure - Corp.
484 F. 2d 596 (1973)	Elward v. United States					Internal Revenue ("head of household")
484 F. 2d 602 (1973) cert. den. 415 U.S. 917 (1974)	Hampton v. City of Chicago, Cook County, Ill.		X			Civil Rights Immunity of Officers - conspiracy
484 F. 2d 611 (1973) rev. 417 U.S. 506 (1974) reh. den. 419 U.S. 885 (1974)	Alberto-Culver Co. v. Scherk				X	Courts - Securities Regulation
484 F. 2d 625 (1973)	Homemakers H. & H.C.S., Inc. v. Chicago Home for Friend.		X			Trade Regulation
484 F. 2d 661 (1973) cert. den 416 U.S. 993 (1974)	United States v. Riely		X			Armed Services - C.O. draft status
484 F. 2d 666 (1973)	United States v. Fern					4th Amendment: Arrest Searches & Seizures
484 F. 2d 678 (1973)	Saurez v. Weaver					Const'l. law - Due Process Rt. to maintain reputation as Dr. & citizen.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
485 F. 2d 153 (1973)	Int'l. Minerals & Chemical Corp. v. Husky Oil Co.				X	Evidence; Contract Interp.- Courts.
485 F. 2d 300 (1973)	United States v. Jackson					Criminal Law - procedure reversable error.
485 F.2d1251 (1973) cert.den. 415U.S.918(1974)	Tcherepnin v. Franz					Trusts; Bldg. & Loan Ass.-Fed. Courts; Civil Procedure

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE		OPINION			TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
486 F. 2d 972 (1973)	Assoc. Gen. Contractors of Ill. v. Ill. Conference of Teamsters.		X			Labor Relations - Contract Dispute.
486 F. 2d 694 (1973)	Shead v. Quatsoe	X				Habeas Corpus - Right to Counsel
486 F. 2d 6 (1973)	Brennan v. Local 551, United AA&A Imp. WKRS. of A, Inc.		X			Labor Relations - Union Elections
486 F. 2d 627 (1973)	Gilbert v. Wood Acceptance Co.					Truth-in-Lending Act
486 F. 2d 794 (1973)	Nagler v. United States Steel Corp.					Tort-Negligence
486 F. 2d 743 (1973)	N.L.R.B. v. Braswell Motor Freight Lines Inc.				X	Labor Relations - Unfair labor practice
486 F. 2d 632 (1973)	Portage Plastics Co., Inc. v. United States					En Banc. - Corp. Income Tax - Internal Revenue
486 F. 2d 791 (1973)	Shirck v. Thomas		X			Const. Law - Civil Rights Act Failure to renew teacher contract
486 F. 2d 736 (1973) cert. den. 416 U.S.	United States Ex. Rel. Smith v. Twomey	X				Habeas Corpus - Delay in State Appeal
994 (1974) reh. den. 417 U.S. 959 (1974)						
486 F. 2d 614 (1973) cert. den. 415 U.S. 959 (1974)	United States v. Hernandez	X				Unlawful Transportation of aliens, search & seizure
486 F. 2d 807 (1973) cert. den. 415 U.S. 989 (1974)	United States v. Medansky					Criminal Law - Right to Jury Trial, Double Jeopardy

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
487 F. 2d 804 (1973)	Rose v. Bridgeport Brass Co.				X	Labor Relations - Sexual Discrimination - Civil Rts.
487 F. 2d 595 (1973)	Walker v. Trico Manufacturing Co. Inc.					Products Liability

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
488 F. 2d 1064 (1973)	Adams v. Walker					Const. Law - Due process - discharge of State Official

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
489 F. 2d 829 (1973)	Baker v. F&F Investment Co.					Const. Law - Civil Rts. - Discriminatory Home Pricing
489 F. 2d 933 (1973)	Barancik v. Investors Funding Cor. of New York		X			Staying State Court Proceedings - Injunctions
489F.2d825(1973) cert.den.415U.S. 985 (1974)	Container Corp. of America V. Admiral Merchants M. Frgt., Inc.		X			Commerce - Recovery of Overcharges
489F.2d1359(1973) cert.den.417U.S. 933 (1974)	Dart Industries, Inc. v. E.I. DuPont De Nemours & Co.		X			Patent Infringement
489 F. 2d 1377 (1973)	Freitag v. Carter					Civil Rts. Act - Class action Denial of License
489 F. 2d 1014 (1973)	Knell v. Bensinger	X				Injunction - Prisoners Rts. violation
489 F. 2d 1335 (1973)	Morales v. Schmidt				X	State Prisoner's Civil Rts. Action
489 F. 2d 998 (1973)	Rota v. Brotherhood of Railway, Airline & S.S. Clerks		X			Labor Relations - Labor-Management Reporting & Disclosure Act.
489 F. 2d 896 (1973)	Bowe v. Colgate, Palmolive Co.					Civil Rts. - Sex Discrimination
489 F.2d872(1973)	United States v. Ott		X			Crim. Law - Witnesses -disclosure of informants status.
489 F.2d 1353 (1973) cert.den.415U.S. 982 (1974)	United States v. Walker		X			Transportation of firearm in interstate commerce
489 F.2d 849 (1973) cert. den. 415U.S. 960 (1974)	Wood v. Dennis			X		En Banc.-Labor Relations - Labor Man. Rep. & Disclosure Act.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
489 F. 2d 983 (1973)	United States v. Carmichael					En Banc. Criminal Law. Sufficien of affadavit to show probable cause

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
490 F.2d636 (1973) cert.den.416U.S.993 (1974)	Air Line Stew. & S. Assn., Loc.550 v. American Airlines, Inc.					Class Action - Discharging pregnant stewardesses - Civil procedure
490 F.2d 654 (1973) cert.den.416U.S.960 (1974) reh.den.420 U.S.967 (1975)	Eason v. Gen. Motors Acceptance Corp.		X			Securities Fraud
490 F.2d 98 (1973)	Epperson v. United States					Income Tax Refund Suit
490 F. 2d 290 (1973)	Garcia v. Daniel					Civil Rts Act- Recovery of Earnings Lost-Summary Discharge
490 F.2d 424 (1973)	Gasbarro v. Lever Brothers Company					Torts-Slander & Tortous interference
490 F.2d 1 (1973)	Paulson v. Shapiro					Brokers - Stat. of Lims, choice of law
490 F. 2d 885 (1973)	Secretary of Labor of United States v. Farino					Alien Employment
490 F. 2d 678 (1973)	United States v. Trutenko		X			Mail Fraud - Reversible error Requi ements

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
491 F.2d 161 (1974)	Barrick Realty, Inc. v. City of Gary, Ind.					Const Law - Municipal ordinance Re use of signs.
491 F. 2d 320 (1974)	Chrysler Corp. v. M. Present Co., Inc.					Landlord/Tenant - Recovery of lost property in fire.
491 F. 2d 825 (1974) vac.501 F 2d 417 (1974)	Garza v. Sigler					Crim Law - Parole
491 F. 2d 684(1974)	Kuri v. Edelman					Class action for Declaratory & injunctive relief
491 F. 2d 634 (1974)	Seaton v. Sky Realty Co. Inc.					Civil Rts - Discrim in sale of Dwelling.
491 F. 2d 1233 (1974)	United States v. Williams	X				Crim. Law - Assault

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
492 F. 2d 1003 (1974)	Adams v. Walker			X		Removal of State Official
492 F. 2d 268 (1974) cert. den. 419 U.S. 883 (1974)	Cummings Wholesale Elec. Co. Inc. v. Home Owners Ins. Co.					Insurance
492 F. 2d 30 (1974)	Danly Machine Corp. v. United States					Recover over Payment of Corp. Tax.
492 F. 2d 937 (1974)	Haines v. Kerner	X				Const. Law- Prisoner's Rights
492 F.2d 1 (1974)	Jeffries v. Turkey Run Consolidated School District		X			Due Process - Requirements for Discharged Teacher
492 F. 2d 1337 (1974)	King v. United States					Parole-Prisoners Rights

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
493 F. 2d 377 (1974)	Hanover Insurance Co. v. Hawkins					Insurance
493 F. 2d 151 (1974) vac. 419 U.S. 813 (1974)	Thomas v. Pate					Civil Rts.- Prisoners Rts.
493 F. 2d 1325 (1974)	United States Ex. Rel. Townsend v. Twomey					Habeas Corpus Reasonable Time for Appeal.
493 F. 2d 76 (1974)	Union Central Life I. Co. Inc. v. Hamilton Steel Prod., Inc.					Attorney's fees Award.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION		DIS.	TYPE OF CASE
			MAJ.	CONC.		
494 F 2d 85 (1974)	Morales v. Schmidt			X		Civ. Rts-Prisoners Rts.
494 F 2d 293 (1974) cert. den. 419 U.S. 996 (1974)	Packerland Packing Co., Inc v. N.L.R.B.	X				Unfair Labor Practices
494 F 2d 327 (1974)	Peters v. Gray	X				Rt. to Counsel -Indigent
494 F 2d 648 (1974)	United States v. Drake					Crim. Law-Jury Selection
494 F 2d 562 (1974)	United States v. McGrath	X				Crim. Law-Counterfeit currency Entrapment.
494 F 2d 355 (1973)	United States v. Silvern					Const. Rts.-Jury Instruction
494 F 2d 206 (1974)	United States v. Wooley					Crim. Procedure-Evidence

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
495 F 2d 1283 (1974) affirmed 421 U.S. 330(1975)	In Re Chicagoland Iteel Cleaners Inc.					Bankruptcy
495 F 2d 571 (1974) cert. den. 419U.S. 844 (1974)	Complaint of Wasson			X		Admiralty
495 F 2d 658 (1974)	Miller v School District Number 167 Cook County, Ill.		X			Review of Termination of Employment-Const. Law-Civ. Proc.

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
496 F 2d 1156(1974) cert.den.419U.S. 1057 (1974)	United States Ex. Rel. Betts v. County Court For LaCrosse County, Branch II.	X				Crim Law-Habeas Corpus-Pleading.
496 F 2d 6 (1974)	Caton v. Hardamon					Fed. Civ. Proc.- Exhibits to Jury Room.
496 F 2d 1(1974) cert.den.419U.S. ~~879 (1974)~~	International Broth. of E.W.,L. 336 v. Illinois Bell Tel. Co					Labor Relations
496 F 2d 18 (1974)	Kronenberger v. N.L.R.B.	X				Labor Relations
496 F 2d 1324 (1974)	St. Mary's Hospital of East St. Louis, Inc. v. Ogilvie					Injunctive relief- Medicaid Reimbursement Procedures.
496 F 2d 466 (1974)	Schwerman Trucking Co. v. Gartland Steamship Co.					Admiralty
496 F 2d 1105(1974) cert.den.419U.S. 897 (1974)	United States v. Penick					Crim. Law-Evidence

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
497 F 2d 960 (1974)	Brennan v. Wheeler	X				Injunctive Relief-Trust Fund Disbursement.
497 F 2d 1270 (1974)	Howard v. United States	X				Tax Suit
497 F 2d 1225 (1974)	Rivota v. Fidelity & Guaranty Life Ins. Co.					Insurance
497 F 2d 1092 (1974)	Stark v. Weinberger		X			Social Security
497 F 2d 1068 (1974) cert.den.420U.S.909 (1975)	United States v. Greene				X	Crim. Law-Air Piracy-Insanity Plea.
497 F 2d 1115 (1974)	United States v. Zouras	X				Crim. Law-Mann Act.

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JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION			TYPE OF CASE
			MAJ.	CONC.	DIS.	
498 F 2d 875 (1974) cert.den.419U.S. 1019 (1974)	United States Ex Rel. Bombacino v. Bensinger		X			Juvenile Law
498 F 2d 879 (1974)	United States v. Hoffman					Civ. Rts.
498 F 2d 11 (1974)	Washington v. Board of Ed., Sch. Dist. 89, Cook County, Ill.					Civ. Rts. Federal Rules of Civil Procedure

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
499 F.2d 797(1974) cert.den.419U.S.883 (1974)	Perry v. Columbia Broadcasting Systems, Inc.					Torts-Defamation-Rt. of Privacy.
499 F 2d 142 (1974)	Signorile v. Quaker Oats Company					Civ. Procedure-Rt to Attorneys fees.
499 F.2d 1381 (1974)	Teague v. United States					Crim. Law-Sentences
499F.2d645(1974) cert.den.419U.S. 1071 (1974)	United States v. Baker			X in part	X in part	Crim Law - Conspiracy
499 F.2d 64 (1974) cert.den.419U.S. 1013 (1974)	United States v. Darrow					Counterfeiting-Search & Seizures
499 F.2d106 (1974)	United States v. Fiorito				X	Crim. Law-Narcotics-Conspiracy
499 F.2d 173 (1974)	United States v. Rosciano	X			X	Crim. Law-Sentencing
499 F.2d 251 (1974)	United States v. Smith					Crim. Law-Search & Seizure

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION			TYPE OF CASE
			MAJ.	CONC.	DIS.	
500 F.2d 65 (1974) cert.den. 419U.S.1050 (1974)	Christman v. Hanrahan		X			Civ. Rts-Witholding Exculpatory Evidence
500 F.2d 998 (1974)	General Split Corp. v. Unites States					Tax Suit
500 F.2d 993 (1974)	Hupp v. Gray					Securities Fraud- Stat. of Lims.
500 F·2d 711 (1974)	Miller v. School District No. 167, Cook County, Ill.	X				Termination of Employment by School Board.
500 F.2d 72 (1974)	United States v. Kelley			X		Crim. Law- Narcotics- Statutory Presumption

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
501 F 2d 1196 (1974)	Brennan v. Occupational Safety and Health Review Commission					Labor- relations
501F.2d.466 (1974) cert.den.420U.S. 947 (1975)	Economy Finance Corporations v. United States				X	Tax Treatment of insurance companies
501 F 2d 417 (1974)	Garza v. Sigler					parole
501 F 2d 1016 (1974)	Mueller v. Turcott					prisoners
501 F 2d 1021 (1974)	Tritsis v. Backer					False imprisonment
501 F 2d 540 (1974)	United States v. Zemater	X				Criminal Law prostitution
501 F 2d 531 (1974)	United States v. Dilts	X				Criminal law Witnesses

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
502 F 2d 172 (1974)	Hassler v. Weinberger					Social Security
502 F 2d 743 (1974)	Lolie v. Ohio Brass Company	X				products liability
502 F 2d 290 (1974)	Mullis v. Arco Petroleum Company		X			monoplies trade regulation
502 F.2d1351(1974) cert.den.420U.S. 925 (1975)	Unites States v. Coppetto					commerce gaming
502F.2d715 (1974) cert.den.420U.S. 945 (1975)	United States v. Ewig Bros. Co. Inc.		X			Food-DDT in fish
502F.2d166 (1974) cert.den.419U.S. 1114 (1975)	United States v. Haygood		X			Criminal law

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
503 F. 2d 18 (1974)	Burns v. Paddock					securities regulation
503 F. 2d 912 (1974) cert.den.420U.S.992 (1975)	Cousins v. City Council of the City of Chicago			X		redistricting-civil rights
503 F. 2d 774 (1974)	Field v. Boyle					Constitutional law-property interest
503 F. 2d 105 (1974)	McDonald v. Board of Trustees of University of Illinois	X				Courts-dismissals
503 F. 2d 1229 (1974)	Nutional Labor Relations Board v. Sachs	X				Labor relations
503 F. 2d 654 (1974)	Perzinski v. Chevron Chemical Co.					evidence-pesticides
503 F.2d543 (1974) cert.den.419 U.S. 1048 (1974)	United States v. Pacente					criminal law extortion, instructions
503 F.2d524 (1974) cert.den.420U.S.932 (1975)	United States v. Ramsey		X			wiretapping
503 F. 2d 1127 (1974)	United States v. Tweed					jury
503F.2d1014 (1974) cert.den.420U.S.932 (1975)	United States v. Waller	X				criminal law-heroin dealing

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
504 F. 2d 586 (1974)	Continental Illinois National Bank and Trust Co. of Chicago v. United States					estate taxes
504 F. 2d 836 (1974)	Drexler v. Southwest Dubois School Corporation			X		civil rights courts-abstention
504 F. 2d 741 (1974)	Freeman Coal Mining Company v. Interior Board of Mine Oper. Appeals et.al.					labor relations
504 F. 2d 1198 (1974)	Gallard v. Johnson					damages-negligence
504 F. 2d 989 (1974)	Goldstein v. City of Chicago					equal protection garbage collection
504 F. 2d 1189 (1974)	Herzbrun v. Milwaukee County			X		con. law govt. employees
504 F. 2d 1181 (1974)	National Labor Relations Board v. Caravelle Wood Products, Inc.			X		labor relations
504 F. 2d 1045 (1974)	United States v. Fleming		x			criminal law
504 F. 2d 622 (1974)	United States v. Johnson	X				criminal law receiving
504 F. 2d 474 (1974)	Whitfield v. Illinois Board of Law Examiners	X				constitutional law civil rights admission

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
505 F. 2d 794 (1974)	Brooks & Woodington, Inc. v. Carncross, Schroeder & Co.					Bankruptcy Allowance of Fees
505 F. 2d 1 (1974)	Fattore Comp., Inc. v. Metropolitan Sewerage Commission-Milwaukee Cty.					Public Contracts-Damages-Municipal Corp.
505 F. 2d 527 (1974)	Freeman v. Chigago Title & Turst Co.	X				Trade Regs.- Robinson-Patman Act Agent Rebates by Title Insurance Comp.
505 F 2d 1360 (1974)	Inter. Commerce Com. v. All-American, Inc.					Admin. Law-Doct. of Primary Juris, Power to Re-open Proceedings
505F.2d1091 (1974) cert.den. 421U.S.964 (1975) reh.den.422US 1049 (1975)	United States v. Barrett				X	crim. law-Adverse Pre-Trial Publicity
505F.2d139 (1974) cert.den. 421 U.S. 910 (1975)	United States v. Braasch					crim law-Witness Immunity, Grand Jury, Public Officials, Threats & Bribery
505 F. 2d 770 (1974)	United States v. McConahy					crim law-Speedy Trial
505 F. 2d 301 (1974)	United States v. Oliver		X			crim. law-5th Amend, Admissions, Right to Warnings

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
506 F 2d979 (1974)	Champagne v. Schlesinger					Courts-Armed Services Dismissal Challenge, Homosexual - issue on Appeal-
506 F 2d 1073 (1974)	Lozano-Giron v. Immig & Naturalization Service					Aliens-Conviction of "moral Turpitude," Deportation, time absent country.
506 F.2d 305 (1974) cert.den.420U.S. 1005 (1975)	United States v. Johnson	X				crim law-Jury instructions-Lesser included Offense, Double-Jeopardy
506 F 2d 627 (1974)	United States v. Rosselli		X			Crim. law-Search & Seizure-Drugs

			OPINION			
CITATION	STYLE OF CASE	PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
507 F. 2d 1246 (1974)	Chapman v. Kleindienst	X				Prisoner's Rights- Civil Rights Action- Due Process.
507 F. 2d 1363 (1975)	Cotovsky-Kaplan Physical Therapy Assoc. LTD. v. U.S.		X			HEW Regs- Standing to Challenge, "Zone of Interest"
507 F. 2d 22 (1974)	United States v. Snow		X			Crim Law-Mann Act-Intent- Proof of Dominant Purpose.
507 F. 2d 103 (1974)	U.S. ex. rel. Waters v. Bensinger	X				Habeas Corpus- Due Process- Jury Instructions

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
508 F. 2d 64 (1974)	Allen v. W.H. Brady Co.		X			Patent-Validity Atty. Fees
508 F. 2d 1354 (1975)	C.N.S. Enterprises, Inc. v. G&G Enterprises, Inc.					Sec. Reg.-1934 Act-Federal Juris, Commercial Notes.
508 F. 2d 603 (1975)	Gates Rubber Company v. USM Corporation		X			Contracts-Stat. of Lim-Accrual of Claim-Sum. Jdgmt.
508 F. 2d 283 (1974)	Neal-Cooper Grain Co. v. Texas Gulf Sulphur					Contracts-Sales U-C-C.

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
509 F. 2d 913 (1975)	Calumet Fed. S&L Ass'n. of Chicago v. Lake Cty Trust Comp					Mortgage Foreclosure-Guarantor of Notes
509 F. 2d 293 (1975)	Corning Glass Works v. F.T.C.		X			F.T.C.-Proposed Orders-Discretion
509 F. 2d 776 (1975)	U.S. v. Bush					Crim. Law-Draft Induction-C.O. Status-Failure to Appear.
509 F. 2d 909 (1975)	U.S. Controls Corp. v. Windle					Declaratory JDMT-Stock Transfer, Compensation for Services Rendered.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
510 F.2d 1065 (1975)	Rutter v. Arlington Park Jockey Club					Contracts-Liability Exemption Clause-Public Policy.
510 F.2d 1090 (1975)	Hairston v. R&R Apartments					Civil Rights-Race Discrim-Housing-Atty. Fees
510 F.2d 594 (1975)	Horvath v. City of Chicago		X			Courts-Declaratory Jdmt-Due Process Premature Federal Action
510 F.2d 397 (1975) cert.den. 421 U.S. 1016 (1975)	U.S. ex rel Kirby v. Sturges		X			Crim Law-Habeas Corpus-Suggestive Identification-Due Process.
510 F.2d 257 (1974)	N.L.R.B. v. Caravelle Wood Products	X				Labor Relations-Elections
510 F.2d 1149 (1975)	United States v. Newton					Crim. Law-Search & Seizure-Luggage-Probable cause.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
511 F. 2d 70 (1975) cert. den. Oct. 6, 1975	Avnet, Inc. v. F.T.C.		x			Monopolies-Relevant Markets-Divestiture Orders
511 F. 2d 22 (1975)	Carson v. Allied News Co.		x			Courts-Necessary parties
511 F. 2d 834 (1975) Rev._U.S._, Nov. 11 1975 (74-1544)	Indiana State Employees Ass'n, Inc. v. Boehning					Courts-Abstention-Due Process-Atty. Fees
511 F. 2d 1062 (1975) App. Pending	U.S. v. Green					Criminal Law-Controlled Sub. Act, Sale of Drugs by M.D.
511 F. 2d 482(1975) cert. den. Oct 6, 1975	U.S. v. McCorkle					Crim. Law-Tax Evasion-Jury Instruction-Admissions
511 F. 2d 96 (1975)	U.S. Steel Corp. v. Hartford Acc. & Indem Co.					Dec. JDMT-Damages-Insurance

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
512 F. 2d 133 (1975)	Hayes v. Stanton					Social Security- Medicaid- Conditions of Receipt
512 F. 2d 1036 (1975)	Stream Pollution Control BD of Indiana v. U.S. Steel Corp.		x			Court-Fed. Juris-Citizen Intervention-Waterways

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
513 F. 2d 92 (1975)	Levin v. Baum		x			Courts-Appellate Jurisdiction Partial Summary judgment
513 F. 2d 184 (1975)	Lewellyn v. Gerhardt					Courts-Abstention Doctrine
513 F. 2d 25 (1975)	Mason v. United States		x			Tax-Charitable Deductions
513 F. 2d 227 (1975)	U.S. v. Wilkinson					Crim. Law-Search & Seizure — Prob. Cause, Grand Jury Minutes Jury Charge
513 F. 2d 725 (1975)	Wojcik v. Levitt	x				Con. Law-3 Judge Courts-14th A.

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JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
514 F. 2d 1082 (1975)	Brennan v. Chicago Bridge Iron Company	x				Labor Relations-Sec'y of Labor-Definition Of "Reasonable Promptness."
514 F. 2d 607 (1975)	Rosenfeldt v. Comprehensive Account Serv. Corp.		x			Courts-Interlocutory Orders-Contempt
514 F. 2d 1077 (1975)	U.S. v. Barker					Elections-Conspiracy to Fix Election-Votings Right Act.
514 F. 2d 554 (1975)	U.S. v. Bolin					Crim. Law-Search & Seizure-Incident to Arrest-Prob. Cause

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
515 F. 2d 730 (1975)	U.S. V. Johnson		x			Crim. Law-Dyer Act-Sufficiency of Evidence
515 F. 2d 798 (1975)	U.S. v. Willis		x			Crim. Law-Sufficiency of Indctm.-Embezzlement of Mail Package

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
516 F. 2d 220 (1975)	Metro Cable Co. v. CATV of Rockford, Inc.					Antitrust-Munic. Corps.- Campaign Funding.
516 F. 2d 307 (1975)	U.S. v. Bryant					Crim. Law-Conspiracy to Cast Fraudulent Votes
516 F. 2d 889(1975) cert, den. Oct. 6, 1975	Thomas v. Pate	x				State Prisoner's Civil Rights
516 F. 2d 574 (1975)	U.S. v. Davis					Crim. Law-Guilty Pleas
516 F. 2d 489 (1975)	U.S. v. Flick					Crim. Law-Check Kiting - Sufficiency of Evid-Severance of Def.-Prejudicial Publicity
516 F. 2d 1081 (1975)	Anning--Johnson Co. v. United States O.S. & H.R. Com.					Lab. Law-Subcontractors-Regulation Violations
516 F. 2d 1341 (1975)	General Movers, Inc. v. Jernberg Forgings Company					Carriers-Contracts Prepaid Tariffs

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
517 F. 2d 41 (1975)	United States v. McCoy		x			Crim. Law-Prob. Cause for Arrest-Admissability of Evidence-Judicial Discretion-Reading Testimony to jurors
517 F. 2d 53 (1975)	United States v. Staszcuk		x			Crim. Law-Hobbs Act Interstate Commerce-Extortion. En banc decision
517 F. 2d 589 (1975)	Bachner v. United States			x		Crim Law-Guilty Plea-Parole Eligibility-Advising Defendant
517 F. 2d 492 (1975)	In Re Uniservices, Inc.			x		Bankruptcy-Protected Property-Competitors duty not to compete
517 F. 2d 696 (1975)	Satoskar v. Indiana Real Estate Commission					Civil Procedure-Class Actions-Attorney Fees
517 F. 2d 498 (1975)	United States v. Bradberry		x			Crim. Law-Conspiracy to Commit Vote Fraud-Insufficiency of Evidence
517 F. 2d 1311 (1975)	Bonner v. Coughlin		x			Prisoner's Rights-4th A. Search & Seizure-Standing Re Prison Regs-Due Process
517 F. 2d 1013 (1975)	Encyclopedia Britannica, Inc. v. FTC		x			Injunction,-Trade regulation-Pursuit of statutory remedies. Freedom of Information act.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
518 F. 2d 55 (1975)	Earley v. Louisville & Nashville Railroad Co.		x			Diversity Action-Personal Injury-Statute of Limit.
518 F. 2d 512 (1975)	Mabra v. Gray		x			Habeas Corpus-4th A-Search & Seizure-Prisoner's Wife-No Standing Due Process
518 F. 2d 1179 (1975)	Balas v. Immig. & Natural Serv.	x				Aliens Deportation Notice-No Final Order Reviewable by Court
518 F. 2d 811 (1975)	Redmond v. United States					Negligence-Fed. Fed. Tort Cl. Act-Lack of Cause/Act-Lack of warning Re Crim. Activity
518 F. 2d 1099 (1975)	Schreiber v. Lugar		x			Taxpayers Suit-Jurisdictional Amount Requirement-Amount in Controversy-No Sub. Matter Juris.
518 F. 2d 842(1975)	United States v. Kendrick					I.R.S.-Subpoena of Records-Notice Necessary
518 F. 2d 947(1975)	United States v. Kuta					Crim. Law-Extortion-Tax Avoidance Subpoena of Records
518 F. 2d 1247 (1975)	Goldman v. First Fed. S &L Ass'n of Wilmette		x			Class Action-Mortgagee's Practice Re Pre-Paid Interest-Penalty
518 F. 2d 1245 (1975)	Matthews v. United States		x			Post Conviction Relief-Ineffective Assist of Counsel-No need for hearing
518 F. 2d 1258 (1975)	Tryforos v. Icardian Development Company, S.A.		x			SH/Holders derivative Suit-Dismissal-Standing-Attorney Fees

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
519 F. 2d 391 (1975)	Illinois Migrant Council v. Campbell Soup Company					Constitutional law-"company town" treated for Constitutional purposes as public municipality
19 F. 2d 13 (1975)	Wright v. United States					Criminal law-sentencing

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
20 F. 2d. 1012 (1975)	Brennan v. Butler Lime and Cement Co.					Labor Relations Occupational Health & Safety
20 F. 2d 1212 (1975)	Muscare v. Quinn	x				Constitutional Law- Due process requirements for discharge from State employment
20 F. 2d 1248 (1975)	Polish American Congress v. F.C.C.					Telecommunications-(Fairness doctrine and "Polish jokes")
20 F. 2d 1256 (1975)	U.S. v. Jeffers		x			Effective assistance of counsel; Arrest; search and seizure-conspiracy
20 F. 2d 722 (1975)	Arenson v. Chicago Mercantile Exch.					Antitrust
20 F. 2d 632 (1975)	U.S. ex. rel. Hahn v. Revis					Pardon and Parole
20 F. 2d 529 (1975)	Hidell v. International Diversified Investments	x				Securities Regulation Corporations
20 F. 2d 737 (1975)	Sorance v. Marion Power Shovel Co., Inc.					Indemnity
20 F. 2d 731 (1975)	Smith v. U.S. Civil Service Comm.					Relation of Hatch Act to Conduct of State employees
20 F. 2d 931 (1975)	U.S. ex. rel. Stachulak v. Coughlin					Habeas Corpus

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	 MAJ.	 CONC.	 DIS.	TYPE OF CASE
521 F. 2d 1301 (1975)	Anastos v. M.J.D.M. Truck Rental, Inc.		x			Attorney and Client, Federal Civil Procedure
521 F. 2d 1089 (1975)	United States v. Harris					Indictment and Information (specificity) - Internal Revenue forcible rescue after seizure
521 F. 2d 83 (1975)	United States v. Shanks					"Plain error" rule
521 F. 2d 682 (1975)	Martin v. Indiana	x				Criminal Law (post-arrest lineup) (right to counsel). Federal Crim. Proc. (harmless error standard)

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

			OPINION			
CITATION	STYLE OF CASE	PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
522 F. 2d 228 (1975)	United States v. Lisk		X			Admissibility of firearms seized during an illegal search-bailee's automobile

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

SLIP OPINIONS

CITATION	STYLE OF CASE	OPINION				TYPE OF CASE
		PER CUR.	MAJ.	CONC.	DIS.	
#75-1033, 7th Cir. Sep. 16, 1975	United States v. Lisk		x			Petition for Rehearing-Search & Seizure-Right to Evidentiary Hearing
#74-1464, 7th Cir. Sep. 12, 1975	Case & Company v. Bd. of Trade-Chicago					Authority of Board to Suspend Rule Re price Fluctuation of Futures Contracts.
#75-1406, 7th Cir. Sep. 12, 1975	Jimenez v. Weinberger		x			Social Security Act-District Court Authority to Certify Case as Class Action-Award of Retroactive Relief
#74-1963, 7th Cir. Sep. 5, 1975	Brennan v. Butler Lime & Cement Co. & AS and H. Rev. Commission					Review of Commission Decision Affirming Vacation of Proposed Penalty Against Butler
#74-1820, 7th Cir. Sep. 4, 1975	United States v. Hays	x				Failure to File Tax Return-Cross Examination-Prior Convictions.
#74-1870, 7th Cir. Aug. 14, 1975	Kimbrough v. O'Neill			x		Declaratory Relief-Prisoner's Rights-Civil Rights-42 U.S.C. §1982.
#75-1111, 7th Cir. Jul. 30, 1975	United States v. Mandell	x				Crim. Law-Ineffective Assistance of Counsel-Cross-Exam-Prosecutorial Conduct
#74-1949, 7th Cir. Sep. 26, 1975	Fitzgerald v. Porter Memorial Hospital		x			Privacy-Marital Rights
#74-1930, 7th Cir. Oct. 28, 1975	Cohen v. Illinois Institute of Tech.		x			Sex Discrimination-Private Schools
#75-1121, 7th Cir. Nov. 17, 1975	Fred Harvey, Inc. v. Mooney				x	Diversity Suit-Petition to Intervene-Proper Party
#75-1240, 7th Cir. Nov. 17, 1975	United States v. Harding		x			Crim. Law-Prejudicial Cross-Examination of Defendant
#75-1925, 7th Cir. Nov. 21, 1975	In Re Bonk					Grand Jury-Grant of Immunity-Refusal to Testify.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

SLIP OPINIONS

CITATION	STYLE OF CASE	OPINION PER CUR.	OPINION MAJ.	OPINION CONC.	OPINION DIS.	TYPE OF CASE
#75-1207, 7th Cir. Nov. 11, 1975	United States v. Rauhoff					Crim. Law-Federal Juris-18 U.S.C. 1952-Sufficiency of Evid-Supression o Evid.
#75-1242, 7th Cir. Nov. 4, 1975	United States v. County of Champaign, Ill.		x			Tax on Mobile Homes-Statutory Interpretation
#74-2074, 7th Cir. Oct. 30, 1975	Sanders v. John Nuveen & Co.		x			Commercial Paper-Underwriter's Liability for Customer Losses
#74-1780, 7th Cir. Oct. 24, 1975	Patrick v. United States		x			Actions to Restrain Collection of Tax Grand Jury Testimony-Transcripts-Exclusionary Rule
#74-2040, 7th Cir. Oct. 20, 1975	Dunlop Holdings Limited v. Ram Golf Corp.		x			Patent Infringement
#74-1989, 7th Cir. Oct. 17, 1975	Quinn v. Com. of Internal Revenue					Challenge of Tax Court Deficiency Judgment
#74-1741, 7th Cir. Oct. 9, 1975	Grow v. Fisher					Failure to State Claim of Action-Civil Rights-Prosecutorial Immunity-"Color" of State Law
#74-1714, 7th Cir. Sep. 30, 1975	Chicago Rawhide MNFCTR Co. v. Crane Packing Co.		x			Validity of Patent-Award of Fees
#74-1906, 7th Cir. Sep. 29, 1975	Eskra v. Morton		x			Interstate Distribution of Estate Discrimination Aga Illegit-Indian Child
#74-1924, 7th Cir. Sep. 25, 1975	E-T Industries v. Whittaker Corp.					Patent Validity-Obvious Subject Matte
#75-1398, 7th Cir. Nov. 25, 1975	United States v. Lockett					Crim. Law-Speedy Trial
#75-1283, 7th Cir. Nov. 25, 1975	United States v. Fairchild		x			Crim. Law-Speedy Trial Search & Seizure.

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS
SLIP OPINIONS

CITATION	STYLE OF CASE	PER CUR.	MAJ.	CONC.	DIS.	TYPE OF CASE
#74-1394, 7th Cir. Nov. 24, 1975	American Meat Institute v. E.P.A.					Review of Regulations promulgated by E.P.A. - Waterways pollutants

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

THREE JUDGE COURT DECISIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	CONC.	DIS.	TYPE OF CASE
321 F. Supp. 1370 (1970) Rev. 405 U.S. 15 (1972)	Hartke v. Roudebush				x	Election Law-Suit for Prelim Injunction of Election Recount
390 F. Supp. 1287 (1974)	Dyer v. Blair		x			Con. Law-Illinois House of Rep. Rule Re Ratification of U.S. Consti. Amndtmt- Justiciability
390 F. Supp. 1291 (1975)	Dyer v. Blair		x			Same as 390 F. Supp. 1287 Discussion of Justiciability, State Legislature's Power Re Rule Adoption & amend. Ratification

JUDGE JOHN PAUL STEVENS, 7th Circuit, October 14, 1970 - Present-REPORTED OPINIONS

CITATION	STYLE OF CASE	PER CUR.	OPINION MAJ.	OPINION CONC.	DIS.	TYPE OF CASE
64 CCH Labor Cases ¶ 11,479 (1971)	International Union of Operating Engineers v. Flair Builders, Inc.				x	Union Suit to Compel Arbitration Barred by Laches
66 CCH Labor Cases ¶ 12, 238 (1971)	U.S. v. International Longshoremen's Ass'n		x			National Emergency Strikes-Injunctions-Impact on Econom
68 CCH Labor Cases ¶ 12,579 (1972)	N.L.R.B. v. Whitney Stores' Inc.				x	Refusal to Bargain-Relitigation of of representation Issues-Unit Determination Issue
69 CCH Labor Cases ¶ 13,007	N.L.R.B. v. Colonial Manor Convalescent & Nursing Home		x			Suit for enforcement of order-economic strikes-refusal to reinstat

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American Law Division

NOMINATION OF JOHN PAUL STEVENS TO BE A JUSTICE OF THE SUPREME COURT

WEDNESDAY, DECEMBER 10, 1975

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:20 p.m. in room 2228, Dirksen Senate Office Building, Senator Quentin N. Burdick presiding.

Present: Senators Burdick, Eastland, Hruska, and Thurmond.

Also present: Francis C. Rosenberger and J. C. Argetsinger, of the committee staff; and William P. Westphal, chief counsel, Subcommittee on Improvements in Judicial Machinery, assistant to Senator Burdick.

Senator BURDICK. The committee will come to order.

Our first witness this afternoon will be Mr. Anthony R. Martin-Trigona, of Chicago, Ill.

Do you swear that the information you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF ANTHONY ROBERT MARTIN-TRIGONA OF CHICAGO, ILL.

Mr. MARTIN-TRIGONA. I do.

For the record, my name is Anthony Robert Martin-Trigona. I reside in Chicago, Ill., and maintain offices at One IBM Plaza in Chicago.

I want to thank the committee and the Senators here today for the opportunity to appear and testify and present what I believe is information which may prove of value to the committee in formulating an assessment as to whether they should recommend confirmation of Mr. Stevens as an Associate Justice on the Supreme Court.

I would like to emphasize at the outset that I have no personal feelings with respect to the nomination of Judge Stevens; that I have never met the man, and indeed, before I saw him here in this room on Monday, I had never even seen him. Quite frankly, I have not formed any opinion as to any of his own views or any of the decisions in many of the matters relating to philosophical principles which have previously been discussed. Therefore, I do not wish to necessarily be understood as appearing in opposition to the nomination, but rather, appearing and proffering to the committee certain information which I feel can assist the committee and be a value to it in conducting its own investigation.

I feel it is correct to point out in this respect that some of the materials which I have developed and which have been furnished

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to me involved hearsay; others involve circumstantial issues which possibly might be explained away. Nevertheless, in my own opinion I think they raise questions of sufficient importance that the committee should be informed of them, and consider them, and attach to them the significance it feels is their due.

I would like to break down or divide my specific comments into three areas. One, some disscussion of an affidavit which was previously furnished to the chairman of the committee and certain members of the committee. Two, to discuss a lawsuit which was brought relating to certain aspects of the affidavit, and finally, to go into in somewhat greater detail certain statements and understandings which I have concerning the so-called Keane question.

First, with respect to the affidavit which I furnished to the committee, I feel it would be both helpful and appropriate if I first reviewed very briefly the circumstances which motivate me to contact the committee.

The affidavit, in essence, relates to a number of conversations which I had with Mr. Jerome Torshen, the assistant counsel of the special commission, and the sum and substance related in the affidavit were that, while Mr. Torshen and Mr. Stevens served on the special commission investigating charges of impropriety against judges on the Illinois Supreme Court, that damaging information relating to certain sitting judges was withheld.

I think in this connection it is necessary to point out that damaging information relating to some judges was also disclosed, and in fact, two sitting judges, both Republicans, did, in fact, resign from the Illinois Supreme Court as the result of the work of this commission.

For purposes of clarity and completeness, I think it would be appropriate and reasonable at this time to read into the record the affidavit which was furnished to the chairman, and the affidavit is as follows.

[The witness read the affidavit which is printed above at page 60.]

Mr. MARTIN-TRIGONA. I did sign it, Senator. It was acknowledged in the State of Illinois and in the city of Chicago.

In summary, then, the affidavit basically states that information provided to me by an attorney, under circumstances which would indicate that the information was reliable, indicated that cocounsel to the commission had, in essence, restricted the scope of disclosures made with respect to the work product or fruits of their investigation into unlawful acts and acts of impropriety by sitting justices on the Illinois Supreme Court.

Frankly, I don't know if Mr. Torshen told me the truth. My own opinion and belief is that he did tell me the truth. I have never had an independent way to verify the information simply because the records of the commission have been sealed and have never been made available to me, despite, of course, my efforts to secure their release through the aforementioned judicial proceedings.

I believe, that with respect to this particular issue, one way of proceeding, of course, would be to call Mr. Torshen to testify and, perhaps, to weigh the relevant credibility of the testimony of the witnesses. However, I believe that lawyers have a rule of evidence, and they call it the best evidence rule, and to the extent that record still exists, I think it would be appropriate to suggest that committee members themselves or, perhaps, at least in the first instance, committee

staff members, examine the documents to the extent that they are still in existence and determine exactly what they say.

Now, this, at the very least, would remove, I think, the cloud which will continue to hang over Judge Stevens. The staff of the committee or a member thereof could then report to the committee as to the presence or absence of information damaging to any judge, and I think it would be entirely appropriate, and I would suggest that it be done without saying what information was found in the event there is something damaging.

Very clearly, a wrongdoing by a judge in Illinois is of no direct concern to this committee. Nevertheless, the fact that information relating to it may have been withheld is highly relevant and probative to the nomination which is now before the committee.

The second area which I would like to go into with some greater detail is the lawsuit involving Judge Stevens and the sitting judges that is mentioned in the affidavit. I think there is some basis that the committee would wish to be further advised of it.

I would like to explain the circumstances under which it was filed and explain the position I took. I think it is important that in assessing my credibility you reflect upon the fact that, first of all, I filed the action and took that position on the public record approximately 3 years before Judge Stevens was nominated to the Supreme Court and over 1 year before I was denied admission by the Illinois Supreme Court, so, therefore, these allegations in that case long predate any action on my initial application by the Illinois Supreme Court and certainly predate Mr. Stevens' nomination to the Supreme Court of the United States.

I think that any lawyer reading the complaint, the original complaint, No. 72 C 2290, would have to be impressed with the fact that the allegations involving Judge Stevens were very carefully drawn and they were most circumscribed. The complaint points out in explicit language that in three different accounts Judge Stevens was, pursuant to the Federal Rules of Civil Procedure which require that a necessary or indispensible party be joined, and as chief council to the commission it was clear to me then, and I think it is now, that he was, pursuant to Federal Rule 19, a necessary or indisepensable party.

Judge Stevens, in the complaint, is mentioned only as a direct principal party in one of the counts, and that was the count relating to the nondisclosure or coverup, I believe as Senator Mathias characterized it, of the work product of the investigation. Therefore, it is important to note that the accusations contained in the complaint were carefully worded and narrowly drawn.

The suit moreover was drawn against the sitting judges of the Illinois Supreme Court simply because they were the logical defendants. They control both admission to the court and in this instance, in the case of the suit more importantly, disbarment proceedings.

One of the judges for whom the commission had found had committed positive acts of impropriety had never been disciplined and had been allowed to resume the practice of law. The other judge, Justice Klingbeil, had been permitted to resign and receive a State pension from the State of Illinois. Neither judge had at any time ever refunded to the State the illegal stock profits which the commission had found these men had received.

Therefore, it seemed reasonable, and I think perhaps electable to join the sitting judges of the court as defendants since (*a*) my best information was that they were the custodians of the commission and (*b*) ultimately any disbarment actions against them would relate back to their inherent judicial power.

Senator BURDICK. This action you are testifying about refers to your appeal to get your legal license to practice?

Mr. MARTIN-TRIGONA. No, sir, it does not.

Senator BURDICK. What does this refer to?

Mr. MARTIN-TRIGONA. This relates to the proceeding previously referred to as the 72 C 2290, the action to secure release of the nonpublished commission documents and work product, also to recover the illegal stock profits which had never been recovered, and finally to see that some disciplinary sanctions were imposed upon the judges who had previously been found guilty of positive acts of impropriety.

Senator BURDICK. And what happened?

Mr. MARTIN-TRIGONA. I am just about to go into that.

Senator BURDICK. The reason I ask is that we have a vote on the Senate floor and we will have to recess in a minute for that.

Mr. MARTIN-TRIGONA. I would be happy to interrupt my testimony right now.

Senator BURDICK. We will take a brief recess.

[A brief recess was taken.]

Senator BURDICK. The committee will come to order.

Mr. MARTIN-TRIGONA. Senator, you asked about the subsequent history of that case.

Senator BURDICK. Well, I was wondering which case you were referring to. There were two cases involved: one dealing with your license to practice law; and one dealing with the action you brought in reference to the Chicago situation.

Mr. MARTIN-TRIGONA. The case involving my license has not at this point been mentioned in my testimony. The case involving the actions of the special commission and the efforts to procure disclosure had a history basically as follows. As I indicated in the affidavit, the case was assigned to Judge McLaren who had formerly been Assistant Attorney General in the Nixon administration.

He refused to issue the summonses in the case and dismissed it, I think a day or two or so, very shortly after it was filed. I then appealed to the seventh circuit his dismissal of the case and his refusal to issue summonses. This issue was heard by the court of appeal on December 4, 1973. And at that time, as I indicate in my recitation of the affidavit, they took the rather unusual action of reversing Judge McLaren immediately, right from the bench.

It then went back to Judge McLaren and a motion was filed for transfer to a new judge and it was assigned to Judge Austin. Judge Austin then heard briefs on the matter and dismissed it in 1974. It was again appealed to the U.S. Court of Appeals for the Seventh Circuit. The basic defense, if you will, of the judges was that they were immune from suit and that no Federal question had been stated.

In addition, they raised the question whether I lacked standing to recover the funds which had arguably been taken from the people of Illinois. The seventh circuit issued an opinion on October 30 of this year and indicated on procedural grounds that it would affirm the

dismissal. It said first of all that I did not have standing to bring it because I had not been injured specially from anyone else. If money had been taken from the State, every taxpayer's funds had been taken to a proportionate degree; and second, that no Federal question had been stated and indicated that the mere commission of a tort, I think the language was, does not give rise to Federal jurisdiction.

With the Senator's permission, I would like to supplement my testimony and affidavit on this point by furnishing to the committee, as soon as I can make them available, copies of the briefs and of the complaints so that they will be incorporated by reference.

In this connection, Senator, if I might have a day or so, I did not bring them with me. But I will put them in the mail tomorrow morning and they shall certainly be here by Friday if they come by express mail.

Senator BURDICK. I cannot guarantee how long the record will be open because we want to proceed with this nomination. I would think if you have them you should have them here by tomorrow.

Mr. MARTIN-TRIGONA. I will do my best.

[The material referred to was subsequently received by the committee.]

Mr. MARTIN-TRIGONA. I think, to summarize the state and status of this legal action, at no time was any decision on the merits ever handed down. The circuit court of appeals which considered the issues resolved them on a threshold question of standing and on the preliminary issue of whether in fact, the unlawful action of a State official could involve sufficient grounds to give rise to a Federal question of jurisdiction.

The defendants in the proceeding at no time deny the allegations, nor did they at any time contest the fact that the allegations, if true, would establish improper conduct. Therefore, I think one can begin to see that there is at least a real basis to examine and look into the work product and the official records of the special commission to determine just what—wherein lies, as it were, the factual foundation.

The third and final area of interest and inquiry which I would like to urge upon the committee involves the facts and circumstances relating to what I suppose can be characterized as the Keane situation, the Thomas Keane situation.

In this connection I would point out that much of the material related thereto is circumstantial in nature, and I am not necessarily taking a position upon it. But I think it is very fair to state that given the gravity and seriousness of the appointment under consideration and the need to have integrity on the Court, that every possible question and every lead should be investigated to the fullest extent, even if it is to the point of a dead end.

Mr. Keane was mentioned in passing yesterday. I think it is appropriate that he be identified with somewhat greater precision simply because he is not a national figure, although perhaps he is a relatively notorious local figure. Mr. Keane is the major figure in Chicago politics of four decades. He was a State senator and then for 30 years an alderman. Over a number of years, spanning at least a decade and possibly longer, he was repeatedly charged by the press with profiting from public office by allowing his associates to profit and by profiting himself.

It is a matter of record, I believe, that he was ultimately indicted by a grand jury and convicted by a Federal petit jury, and in all fairness, certiorari was pending on this decision, although it was confirmed by the U.S. Court of Appeals for the Seventh Circuit.

With this background and with some greater detail of information as to Mr. Keane's role and the very great extent of his power and influence in Chicago politics, I think it is important then to proceed to reflect on certain facts and circumstances, most of which are uncontroverted at this time. (A) Shortly after resuming the private practice of law, Mr. Stevens immediately was contacted by the Keane firm as cocounsel on one case and subsequently thereto on a second case.

Therefore, as early as the 1950's, the beginning of the 1950's, he presumably was relatively well acquainted with Tom Keane from personal knowledge, information, and experience.

Second, it is my understanding that Mr. Keane also had as one of his attorneys Jerome Torshen and the attorney-client relationship existed prior to Mr. Torshen's appointment as assistant counsel to the special commission.

Thereafter, of course, in 1969 both Mr. Torshen who had an attorney-client relationship with Mr. Keane, and Mr. Stevens who was a longtime acquaintance and former cocounsel with Mr. Keene, were appointed to supervise the investigation of the charges of impropriety. I think in this connection, Senator, it is well to point out one significant factor.

The special commission was composed of very eminent practicing attorneys in the State. Nevertheless, to the same extent that a Congressman or Senator will rely on his staff for digging and information in an investigation, the commissioners themselves relied very heavily on the staff, and with particular regard to relying on the investigatory efforts of the counsel and cocounsel who were supervising the discovery and who as lawyers were in a special position to understand just how to put together a good thorough investigation.

I have spoken with members of the news media who covered the reports and proceedings of the special commission thoroughly, who were very friendly with Mr. Stevens and Mr. Torshen. At no time were any of the news media ever aware that Mr. Stevens was acquainted with Mr. Keane or that Mr. Torshen was an attorney for Mr. Keane. They have indicated to me that had they been aware of these facts it would have placed a disturbing light on (*a*) the work product of the commission, and (*b*) the allegations which were circulating even then that some sort of coverup, and that is not my own word, but it is a word that was given yesterday, that some sort of coverup had been effectuated.

I think there is at least there a matter of concern simply because there is a possible appearance of impropriety. Now here you have both the chief counsel and the assistant counsel having a relatively significant relationship with a figure who is a senior democratic leader, perhaps the second most influential man in the city of Chicago, and who has been involved repeatedly in accusations of profiting from public office, particularly when the commission is being charged with investigating whether judges have profited from public office.

I believe that had the relationship between Keane and Torshen and

Keane and Stevens been made aware, this would have placed an entirely different light on the proceedings and might have indeed occasioned a new special commission.

Several weeks after the report of the special commission was filed, Mr. Torshen, as attorney for Mr. Keane, lodged in Federal court a major antitrust action. It would appear from the extent of the pleadings necessary to prepare such a complex piece of litigation, that he had been working on this litigation at the time of the special commission and prior thereto.

In summary, I feel there is a very serious question presented as to whether or not the appearance of impropriety would have been charged or made known to the public had the public or members of the press been aware that the counsel and chief counsel sitting as it were at the very epicenter of commission activities and in a position to direct the scope and extent of the inquiry and to influence the nature of the investigation had been associated on a relatively intimate basis with Mr. Keane.

In this connection, I believe it is worthwhile to jump ahead, as it were, to the case of *United States* v. *Keane* in the seventh circuit. Despite the fact that Mr. Stevens had been a judge for 5 years, and the cocounsel relationship with Mr. Keane went back possibly as long as 20 or more years, he disqualified himself from hearing the petition for rehearing in bank.

Nevertheless, on February 7, he did enter an order allowing Mr. Keane to file a somewhat larger brief. The attorney who was the moving party on behalf of Mr. Keane in that order was Mr. Torshen. I find it difficult to reconcile and balance the recusal in the *Keane* case with the nonrecusal in the case of *Cousins* v. *Wigota* because Mr. Wigota was Mr. Keane's lawyer.

The majority opinion in *Cousins* v. *Wigota* details the facts relatively extensively that most of the actions that were alleged to have been unlawful, and which were found in part to have been unlawful by the court of appeals majority, occurred in Mr. Keane's office.

Mr. Stevens also apparently dissented in a case involving Mr. Barrett who was the county clerk and who had been found guilty, I believe, by a Federal jury of having solicited and accepted bribes in connection with the performance of his official duties.

When I try to place into a consistent pattern the longstanding knowledge of the nominee with his recusal in one case and his nonrecusal and indeed dissent in two other cases, I am left with a puzzle, a question. Perhaps it is no more than that, but I think it would be entirely appropriate to say that it raises legitimate questions which, in my view, have not been completely and adequately answered by the nominee and which deserve further examination by the committee.

As the Senator may possibly be aware, the time the affidavit was filed with the committee, the affidavit and only the affidavit was available to me as a source of information regarding the nominee. Thereafter, conducting an independent investigation, the link, if you will, between Mr. Keane and the nominee, Mr. Stevens, was first developed and disclosed. After I came to Washington at the behest and telegram of the committee and presented my statement to the committee on Monday, I was advised of additional information which again I feel is probative to the committee. It provides, I think, a further possible in-

dication of very close and continuing connections between the convicted political figure, Mr. Keane, and Stevens' law firm.

And I refer now specifically to material involving a story which appeared in yesterday's Chicago Daily News on page 4, and I will read from it just very briefly.

Senator BURDICK. Well, read it briefly because we are running out of time.

Mr. MARTIN-TRIGONA. It says—

> Edward I. Rothschild and six others, plus a number of secret investors, bought the city-owned 148-acre Gage farm tract in west suburban North Riverside after a sale at the bargain price of $2.1 million was approved by the city council at the instigation of Thomas Keane. Rothschild and the other buyers, including at least three close business associates of Keane, made substantial profits from resale and leasing of various parts of the land.

In this connection I think it is fair to clarify the record on at least one point. The nominee denied that Mr. Keane had been a financial participant in the Gage farm purchase and that is correct. I do not believe it was ever claimed that he had been a participant in the Gage farm purchase. As a public official, he would have been prohibited by State law from buying property which was being sold by the city.

Thus it appears and the evidence suggests that there was a close relationship between Mr. Keane's associate and Mr. Keane's law firm going back many years, specifically to 1954, at least. At the time Mr. Stevens was an active senior partner in the firm. Quite frankly, speaking as a lawyer, I think it could reasonably be expected that Mr. Stevens had knowledge of the extent and the nature both of the client that Mr. Rothschild claimed to represent, and also of the relatively large financial investment which was being made.

Therefore, at the time of serving on the special commission, there is, I feel, furnished a motive for Mr. Stevens to have been particularly sensitive to any line of inquiry which would have led to the doorstep of a sitting democratic Illinois Supreme Court justice.

I think there was some question raised yesterday as to whether the nominee had ever engaged in the use of a blind trust. I think it is very important to distinguish a blind trust, which is typically one used by a public official to have his assets in the hands of an investor who does not tell him what he has so he will not know and will not have a conflict, from a land trust.

Now the nominee was not asked and did not specify whether he had ever been the beneficiary of a land trust. A land trust is a relatively unique Illinois legal doctrine or institution which has many useful features entirely apart from the secrecy of the interest of the persons involved.

Senator BURDICK. Just a minute. Do you have any evidence that he had a land trust? I have given you a lot of latitude. Do you know anything about a land trust? Tell us.

Mr. MARTIN-TRIGONA. Senator, my point was——

Senator BURDICK. I am trying to be fair with you, but I want some evidence pretty soon. Do you know anything about a land trust?

Mr. MARTIN-TRIGONA. I am trying to point out that the committee itself questioned Mr.——

Senator BURDICK. You are supposed to give us evidence. Now I want evidence from now on. Do you have any evidence?

Mr. MARTIN-TRIGONA. The evidence, Senator, does not relate to the fact of whether Mr. Stevens was or was not a participant in the Gage farm transaction. That, I think, could best be determined by a reference to the documents. The relevance of what I am pointing out to the Senator is that it creates a motive, an apparent conflict of interest, vis-a-vis this service on the special commission.

I am not accusing Mr. Stevens of having had a land trust interest in the Gage farm. Nevertheless, I find it difficult to believe that the senior partner invested what I have been told as $120,000 in this venture, and that Mr. Stevens was entirely ignorant of this fact. I think there is a rather fair basis to conclude that there is a question of impropriety raised when the firm and a senior partner in the firm had a close relationship with the same democratic politician who also was retaining Mr. Torshen as counsel.

I believe that Mr. Stevens is a very bright and aware, and perceptive lawyer. I indicated that he had a quick mind and he quickly grasps significance, and I find on this point it difficult to assume that he was not aware of these things at the time that he performed the services for the special commission. And therefore I think there is a basis for a motive which I feel the committee should investigate.

I do not think it is appropriate to impose upon a witness to the committee the burden of producing a smoking gun. I think it is appropriate to impose upon a witness to the committee the burden of coming forward with circumstances which would be of interest to the committee.

In closing, I would like to thank the committee for the opportunity to come before the committee and to relate what I think are serious questions raised on the record concerning the facts and circumstances which gave rise to possible impropriety. I understand that efforts have been made to attack my own character and veracity to possibly Senators and Senators' staffs.

From my point of view, I sincerely regret that these things have been done on behalf of Judge Stevens. Indeed, I think it would be inappropriate for me to address such innuendoes in my own testimony before the record, but I am happy to address and explain any incident in my own background which any Senator feels casts any doubt on my own character and veracity.

With that, I think, Senator Burdick, I would turn the matter over to the committee and given the information which has now been produced in open record, the committee may deal with it and act with it as it sees fit.

I think there is certainly a basis for at least a staff member of the committee to preliminarily examine the documents to determine just what the special commission records say. We all know from our own experience that in past years very severe charges were made against high public officials. Initially these were called crank charges or unsubstantiated charges and later when the documents trickled into the public record, the most stunning consequences arose as a result.

And I think therefore it is important that this committee proceed with an abundance of caution and, if necessary, with an excess of thoroughness rather than a lack of excess.

Thank you very much, Senator, and if there are any questions, I would be most pleased to address myself to them.

Senator BURDICK. The purpose of the hearings is to get evidence and not to get impressions or argument. The purpose of the hearing is to get evidence. That is what we are trying to get on the qualifications of Mr. Stevens. Now you have started your testimony by reading your affidavit, which you have read in full, which I have before me.

As I look through this affidavit, I find it replete with—I will quote some of it. "This led to a series of discussions with Mr. Torshen." Then again, "Mr. Torshen and I discussed the work." Again, "Mr. Torshen assured me." "Mr. Torshen assured me," again. And again, "Mr. Torshen assured me." Again, "Mr. Torshen mentioned." Again "Mr. Torshen had strong indications, gave strong indications." Again, "during the scope of our conversation, Mr. Torshen repeatedly referred to."

Now, that is your affidavit. I do not find one piece of direct evidence in that affidavit. Do you have any?

Mr. MARTIN-TRIGONA. Senator, I believe the affidavit speaks for itself. It is evidence that this question is raised.

Senator BURDICK. Just a minute. I have given you lots of latitude. Do you have any evidence of what you say Mr. Torshen told you of your own knowledge?

Mr. MARTIN-TRIGONA. How would it be possible?

Senator BURDICK. I am just asking, do you have any?

Mr. MARTIN-TRIGONA. Yes, I think the evidence is my testimony.

Senator BURDICK. What is that?

Mr. MARTIN-TRIGONA. Senator, I believe the evidence as presented in a court of law in an administrative proceeding or a committee hearing is testimony. I have been sworn and I have testified as to these facts and circumstances.

Senator BURDICK. According to the affidavit, you rely entirely on what Mr. Torshen told you. Could you point out something in your affidavit that comes from your own knowledge? I want to know what it is.

Mr. MARTIN-TRIGONA. Senator, I believe the testimony itself is evidence and I would refer you respectively, sir, to the best evidence which is the documents themselves. I think the affidavit is fairly clear as was my testimony. I have never been permitted to view the original evidence for the best evidence.

Senator BURDICK. Take your own affidavit right now and point out the line and page where you have direct evidence, will you?

Mr. MARTIN-TRIGONA. Senator, I believe the affidavit was read into the record. The testimony, as such, is evidence.

Senator BURDICK. At this stage, I am going to read to you an affidavit by Mr. Torshen.

AFFIDAVIT OF JEROME H. TORSHEN

STATE OF ILLINOIS
County of Cook ss:

Jerome H. Torshen, being duly sworn upon oath, deposes and says that he is an attorney at law having been admitted to practice before tbe Supreme Court of tbe State of Illinois is 1955 and that he has been subsequently admitted to practice before the bars of the Supreme Court of the United States, the Courts of Appeal for the Seventh, Eighth, Ninth and District of Columbia Circuits and before the United States District Court for the Northern District of Illinois, that he resides at 442 West Wellington Avenue, Chicago, Illinois, and maintains his office at 11 South LeSalle Street, Chicago, Illinois.

Affiant was privileged to serve as assistant counsel to Judge John Paul Stevens on the staff of the Special Commission of the Illinois Supreme Court ("the Commission"). As a result of the report of the Commission, two Justices of the Illinois Supreme Court resigned. Snbsequently, in an unrelated matter, affiant's law firm, for a time, represented one Anthony R. Martin-Trigona in connection with Mr. Martin-Trigona's application for admission to practice law in the State of Illinois. Affiant's law firm withdrew from that representation prior to the hearings resultiug in denial by the Illiuois Supreme Court of the said application.

Affiant has been advised that Mr. Martin-Trigona has submitted a document which, in effect, charges that affiant advised Mr. Martin-Trigona that the Commission had obtained evidence sufficient to cause the resignation of two Justices in addition to those who had resigned, but that this evidence was, in some manner, suppressed. Apparently, it is charged that Judge Steven was involved.

These charges are false, malicious and scurrilous. No such statements were ever made by affiant to Mr. Martin-Trigona. Moreover, no material was obtained by the staff of the Commission which indicated any impropriety, much less illegal conduct, on the part of any members of the Illinois Supreme Court other than those two Justices who resigned.

Affiant has known Judge Stevens for almost twenty years as a lawyer, as a colleague on the staff of the Commission and as a judge. He is a snperb legal craftsman, a gentleman of impeccable character and deep sensitivity, and a man of the utmost integrity. His fitness for judicial office is, if anything, exemplified by the performance of his function as counsel to the Commission.

JEROME H. TORSHEN.

Subcribed and sworn to before me this 5th day of December, 1975.

MARIA A. CABEL,
Notary Public.

Senator BURDICK. Now, your affidavit relies entirely upon your conversation with Mr. Torshen, and I ask you again, do you have any independent evidence, other than the conversation you had with Mr. Torshen?

Mr. MARTIN-TRIGONA. Based on my conversations with Mr. Torshen, and I believe in the truth of what he told me, I believe that the independent evidence which could be produced to support the allegations would be the original files, work product, the documents of the special commission. I think they can resolve with finality and impartiality any conflict between the affidavits.

Very briefly, Senator, much of what Mr. Torshen's affidavit relates to—consists of conclusions. Second, I am taken totally by surprise that he knew Judge Stevens for as long ago as 20 years because I was advised by someone, by a member of the press, that Mr. Torshen had told them that he did not know Judge Stevens very well at the time that he was appointed assistant counsel.

Quite frankly, Senator, the more I hear about this case and the more that is denied concerning my allegations, the more I feel very possibly questions are raised which very seriously ought to be considered by the committee.

Senator BURDICK. I asked you for an answer, if you had any independent evidence. The answer is "No"?

Mr. MARTIN-TRIGONA. Yes. The work products of the special commission, that is the best evidence. It will ultimately resolve with impartiality——

Senator BURDICK. But you do not have it?

Mr. MARTIN-TRIGONA. It is not in my possession, but I have tried to secure it.

Senator BURDICK. Do you have any direct evidence of any connection or wrongdoing on the part of Mr. Stevens in regard to the Keane matter, any direct evidence?

Mr. MARTIN-TRIGONA. Keane matter? What are you specifically referring to?

Senator BURDICK. You spent considerable time talking about some connection with Mr. Keane.

Mr. MARTIN-TRIGONA. I think what we were talking about, sir, in connection with Mr. Keane was acts of impropriety or appearance of impropriety. I believe that failing in conceal—concealing from the public a previous cocounsel relationship with a common political source, such as the chief counsel, could reasonably be construed by an impartial person as the appearance of impropriety.

I believe furthermore if Mr. Stevens was aware that a senior partner was an investor in land deals with persons who had been identified as associates of Mr. Keane, that again questions are raised.

I would like to again remind the Senator I think I have been fairly careful at all times with respect to my allegations regarding Mr. Stevens because of the fact that ultimately I believe that the committee has to make its own independent investigation. I lack subpena power, sir, I lack the physical resources to do the kind of investigation I think would be warranted under the circumstances.

The committee does have subpena power and it does have the resources in terms of people power to go into these matters a little bit more thoroughly.

Senator BURDICK. Exhibit D, filed with your affidavit, in the case you took before the seventh circuit, says:

> In this connection it is well to reiterate that Judge Stevens of this court was named as a defendant in this action solely because of his connection with the Special Commission and his knowledge of the Special Commission's files and work product. At no time did the plaintiff ever suggest that Judge Stevens had committed any acts of impropriety in connection with the Klingbiel-Solfisburg episode.

Mr. MARTIN-TRIGONA. Senator, if I might respond to that. Of course I would like the record to reflect my reading of that. At the time that was filed in the court of appeals, I was not aware that Mr. Stevens had been involved in a cocounsel relationship with Mr. Keane. I learned that last week for the first time.

At the time that that brief at the court of appeals was filed, I was not aware that Mr. Stevens' senior partner had been a land investor with a number of persons who were identified as close associates of Mr. Keane. Had I had this information in my possession at that time, I might have come to different conclusions.

Nevertheless, specifically with respect to Justices Klingbiel and Solfisburg, no one, including myself, has ever said that he was involved in any impropriety with Klingbiel and Solfisburg himself. The affidavit, I think, is relatively clear that the coverup related to judges who have not yet even been named in the public record.

Therefore, I think that with that clarification my testimony stands uncontradicted on that point.

Senator BURDICK. Your testimony stands on no evidence whatsoever. That is all it stands on right now.

At this time, without objection, I ask that the affidavit of Frank Greenberg, and the affidavit of Henry L. Pitts, who were cochairmen of the commission, together with the affidavit of Joseph Torshen, which I read into the record, be made a part of the record at this point.

[The material referred to follows:]

AFFIDAVIT OF HENRY L. PITTS

STATE OF ILLINOIS
County of Cook, ss:

I, Henry L. Pitts, being first duly sworn, state as follows:

I am advised that there has been a charge that John Paul Stevens and Jerome Torshen, as Chief Counsel and Associate Counsel, respectively, to the Special Commission which investigated charges relating to the integrity of the judgment entered by the Supreme Court of Illinois in *People, etc.* v. *Isaacs*, No. 39797, suppressed evidence relating to misconduct of judges of said Court.

As President-Elect of the Illinois State Bar Association, I was appointed by order of the Supreme Court of Illinois on June 17, 1969, together with Mr. Frank Greenberg, the President-Elect of the Chicago Bar Association, to select three other members of the Illinois Bar to serve as a five-man Special Commission to investigate the circumstances relating to the Court's decision in *People* v. *Isaacs*, No. 39797. Messrs. Stevens and Torshen were selected by the Special Commission to assist in the making of the investigation. From the inception, the Special Commission made it clear that its counsel were answerable solely to the Special Commission in ascertaining all of the relevant facts regarding all of the judges of the Supreme Court of Illinois. In carrying out that searching investigation for the Special Commission. Messrs. Stevens and Torshen worked closely with the members of the Special Commission. As organizers of the Special Commission, Messrs. Greenberg and I were familiar with all of the oral and documentary evidence adduced during the investigation. I personally read every deposition taken by members of the Special Commission's legal staff and reviewed documents obtained during the course of the investigation. All leads developed by the legal staff were reviewed by Mr. Greenberg and me and the other members of the Special Commission.

Based upon the foregoing, I can state without any reservations whatever that no evidence regarding the conduct of any judge of the Supreme Court of Illinois was suppressed by Messrs. Stevens and Torshen. The Special Commission and all of the staff recruited by it served without pay; the younger lawyers recruited by the Special Commission to assist Messrs. Stevens and Torshen were acting solely out of a desire to serve the public and were, therefore, in a uniquely independent position. Under these circumstances, it is inconceivable that any evidence could have been suppressed.

Throughout the investigation and the interrogation of the witnesses, including judges of the Supreme Court itself, Mr. Stevens pursued the truth fearlessly and in a thoroughly professional manner. Mr. Stevens' performance in the public interest as the Special Commission's counsel was exemplary in all respects.

In more than thirty-six years of private practice and work in the organized bar at the national and state levels, I have not observed an individual more superbly qualified than Judge Stevens to serve on the Supreme Court of the United States, as evidenced by an unsolicited letter which I wrote to Senator Charles H. Percy on April 16, 1970, a copy of which is attached hereto. I have complete confidence that Judge Stevens has all of the qualities of mind and heart necessary to make a great Justice.

HENRY L. PITTS.

Subscribed and sworn to before me this 5th day of December, 1975.

NANCY R. KRANZOW,
Notary Public.

[Attached]

APRIL 16, 1970.

Hon. CHARLES H. PERCY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Upon my return to the city, I noted last week's news item concerning your submission of John Paul Stevens' name for the Court of Appeals in our circuit. I want to congratulate you for this action, for you know how highly I regard Mr. Stevens.

I am writing this for the purpose of describing in more detail the basis for my opinion. I have had a unique opportunity to observe Mr. Stevens closely and to evaluate his personal and professional attitudes and ability under the most trying circumstances. I am referring to his serving as Chief Counsel to the

Special Commission appointed by the Illinois Supreme Court last June to investigate the integrity of that Court's decision in the Isaacs case. When Frank Greenberg and I were given this assignment by the Supreme Court, we had to select the other three members of the Commission, as well as an investigative staff, all of whom served without compensation. Mr. Stevens responded to our request that he act as Chief Counsel without any hesitation, knowing full well that this meant six weeks of the most intensive and difficult work—and on a matter that had obvious implications for a practicing attorney. Mr. Stevens' organization of the investigation, the handling of the preparation for the public hearings, the interrogation of witnesses and directing the legal research, was one of the most impressive professional performances I have had the pleasure of observing. And it was done with a volunteer staff of younger lawyers and accountants in an incredibly short time in a case which had drawn intense public attention.

In addition to the highest of professional competence, integrity and courage, Mr. Stevens has the other qualities so necessary in a judge. He is a compassionate and sensitive man devoid of any trace of arrogance sometimes found in those as intellectually gifted as he.

No one has solicited this letter. Mr. Stevens does not know I am writing it. Finally, permit me to say, Senator, that your sponsorship of a lawyer like John Paul Stevens for the federal bench is the complete and eloquent answer to some of those who have recently been so critical. We lawyers have a special responsibility in this area and I'm confident that the bar is heartened by your action.

Sincerely,

HENRY L. PITTS.

AFFIDAVIT OF FRANK GREENBERG

I, Frank Greenberg, being first duly sworn upon oath depose and say as follows:

1. I am a lawyer and the senior member of the law firm of Greenberg Keele Lunn & Aronberg, with offices at Suite 4500, One IBM Plaza, Chicago, Illinois 60611. I reside at 320 West Oakdale Avenue, Chicago, Illinois 60657. I am 65 years of age. I was admitted to the bar of the State of Illinois in 1932 and have practiced law in Chicago since that date. I am a past president (1969–70) of The Chicago Bar Association.

2. In June, 1969, the Illinois Supreme Court, faced with charges of alleged improprieties on the part of then Chief Justice of the Court Roy J. Solfisburg, and an Associate Justice, Ray I. Klingbiel, appointed and ad hoc commission (hereinafter the "Commission") of five lawyers to investigate these charges. The investigation by the Commission and its report to the Illinois Supreme Court led to the resignation in August, 1969 of Justices Solfisburg and Klingbiel.

3. I was named by my colleagues on the Commission and served as Chairman of the Commission. Promptly upon its organization the Commission selected John Paul Stevens, a member of the Chicago bar (now a justice of the Court of Appeals for the Seventh Circuit), to serve as its counsel. With the consent and approval of the Commission, Mr. Stevens called to his assistance, to serve as assistant counsel, Jerome H. Torshen of Chicago, Illinois and several other younger members of the Chicago bar to serve as associate counsel. Mr. Stevens acted as counsel to the Commission under the Commission's direction and under my direction as Chairman of the Commission and he performed his duties with exemplary skill, integrity and professionalism. I commend his service in the highest possible terms.

4. The occasion of this affidavit is that I am informed that one Anthony Martin-Trigona has made a charge, the substance of which I understand to be that Mr. Stevens and his associate counsel, Jerome H. Torshen, discovered during the course of the Commission's investigation, and suppressed, evidence which, if disclosed, would have led to the resignation of two other Justices of the Illinois Supreme Court. I believe this charge to be wholly false and I regard Mr. Anthony Martin-Trigona as a particularly unreliable gossip-monger.

Both Mr. Stevens and Mr. Torshen were in constant communication with me during the entire course of the Commission's investigation and I am completely confident that I was privy to all of the information which they or other members of the Commission staff may have had with respect to alleged misconduct of or improperties on the part of any member of the Illinois Supreme Court. Had Mr. Stevens or Mr. Torshen been in possession of evidence tending to implicate any

other members of the Illinois Supreme Court in the matters which were the subject of the Commission's investigation I am certain that I would have known about it.

5. Neither I nor, to my knowledge, any other member of the Commission or any member of its staff suppressed any evidence germane to the subject matter of the investigation, whether such evidence involved Justices Solfisburg and Klingbiel or any other Justices of the Illinois Supreme Court. I am completely confident that the charge made by Anthony Martin-Trigona is completely without foundation and that neither Mr. Stevens nor Mr. Torshen possessed or suppressed any evidence that, if disclosed, would have resulted in the resignation of any Justice of the Illinois Supreme Court other than the two Justices whose conduct was the subject matter of the investigation.

6. All of the evidence gathered by the Commission, both in the form of documentary evidence and testimonial evidence, was deposited with the Clerk of the Illinois Supreme Court immediately after the filing of the Commission's report and so far as I know that material is still in the possession of the Clerk and is open to inspection. To the best of my recollection the material deposited with the Clerk included not only the transcripts of the testimony taken at the open hearings conducted by the Commission but also included the depositions taken by Mr. Stevens or other members of the Commission staff in the preliminary phases of the investigation, and in preparation for the open hearings.

7. I wish to report that I know Mr. (now Justice) Stevens and Mr. Torshen to be honorable men of great probity and integrity and I entertain no suspicion that they could have been possessed of any relevant evidence which they did not disclose to me as Chairman of the Commission. And I further repeat that I know of no evidence that, however directly or remotely connected with the work of the Commission, would have implicated any other Justice of the Illinois Supreme Court in any improprieties that would have supported any charges against them or would have called for their resignation.

Dated at Chicago, Ill. this 5th day of December, 1975.

FRANK GREENBERG.

Subscribed and sworn to before me, a Notary Public in and for the County of Cook, State of Illinois this 5th day of December, 1975.

CATHERINE DELMEY,
Notary Public.

Senator BURDICK. Well, I might as well ask you one small question here while we are waiting. You state for the record, "I served as a temporary employee of the U.S. Senate in 1966 when I was on the staff of the U.S. Senator Paul H. Douglas."

I do not know whether that leaves me with the impression that you had a responsible position there. What kind of a job did you have?

Mr. MARTIN-TRIGONA. Well, I was one of the junior assistants in the office. I had just graduated from college and I was told to come here and be an intern in the office and do what I was told.

Senator BURDICK. You were a summer intern?

Mr. MARTIN-TRIGONA. Well, at the time, Senator, there was a possibility—I had not decided where I would go to law school—but there was a possibility I might be kept on the staff if I came to law school in the District. I ultimately was accepted by two laws schools in Illinois and did not stay on the staff.

Senator BURDICK. I understand you received $152 for your work as an intern.

Mr. MARTIN-TRIGONA. That is right. I might point out in that connection that I resisted accepting any payment whatsoever, but I was told that it was necessary for me to be on the payroll, so I did accept an honorarium of whatever the amount was, of $152. It was a most pleasant and pleasing episode in my life to have the opportunity to work here in the Senate, to observe how it operated firsthand.

Senator BURDICK. I offer for the record at this time the report of the case of *In re Anthony R. Martin-Trigona, Petitioner*, issued on the 25th day of September, 1973, 302 Northeastern Second 68.

[The material referred to follows:]

55 ILL. 2D 301—IN RE ANTHONY R. MARTIN-TRIGONA, PETITIONER, NO. MR 1297. SUPREME COURT OF ILLINOIS. SEPTEMBER 25, 1973

Petitioner applied for admission to the practice of law after committee on character and fitness had been unable to certify that he had the requisite good moral character and general fitness to practice law. The Supreme Court held that mischaracterization of nature of pending action listed in application for admission to the practice of law and the making of untrue, scurrilous and defamatory charges against members of district committee on character and fitness warrant denial of application.

Application denied

1. Attorney and Client—4

State possesses authority to inquire into private and professional qualifications of applicant for admission to the practice of law. Supreme Court Rules, rule 708(d), S.H.A. cb. 110A, § 708(d).

2. Attorney and Client—7

Where applicant for admission to the practice of law refuses to cooperate in investigation of his character and fitness to practice by failing to answer constitutionally permissible questions or where evidence adduced demonstrates other appropriate bases, state may deny admission. Supreme Court Rules, rule 708(d), S.H.A. ch. 110A, § 708(d).

3. Attorney and Client—4

Mischaracterization of nature of pending action listed in amended application for admission to the practice of law and the making of untrue, scurrilous and defamatory charges against members of district committee on character and fitness warrant denial of application. Supreme Court Rules, rules 708(b, d), S.H.A. ch. 110A, § 708(b, d) ; U.S.C.A. Const. Amend. 1.

4. Attorney and Client—5

Applicant for admission to the practice of law has duty to see to it that matters contained in application are accurately described and, where a gross mischaracterization appears, committee on character and fitness is justified in refusing to certify applicant unless reasonable explanation is proffered.

5. Attorney and Client—4

Giving of improper oaths by applicant for admission to the practice of law subjects declarant's integrity and veracity to question. Supreme Court Rules, rule 708(d), S.H.A. ch. 110A, § 708(d).

6. Attorney and Client—7

Correspondence sent by applicant for admission to the practice of law to members of committee on character and fitness can be considered in determining applicant's fitness to practice law. U.S.C.A. Const. Amend. 1.

7. Attorney and Client—7

Letter which applicant for admission to the practice of law has sent to an attorney and which contains invective directed against the attorney can be considered by committee on character and fitness, after both applicant and committee's counsel have rested their cases, in rebuttal to applicant's presentation.

8. Attorney and Client—4

Activities of applicant for admission to the practice of law warrant denial of application when those activities, if they had been performed by an attorney, would have warranted disciplinary action.

9. Constitutional Law—287

Hearing before district committee on character and fitness to determine fitness of applicant for admission to the practice of law did not deny applicant procedural due process on theory that committee counsel improperly functioned in dual role

of investigator and prosecutor, that committee was not in position to render decision adverse to applicant because of his accusations directed at committee members and that entire committee may have been prejudicially affected because four of its members had voluntarily disqualified themselves after substantive rulings had been made.

John F. Banzhaf, III, Washington, D.C., for petitioner.
Robert P. Cummins, Chicago, for respondent.
Per Curiam:

Petitioner, Anthony R. Martin-Trigona, applies to this court for admission to the practice of law in this State after the Committee on Character and Fitness for the First Judicial District was unable to certify that he had the requisite good moral character and general fitness to practice law. 50 Ill.2d R. 708(d).

Petitioner passed the Illinois bar examination in March, 1970, and submitted his application with the necessary affidavits to the Committee on Character and Fitness for the Fourth Judicial District. That committee conducted an extensive investigation of petitioner and held four hearings. Petitioner subsequently sought disqualification of the committee, and we ordered the matter referred to the Committee on Character and Fitness for the First Judicial District and further directed that committee to employ counsel to assist in the discharge of its duties.

Following an extensive period of correspondence between counsel for the committee and its members and petitioner and his counsel, during which time petitioner's counsel withdrew and new counsel was retained by him, that committee advised the petitioner of four matters that bore adversely to his application. First, his refusal to nndergo a current psychiatric examination; second, his misleading characterization on his application of pending litigation in which he was involved; third, his communications with the committee and its counsel; fourth, the volume, nature and content of the litigation set out in his application. A hearing was held at which petitioner was represented by counsel. The committee, after receiving evidence, including various affidavits in support of petitioner's admission, was unable to certify him as qualified to practice law. In his brief, petitioner presents three issues: first, the record does not support the committee's findings; second, he was denied procedural due process; third, any further delay in his admission to practice would be unconscionable.

[1, 2] As the United States Supreme Court has said, "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." (Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232, 239, 77 S.Ct. 752, 756, 1 L. Ed.2d 796, 801–802; Law Students Civil Rights Research Council v. Wadmond, 401 U.S. 154, 91 S.Ct. 720, 27 L.Ed.2d 749.) It follows that the State possesses the authority to inquire into an applicant's private and professional qualifications in making this determination. In Konigsberg v. State Bar of California, 366 U.S. 36, 81 S.Ct. 997, 6 L.Ed.2d 105, the court described a screening process for applicants who sought admission to the California bar. This procedure is comparable to that existing in this State which initially places the burden of establishing good moral character and fitness to practice upon the applicant. Properly constituted committees have the power to investigate, question and determine fitness. (In re Latimer, 11 Ill. 2d. 327, 143 N.E.2d 20, cert. denied, 355 U.S. 82, 78 S.Ct. 153, 2 L.Ed.2d 111. Where an applicant refuses to cooperate in such investigation by failing to answer constitutionally permissible questions or where the evidence adduced demonstrates other appropriate bases, a State may deny admission.

In the case at bar the First District committee requested that petitioner undergo a psychiatric examination by a specialist who would be mntually acceptable to the parties. This request occurred after the Fourth District committee had obtained information in petitioner's Selective Service file which indicated that petitioner had been purportedly found unfit for military service because of a "moderately-severe character defect manifested by well documented ideation with a paranoid flavor and a grandiose character." His rejection had occurred subsequent to filing his initial application for admission. This information was revealed after the chairman of the Fourth District committee had written the State Director of Selective Service on March 12, 1971, seeking access to petitioner's file. Several days later the State Director, pursuant to the appropriate regulation then in effect (32 C.F.R. sec. 1606.32(4)), authorized that an appropriate committee representative would be permitted to "review" this material at State Selective Service headquarters.

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At the hearing before the First District committee, petitioner objected to the introduction of this Selective Service material. The committee overruled the objection and accepted the documents. Petitioner then submitted affidavits from his personal psychologist to the effect that any emotional problems he had previously experienced were due to factors that had since been reconciled. Petitioner further challenged the power of the committee to recommend a psychiatric examination.

Petitioner does not now contest the validity of the aforementioned Federal regulation but rather seeks to exclude the introduction of the Selective Service material on the basis that no lawful authority was established to copy the documents because the authorization only stated that the file might be reviewed. He specifically objects to the use of several documents in the file because of their alleged hearsay nature and his inability to confront the declarant as to the truth of matters therein stated. He further argues that a subsequent favorable report submitted by his personal psychologist in February, 1973, as to his present emotional stability far outweighs any detrimental observations contained in prior reports by this individual. Finally, petitioner asserts that he is willing to undergo a psychiatric examination, but only if this court so orders.

[3] Consideration of the myriad issues raised as to petitioner's mental stability is not necessary. We find that the matters hereinafter discussed are sufficiently adverse to petitioner to warrant denial of his application for admission.

The second matter to be considered is the description of a pending action listed in petitioner's amended application filed with the First District committee which characterized a lawsuit filed by petitioner as one "for interference with [a] lease." The record reveals that this small-claims action, commenced in January, 1972, against a judge, was for "conspiracy, extortion, attempted theft and related offenses * * * violation of the Organized Crime Control Act of 1970, and denial of due process and civil rights * * *, and other tortious conduct." It is to be gathered from the record that this action apparently arose from this judge's conduct while in the performance of his judicial functions. Petitioner sought damages of $500.

Petitioner now alleges that there is no proof that this was a mischaracterization. Further, he maintains that his attorneys prepared this application and he did not even see this document prior to his signing the affidavit of verification to the effect that the matters contained therein were true. At the hearing before the First District committee, his former attorneys admitted that they had prepared the amended application and submitted it prior to petitioner having seen it. However, the attorneys testified that the amended application was prepared from information supplied by the petitioner and that they were unaware of the true nature of the case.

[4, 5] Our rules (50 Ill. 2d R 708(b)) require that an applicant submit a verified application to the Committee on Character and Fitness. It is his duty to see that matters therein are accurately described. Where, as here, a gross mischaracterization appears, the committee is justified in refusing to certify the applicant unless a reasonable explanation is proffered. A satisfactory explanation was not made in this instance. And, as we noted in the case of In re Latimer, 11, Ill. 2d 327, 336, 143 N.E. 2d 20, cert. denied, 355 U.S. 82, 78 S. Ct. 153, L.Ed.2d 111, the giving of improper oaths subjects the declarant's integrity and veracity to question.

It was further proved that petitioner in his correspondence with the First District committee, its counsel and this court, made charges against the members of that committee and its counsel that were untrue, scurrilous and defamatory. While the volume of correspondence is extensive, the substance of several letters will be set out in detail. In correspondence to the committee's counsel he made a number of frivolous demands including a request for a list of clients of each committee member and the political affiliations of each member. In another, petitioner charges that the General Assembly and this court were corrupt, that this court had already decided the merits of his case and that the committee members were emotionally ill and might be compared to "scum" that rose to the top of their profession. In correspondence with this court petitioner charged that "clubby, powerful, Chicago Lawyers" were unduly delaying and harassing him and he demanded that the committee members undergo psychiatric examination. Petitioner also asserted that in secret sessions with his prior counsel, the committee's attorney attempted to force him to cease various pending litigation. He further alleged that he had been harassed by the organized bar through its questionable, illegal acts, and its attempt to affect

a political campaign he was waging at the time. The record reveals charges of a similar nature in other correspondence which contains at times vulgar and profane language.

[6] Petitioner contends that this correspondence is protected by the first amendment's freedom of speech provision and because of its private nature has not caused public harm to any person, organization or profession. Thus, while he concedes these communications are unusual and forceful, he maintains that no action may be taken against him. The question presented is not the scope of petitioner's rights under the first amendment but whether his propensity to unreasonably react against anyone whom he believes opposes him reveals his lack of responsibility, which renders him unfit to practice law.

This type of conduct is not confined to these proceedings. Where judges have ruled against him, petitioner has seemingly ignored proper appellate procedure by his unprofessional actions. He made a "Motion to Vacate Fraudulent Judgment [against petitioner] Entered by an Insane Judge", accusing this judge of misconduct caused by "a pathological antipathy of the defendant [petitioner] which rendered her [judge] temporarily mentally insane for the purposes of proceeding against the defendant." In this motion petitioner asserted that this judge was a defendant in another action commenced by petitioner and therefore should have disqualified herself from consideration of the case in which a monetary judgment was entered against him. This case is described in his amended application for admission as involving a "parking violation" which was filed in December, 1971.

In another matter petitioner filed a motion in December, 1972, against another judge, seeking a hearing to determine "his sanity, competence and fitness to hold jndicial office." In petitioner's affidavit in support of this motion he averred that the judge told him to entreat another individual in order to obtain an extension of time in a pending matter. Petitioner refused and further suggested to the judge that the latter "not participate in the case further because you [judge] will be named as a defendant in a related case today." Petitioner claimed that the judge then began to yell, physically assault him, and "spit" on him. As a result of his altercation petitioner concluded that the judge was "not mentally competent to discharge the duties of a Circuit Judge and, whether from marital or medical problems, or from psychopathic hatred of the affiant [petitioner], is not in a fit state of mind to act in any case involving "affiant." Petitioner substantially repeated his conclusions as to the sanity of this judge when he entered his appearance in the case therein pending before the same judge, and in this document further alleged that the judge had unsuccessfully attempted to solicit a bribe from petitioner. He further castigated opposing counsel, a city attorney, in this pending matter as being "unscrupulous and incompetent" and "illegally" representing the city of Urbana, Illinois.

On the same day petitioner filed the aforementioned motions, he also instituted an action naming the judge as a defendant. It was alleged that this judicial officer was involved in a vast conspiracy with real-estate brokers, a bank, the city attorney and others designed to deprive petitioner of his property interests, and, inter alia, it further alleged this judge's involvement in the aforementioned bribery attempt. It would appear from the record that petitioner then sought dismissal of this action without prejudice.

[7] Further, petitioner has, in the course of other business relations in February, 1973, written a letter to a member of the bar referring to documents which bore this attorney's signature as having been signed by a "palsied lunatic." Petitioner specifically charged this attorney with "champerty, barratry and maintenance" and described him as "shaking and tottering and drooling like an idiot, * * * a physically and mentally sick man * * *." Petitioner demanded that this attorney cease his "insane activity." The invective directed against this lawyer, who suffers from a mild case of cerebral palsy, was occasioned upon his serving "notice of forfeiture" upon petitioner in an unrelated real-estate transaction. Petitioner objected to the introduction of this letter and several other aforementioned documents because both sides had rested their cases. Thus he concludes there was no need for him to attempt to refute them. The committee's acceptance of this material was not improper, for we believe that committee counsel had the right to introduce evidence in rebuttal to petitioner's presentation, and many of these matters arose after this counsel had initially presented his case.

[8] Such conduct by an attorney would warrant disciplinary action. (In re Sarelas, 50 Ill.2d 87, 277 N.E.2d 313.) Where it appears that a candidate, who represents to this court that he is fit to practice law, proceeds in the same manner, it can only result in a basis for denial of his application.

[9] Petitioner argues that he was denied procedural due process before the First District committee. The thrust of his allegation is threefold. He asserts that the committee counsel improperly functioned in a dual role of "investigator and prosecutor" while advising the committee members as to legal matters pertaining to this case. Secondly, he implies that the committee was not in a position to render a decision adverse to him because of his accusations directed at committee members. Finally, he suggests that the entire committee may have been prejudicially affected because four of its members voluntarily disqualified themselves after substantive rulings had been made. To alleviate any possible charge of bias in future cases of this nature petitioner suggests a possible alternative procedure applicable to attorney disciplinary matters. However, petitioner requests that in this instance, because of lengthy delay, we ignore the committee's recommendation in arriving at our decision as to the propriety of petitioner's qualifications.

Our decision in the case of In re Latimer, 11 Ill.2d 327, 143 N.E.2d 20, cert. denied, 355 U.S. 82, 78 S.Ct. 153, 2 L.Ed.2d 111, is dispositive of several of these contentions. In that case we observed: "Admission cases are not governed by the same rule as disciplinary actions against attorneys, where definite charges are lodged. Under our rules the committee is charged with the duty of inquiry and investigation, not preferring charges, and granting certificates only to such personnel as are fit, by good character and morals, to be admitted to the practice of law." (11 Ill.2d at 332, 143 N.E.2d at 23.) We further noted that it was the committee's duty to conduct a sufficient investigation to enable it to properly pass upon an admission application. In this regard we find no basis for petitioner's critical analysis of the function of counsel for the committee.

We must reject the contention that the committee was an improper forum to decide petitioner's case because it had been allegedly prejudiced by his accusations against it. The tenor of petitioner's correspondence is analogous to that involved in *Latimer*, and our remarks there are equally applicable in this instance. "They [applicant's statements] were disparaging of the commissioners * * * and constituted a forum of intimidation calculated to compel the granting of a certificate of good moral character and fitness, irrespective of applicant's qualifications." (11 Ill.2d at 333, 143 N.E.2d at 24.) Moreover, under the circumstances, we believe the voluntary disqualification by several committee members during the course of these proceedings is rather indicative of the conclusion that petitioner received a proper determination as to the merits of his application and we reject any contrary suggestion.

In petitioner's presence at the termination of oral argument in this cause on June 21, 1973, we directed the clerk of this court to file all correspondence directed to the court or its members by petitioner concerning this matter. This material was to be incorporated in the record. After this cause was taken under advisements for decision and opinion, each member of this court on or about July 23, 1973, received notice that his deposition was being taken by petitioner on written interrogatories in a pending action commenced by petitioner in the Federal District Court, Northern District of Illinois (73 C 1255), against counsel for the First District committee and other parties. The clerk is now directed to file those interrogatories as a part of the record in this proceeding.

After review of all these matters, we find that it has been demonstrated that petitioner should not be admitted to the practice of law in this State. While it is not challenged that he may possess the requisite academic qualifications to practice law, the record overwhelmingly establishes that he lacks the qualities of responsibility, candor, fairness, self-restraint, objectivity and respect for the judicial system which are necessary adjuncts to the orderly administration of justice. Petitioner's application for admission is denied.

Application denied.

Senator BURDICK. Senator Thurmond.

Senator THURMOND. Thank you.

Mr. Martin-Trigona, as I understand you are testiying here against Judge Stevens upon the information that Mr. Torshen gave you. You do not have any knowledge yourself of it, but it is what Mr. Torshen told you; is that correct?

Mr. MARTIN-TRIGONA. Senator, if I might just clarify a point which I made at the beginning of my testimony, and I am not sure you were here at that time. I think I indicated, I hope clearly, that I am not testifying per se against Mr. Stevens.

I indicated that there were matters which I felt the committee ought to pursue on its own. Since I cannot resolve them with finality to the extent that any ultimate conclusions would be formed as being adverse, that would be a finding of the committee, and not of my own. It is correct with respect to the second phase of your question that, yes, initially the information presented to the committee last week did relate to information furnished to me by Mr. Torshen.

I think it is fair to point out that I have engaged in a struggle in the courts of some 3 years' standing or pending seeking to ascertain the ultimate truth of Mr. Torshen's statements by reference to the documents themselves. I have been unsuccessful to date in securing the disclosure of the commission records. I do have 60 days from October 30 to petition for certiorari to the Supreme Court. If time permits, I would like to do so and there may be additional remedies available at this time.

In the State courts I just do not know, but yes, at this time what I know arises out of what Mr. Torshen told me. I think the earlier testimony was also quite clear. I saw Judge Stevens for the first time in my life on Monday when he came to the committee and was questioned by the various members.

Senator THURMOND. Well, in other words, what you are saying is that Mr. Torshen made certain statements to you and you relied on that and you believe in that and that is the reason you are here today, is it not? Otherwise, you would not be here.

Mr. MARTIN-TRIGONA. Senator, I think it is a very fair characterization. Let me answer you with greater specificity. He was my attorney. At the time that he was representing me, I had total faith in this man. He represented me for almost 2 years. I paid him somewhere around $5,000 or $6,000 or $7,000, I do not remember how much. I believed the man. I still believe that what he told me was true.

However, assuming it was mere lawyer's—or untrue or trying to impress a client, the ultimate truth, it seems to me, can be ascertained by looking at the documents. The documents speak for themselves. The record would speak for itself. All I am trying to do is suggested to the committee that it send either a member of the committee or a staff member to examine the documents and that that member or staff member form an opinion and report back.

I would be very happy if the staff member came back and said there is nothing to it, Mr. Torshen told a lie. Mr. Trigona was in error when he believed Mr. Torshen. I do not have any vested interest in fighting John Paul Stevens. I have never met the man before Monday.

Senator THURMOND. In your affidavit, paragraph 17 reads this way:

> Mr. Torshen assured me on numerous occasions that if the full and complete record of investigatory materials which had been assembled by himself and Mr. Stevens had been released, at least two additional judges (in addition to the two who did in fact resign) would have been forced to resign from the Illinois Supreme Court.

Did Mr. Torshen assure you of that?

Mr. MARTIN-TRIGONA. Yes.

Senator THURMOND. In paragraph 18:

Mr. Torshen mentioned the specific name of one judge and stated in words to the substance of: "He would be off the Court today if it were not for the fact that we restricted the scope of our report and limited the findings to the specific area of our mandate, and kept our mouths shut about other information which we developed as a result of our investigatory activities." Mr. Torshen also referred me to the actual report of the Special Commission to note the careful manner in which key passage of the report had been drafted to limit the scope of the disclosure being made.

Did Mr. Torshen tell you that?

Mr. MARTIN-TRIGONA. Yes, sir. I might point out that I did not identify the judges who he mentioned. I would prefer not to identify them simply because I do not think it is relevant to this proceeding. Second, Mr. Torshen may have lied; third, it might cast aspersions. However, I would be perfectly happy to furnish the names of the judges that he mentioned to the committee, either in closed session or in a closed written transmittal. I am not sure that is relevant.

Senator THURMOND. Your case then has to be built on what Mr. Torshen told you because you have no direct evidence yourself. Judge Stevens has made no statements to you and me and no one else has made any statements to you, except Torshen?

Mr. MARTIN-TRIGONA. Yes, Senator, I think it is a very fair characterization.

Senator THURMOND. Now, in the affidavit of Mr. Torshen presented by the Senator from North Dakota here, Mr. Torshen in response to that says:

These charges are false, malicious and scurrilous. No such statements were ever made by affiant to Mr. Martin-Trigona. Moreover, no material was obtained by the staff of the Commission which indicated any impropriety, much less illegal conduct, on the part of any members of the Illinois Supreme Court other than those two Justices who resigned.

So you see what Mr. Torshen says about your statement.

Mr. MARTIN-TRIGONA. Well, Senator, if I may respond to your question very briefly——

Senator THURMOND. In other words, you do not agree. Are you saying Mr. Torshen said something and Mr. Torshen denies it and you now want to deny that? He uses very strong language. He says "false, malicious and scurrilous."

Mr. MARTIN-TRIGONA. Let me make this response to your characterization, Senator. First of all, if Mr. Torshen's affidavit can be taken as truth, there is no damaging evidence, then I would have assumed that they would have resolved the issue with finality by asking that the evidence or reports of the commission be disclosed.

Although he attacks me personally and makes his own characterization of the records of the commission, he does not offer to disclose them.

Secondly, I think what you get into is—quite frankly, you are a lawyer and I will talk to you as a lawyer, Senator—a question of tussling over credibility. For example, if this was a lawsuit rather than a congressional hearing, the judge would say we have two witnesses and he would probably enter a discovery order. The documents would be produced and perhaps initially examined in camera by the court and ultimately they would find themselves into the record of the trial.

Now we do not have that situation here simply because——

Senator THURMOND. We are going to have to move on, so if you will just answer the question. You have had your opportunity, and we wanted you to have it, but our time is somewhat limited.

Now, do you know Mr. Henry L. Pitts, the president of the Illinois State Bar Association?

Mr. MARTIN-TRIGONA. Do I know him personally, Senator? No. I have never met him.

Senator THURMOND. Have you ever heard of him?

Mr. MARTIN-TRIGONA. Yes, many times. He is a fairly prominent attorney.

Senator THURMOND. He was a member of that five-man special commission, was he not?

Mr. MARTIN-TRIGONA. I believe he was, yes. I could refresh my recollection by referring to the report. I do happen to have a copy with me and I can confirm it momentarily.

Senator THURMOND. Look in your book and see if you can find it.

Mr. MARTIN-TRIGONA. Yes, Henry Pitts signed the reports. He was one of the members.

Senator THURMOND. Now he made an affidavit here and here is what he said:

> As organizers of the Special Commission, Messrs. Greenberg and I were familiar with all of the oral and documentary evidence addveed during the investigation. I personally read every deposition taken by members of the Special Commisison's legal staff and reviewed documents obtained during the course of the investigation. All leads developed by the legal staff were reviewed by Mr. Greenberg and me and the other members of the Special Commission.
>
> Based upon the foregoing, I can state without any reservation whatever that no evidence regarding the conduct of any judge of the Supreme Court of Illinois was suppressed by Messrs. Stevens and Torshen.

Then he goes on and praises Judge Stevens.

Now do you know Mr. Frank Greenberg?

Mr. MARTIN-TRIGONA. I do not know him personally. Is that your question. I have not met him personally.

Senator THURMOND. Well, he was the chairman of this commission, I believe, was he not? Look up his name and see if his name is in there.

Mr. MARTIN-TRIGONA. He was the chairman.

Senator THURMOND. He was the chairman. Well, let us see what he says about it. He says:

> The occasion of this affidavit is that I am informed that one Anthony Martin-Trigona has made a charge, the substance of which I understand to be that Mr. Stevens and his associate counsel, Jerome H. Torshen, discovered during the course of the Commission's investigation, and suppressed, evidence which, if disclosed, would have led to the resignation of two other justices of the Illinois Supreme Court. I believe this charge to be wholly false and I regard Mr. Anthony Martin-Trigona as a particularly unreliable gossip-monger.
>
> Both Mr. Stevens and Mr. Torshen were in constant communication with me during the entire course of the Commission's investigation and I am completely confident that I was privy to all of the information which they or other members of the Commission staff may have had with respect to alleged misconduct of or improprieties on the part of any member of the Illinois Supreme Court. Had Mr. Stevens or Mr. Torshen been in possession of evidence tending to implicate any other members of the Illinois Supreme Court in the matters which were the subject of the Commission's investigation I am certain that I would have known about it.

So here is the chairman of the commission, and the man who served as president of the Illinois Bar Association who takes a position that is adverse to the position taken here. Now do you have—again we want

to ask you—do you have any evidence, any knowledge of your own, against Mr. Stevens being confirmed?

Mr. MARTIN-TRIGONA. Well, again, Senator, I would like to point out that I am attempting in my testimony to bring to your attention matters which I feel the committee should investigate using the rather broad powers which are available to it. I feel relatively confident that were I to be delegated with the committee's power that the information which I have reviewed could be flushed out with documents.

Senator THURMOND. You heard what the chairman of the commission said, and you heard what a member of the commission said, and you heard Mr. Torshen's affidavit which contradicts you. Now do you have any evidence of your own? What do you know yourself against Judge Stevens that should command the attention of the Senate to consider to prevent confirming?

Mr. MARTIN-TRIGONA. Well, Senator, the full thrust of my testimony here today involves a number of areas.

Senator THURMOND. I am not speaking about the thrust of your testimony. You have already given us that. I am asking you what evidence do you have yourself, what knowledge do you have yourself that you can contribute to this committee, that is adverse to Judge Stevens, that would warrant the Senate to refuse to confirm him?

Mr. MARTIN-TRIGONA. Senator, I think there is a predicate in your question which I find troublesome. I do not think it is necessary for me to come before the committee and say here is something which I think is adverse. I think it is entirely appropriate for a witness to come before the committee and say here is something—a matter which is something I think you ought to investigate to resolve with a particularity, and to determine with finanlity.

Senator THURMOND. That is what the committee has done. That is what these affidavits are all about.

Mr. MARTIN-TRIGONA. That is part of the committee's work product. But I notice—I think it is a very interesting comment on the affidavit—none of the three gentlemen say why don't they look at the documents if they don't believe us. I don't see why there would be any difficulty with either the committee or staff member looking at the documents to make an independent assessment.

I think one can reflect on the Watergate hearings where the President of the United States made a number of statements which were later found to have a questionable foundation in fact. I do not want to get into that particular tragedy in our national history, but nevertheless, people tend to——

Senator THURMOND. Was Mr. Torshen your attorney when you applied to be admitted to the bar in Illinois?

Mr. MARTIN-TRIGONA. Yes; and I trusted him implicity. I believed in that man and I think the record will reflect that he represented me for a period of 2 years.

Senator THURMOND. I believe the distinguished Senator from North Dakota has put in the record a copy of that decision by which you were denied the practice of law.

Mr. MARTIN-TRIGONA. He was not my attorney at that time.

Senator THURMOND. I will not take time to go into that, but I just wanted to note that Mr. Torshen was your attorney.

Mr. MARTIN-TRIGONA. Not at that time.

Senator THURMOND. You had released him at that time?

Mr. MARTIN-TRIGONA. I believe I testified earlier that we had come to a disagreement.

Senator THURMOND. He was your attorney prior to that, is that it?

Mr. MARTIN-TRIGONA. Yes. He was my attorney from approximately July of 1970 to April of 1972. I was then denied admission in September of 1973.

Senator THURMOND. Well, thank you very much.

Mr. MARTIN-TRIGONA. Thank you, Senator. I appreciate the opportunity to put these matters to the attention of the committee.

Senator BURDICK. Our next witness will be Mr. Rocco Ferran, president of the Citizens for Legislative Reform, Albany, N.Y.

TESTIMONY OF ROCCO FERRAN, PRESIDENT, CO-EQUAL CITIZENS FOR LEGISLATIVE REFORM, INC., ALBANY, N.Y.

Mr. FERRAN. Thank you, Senator.

My name, for the record, is Rocco Ferran. I am president of the Co-Equal Citizens for Legislative Reform. We have a box address, 1976, Albany, N.Y.

I would like to say that the Co-Equal Citizens for Legislative Reform strenuously oppose the nomination of John Paul Stevens to be associate justice of the Supreme Court for the following reasons:

Because Judge Stevens is a lawyer, a member of a profession which is already over-represented on the Supreme Court.

We oppose because the selection process utilized by President Ford was undemocratic and probably unconstitutional, employing, as it did, a private lawyers club, the American Bar Association, to recommend a candidate, while at the same time denying participation to those Americans who will be most affected by the new Justice's decisions.

We oppose because a representative form of government requires that there be a diversity of occupations in the hierarchy.

We oppose because logic, reason, and justice prescribe that a non-lawyer, a member of the governed, should be on the Supreme Court.

We oppose because there is an overwhelming need for, and an undeniable right to an ultimate authority, such as a Supreme Court Justice, who is not a lawyer.

Because Judge Stevens is a lawyer, that is more than sufficient reason to deny his nomination for the position of Supreme Court Justice.

Lawyers make up less than one-fifth of 1 percent of the population, yet virtually all power and authority in the United States is held by individuals or groups who are lawyers. The law profession itself is an unregulated monopoly which treats the law as its own private reserve.

"Justice", Aristotle remarked, "is a peculiar virtue in that its possessor benefits his fellow members of society rather than himself." The main beneficiary of justice in this Nation would appear to be lawyers.

The very best lawyer candidate for Associate Judge of the Supreme Court is the least desirable choice of the governed. Lawyers get no brownie points when they habitually exclude the governed from the whole of the Federal judiciary. Lawyers in sum are not

only over-represented on the Supreme Court, they are also under-responsive to the constitutional rights of the governed.

We oppose because the selection process employed by the President is undemocratic. The use of the American Bar Association, a private lawyers' club, to screen candidates for positions on the third branch of Government, while excluding all other citizens and groups is repugnant at best, and probably illegal.

The American Bar Association, with its built-in biases and its micro-minority status, does not have a constitutional role in the selection process. The American Bar Association is by no means exemplary of the democratic process and is in no way qualified to make selections for the other 99.9 percent of the population. The thought of the American Bar Association discarding the qualities in a Supreme Court candidate that may well be the prime prerequisite of the governed is unconscionable.

We oppose because Judge Stevens' nomination runs counter to the prerequisites of a representative form of government.

The questionable claim to exclusive expertise is no justification for allowing any single group to gain control of any branch of government. Experts are the servants of power, not the other way around.

The importance of this appointment might have been alluded to by Thomas Jefferson when he said—

> Were I called upon to decide whether the people had best be omitted in the legislative or the judiciary department, I would say it is better to leave them out of the legislative. The execution of the laws is more important than the making of them.

We oppose because logic, reason, and justice prescribe that a non-lawyer, a member of the governed, should be on the Supreme Court. Knowledge of what the law is is a universe removed from knowing what the law should be. It could be justly argued that lawyers should be encouraged to perfect their profession, while leaving the citizens free to perfect their society. It is more preferable that laymen learn what the law is, than to have lawyers or any single group determine what the law should be.

We oppose because there exists an overwhelming need for an undeniable right to appeal to an ultimate authority, such as a Supreme Court Justice, who is not a lawyer.

Vast inequities exist in our society simply because lawyers are all pervasive in government. For instance, the New York State attorney general prosecutes criminal violations under provisions of the education law which governs the conduct of all the professions existing the law profession. In private practice, lawyers have virtually immunity from the consequences of their actions as a direct result of one of their unwritten laws: a lawyer never sues another lawyer on behalf of an aggrieved client.

Chief Justice Warren Burger has said—

> The legal profession has failed to discipline errant lawyers. For the last 20 years, at least, the disciplining of lawyers has been almost nonexistent. The public feels the pain but does not know what casued it or what to do about it.

We believe most sincerely that the prescription to cure that pain and many others is before this Senate Judiciary Committee at this moment, rejection of the President's proffered candidate and the institution of a democratic selection of a member of the governed in his stead.

For over 300 years the black citizens of this Nation have been treated as if they were inferior and that they, therefore, must take inferior roles in society.

For 200 of those years the vast majority of the population has been propagandized into believing that lawyers were best qualified to be judges, legislators, and so forth the implications being that the vast majority of the citizenry are inferior to the lawyers and therefore incapable of taking care of their own destiny.

The first of these two myths has finally been discredited by an enlightened black people, fighting for their rights.

Let the selection of a nonlawer Associate Justice of the Supreme Court signify the beginning of the end of the second myth.

Senator BURDICK. Thank you.

Senator THURMOND. Mr. Ferran, as I understand the thrust of your statement here is that you prefer for a lawyer not to be appointed. Is that right?

Mr. FERRAN. That is correct, essentially, except that I might add that that really, in essence, is only 10 percent of it and that the citizen, the governed, have been excluded from the whole judiciary and, therefore, it is 200 years overdue that one layman be represented, not only on the Supreme Court judiciary, but even in the whole of the Federal judiciary because at this very moment all the positions of power in this country of authority are in the hands, incidentally, probably of lawyers, and if a person has a grievance with a lawyer, which happens very often, he has nowhere to go but to lawyers, and for that very simple reason, I believe that 90 percent of the thrust of my argument is simply for the cause of justice to have an individual and not have to go to someone who may have a bias.

Senator THURMOND. I know of no requirement that a man or a woman appointee to the Supreme Court be a lawyer. Most of the States have requirements of that kind, but I do not know of any such requirement for the U.S. Supreme Court. But how would it suit you to appoint a person who has a legal mind, with a layman's heart?

Mr. FERRAN. Senator Thurmond, I believe that out of 200 million people, there are many thousands that would qualify to be on the Supreme Court. At the moment, right now and for almost 200 years, the Supreme Court has been one dimensional. It has been trained, the individuals on the Supreme Court have been trained to know what the law is. The most important thing that the layman wants is justice, which is what the law should be, and I don't believe one group, that the limited resources of one group, specifically lawyers, can be taxed indefinitely to acquire justice for the vast majority of the people. It hasn't happened.

At this very moment there are many hundreds and, perhaps, thousands of people who are, to use the term used by our younger generation "ripped off" who have nowhere to go because the bar associations, the appellate divisions of the Supreme Court, the attorney generals, are all lawyers and they are all decidedly playing the same game.

This is the case in New York State, and I have no reason to believe that it is not the case in any other State of the Union.

As I showed in my testimony, the lawyers of the Supreme Court have exempted themselves from the law, from criminal prosecution. I have talked to the State Republican chairman, and he says this is prob-

ably unconstitutional, and, yet, at the same time here is the attorney general of New York State with this discriminatory law against the citizens of New York State and doing nothing about it. If a citizen goes in and says, I have a problem with a lawyer, he sends him to the district attorney or someplace else. He will not prosecute, but against a doctor or another professional, glad to.

Senator THURMOND. You understand the Senate only acts upon the nominations that are sent to us by the President, so the solution to your problem seems to me would be to contact the President before he makes an appointment.

Mr. FERRAN. We have contacted the President before this appointment and, of course, it didn't do much good, obviously.

Senator THURMOND. Thank you very much.

Mr. FERRAN. Thank you very much, sir.

Senator THURMOND. Our next and last witness is Mr. Robert J. Smith, of Michigan City, Ind.

Mr. Smith, there is a rollcall vote on the Senate floor. If I leave, you will understand that we will take a brief recess. I am a pretty fast walker.

TESTIMONY OF ROBERT J. SMITH, MICHIGAN CITY, IND.

Mr. SMITH. For the record, my name is Robert J. Smith.

Senator THURMOND. I am informed that you have a lot of material here that you would like to have considered. It will be received for the committee's files.

Mr. SMITH. Thank you, sir. My name is Robert J. Smith. I reside at 1106 Lakeshore Drive, Michigan City, Ind.

I wish to state that I am relatively poorly prepared for this hearing today for several reasons. One, Judge Stevens was a surprise nominee. His name did not appear in any of our periodicals. I was not apprised that Judge Stevens was to be considered the nominee until he appeared on TV on December 1.

I have an additional problem in that all of my case files, to which I would normally refer, are packed up because we are facing a momentary move from our home, and I do not have access to them.

I have suggested to the committee by telegram that they bring in all Smith case files from the appellate court and, perhaps, from the district court, so that they could be incorporated into the record by reference.

Let me also preface my remarks by saying I am a proud American. I am solidly conservative, one who deeply reveres the Constitution of the United States. I am not a member of any group, although I have been labeled by my political enemies as a political pariah, one who is to be totally denied due process of law and all constitutional rights. Judge Stevens is one of these enemies, and one who has used his high office as judge of the seventh circuit to aid his fellow conspirators by placing a political mark of Cain upon me. And Mr. Stevens, even more so, must bear the greater responsibility by reason of his highest office. Because of his eminent position, he could have and he should have, as a just judge, stopped the 15-year reign of terror that I and my blind wife have suffered under.

I accused Judge Stevens of criminal conspiracy to aid and abet my political enemies to: One, steal my lucrative business that was paying me $25,000 a year; two, the loss of all my valued realty holdings which at today's estimated value would be $120,000; three, my business earnings from that business would have been about $250,000 in the 10 years while this has gone on; four, the value of lost business at least another $250,000 and some reinvestments that would have made me a millionaire by this time.

Today I am nearly totally pauperized. I have had no employment in the past year. I drew my last $35 unemployment compensation check last week. We face a bleak winter. My blind wife is at home living on scraps of food and in great danger guarded only by our two dogs needed for protection. The money Stevens and his political cohorts have stolen from us could have restored my wife's vision 3 years ago.

On December 23, 1975, in the next 2 weeks, we stand to lose our fully paid home for $1,000 in unpaid taxes. The home is valued at $35,000. I will show my case reference that Judge Stevens is directly responsible for the loss of this home, if we do lose it. We have some hope of saving it.

This has been the frightening cost of a privilege, a great privilege.

Senator THURMOND. I will have to go over now and vote, and at 4:15 Senator Tunney, of California, will be here to carry on if you will just suspend until that time.

[A brief recess was taken.]

Chairman EASTLAND. You may proceed, Mr. Smith.

Mr. SMITH. Thank you.

I had only just begun to encapsulate. I have to have my reading material within a certain range because of reading defects. I will encapsulate because I had read only a page and a half of my testimony to begin with. I have stated that I am a private citizen; I am a proud American; one who believes implicitly in the Constitution as a revered document of our democracy.

I indicated that in about 1960 I was worth approximately $250,000, minimum; that had I been allowed peaceably to pursue my business in these past 10 to 15 years, I would have accrued roughly $1 million, and I stated that today I am nearly totally pauperized. I have had no employment in the past year. I drew my last $35 unemployment compensation check last week, and it cost me almost a month's unemployment compensation to come to this meeting.

My wife, who is blind, is home and living alone on such scraps of food as I can gather together for her. I point this out so that the committee may take cognizance that this appearance is at great sacrifice. I trust, therefore, that the committee will attach a great deal of significance and validity to this great sacrifice of personnel loss in appearing before the committee.

I had just accused Judge Stevens of being a part of the political conspiracy that stole my money, my property, and also my good name, and I state that the money Stevens and his political cohorts have stolen from us could have restored my wife's vision 3 years ago, but we lacked any money for her operation. On December 23, this month, we will lose our fully paid home worth $30,000 for $1,000 in unpaid taxes.

I will indicate subsequently that Mr. Stevens' direct ruling and sole ruling in my case of Smith versus the Internal Revenue is totally

responsible for the loss, if it occurs, of this valued piece of property because the money taken from me illegally by the Internal Revenue Service, which he refused to restore, was my tax money.

This has been the frightening cost of privilege, a great privilege, a privilege that has sounded through these Chambers in the past 2 or 3 days. Senators Kennedy and Tunney have expressed their great concern for this privilege. I have utilized this great privilege as a title of a forthcoming book, "The High Price of Free Speech," because I believe wholeheartedly in this revered right guaranteed by the first amendment. It has cost me, as I have said, at least $1 million in the last 15 years.

We live behind closed doors, in constant terror, because we have been subjected to unusual and unique police harassment. I am going to quote an illustration, which is not directly connected with Judge Stevens, at this point to give an illustration of the kind of harassment that citizens are being subjected to without any protection.

Just 1 year ago, one night we had a pounding at our door. It was 9 o'clock in the evening. I finally had to go to answer it. Ordinarily we do not answer. The pounding was insistent and I feared the door would be broken down. As I opened the door two big, burly State policemen burst into my home and arrested me on the charge that I failed to be in a justice of the peace court at 8 o'clock that same evening. I had no notice to so appear. This was a minor traffic matter.

I was put on trial at 9:30 at night. I moved properly because I know criminal law and quasi-criminal law. I moved properly for all constitutional safeguards, the right to call witnesses, to have counsel, to have time to prepare. I was found guilty in this strange court. I was fined, and with no money I was ordered to jail, despite the Supreme Court ruling that no person could be jailed for his inability to pay a fine.

I will add in mitigation for that JP, that when I pleaded that my wife was blind and alone, he did allow me to go home. However, I was subsequently jailed on another charge under the very same circumstances almost exactly.

We have been subjected to this and even worse trauma for 15 years because, in the final analysis, Stevens has used his vast powers as a seventh circuit appellate judge to rule against me, and because of my avowed political enemies who are his personal friends. That, Senators, is only a small part of the price my wife and I have paid for the privilege of free speech, which right Stevens actually reviles despite the pious incantations he has uttered for the past 3 days.

He hates free speech. He despises and refuses the right of due process and equal protection. I would point out that Mr. Stevens is 100 percent against the fourth amendment, the right of people to be secure against unreasonable searches and seizures. I will prove this by Stevens' own ruling or lack of ruling.

Another explanation is necessary. I am fully prepared to oppose the surprise appointment. Mr. Stevens' name was not on any prospect list in our papers, on radio or TV. My first knowledge was on December 1 when Mr. Stevens was interviewed. I hurriedly dispatched a telegram, asking that I appear. I asked in that telegram for instructions on what to prepare but I received none. I received a confirming wire on Thursday. This was because it was not promptly delivered. We are packed up as we may have to move very quickly from our home and my case files are not available to me.

I prepared a lengthy presentation, working day and night for the balance of the week to 2 a.m. on Monday morning, when I had to leave to catch a plane. I did not have funds for supplies. I had to use scrap paper. My typewriter does not always function. I am not a typist. My wife is an expert legal secretary, but blind and unable to do the work for me. I had to do this the best I would, using a few odd pleadings that I was able to find. I can submit only one copy. I ask, therefore, for the committee to recognize my impoverished state and to order that my one copy by Xeroxed so that each member of the committee may read this shocking record for himself.

Chairman EASTLAND. Mr. Smith, I want you to read that into the record, the rest of your statement, and I am going to have it sent to each member of the Judiciary Committee.

I have to go for a vote, and I hope you will read it into the record here.

Mr. SMITH. You want me to read this to the court reporter?

Chairman EASTLAND. Take as long as you want.

Mr. SMITH. It will take several hours.

Chairman EASTLAND. Well, we cannot wait that long because I want to send a copy of what you said to each member of the committee, and if it takes several hours no one is going to read it. Why do you not run over the most important part of it and take about 15 or 20 more minutes to get through. That is the way you can get your statement considered.

Mr. SMITH. Are you referring to the packet that I have submitted to the committee or my present testimony?

Chairman EASTLAND. Well, your testimony, of course.

Mr. SMITH. This that I am reading?

Chairman EASTLAND. Your testimony.

Mr. SMITH. Well, everything is my testimony.

Chairman EASTLAND. I know that. Your package is part of the files and will be submitted to any member of the committee.

Mr. SMITH. I do not hear you too well, sir.

Chairman EASTLAND. Explain it to him.

Mr. WESTPHAL. The chairman has said that the packet of papers, the single copy of all of your documentation to supplement your statement here, your testimony, has been received by the committee. It is in the committee files and will be available to every one of the Senators on the committee. The chairman has suggested to you that you take another 15 or 20 minutes here to complete your statement, which you have prepared, by dictating it to the reporter here so that your oral presentation here may be completed, and once you do that, as the chairman has said, copies will be made available to every one of the Senators on the committee. Do you understand that now?

Mr. SMITH. I still am not clear as to whether I will be able to give this testimony, which is only about 20 minutes, before the committee.

Chairman EASTLAND. If you will dictate it in the record now, it will be before the committee.

Mr. SMITH. In other words, instead of giving it before the committee——

Chairman EASTLAND. You will be giving it before the committee. We are in an open committee session.

Mr. WESTPHAL. In other words, continue on now for another 15 minutes, and you are giving it now to the committee.

Chairman EASTLAND. What you want is for your statement to be available to the committee, rather than just to me, is it not?

Mr. SMITH. Yes, sir, and I will continue.

I am especially well qualified to appear as a witness opposing Mr. Stevens' confirmation. I have had possibly eight or more cases before him and his associated judges, mostly all dealing with constitutional issues.

I would like to indicate my educational background I have had the equivalent of 2 years of law school. I was not able to complete law school due to the fact that I dropped out for eye surgery, which became complicated and ended up with 7 years of intermittent hospitalization with 13 major eye operations. During periods of recuperation, with a large law library on Federal law, I crammed on Federal law procedure and practice.

Because of my poverty I have had to pursue many of my cases pro se. However, the cases that I have asked that the committee include in the record will prove my ability and comprehension of legal and constitutional issues.

If time permitted, I could show that I won every case by ability, but the Chicago Federal court is staffed by the most corrupt judges in the Federal system. These men have constantly ruled against me and in favor of my political enemies.

I recommend to the committee a book; Mr. Joseph Golding, a native of Maryland, has written a critique on the Federal judicial system entitled "The Bench Warmers." I urge that the committee read chapter III, entitled "The Shame of Chicago," which is based upon the Chicago judiciary, as further understanding of the problem that I have encountered in my quest for due process of law and justice, per se.

I also am writing an entire book based on this hell hole of judicial infamy, tentatively entitled "The Judicial Mafia." The seventh circuit is as bad, if not worse.

There is some hope of decency with the appointment of Judge Tone, whose constitutional writings are familiar to me.

I have prepared an extensive brief of some 60 pages, and I will skip that because we have already covered it, but I wanted to indicate that I have many cases on file in the seventh circuit in which Judge Stevens has ruled and proven beyond a shadow of a doubt that he is a rabid anticonstitutionalist. He has ruled against such fundamental issues as the first amendment and the right of free speech, amendment 4, the search and seizure provision, and also denials of due process and equal protection of the laws provided by amendment 14.

On Monday, Senator Kennedy asked Judge Stevens how do you label yourself, as an activist or a strict constructionist, in referring to the Constitution. Mr. Stevens replied—and I will quote as best I can—I would not label myself. This is in contrast to his many interviews in the press and over radio and TV in which he has proclaimed, I am a constitutional centrist. Mr. Stevens is not only evasive and noncommunicative to this committee, but he is deliberately falsifying his true position.

I have four cases in which he has ruled in total disdain of amendments 1, 4, and 14, and also the statutes of the United States. I have requested the committee to bring the Smith files to substantiate the charges that I make so that the prima facie conviction of Mr. Stevens may be proven.

I have read and on Monday heard glowing testimony by the bar association officials and even commendation by Senators. I ask a pungent question. What is the most valid criterion by which Mr. Stevens can be judged? A review of favored cases that he has no doubt carefully selected and submitted to this committee and to the bar association? Who is the more qualified to judge Mr. Stevens? Someone who has never had a crucial case mishandled by Mr. Stevens, or one who, like myself, has had some half a million dollars, at least, in property stolen by Mr. Stevens in conspiracy with political cronies?

I have had at least four cases, and probably many more, some of interlocutory review nature, some writs of mandamus, and so forth, but based upon the illegal conduct of district court judges, all before Mr. Stevens and his various associates, but largely Mr. Stevens. I submit my pragmatic experience and the prima facie evidence of Mr. Stevens' illegal, anticonstitutional orders, makes me a most valid voice and, perhaps, the only valid voice, by reason of experience.

I have included in my massive brief only four cases, but four significant cases, all dealing with our most cherished constitutional fundamentals, especially amendments 1, 4, and 14. I refer now to a case entitled *Smith* v. *Ernst and Bauer*, or in the reverse, *Bauer and Ernst*. The number of this case in the appellate court is No. 18768. I do not have the file as I have said. A background is somewhat necessary.

Mr. Bauer was a district attorney in Du Page County, which is in eastern Illinois, west of Chicago, the county in which I owned a chain of travel agencies from 1955 to 1965. My employees stole $35,000 in airline tickets and sold the stolen tickets throughout other States. I laid the prima facie evidence of the crime before Mr. Bauer as district attorney, and I was refused all prosecution. On Christmas Day of that year a man from Wisconsin called me, offered to appear before the grand jury to tell that my employees paid William Bauer, the district attorney, $5,000 of my stolen money to avoid prosecution.

I have incorporated in my pleadings to the committee a series of leaflets, which I hold in my hand. One is entitled "The Crime of William Bauer," and on the reverse side is a reproduction of my letter to the circuit court of DuPage County, requesting grand jury hearing regarding the Bauer bribes.

I was refused a grand jury hearing. Then Mr. Bauer retaliated, viciously so, and this lays the background for Mr. Stevens' involvement.

I was attacked by thugs three times in my office. I was badly injured. My office was made a shambles. I called the police. I wanted to have them examine the office and take fingerprints, which they refused to do. The police arrested me immediately on false charges of assault and battery, and in some cases of aggravated battery.

Bauer's controlled press blared forth, and this is not an exact quote, "Smith beat up complaining customers." I urge the committee to read a leaflet on yellow paper, entitled "Patterns in Persecution," a leaflet provided with hundreds of crimes committed against me that were designed to run me out of business and run me out of Du Page County.

I would also urge the committee to read another leaflet, entitled "The Du Page Mafiia," which is also included.

For Senator Fong's interest, I was arrested one day, or attempted to be arrested, by a man who claimed to be a Hawaii or a Honolulu

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policeman. The man showed an actual Honolulu police badge. I asked him what his jurisdiction was and what his complaint was, and he said, "I don't need any jurisdiction. You stole $200 from one of my friends, and I want it or I am going to arrest you and run you in." With that I grabbed the nearest thing I could, ran around the other side of my counter, and ran the man out of my office. I followed him; got the number of his license plate, an Illinois license; I traced the man. He proved to be one of Mr. Bauer's gestapo army, of which there are numbers in Du Page County.

This is only typical of some of the harassment I was subject to.

I ask the committee at this point, with the little bit they have heard or read in my leaflet, have my constitutional rights been violated? Am I entitled to due process of law?

The worst is yet to come. In November of 1964, William Bauer, the district attorney, was running for the circuit judgeship. I published some of these leaflets, reprinted them, and I was handing them out to people on the street throughout Du Page County. I had also included another by that time, which I quote: "Murder Pays District Attorney Bauer $10,000 Bribe." This is a true story. I have the story directly from the man who paid the bribe. In the handing out of these leaflets, mind you—I repeat, on election day—I was arrested and jailed and held for about 4 hours to keep me off the street.

Now, is this a constitutional violation? How are my rights under the first amendment in this case been violated?

I also point out to the committee that at this time the landmark decision of the Supreme Court in *New York Times* v. *Sullivan* had been published several months before. Even the lay public was well-informed of their rights to oppose a political candidate under the decision of that landmark case.

Mr. Bauer and his associates are lawyers. They are required to know more of the law and to apply more of the law than the average layman. Mr. Bauer had me arrested on election day because I opposed him and opposed his election campaign. In the light of that legal definition, I was arrested and tried for criminal defamation of William Bauer, a public office holder. I wish I had time to give the full details of the trial, but I forebear because they are not pertinent at this time. Suffice it to say that William Bauer refused to take the stand, and I won a jury verdict of acquittal. Actually, it was a directed verdict because I so moved.

Later on I filed this case as a civil rights case in the district court of Chicago. It was heard by Judge Parsons. Judge Parsons is reported in the book I have quoted as the infamous, drunken judge of the Federal circuit. The case was before Judge Parsons around 1970 and, as I say, I do not have the exact dates or exact case numbers with me because of the matters I mentioned.

Judge Parsons looked at Mr. Bauer's lawyers and made this statement, which is fraught with great meaning: "Gentlemen, is this the case that is withholding Mr. Bauer's appointment as U.S. attorney"—because at that very time Mr. Bower had been promised a political appointment by Senator Percy. He was, therefore, before this committee as a nominee for the U.S. attorney's position.

Now, at that time I printed and prepared and brought to Washington an entire box full of manuscripts, legal briefs, which I hold in

my hand, of some 40 pages, along with the documents, the exhibits I have mentioned, the leaflets I distributed on election day. I presented this to each member of the committee, but I was not called to oppose the nomination of Mr. Bauer, I, therefore, filed this suit against Mr. Bauer as proof positive that the man was corrupt and had every intention of violating the first amendment of the Constitution, if not the whole Constitution.

I hold no rancor at not being called, but had I been called, Mr. Bauer would not have been appointed to that high office.

Now, I call the committee's attention especially to that Judge Parsons dismissed this case purely because Mr. Bauer was an appointee as a U.S. attorney. That is not just grounds for a dismissal of a case. In fact, it is illegal grounds.

Now, this case ultimately came to the appellate court, and I daresay that Mr. Stevens has not submitted this case to you for your consideration. I ask, therefore, that this case, No. 18768, be made a part of the record, incorporated in it, and that the briefs therein studied. They are very thorough, and they delineate this constitutional issue exactly.

Mr. Stevens summarily dismissed this case to favor Bauer and his crony, Mr. Peter Ernst. I would like to ask Mr. Stevens to submit, as I have in my brief, by the way, I am positive; I would, again, like to ask Mr. Stevens to submit one, a verified affidavit on how long Mr. Bauer has been known to him on a personal friendship basis; two, that Mr. Stevens submit a memorandum of law, testifying his rabid desecration of my first and 14th amendment rights in the dismissal of the case *Smith* v. *Bauer*.

I remind you, again, that this case deals with a prime constitutional issue, the first amendment right of free speech and the right of a citizen to oppose a corrupt individual on election day, for which I was jailed and prevented from doing.

I point out that this case was dismissed in both the district court and also by Mr. Stevens in the appellate court definitely on a basis of political favor and to desecrate the Constitution. Relative to Mr. Stevens' ruling, one, Bauer was confirmed as U.S. attorney. Now, in the meanwhile, my case came before the Seventh Court of Appeals with Mr. Bauer as U.S. attorney, despite the massive brief that I have already quoted, that I have submitted to the committee. But by the time this case came before Mr. Stevens and the Seventh Circuit, Bauer was not only U.S. attorney and protected by these judges knowingly, but Mr. Bauer was now a nominee for a judgeship in the Federal court.

Therefore, Mr. Stevens dismissed this case in the very same manner that Mr. Parsons had dismissed it in the lower court to protect Mr. Bauer's confirmation by this committee to the high post of a Federal judgeship. So Mr. Stevens dismissed this case because Mr. Bauer had a deal with Senator Percy to get a Federal judgeship during Mr. Nixon's Presidency, and Stevens, to prevent Bauer's constitutional crimes from being discovered, dismissed the case completely.

Here is incontrovertible proof of Mr. Stevens' true character, a rabid anticonstitutionalist and one who purveys judicial favors for political cronies. Mr. Stevens never recused himself, despite his pronouncement on Monday and Tuesday about the *Keane* case on which he was examined at length. Stevens says one thing, but his acts betray him.

Further, in the case *Smith* v. *Dushong*, 71–1064, and I do have the pleadings before me in this case, this is a brief along with the notice of motion under rules 40 and 41, designed to stay the mandate of the court.

It is difficult for me to refer to a note and then come back to my writing because of my visual loss and the difficulty.

In *Smith* v. *Dushong*, which also came before Mr. Stevens simultaneously with the *Bauer* case, Dushong was one of my employees who was a thief and stole some $35,000 worth of airline tickets and whom I have reported in the words of a witness willing to appear before the grand jury as having paid Mr. Bauer a $5,000 bribe to avoid prosecution, and to obtain a favorable decision from Judge Napoli in the district court. This was another case in which Judge Napoli ruled.

The case was based upon my written contract with Dushong. The contract was fully recited within the complaint under full compliance of the Illinois law, which I believe is IRS 11036. Mr. Napoli made the strange ruling, and this is important to understand because we must consider Mr. Stevens' ruling in the light of this. Mr. Napoli, and I quote Judge Napoli as closely as possible: "If the case sounds in contract, it is filed timely. If it is filed in tort, it is barred by the 3-year statute of limitations. I find that the case sounds in tort." And the case was dismissed.

I repeat again, the case was based on contract which was fully recited within the complaint. I ask you to try to find any legal justification for this strange and illegal decision. One can only arrive at the conclusion that I have that Mr. Napoli was paid for a favorable decision for Dushong, just as he paid for protection from Mr. William Bauer.

Mr. Stevens upheld Napoli's illegal ruling by a devious trick common to the Seventh Circuit. Rule 2 is a local rule by which the judges can, and I quote, "suspend the rules," so they can dispose of "my own troublesome cases." This is akin to thieves who suspend the theft statute so that they can commit a crime. The *Dushong* case is loaded with Mr. Stevens' illegal rulings, all favoring Dushong, the thief. See Dushong's letter in the file written personally to chief judge, which was answered by Judge Stevens without a copy to me. Here is a graphic example of illegal and very undesirable ex parte working arrangements between a client and a judge.

The *Dushong* case implicates Bauer, the district attorney. Dushong and others paid off. If this case came to trial, Bower would be called upon to answer, one, why did you refuse to prosecute Dushong at all? Two, did you accept a bribe from Dushong? Now, if Mr. Bauer answered in the negative that he had not accepted a bribe, I had a willing witness who could come and testify that Mr. Bauer was paid a $5,000 bribe of my stolen money, but Mr. Bauer was now the U.S. attorney and before this committee as a judicial nominee, who could be revealed as the corrupt person I have claimed him to be, and Bauer would, of necessity, have been rejected by this committee and probably impeached in his other position as well.

Mr. Bauer's ambition, by the way, like Mr. Stevens', is that of becoming a Supreme Court Justice.

Read my pleadings filed in the Seventh Circuit in *Smith* v. *Dushong*. I believe you will find its counterpart in *Smith* v. *Bauer*. I had some of the Dushong motions, and I am supplying them to the committee. In

it I charged Judge Stevens et al, as follows. In the notice, I will read only a few scattered lines throughout this aptly taken motion. "Please take notice I have this date filed by mail the attached motion for ruling under rules 40 and 41 for seven reasons, all of which incorporate fraud on the part of the defendant-appellee's counsel"——

Mr. WESTPHAL. Excuse me, Mr. Smith. I think the pleading that you are reading from is in the packet of papers that you turned over to the committee. I remember seeing it there myself. Material that has already been turned over to the committee you do not need to read again.

Mr. SMITH. Well, I would like to emphasize some of the salient points, if I could.

Mr. WESTPHAL. All right.

Mr. SMITH. So, the net result of Mr. Stevens' ruling in the *Dushong* case was that the case was absolutely dismissed without any opinion ruling. I think that I must rely on my memory that my brief incorporates the fact that I asked Judge Stevens for a memorandum of law, justifying his totally illegal position, which he refused to do.

My motion under rule 40 and 41 was, of course, denied. I was unable to pursue the case much further, although I did file preliminary motions in the Supreme Court, but the record would show that I was shortly thereafter hospitalized for additional eye surgery of a very grave nature.

I now come to another case of great significance, *Smith* v. *Internal Revenue Service*. I do not have the number of this case. However, it is immediately available to the committee from the reference cards. An hour could be used to delineate the illegality in this case.

I was unemployed for 7 years, almost totally, and I was a target for Internal Revenue harassment. Obviously I had been placed on the enemy list by Mr. Bauer and possibly with the concurrence of Mr. Stevens, although I do not make that a direct charge, but I do charge that to Mr. Bauer.

To stop the harassment I filed a suit against the IRS in the Tax Court in Washington, D.C. The IRS failed to reply timely and I moved for a defaulted judgment, which was denied. A hearing was set for May 21, 1973. I ask that the date be noted with careful specificity. The hearing, the only one so far, was to be held on May 21, 1973. On or about May 15, again, I say, note that date, 1 week before the hearing, the Internal Revenue seized my funds, $700. This money was designated as realty tax money. Those taxes now have still been unpaid. I have referred to the fact that if we do not pay $1,000 in taxes in penalty by December 23, this month, we will lose this fully paid home.

On May 21, the Tax Court judge dismissed me and gave IRS a new legal judgment of $2,000, plus. I filed timely motions to set aside the judgment. There are many motions on file in this case which are readily accessible to the committee in the local Tax Court.

Finally, in November, while these motions, postjudgment motions, were still under consideration and in various stages of process, an IRS agent attempted to seize my automobile. When I demanded from him a court order, the agent could not produce it. I then showed him my up-to-date file, and he backed down and left my car in my possession.

To terminate such illegal harassment, I filed for a restraining order in the Seventh Circuit, the only court open quickly to me because it is only 70 miles away. I also filed a motion for the return of my $700. Mr. Stevens ordered the Internal Revenue attorney to reply by November 26, I believe that was 1972. The attorney failed to reply. Instead, in a letter dated November 26, the very day he was to have his pleadings on file, he wrote a letter with the statement, I have been too busy with the holidays, and he asked for more time. I opposed his being given more time by stating that I, too, had holidays and I, too, had pressing work to take care of, and I, too, had very difficult problems, especially with my eyes and so on. The motion is on file. See my scathing pleadings.

The IRS attorney never filed a reply to my knowledge; at least I never got a copy of any such reply, despite the order of Judge Stevens. But Mr. Stevens, on November 30—now, I put a question mark after that date because I am going by memory. However, it was very quickly after I filed my reply motion, asking that additional time to the IRS not be granted.

Mr. Stevens, on November 30, denied my motion for a restraining order and denied me the return of my $700. Here is one of the most glaring constitutional deprivations that could be brought before this Court unless it is in the case of my illegal arrest on election day.

Mr. Tunney questioned at length as to Mr. Stevens' regard for the fourth amendment. Here is proof positive that Mr. Stevens, by his rulings, has no regard for the fourth amendment. I have also shown he has no regard for the first amendment. I have shown proof positive that he has no regard for the 14th amendment. So, Stevens again proves his determination to destroy those sacred rights in our hallowed Constitution.

I ask this committee not to be misled by what he says; judge him on his acts. Not acts in favored cases that he has submitted to the committee and to the bar association, but cases he has not presented, and these cases, if he could, he would destroy the total files so that they could not be used against him. And I state tonight before this committee that these cases are haunting him at this moment, just as surely as Morley's ghost of Dickens' Christmas Carol.

In conclusion, I come to one more case. It is a tragic and a bitter case, too long to properly relate here. It involves my home and an illegal possession. I have not been able to bring before the committee—I will only brief this very shortly. At one stage of my political prosecution I was subjected to a criminal warrant for theft. I was tried for that theft. The theft consisted of my stopping payment on a check on which I had just legal ground to stop payment, but Mr. Bauer, as the district attorney, called this theft which is absolutely opposed to Illinois statutes.

Now, we went through the trial and I was found guilty under very strange circumstances. By this time I had myself pro se filed and proceeded in six criminal charges that had been placed against me by Mr. Bauer. All of them were false, but I defended myself pro se and I won every case.

There was no attorney, district attorney, and assistant, in the Du Page Courthouse who would oppose me in any case I brought.

Now, we come to another bitter experience. The judges of the Du Page court—there was one judge, I believe it was Judge Attin—ruled that I would not be allowed to represent myself in the proceedings of this criminal theft charge, the reason being, as I have stated, that no district attorney would appear before me. They knew I would win.

Mr. WESTPHAL. Mr. Smith, excuse me. You are mentioning a proceeding in the Du Page County Court. Judge Stevens had no connection with the Du Page County Court.

Mr. SMITH. He has a connection with the outgrowth of this case. I will tie it all in.

Mr. WESTPHAL. How much more do you have?

Mr. SMITH. Possibly 5 minutes.

Mr. WESTPHAL. All right.

Mr. SMITH. Therefore I will indicate that I was found guilty falsely because I had to hire a lawyer who was drunk during the trial and fell in a heap right in front of the jury. Under such conditions I was found guilty. I hired an appeal lawyer. This, again, is a tragic story. To make a long story short, this appeal lawyer failed to file my appellate brief, all the meanwhile telling me that everything was fine, he had a continuance. On October 5, 1965, I called my lawyer at 5 o'clock in the evening. I said, Mr. Brentikis, let's get this case over with so I can restore my business. I am eager to get back where I can earn a living. He said, everything's fine, I have another continuance. This was at 5 o'clock on October 5, 1965.

The next day, October 6, 1965, I was picked up and brought before a judge of that circuit. The district attorney stated that my appeal had been denied and demanded immediate incarceration. I was immediately transferred to the Stateville Pentitentiary. I was not allowed to telephone my wife, who searched the hospitals all night long looking for me, only to learn the bitter truth through some circuitous route that I was in the penitentiary. This has never been done, as I understand it, in the history of criminal law. You are also allowed a telephone call when you are imprisoned. You are also allowed a telephone call when you are transferred to another institution.

I was denied phone calls both times, and I was held in seclusion for almost 30 days, incommunicative so my wife could not reach me.

Under such conditions as this, we had to get along as best we could. We had to get a loan on our house because neither one of us was employed and I was in prison. A trusted lawyer said that I appoint a trustee for this loan who would get a loan.

Therefore, I appointed my mother as a trustee. I wrote a letter from the penitentiary and it is prima facie evidence, because it goes through a censor.

I instructed the lawyer, Mr. Robert Ransome of Oak Park, Ill., make my mother, Mrs. Alice R. Smith, the trustee of the property with R. J. Smith and Winifred Smith as sole beneficiaries of the trust.

To make a long story short, a lawyer came to our aid and 10 months after the beginning of my imprisonment the case was resolved and reversed by a Supreme Court ruling that stated that a stop payment check was a civil case and not a criminal case.

But, the damage was done.

Shortly thereafter, within a month I was immediately hospitalized as I have already said, and a year later we attempted to sell our home. The house was sold in July. I, myself, made the sale.

I filled out the documents. I turned them over to my same trusted lawyer and this was right away. And for 5 or 6 months he kept delaying the transaction, telling me that the people who were buying it had asked for an extension of time, which we gave him. He was to get money for such extensions and he never did.

When we finally came, I believe it was December 23, to close the case, this lawyer was Robert Ransome of Oak Park, it is a matter of record that the Federal court had made my mother the full owner of that property. And my mother, under the influence of my larcenous brother, refused to return the title to us.

This was our only remaining property, the only thing we had any hopes of covering my eye operations and getting my business restored, which we have not to this day fully cleared.

Now, ultimately, we used every possible source of mediation because of the family nature of this peculiar situation.

My minister made overtures. I want to her minister. All mediation was refused. My mother stated, see my lawyer.

Because of the diversity of citizenship, I filed this case in the Federal district court of Chicago. I do not have the number, but it could be readily determined. It is *Smith* v. *Smith*. And I believe Mr. Ransome was in on that too, I am not sure. There are two cases, by the way.

This case came before Judge Lynch. Now, I would prefer reading to confine my remarks. Incidentally, I have included transcripts of the hearings before Judge Lynch of two dates. I have these to show the shocking treatment I received from Judge Lynch. I was charged with contempt, for no reason whatsoever. I was charged with contempt so that I would be totally intimidated and drop the case.

I had threats made against me that I would not only be put in jail, you will find the exact quotation, Judge Lynch stating, I will change your residence.

You will also find in the transcript that Judge Lynch further intimidated me by ordering that I appear before a psychiatrist of his choosing to prove my mental competency.

Incidentally, he referred to the psychiatrist that he appointed as Dr. Arcama. The files of the American Medical Association show there is no Dr. Arcama, and there was none in the Chicago telephone book. This was one of the illegal tricks used by the judges of the district court to intimidate anyone whose cases they want to dismiss.

The opposing lawyer I now find is a friend of Mayor Daley. Lynch was Daley's former law partner and hand-picked Federal judge.

Mr. WESTPHAL. Did you appeal that case to the Seventh Circuit?

Mr. SMITH. Yes; I am coming to that.

The next day our luncheon buddies of the opposing lawyer, whose name, by the way, is Mr. Arcama, and all are close friends of Thomas Keane and possibly Judge Stevens—I stress possibly. Now we come to Judge Stevens' part in this very sad and tragic case.

My property is at stake. I am ordered by Judge Lynch not to come back to his court. The case is continued generally until I prove my mental competency to proceed pro se with a psychiatric examination by a psychiatrist who does not exist.

Or, in the alternative, I have to be represented by counsel.

I submit to the committee that I have the constitutional right of appearing pro se, I also suggest that an examination of my pleadings in that specific case especially will prove that I am highly competent and highly skilled in Federal practice.

All of these issues were brought before Judge Stevens in the seventh circuit. Judge Stevens dismissed this case. Now, this was an interlocutory appeal in which I appealed asking that the actions of Judge Lynch be reversed and that he be ordered to conduct a trial or in the alternative to give me another judge.

Judge Stevens threw this case out of court. In essence he has allowed my home to be stolen by my own brother and my mother. I state to this committee positively and emphatically that Judge Stevens is in consort with my political enemies to steal every penny that I can possibly get together, they have stolen my property, they will continue to steal my property.

They have subjected me to police harassment, the like of which has never been told in the United States. And when I relate some of these things and you have only a sketchy understanding of the whole situation, people tell me this can not happen in the United States and then they get the little thought in their mind that this man truly must be unbalanced, these things could not happen.

Mr. WESTPHAL. Mr. Smith, you have had about an hour now to complete your statement that you thought might take 20 minutes or so.

Mr. SMITH. I have only two more pages.

I could cite more cases. I have submitted all of these pleadings by memory. I do not claim to have the phenomenal memory of John Dean, but I urge you to compare the actual files and also the actual rules signed by Judge Stevens, rulings and the like of my well-pleaded motions and see how Mr. Stevens has ravaged the law, the Constitution, and our sacred rights as citizens of the United States.

I repeat that I am the most valid witness to be heard pro and con because I have brought before this committee the actual cases and the actual rulings of Judge Stevens.

They came to praise without knowing all of the machinations of this totally corrupt judge, who must only be denied the high office he seeks but must be denied his present position as well.

Read my three page conclusion, especially, included in my packet of materials. He has violated not only the Constitution but most of the cannons of judicial ethics of which he has eloquently spoken in this hearing.

Yesterday, he himself, related the importance of the appearance of impropriety. He condemns himself in *Bauer*, *Dushong*, *IRS*, *Smith* v. *Smith*.

He has shown his true Janusfaced self.

One face, Janus was the Roman god with two faces, one face of Judge Stevens blesses the Constitution, the other face reviles it.

We do not want a two-faced judge on the Supreme Court of the United States or in any other court of our land.

I submit, gentlemen of the committee, that you must consider my pleadings in my cases and the rulings of Judge Stevens to prove beyond the shadow of a doubt that Mr. Stevens is absolutely opposed to the constitutional rights of every citizen.

And I thank you.

Mr. WESTPHAL. Thank you, Mr. Smith.

I understand the committee will recess subject to the call of the Chair.

[Whereupon, at 5:30 p.m., the committee recessed subject to the call of the Chair.]

[The chairman subsequently made the following statements a part of the record.]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 9, 1975.

STATEMENT BY BELLA S. ABZUG, TO THE SENATE JUDICIARY COMMITTEE HEARINGS ON THE CONFIRMATION OF JUDGE JOHN PAUL STEVENS TO THE SUPREME COURT

Senator Eastland and Members of the Senate Judiciary Committee:

As you realize from reading the letter which I circulated to you yesterday, when this hearing began, I had questions about Judge Stevens' sensitivity to women's rights based on his decisions in a number of sex discrimination cases which came before him in the Court of Appeals.

After learning of his statement yesterday that he would decide these cases exactly the same way today, I am increasingly concerned over this hasty confirmation process. In light of this statement, I am especially disturbed about Judge Stevens' dissent in the *United Air Lines* case, where he failed to find that the no-marriage rule for stewardesses was sex discrimination prohibited by Title VII of the Civil Rights Act of 1964.

This opinion was anachronistic when written, but when it is examined again in 1975, with the hindsight of the progressive development of Title VII law in the intervening four years, I find it nnbelievable that Judge Stevens would rule the same way.

After reading the Judge's comments at yesterday's hearings, I found myself compelled to come before you to urge that these hearings not be adjourned without your hearing from additional women's groups, female jurists and others who have a very serious interest in Judge Stevens' views—particularly with reference to the Equal Rights Amendment which was overwhelmingly passed by the Congress and ratified by 34 states.

I mnst say that I found the Judge' slack of knowledge about the background of the amendment shocking. It is ont of step with the times that a man being recommended for the highest court in our land would not be familiar with the outcome of litigation which attempted to apply the 14th amendment to women as it had been applied to minorities.

Judge Stevens' view of the ERA reflects the thinking of the 1950's when legal scholars still believed that the courts would interpret the 14th amendment expansively. As the history of litigation showed that not to be inevitably the case, women's organizations, trade unions and civil rights groups became increasingly convinced of the necessity for adding the Equal Rights Amendment to the Constitution. For that reason, the broadest coalition of groups including the Democratic and Republican parties snpports its ratification as the best means of guaranteeing equal justice under the law.

There is ample legal literature on what the ERA would accomplish and I would be happy to provide the relevant articles to the nominee and the Committee. Rather than take up the Committee's time with citations to Law Review journals, I urge this Committee not to confirm this nominee hastily—but rather to recess and allow interested groups the time to come forward and testify on Judge Stevens' nomination and his positions as stated before this Committee.

I and other Members of Congress as well as major women's groups urged President Ford to nominate a woman to the Snpreme Court and were disappointed with his failure to attempt to redress the historical imbalance in our Courts. None of us advocating the appointment of a women to the High Court has even suggested that the appointment be made on the basis of sex alone. There are a number of highly qualified women jurists and lawyers in our country from whom a suitable choice could be made, if there were a desire to do so. Clearly, the President had no such desire.

It is ironic that the nominee chosen by our non-elected President in this International Women's Year should turn out to be unsympathetic to the needs of over half our population. I see no reason why the Senate should hasten to approve the President's choice, particularly when a lifetime appointment is involved.

WOMEN'S LEGAL DEFENSE FUND,
Washington, D.C.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

STATEMENT OF OPPOSITION TO THE NOMINATION OF JUDGE JOHN PAUL STEVENS TO THE SUPREME COURT OF THE UNITED STATES

The Women's Legal Defense Fund, a non-profit, tax exempt corporation organized in 1971 to secure equal rights for women by providing volunteer legal representation in sex discrimination cases, whose membership includes both attorneys and lay persons, wishes to state that we oppose the nomination of Judge John Paul Stevens to the vacant Supreme Court seat for the following reasons:

1. Judge Stevens' comment that race discrimination is a "more important" issue than sex discrimination shows a blatant insensitivity to discrimination against women.
2. His statement that he would never rule sex as a suspect classification, such sex-based discrimination to be subjected to the strictest scrutiny by the Supreme Court, reveals a predisposition to rule adversely in cases which women bring under the Equal Protection Clause of the 14th Amendment to the Constitution.
3. His self-admitted lack of knowledge of the legal implications of the Equal Rights Amendment to the Constitution is appalling in light of the Supreme Court's function of understanding and interpreting the Constitution of the United States; and surprising in light of the opinion which he wrote in *Dyer* v. *Blair*[1] upholding a state of Illinois procedural rule change which effectively defeated the Equal Rights Amendment in Illinois.[2]
4. His decision in *Sprogis v. United Airlines*[3] shows that Judge Stevens based his opinion in that case on preconceived notions of women rather than the regulations arising under Title VII of the Civil Rights Act of 1964 (as amended in 1972) dealing with sexual equality, and in fact, misinterpreted Title VII. His opinions in both *Doe* v. *Bellin Memorial Hospital*[4] and *Cohen* v. *Illinois Institute of Technology*[5] which denied that there was any state action present, prevented the female plaintiffs in those cases from ever reaching the central issue involved—sex based discrimination.

For the above reasons, the Women's Legal Defense Fund urges you to reexamine the credentials of Judge Stevens as to his fitness to serve on the Supreme Court and further urges you to vote "no" on his nomination.

NAN ARON,
President.

BERGER, NEWMARK & FENCHEL,
Chicago, Ill., December 2, 1975.

Re Hon. John Paul Stevens.

HON. JAMES EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: It is my understanding that several years ago, when Judge Stevens' nomination for his present judicial office was being considered by the United States Senate, Mr. Leslie G. Behrend, of Barrington, Illinois, wrote to the Senate Committee on the Judiciary with relation to an arbitration award which had been made by John Paul Stevens, as arbitrator, when he was an attorney practicing in Chicago. I only learned of that letter subsequent to its receipt by the committee.

I represented Mr. Behrend in relation to that award (but only subsequent to its entry). The arbitration proceeding was administered by the American Arbitration Association (Chicago office) and was designated No. 51 10 0010 67–C, Leslie G. Behrend and Robert G. Woods. The proceeding involved an accounting, between ex-partners, as to the management consultant business they had operated.

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[1] 390 F. Supp. 1291 (7th Cir. 1975).
[2] The ERA had been approved by a simple majority vote in the Senate; the rule change required a ¾ vote of the legislature.
[3] 444 F. 2d 1194 (7th Cir. 1971).
[4] 479 F. 2d 756 (7th Cir. 1973).
[5] 74–1930 (7th Cir. October 28, 1975).

Subsequent to entry of an award in favor of Mr. Woods, Mr. Behrend's then attorney made a motion, in the companion court action between Woods and Behrend, to vacate the arbitration award. That motion was denied and the award was affirmed. That action was in the Circuit Court of Lake County, Illinois, and was designated John Robert Woods vs. Leslie C. Behrend, No. 67 C 1337.

After the court's denial of his motion to vacate the award Mr. Behrend engaged this firm and I undertook to represent him regarding the above arbitration award and court action. I filed a motion under Section 68.3 of the Illinois Civil Practice Act for reconsideration of the court's prior orders and for vacation of the award and for other relief. The main thrust of the motion was that the partnership agreement specifically put the partnership on a cash basis while the award was predicated at least in part, on an accrual accounting basis. Neither in my motion, nor otherwise, did I raise any question as to the arbitrator's integrity or competence. The award was vacated by Judge Minard E. Hulse on January 30, 1969 and the cause was remanded to the arbitrator, or his successor, with directions relating to various accounting points (including a cash basis accounting as to three contracts in issue). The court order in no way raised any question as to the arbitrator's integrity or competency. Nor was any such question in any way involved either in the arbitration proceeding or in the court action.

I have known John Paul Stevens since about 1952 and have participated in litigation in which he was also serving as attorney. His conduct and demeanor has always been above reproach, his exceptional legal ability manifest.

At the time that Attorney Stevens' nomination to the Court of Appeals was under consideration, I wrote a letter similar to this one to the then Senate Judiciary Committee. I wrote that letter, and I write this one, to lay at rest any charge or intimation of any impropriety on the part of the arbitrator, John Paul Stevens, in his rendition of the above referred to award.

In my opinion Judge Stevens will make an outstanding member of the Supreme Court of the United States.

Respectfully submitted,

HARRY D. LAVERY.

BAR ASSOCIATION OF THE SEVENTH FEDERAL CIRCUIT,
Chicago, Ill., December 8, 1975.

Hon. JAMES O. EASTLAND,
Senate Judiciary Committee, U.S. Senate,
Washington, D.C.

MY DEAR SENATOR EASTLAND: It is my great pleasure to submit to you, for your consideration and that of other Committee members, and for inclusion in the record of confirmation hearings of the Senate Judiciary Committee being held on the nomination of Circuit Judge John Paul Stevens to the Supreme Court, true copies of a resolution unanimously adopted by the Board of Governors of the Bar Association of the Seventh Federal Circuit, at its meeting on December 6, 1975, in Chicago, Illinois.

Sincerely,

WILLIAM M. EVANS,
President.

Enclosnre.

RESOLUTION

Whereas, President Ford has nominated John Paul Stevens, Circuit Judge, U.S. Court of Appeals for the Seventh Circuit, to fill a vacancy in the U.S. Supreme Court; and

Whereas, the U.S. Senate Judiciary Committee is about to hold hearings on the confirmation of that appointment; and

Whereas, Supreme Court Justice designate Stevens is uniformly recognized by the Bar and Bench alike, in both the Seventh Federal Judiciary Circuit and elsewhere, to be highly qualified to serve on our highest Court by reason of demonstrated fairness, integrity and high intellect; and

Whereas, after an excellent college and law school record interspersed with distinguished service in the Armed Forces, John Paul Stevens has demonstrated in a career of nearly three decades as law clerk, scholar, counsel to a Congres-

sional Committee, lawyer and advocate, law teacher and author and finally as a Circuit Judge on the second highest Court in the Federal Judiciary—exceptional capacity, character and fitness for this highest judicial office; and

Whereas, designate Stevens has served with great dedication and distinction for more than five years as a Circuit Judge of the U.S. Court of Appeals for the Seventh Circuit, and by demonstrating, for all to see, his exceptional judicial talents: Now, therefore, be it

Resolved, that this Association, on behalf of the Bar of the Federal Courts in Illinois, Indiana and Wisconsin, does hereby record its abiding conviction that Circuit Judge John Paul Stevens is eminently well qualified by demonstrated character, temperament and experience, to serve as a Justice of the U.S. Supreme Court; that his appointment to that high office should be confirmed promptly by the Senate; and that his service on that Court will be in its highest traditions; and be it further

Resolved, that the proper officers of the Association be, and they hereby are, authorized and directed to submit suitable copies of this resolution to the Chairman and Members of the Senate Judiciary Committee for their consideration, and for inclusion in the record of the confirmation hearings of that Committee on the nomination of Circuit Judge Stevens to serve on the U.S. Supreme Court.

I hereby certify that the Board of Governors of the Bar Association of the Seventh Federal Circuit unanimously adopted the foregoing resolution in a meeting assembled in Chicago, Illinois, on the 6th day of December, 1975.

FEDERAL BAR ASSOCIATION,
Washington, D.C., December 11, 1975.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee, U.S. Senate,
Washington, D.C.

MY DEAR SENATOR EASTLAND: It is my pleasure to inform you of the position of this Association's National Judicial Selection Committee to support President Ford's nomination of Honorable John Paul Stevens to the Supreme Court of the United States.

The Judicial Selection Committee has evaluated the qualifications of the nominee and has found, without dissent, that Judge Stevens is exceptionally well qualified for appointment.

We request that this communication be made a part of the official proceedings of the Judiciary Committee of the Senate.

Sincerely,

JOSEPH S. FONTANA,
Chairman, National Judicial Selection Committee.

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