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Comment

JUSTICE POTTER STEWART'S PHILOSOPHY OF FEDERAL JUDICIAL ADMINISTRATION

*James A. Gazell**

This Comment examines Associate Justice Potter Stewart's philosophy of federal judicial administration as reflected by his participation in numerous decisions as a Justice of the United States Supreme Court for nearly twenty-three years. The central theme of this Comment is that Justice Stewart consistently sought to improve the operations of the federal judiciary—first, by imposition of stringent limitations on the kinds of litigation permitted to enter this system and second, by structural, managerial, and procedural modifications to expedite the disposition of those cases allowed into the Federal Courts.

This Comment discusses rulings in the area of federal judicial administration during Justice Stewart's tenure, with a view to explicating his efforts to help regulate litigational access to the federal courts, and his attempts to help accelerate the flow of cases through such tribunals. It concludes by noting Justice Stewart's interest in limiting access, so that the system as a whole is not imperiled.

INTRODUCTION

Today it is the shameful fact that in many of the large cities of the United States the federal district courts are three and sometimes four years behind in their work. We can accept without elaboration the truism that justice delayed is justice denied. What it is important to realize is that it is the massive number of diversity of citizenship cases that both beget and are begotten by this delay.¹

This excerpt comes from an address delivered in 1957 to the Ohio Bar Association by Potter Stewart, then a member of the United States Court of Appeals for the Sixth Circuit and later an Associate Justice of the Supreme Court of the United States for nearly twenty-three years. His comment is significant in at least two respects. First, it represents his first public manifestation of

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1. Stewart, *The Role of the Federal Courts in the Administration of Justice*, 30 OHIO BAR 475, 479 (1957).

interest in judicial administration (especially at the federal level), a subject which has become salient as the quantity and complexity of litigation have risen in the federal and state court systems over the last few decades.² Second, his observation came early in his judicial career—he had been a judge for only three years—and marks the start of his persistent interest in this area later exemplified in his judicial decisions.

With Justice Stewart's retirement on July 3, 1981, an assessment of his record in the field of federal judicial administration is both timely and appropriate; it has yet to receive scholarly attention.

Other analysts have focused their efforts on the judicial rather than administrative facets of Justice Stewart's work, particularly his decisions concerning freedom of speech and racial equality, and on the validity of his widespread reputation as a "swing" or "moderate" member of the Supreme Court.³ The popular press invariably recalls his propensity for occasional memorable phraseology, as illustrated by his brief attempt at a definition of pornography in *Jacobellis v. Ohio*.⁴

Other aspects of the Justice's juridical persona which have attracted attention include his dissent from banning prayers in public schools,⁵ his opposition to the judicial nullification of state birth control laws,⁶ his sympathy towards civil rights,⁷ his inclina-

2. See L. DOWNIE, JUSTICE DENIED 30, 50, 68 (1971); R. WHEELER & H. WHITCOMB, JUDICIAL ADMINISTRATION 16-17 (1977); Berkson, *Delay and Congestion in State Court Systems: An Overview*, in MANAGING THE STATE COURTS 204, 209-10 (L. Berkson, S. Hayes & S. Carbon eds. 1977).

3. See, e.g., G. SCHUBERT, THE JUDICIAL MIND REVISITED 12-14, 57 (1974); H. SPAETH, SUPREME COURT POLICY MAKING 90-92, 135-36 (1979); Binion, *Justice Stewart on Racial Equality: What It Means to Be a Moderate*, 6 HASTINGS CONST. L.Q. 853 (1979); Lewis, *Justice Stewart and Fourth Amendment Probable Cause: "Swing Voter" or Participants in a "New Majority"*, 22 LOY. L. REV. 713 (1976); Greenhouse, *Stewart: A Lawyer Not a Philosopher*, N.Y. Times June 19, 1981, § A at 14, col. 4; Zimmerman, *U.S. Supreme Court Losing Moderate, Yet Unpredictable Justice*, Cleveland Plain Dealer, June 19, 1981, § A, at 1, col. 1; *Some Legal Minds Share Their Opinions of the Justices*, New Orleans Times-Picayune, July 30, 1978, § 3, at 8, col. 3.

4. 378 U.S. 184 (1964):

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.

Id. at 197.

5. See *Engle v. Vitale*, 370 U.S. 421 (1962) (Stewart, J., dissenting).

6. See *Griswold v. Connecticut*, 381 U.S. 479 (1965) (Stewart, J., dissenting).

7. See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

tion to uphold social and economic legislation,⁸ his ambivalence toward the application (but not the constitutionality) of the death penalty,⁹ his concern for property rights,¹⁰ and his support for a qualified right of abortion¹¹ (but not for the public funding of abortion).¹² Although the press noticed¹³ Justice Stewart's willingness to discuss, in general terms, the inner workings of the Supreme Court,¹⁴ no other facets of his federal judicial administration concerns have received either popular or scholarly exploration.

This Comment seeks to fill an important gap in the literature by examining Justice Stewart's outlook on federal judicial administration, which becomes apparent through analysis of pertinent Supreme Court decisions. Improvement in the operation of the federal judiciary, according to Justice Stewart, would come first by imposing stringent limitations on the kinds of litigation permitted to enter the system. Second, Justice Stewart supported structural, managerial, and procedural steps to expedite the disposition of those cases allowed into the federal courts. He viewed both approaches as complementary methods of increasing the likelihood that federal tribunals might settle civil and criminal matters more expeditiously and fairly.

These observations suggest the three subdivisions of this Comment: (1) a note on the ambit of judicial administration and Potter Stewart's place within it;¹⁵ (2) the Justice's efforts to regulate litigational access to the federal courts;¹⁶ and (3) his attempts to accelerate the flow of cases through such regulation.¹⁷

I. THE AMBIT OF JUDICIAL ADMINISTRATION

State and federal judicial administration studies focus on resolving criminal and civil disputes with honesty, competence,

8. See *Dandridge v. Williams*, 397 U.S. 471 (1970).

9. See *Gregg v. Georgia*, 428 U.S. 153 (1976); *Furman v. Georgia*, 408 U.S. 238 (1972) (Stewart, J. concurring).

10. See *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972).

11. See *Roe v. Wade*, 410 U.S. 113 (1973) (Stewart, J., concurring).

12. See *Harris v. McCrae*, 448 U.S. 297 (1980).

13. See *Justice Stewart Steps Down*, Wash. Post, June 19, 1981, § A, at 14, col. 1.

14. See, e.g., Stewart, *The Nine of Us: 'Guardians of the Constitution'*, 41 FLA. B.J. 1090 (1967); Stewart, *Address at Mid-Winter Meeting of New Hampshire Bar Ass'n*, 18 N.H.B.J. 159 (1977); Stewart, *Inside the Supreme Court*, N.Y. Times, Oct. 1, 1979, § A at 17, col. 2.

15. See *supra* notes 18-27 and accompanying text.

16. See *supra* notes 28-125 and accompanying text.

17. See *supra* notes 126-62 and accompanying text.

evenhandedness, individualization, and fairness—that is, with justice.¹⁸ The pursuit of these overlapping and sometimes conflicting ideals embroils judges in diverse problem areas.

One such area is structural innovations—chiefly court unification. This category includes: creation of a central judicial policymaking organization (such as a judicial conference or council); establishment of court administration offices; authority of the highest judicial body to make rules for the entire court system; the assignment of judges to areas of heaviest workloads; a single budget for the whole court system; a judicial personnel system independent from civil service; a single set of trial courts with comprehensive, exclusive, original jurisdiction; and the abolition of all judicial fee offices.¹⁹

A second category is that of managerial facets, which embrace the administration of such disparate but overlapping functions as court calendars, finances, facilities, equipment, juries, witnesses, personnel, planning, public relations, record-keeping, report writing, coordination, and data processing. Court administrators perform or supervise these tasks in accordance with directions set by a central judicial policymaking agency or a chief judicial executive, such as a chief justice.²⁰

A third classification focuses on a melange of procedural matters, including administrative rule-making, assignment practices affecting judges, courtroom security measures, plea bargaining policies, proper jury size, nonunanimous verdicts in criminal cases, habeas corpus practices, standing, political questions, abstention, diversity jurisdiction, class actions, public compensation for participation in governmental proceedings, and judicially inferred causes of actions. Rules governing these subjects affect not only the flow of litigation but also the extent to which disputes may enter such systems.²¹

Justice Stewart's view on the structural, managerial, and procedural issues of judicial administration include three notable attributes. First, his concerns largely center on the federal courts, although he did participate in Supreme Court decisions with di-

18. Gazell, *The Principal Facets and Goals of Court Management: A Sketch*, in *MANAGING THE STATE COURTS*, *supra* note 2, at 24, 24.

19. *Id.* at 25-27.

20. D. SAARI, *MODERN COURT MANAGEMENT: TRENDS IN THE ROLE OF THE COURT EXECUTIVE* 4-10 (1970); Gazell, *supra* note 18, at 29-34.

21. See W. MURPHY, *ELEMENTS OF JUDICIAL STRATEGY* 21-22 (1964); J. SCHMIDHAUSER, *THE SUPREME COURT* 103-50 (1960); Berkson, *supra* note 2, at 210-13; Gazell, *supra* note 18, at 25, 27-28.

rect impact on state court management. Among these were decisions regarding the extension of the right to counsel to all criminal cases where incarceration is a possibility,²² the use of municipal court clerks to perform the normally judicial function of issuing arrest warrants,²³ and the limitations on the authority of mayor-judges whose villages possess a vested financial interest in the outcome of traffic cases.²⁴ Stewart dissented from the majority's approval of nonlawyer judges in criminal cases where the right to a retrial on appeal existed.²⁵

Second, Justice Stewart's interest in court administration has been a long and sustained one, dating publicly from 1954. At age thirty-nine he became the youngest circuit court of appeals judge in the country.²⁶ Subsequently, his work in the area occurred through both the Court Administration Committee of the Judicial Conference of the United States, and the Judicial Administration Section of the American Bar Association.²⁷

Third, evidence of Stewart's philosophy toward federal judicial administration lies not so much in his speeches or extra-judicial activities but in a potpourri of Supreme Court decisions issued over twenty-three years. These holdings illuminate his views toward the two salient issues of access to federal courts and acceleration of the caseflow.

II. JUDICIAL ACCESS IN CRIMINAL CASES

Justice Stewart displayed his philosophy toward federal judicial administration through decisions which generally restricted the access of plaintiffs to the national courts. His implicit perspective was that an expanding case load could not be resolved expeditiously and fairly merely by structural, managerial, and procedural alterations. Rather, criminal and civil input into the system would also have to be limited.

One such limitation, which Justice Stewart favored particularly, was the exclusion of "victimless crime" cases from the national courts, not only to lower the workloads of such tribunals,

22. See *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

23. See *Shadwick v. City of Tampa*, 407 U.S. 345 (1972).

24. See *Ward v. Village of Monroeville*, 409 U.S. 57 (1972).

25. See *North v. Russell*, 427 U.S. 328 (1976) (Stewart, J., dissenting).

26. Zimmerman, *Unpredictable Stewart—the Voice of Moderation*, *Cleveland Plain Dealer*, June 19, 1981, § A, at 9, col. 1; *President Names 11 for Judgeships*, *N.Y. Times*, Apr. 7, 1954, at 28, col. 3; *Justice Stewart*, *The Docket Sheet*, Oct.-Nov. 1981, at 3.

27. Address by Associate Justice Stewart, *Judicial Administration Section, American Bar Association* (Aug. 24, 1959), at 2.

but also to limit the reach of governmental authority into what he regarded as private conduct. The ambit of victimless crimes would include a variety of historically proscribed conduct, such as abortion, bribery, drug addiction, espionage, family disputes, euthanasia, fornication, gambling, homosexuality, loitering, marijuana use, mental disorder, narcotics consumption, obscenity, pornography for adults, private quarrels, prostitution, public drunkenness, suicide, Sunday closing laws, and venereal diseases.²⁸ In recent years, governmental institutions have begun to react in three complementary ways toward such conduct: legalization, as in the example of abortion; a reduction in criminal penalties, as in the case of marijuana possession and use; and the adoption of a therapeutic rather than punitive approach, as in the construction of detoxification and methadone distribution centers.

Although Justice Stewart eschewed wholesale de-criminalization of hitherto criminal conduct, he cautiously disapproved of criminal status in at least four areas: pornography for adults, narcotics addiction, public drunkenness, and abortion. His implied distaste for proscription of pornography for adults stemmed from his career-long adherence to a broad view of free speech.²⁹ Similar views on narcotics addiction were expressed in a 1962 Supreme Court decision³⁰ which invalidated a California law making narcotics addiction a crime punishable by a mandatory jail term of at least three months. The Court, in an opinion by Justice Stewart, held that the legislation violated the eighth amendment prohibition of cruel and unusual punishment³¹ by punishing persons for their condition or status per se and not for any antisocial behavior.³² The same was true of public drunkenness; in 1968 Justice Stewart joined Justice Fortas in dissenting from a decision upholding the conviction of a defendant for public drunkenness even though he was an alcoholic.³³

His endorsement of noncriminal status for abortion originated in his 1973 concurrence to one of the Court's most controversial

28. See N. MORRIS & G. HAWKINS, *THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL* 3 (1970); R. RICH, *THE SOCIOLOGY OF CRIMINAL LAW*, Table of Contents (1979); E. SCHUR, *CRIMES WITHOUT VICTIMS* 169-79 (1965); Morris, *The Law is a Busybody*, N.Y. Times, Apr. 1, 1973, § 6 (Magazine), at 10.

29. See Greenhouse, *supra* note 3, § A, at 14, col. 5; Stewart, *The Role and Rights of the Press*, Wash. Post, Nov. 11, 1974, § A, at 20, col. 3.

30. See *Robinson v. California*, 370 U.S. 660 (1962).

31. U.S. CONST. amend. VIII.

32. *Robinson*, 370 U.S. at 666-67.

33. *Powell v. Texas*, 392 U.S. 514 (1968) (Fortas, J., dissenting).

thrusts into the domain of victimless crimes: the overturning of most state anti-abortion statutes.³⁴ The right to abortion, he wrote, was clearly "embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment."³⁵ He reaffirmed this position at a press conference following the announcement of his imminent retirement from the bench.³⁶ His concurrence was surprising because he had dissented from a high court ruling in 1965³⁷ that invalidated a Connecticut ban on contraceptives. He favored the repeal of this statute, but did not believe that the Court should substitute its view for that of the state legislature.³⁸ In 1972, however, he joined the majority in nullifying a Massachusetts statute which permitted only married persons access to contraceptives. The statute was held to be violative of the equal protection clause of the fourteenth amendment.³⁹

Other victimless crimes also were matters of concern to Justice Stewart. He saw Sunday closing laws as an unwarranted governmental intrusion into the practice of faiths, like Orthodox Judaism, which require abstention from work on Saturday, but not on Sunday. In a 1961 dissent from a group of Supreme Court rulings in this area, he commented:

Pennsylvania has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice. It is a choice which I think no State can constitutionally demand. For me this is not something that can be swept under the rug and forgotten in the interest of enforced Sunday togetherness.⁴⁰

Sexual conduct between consenting adults is an issue where Justice Stewart's views are less clear. In 1975, for instance, he joined the majority in summarily affirming a lower court decision upholding a Virginia enactment outlawing homosexual acts and heterosexual oral copulation.⁴¹ This position, along with his votes

34. *Roe v. Wade*, 410 U.S. 113 (1973) (Stewart, J., concurring).

35. *Id.* at 170.

36. *See Dear Mr. Steward [sic], Why Do You Stay on [the] Court Longer than You Need to?*, Wash. Post, June 20, 1981, § A, at 9, col. 3.

37. *See Griswold v. Connecticut*, 381 U.S. 479 (1965) (Stewart, J., dissenting).

38. *Id.* at 530-31.

39. *See Eisenstadt v. Baird*, 405 U.S. 438 (1972).

40. *Braunfeld v. Brown*, 366 U.S. 599, 616 (1961) (Stewart, J., dissenting). *See also* *Gallagher v. Crown Kosher Supermarket*, 366 U.S. 617 (1961) (Brennan, J., dissenting) (Sunday-closing statute upheld after challenges on free exercise, due process, and equal protection grounds).

41. *See Doe v. Richmond*, 425 U.S. 901, *reh'g denied*, 425 U.S. 985 (1976). *See R. WOODWARD & S. ARMSTRONG, THE BROTHERS* 425 (1979).

on contraceptive issues, conflicts with his support of abortion rights—for all three subjects are matters of privacy deserving uniform treatment. These decisions enhance his reputation as a “swing” justice.

III. JUDICIAL ACCESS IN CIVIL CASES

Although the Justice may have considered some victimless crime cases as sand in the federal judicial gears, he saw greater opportunities for limiting judicial access in civil litigation. He participated in numerous decisions affecting the intake of litigation into the civil system, covering numerous subjects: diversity-of-citizenship jurisdiction, political questions, habeas corpus filings, abstention, standing, class actions, public recompense for participation in governmental proceedings, and implied causes of action.

A. *Diversity of Citizenship Jurisdiction*

Although diversity of citizenship cases⁴² were not the first access decisions faced by Justice Stewart, they represent his earliest known interest. As early as 1957, two years before becoming a Supreme Court member, he manifested a strong concern with this topic when he called on “the lawyers of the United States to take a long and careful look at the whole concept of diversity jurisdiction.”⁴³ He expressed strong skepticism toward the continuation of diversity jurisdiction.⁴⁴

Justice Stewart’s doubts about the validity and necessity of diversity jurisdiction in light the rising caseloads in federal tribunals stemmed from four implicit observations: the incongruity of having national and state judges with different salaries, juries, and procedures applying the same state law; the desirability of having judicial forum decided by the significance of the litigation rather than by accidents of geography; a suspicion that federal courts were flooded with trivial suits; and a confidence in the ability of state courts to handle state questions expeditiously and fairly, especially toward non-resident parties.⁴⁵ He furnished no support, however, for his disenchantment with the federal disposition of such cases and his concomitant faith in state judiciaries.

42. See U.S. CONST. art. III, § 2, cl. 1.

43. Stewart, *supra* note 1, at 480.

44. See *id.* at 481-82. Stewart did stop short of urging Congress to eliminate such authority.

45. Stewart, *supra* note 1, at 480.

In 1976 Stewart reaffirmed his misgivings toward diversity litigation by dissenting from a Supreme Court holding that barred a federal trial judge from remanding a case to a state court because a crowded district court calendar allegedly hampered the plaintiffs' efforts to have their case decided on its merits. The dissenting justices argued that the majority ruling violated what they regarded as express congressional intent to allow such transfers.⁴⁶

In 1978 Justice Stewart spoke for the majority in mandating total diversity of citizenship as a prerequisite to the invocation of federal judicial authority.⁴⁷ He explained that "diversity jurisdiction does not exist unless *each* defendant is a citizen of a different State from *each* plaintiff."⁴⁸ In his view, historical congressional intent dictated this conclusion.⁴⁹

Stewart's opposition to diversity litigation in the federal judicial system also reflected his concern about the size and steady rise in the number of diversity cases confronting federal district courts during the late 1970's and about Congress' reluctance to eliminate diversity jurisdiction. Between 1975 and 1980, such diversity cases constituted between twenty and twenty-five percent of the total caseload.⁵⁰ Congress is reluctant to eliminate diversity jurisdiction because of opposition from the organized bar which favors the latitude permitted by such jurisdiction. Indeed, access to the courts was recently made easier, at least in federal question cases, by eliminating the requirement that the amount in controversy in such cases be at least \$10,000.⁵¹

B. *Political Questions*

Justice Stewart also sought to curtail litigational access to the national bench in cases involving political questions. Courts have traditionally considered these issues nonjusticiable and thus better left to legislative or executive resolution. Justice Stewart first analyzed this subject in a spate of legislative redistricting suits in the 1960's and 1970's. Initially, he wanted to narrow the scope of review for such cases, although one effect was the opening of federal

46. *Thermtron Products Inc. v. Hermansdorfer*, 423 U.S. 336, 361 (1976).

47. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978).

48. *Id.* at 373 (emphasis supplied).

49. *Id.* at 374.

50. ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 227 (Table 17) (1980) [hereinafter cited as ANNUAL REPORT].

51. Jurisdictional Amendments Act, Pub. L. No. 96-486, 94 Stat. 2369 (1980). *See Josephson, Access to Justice: A Legislative Analysis*, 14 CLEARINGHOUSE REV. 810 (1980).

judicial gates to more of them. In 1962, for instance, he voted with the majority to mandate the reapportionment of one house of bicameral state legislatures through uniformly populated districts in accordance with the equal protection clause of the fourteenth amendment.⁵² A year later he concurred in a decision applying this requirement to a Georgia county-unit system for tabulating votes in the primary elections for United States Senator and for statewide offices—a method which resulted in giving greater weight to votes from small towns rather than urban sections of this state.⁵³ His concurrence concluded: “Within a given constituency, there can be room for but a single constitutional rule—one voter, one vote.”⁵⁴

In 1964, however, Justice Stewart dissented from two reapportionment decisions, *Wesberry v. Sanders*⁵⁵ and *Reynolds v. Sims*,⁵⁶ which triggered an avalanche of litigation in the federal district courts.⁵⁷ *Wesberry* had upheld reapportionment in U.S. House of Representatives districts. Justice Stewart’s dissent rested on the belief that, despite the justiciability of the redistricting issue, the Constitution did not require such reapportionment on a one-person, one-vote basis.⁵⁸ *Reynolds* had upheld reapportionment for state legislatures. Justice Stewart dissented there from what he saw as the Court’s attempt to lock a particular (egalitarian) interpretation of proper legislative districting into the Constitution. In another instance, Justice Stewart sought to permit alternative representational methods (for instance, geographical) in one legislative house to accommodate the regional, economic, and social interests that vary from one state to another, thus encouraging the development of different representational patterns.⁵⁹ He summarized his outlook by saying:

[T]he Equal Protection Clause demands but two basic attributes of any plan of state legislative apportionment. First, it demands that, in the light of the State’s own characteristics and needs, the plan must be a rational one. Secondly, it demands

52. See *Baker v. Carr*, 369 U.S. 186 (1962).

53. See *Gray v. Sanders*, 372 U.S. 368 (1963) (Stewart, J., concurring).

54. *Id.* at 382.

55. 376 U.S. 1 (1964).

56. 377 U.S. 533 (1964).

57. EDWARD S. CORWIN’S THE CONSTITUTION AND WHAT IT MEANS TODAY 522 (H. Chase & C. Ducat eds. 1978). One need only “Shepardize” the *Baker*, *Wesberry*, and *Reynolds* cases to perceive their extensive impact on the federal trial courts.

58. *Wesberry*, 376 U.S. at 50–51 (Stewart, J., dissenting).

59. See *Lucas v. Forty-Fourth Gen. Assembly of Colo.*, 377 U.S. 713, 748–49 (1964) (Stewart, J., dissenting).

that the plan must be such as not to permit the systematic frustration of the will of a majority of the electorate of the State But, beyond this, I think there is nothing in the Federal Constitution to prevent a State from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.⁶⁰

Justice Stewart has sought further limitations on the egalitarian reapportionment concept. He supported a 1967 decision which opposed the application of this concept to county school boards⁶¹ and he dissented in 1968 from a judicial extension of this precept to Texas commissioner courts (local units with wide governmental authority).⁶² He noted caustically "that the apportionment of the legislative body of a sovereign State, no less than the apportionment of a county government, is far too subtle and complicated a business to be resolved as a matter of constitutional law in terms of sixth-grade arithmetic."⁶³ In 1969⁶⁴ and 1973,⁶⁵ he voted to uphold deviations from mathematical equality in the populations of state legislative districts, although he was less tolerant of such variances in judicially as opposed to legislatively ordered reapportionment plans.⁶⁶

C. *Habeas Corpus Filings*

Stewart also sought to restrict access to federal tribunals by consistently discouraging habeas corpus filings. He first confronted this issue in 1963, when he dissented from two high court rulings which greatly expanded the opportunity of prisoners to challenge convictions by state courts.

In *Townsend v. Sain*,⁶⁷ the Court directed federal trial courts to grant evidentiary hearings in cases where: a district judge's basis for admitting a confession was indeterminable; the judge's reason for instructing jurors to disregard a confession was unclear; the

60. *Id.* at 753-54. For Justice Stewart's dissents in cases analogous to *Lucas*, see *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 655 (1964); *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 676-77 (1964); *Davis v. Mann*, 377 U.S. 678, 693-94 (1964); *Roman v. Sincok*, 377 U.S. 695, 712 (1964).

61. *See Sailors v. Board of Educ.*, 387 U.S. 105 (1967) (Stewart, J., concurring).

62. *See Avery v. Midland County*, 390 U.S. 474 (1968) (Stewart, J., dissenting).

63. *Id.* at 510.

64. *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969) (Harlan, J., joined by Stewart, J., dissenting).

65. *Gaffney v. Cummings*, 412 U.S. 735 (1973); *Mahan v. Howell*, 410 U.S. 315 (1973).

66. *See McDaniel v. Sanchez*, 452 U.S. 130 (1981) (Stewart, J., dissenting); *Connor v. Finch*, 431 U.S. 407 (1977).

67. 372 U.S. 293 (1963).

state court proceedings remained questionable; and past requests for habeas corpus have been denied without evidentiary hearings.⁶⁸ Justice Stewart encapsulated his displeasure with this decision in the following comment:

I differ with the Court's disposition of this case in two important respects. First, I strongly doubt the wisdom of using this case—or any other—as a vehicle for cataloguing in advance a set of standards which are inflexibly to compel district judges to grant evidentiary hearings in habeas corpus proceedings. Secondly, I think that a *de novo* evidentiary hearing is not required in the present case even under the very standards which the Court's opinion elaborates.⁶⁹

In *Fay v. Noia*,⁷⁰ the Court ordered the district courts to furnish *habeas corpus* relief if a state prisoner convicted of murder and sentenced to lifetime incarceration failed to waive intelligently and knowingly his right to appeal his conviction where the appeal, if successful, would have resulted in a retrial and the chance of capital punishment. He joined Justices Harlan and Clark in Justice Harlan's dissenting opinion, which favored a denial of relief on federalism grounds. The dissent saw this conviction as resting on a sufficient, independent state ground and requiring federal judicial respect.⁷¹ Justice Clark, in a separate dissent, noted that the majority's holding would precipitate a massive increase in the number of such petitions in the federal trial courts.⁷² The incidence of such state petitions indeed mushroomed from 2,624 in 1963 to 19,574 in 1980—a rise of 745.96%.⁷³

Justice Stewart was sensitive to these concerns, and his desire to reduce the stream of habeas corpus petitions continued through the 1970's, when he increasingly found himself to be part of a new majority. In *Davis v. United States*,⁷⁴ he joined the Court in ruling that the exclusion of blacks from an indicting United States grand jury was not, under the circumstances, grounds for granting federal habeas corpus relief. His majority opinion in *Frances v. Henderson*⁷⁵ reaffirmed the *Davis* decision and also extended it to the state court level, requiring a demonstration of actual prejudice in the composition of state grand juries. The holding rested on

68. *Id.* at 320-21.

69. *Id.* at 326 (Stewart, J., dissenting).

70. 372 U.S. 391 (1963).

71. *Id.* at 448-49.

72. *Id.* at 446.

73. ANNUAL REPORT, *supra* note 50, at 231 (Table 20).

74. 411 U.S. 233 (1973).

75. *Francis v. Henderson*, 425 U.S. 536 (1976).

“considerations of comity and federalism.”⁷⁶ In another instance he joined Justice Powell’s concurrence in the Court’s denial of habeas corpus to a convict who had stood trial in prison attire, and had failed to make a timely objection.⁷⁷ In a third case, he endorsed the majority’s decision to bar relief to a state prisoner who alleged that evidence introduced at his trial had been obtained in violation of the fourth amendment’s ban on illegal searches and seizures.⁷⁸ The only caveat to this ruling was the requirement that state tribunals supply a complete and fair opportunity for hearing evidentiary challenges.⁷⁹

D. *Abstention*

Justice Stewart sought to limit access to the federal courts through abstention. Stewart believed national tribunals, except in extraordinary circumstances, should permit state proceedings to conclude before considering whether to intercede in defense of federal constitutional rights asserted by defendants in criminal cases.⁸⁰ This practice maintains federalism in the judicial sphere and keeps most cases in state, rather than federal, courts. Such deference, however, may thrust defendants into lengthy, costly litigation in state courts that may be hostile to claims of federal constitutional and statutory rights.

Initially, Justice Stewart opposed the abstention doctrine. In 1964 and 1965, he supported his colleagues’ rulings to ease the abstention policy where plaintiffs had made a reasonable mistake in thinking that they had to file their actions in state tribunals first⁸¹ and where defendants had tried to stop prosecutions for alleged violations of state antisubversion statutes.⁸²

Later, Justice Stewart adopted a more favorable view of abstention perhaps because of growing federal caseload pressures. In 1970, a unanimous Court overturned the intervention of a federal district court in a case involving the constitutionality of Alaska fishing regulations which limited the issuance of salmon gear licenses to a specific class of persons.⁸³ The Court held that

76. *Id.* at 541.

77. *See Estelle v. Williams*, 425 U.S. 501 (1976) (Powell, J., concurring).

78. *See Stone v. Powell*, 428 U.S. 465 (1976).

79. *Id.* at 494.

80. For a discussion of the abstention doctrine, *see* C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 52 (3d ed. 1976).

81. *See England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411 (1964).

82. *See Dombrowski v. Pfister*, 380 U.S. 479 (1965).

83. *Reetz v. Bozanich*, 397 U.S. 82 (1970).

the lower court should have declined to hear the suit while it was pending in an Alaska tribunal.⁸⁴

In 1971, Justice Stewart supported several holdings which raised the abstention barrier to various kinds of litigation. He concurred in the Court's return to its earlier reluctance to intervene in matters involving alleged harassment and prosecution under an evidently unconstitutional state law.⁸⁵ He felt that threat of irreparable injury to the defendants was not great and immediate enough to warrant federal judicial intervention. Such a danger might exist under other circumstances—for instance, where a state law was *prima facie* unconstitutional or where "official lawlessness" in the administration of a state enactment had occurred.⁸⁶ He also applied the abstention doctrine to dissolve a lower federal court injunction against prosecution under allegedly unconstitutional state and local laws where no party had suffered or been threatened with injury.⁸⁷ Justice Stewart believed this policy allowed state court prosecutions under state criminal anarchy laws to proceed without a prior determination of the constitutionality of such statutes.⁸⁸ He supported this forbearance in a trio of cases involving state prosecutions under obscenity laws, the validity of which remained undecided.⁸⁹ Finally, he supported abstention in a case involving a political party's challenge to the constitutionality of a state loyalty oath.⁹⁰

E. *Standing*

Restriction on the grant of standing⁹¹ was another theory by which Justice Stewart sought to restrict entry into the national judiciary. Ultimately, he favored standing only for those plaintiffs with direct, adversarial interests in the proceedings. As with abstention, he initially wanted to increase the scope of standing, but later sought a narrowed application. This may have reflected his growing alarm with the rise of the civil caseloads in the district courts, which grew from 59,284 in 1960 to 87,321 in 1970 (an increase of 47.3%) and then catapulted to 168,789 by 1980 (a 93.3%

84. *Id.* at 87.

85. *See* *Younger v. Harris*, 401 U.S. 37 (1971) (Stewart, J., concurring).

86. *See id.* at 56.

87. *See* *Boyle v. Landry*, 401 U.S. 77 (1971).

88. *See* *Samuels v. Mackell*, 401 U.S. 66 (1971).

89. *See* *Perez v. Ledesma*, 401 U.S. 82 (1971) (Stewart, J., concurring); *Dyson v. Stein*, 401 U.S. 200 (1971); *Byrne v. Karalexis*, 401 U.S. 216 (1971).

90. *See* *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972).

91. For a general discussion of standing, *see* C. WRIGHT, *supra* note 80, § 13.

escalation during the 1970's).⁹² This change occurred despite two partially countervailing developments—the recent decline in the volume of federal criminal cases⁹³ and the enactment of the Omnibus Judgeship Bill in 1978, which added 117 new federal trial judge positions to the 398 previously authorized.⁹⁴

Justice Stewart's record on standing issues spans a thirteen year period, beginning with his support of the 1968 decision to grant federal taxpayers standing to file suit to stop the spending of federal money for instructional materials in parochial schools.⁹⁵ In 1972, however, Stewart's majority opinion refused standing to an environmental interest group which sought to enjoin federal officials from permitting the building of a recreation area in a national park.⁹⁶ This organization failed to allege harm to itself or its members by the proposed construction.⁹⁷ Nonetheless, in 1974 Stewart dissented from a Court ruling that denied standing to a taxpayer who sought to compel the Secretary of the Treasury to disclose the expenditures of the Central Intelligence Agency pursuant to a constitutional provision requiring the disclosure of "all public money" expended by the national government.⁹⁸ Stewart asserted: "It seems to me that when the asserted duty is, as here, as particularized, palpable, and explicit as those which courts regularly recognize in private contexts, it should make no difference that the obligor is the Government and the duty is embodied in our organic law."⁹⁹ Later in his opinion he added that, although the taxpayer's case might well be dismissed on one or more of several bases, that did not mean that the taxpayer did not have standing to bring the case.¹⁰⁰

The following year, Justice Stewart reversed his field. He joined the majority in disallowing standing to petitioners who challenged the constitutionality of restrictive zoning ordinances which allegedly prevented persons of low and middle incomes from living in a suburb of Rochester, New York.¹⁰¹ The Court's

92. ANNUAL REPORT, *supra* note 50, at 217 (Table 13).

93. *Id.* at 269 (Table 40).

94. See Act of Oct. 20, 1978, Pub. L. No. 95-486, § 1(c), 92 Stat. 1629, 1630; *Carter Signs Bill Adding Judges*, San Diego Union, Oct. 21, 1978, § A, at 2, col. 3.

95. See *Flast v. Cohen*, 392 U.S. 83 (1968).

96. See *Sierra Club v. Morton*, 405 U.S. 727 (1972).

97. *Id.* at 735.

98. *United States v. Richardson*, 418 U.S. 166, 202 (1974). The relevant constitutional provision is found at U.S. CONST. art. 1, § 9, cl. 7.

99. *Richardson*, 418 U.S. at 204.

100. *Id.* at 207.

101. See *Warth v. Seldin*, 422 U.S. 490 (1975).

denial was due to an absence of a direct relationship between the alleged harm and the ordinances. The Court saw the plaintiff's ability to live in this community as dependent on the willingness of third parties to construct low income housing.¹⁰²

In 1976, Justice Stewart supported the Court's denial of standing to citizens seeking to revise the disciplinary procedures of a police department because the plaintiffs had alleged no personal deprivations of constitutional rights.¹⁰³ That same year he joined the majority in withholding standing from impoverished petitioners who sought enforcement of tax statutes to end the tax benefits of health care centers which declined to furnish free medical assistance.¹⁰⁴ The Court's explanation was that the plaintiffs did not show a causal link between their greater difficulty in obtaining essential hospital services and the Internal Revenue Service allowance of tax advantages to a hospital supplying only emergency aid.¹⁰⁵ Stewart contended that he could not "now imagine a case, at least outside the First Amendment area, where a person whose own tax liability was not affected ever could have standing to litigate the federal tax liability of someone else."¹⁰⁶

Justice Stewart, however, was a part of a 1977 unanimous Court that accorded standing to a Washington apple growers association that challenged the validity of a North Carolina law requiring all apples in closed containers entering or sold in the latter state to feature their federal grade or the ungraded label.¹⁰⁷ Standing was present due to three elements allegedly missing in the 1975 suit: the existence of standing if the association members had sued individually; the relevance of the interests for which the action was filed to the organization's purpose; and the absence of a need for each association member to participate in the suit.¹⁰⁸

In 1978, the Justice concurred in a Supreme Court decision to grant standing to litigants who lived near the location of proposed nuclear power plants.¹⁰⁹ They challenged the constitutionality of a federal statute limiting the liability of such plants for accidents to \$560,000,000.¹¹⁰ Although upholding the act, the Court found

102. *Id.* at 504-06.

103. *See* *Rizzo v. Goode*, 423 U.S. 362 (1976).

104. *See* *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976).

105. *Id.* at 44-46.

106. *Id.* at 46 (Stewart, J., concurring).

107. *See* *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1976).

108. *Id.* at 343.

109. *See* *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59 (1978).

110. The challenged statute was the Price-Anderson Act, 42 U.S.C. § 2210 (1976).

that the plaintiffs had suffered injuries (specifically, higher water temperatures in nearby lakes and low level radiation emissions) sufficient to justify standing, and that, except for this law, the plants would not have been built and the injuries would not have occurred. Although sanctioning the statute, Justice Stewart opposed the accordance of standing since the petitioners lacked a direct interest in the outcome of the case. He noted that an "interest in the local water temperature does not, in short, give these appellees standing to bring a suit . . . to challenge the constitutionality of a law limiting liability in an unrelated and as-yet-to-occur major nuclear accident."¹¹¹

In 1979, Justice Stewart endorsed Justice Rehnquist's dissent from a majority ruling allowing standing to a village and its residents who accused local realtors of steering prospective homebuyers into different communities in violation of federal fair housing and civil rights laws.¹¹² The Court found the claims that the village was being deprived of racial balance and stability and that the plaintiffs denied residents the social and professional advantages of an integrated community sufficient to warrant standing for the plaintiffs and residents, respectively. Stewart remained unpersuaded that the plaintiffs had suffered direct injuries to justify such a grant.¹¹³

F. Class Actions

Class actions¹¹⁴ may alleviate some of the expanding workload of the federal judiciary. But since the number of suits instituted as class actions has also been rising,¹¹⁵ Stewart supported the tightening of rules governing class actions.

In 1969, Justice Stewart endorsed the Supreme Court's refusal to permit the aggregation of individual claims into one that met the \$10,000 jurisdictional amount.¹¹⁶ Four years later he joined a majority in extending this limit to each claim within a class action.¹¹⁷ In 1974, he supported a further constriction in a decision which required plaintiffs in class action suits to notify all other

111. 438 U.S. at 95 (Stewart, J., concurring in the result).

112. See *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979).

113. See *id.* at 128-29 (Rehnquist, J., dissenting).

114. For a discussion of class actions within the federal court system, see C. WRIGHT, *supra* note 80, § 72.

115. ANNUAL REPORT, *supra* note 50, at 250, 253 (Table 31), 254 (Table 32).

116. See *Snyder v. Harris*, 394 U.S. 332 (1969).

117. See *Zahn v. International Paper Co.*, 414 U.S. 291 (1973).

class members and to defray this cost.¹¹⁸ Because of the expense and difficulty of locating other similarly situated persons, this decision erected a formidable barrier to the frequent use of the class action, especially by indigent and politically weak claimants. The impact of these decisions on the federal courts has been a pronounced one, especially since 1976 when 3,584 class actions were filed.¹¹⁹ Since then, filings have dropped to 1,568 in 1980.¹²⁰

G. *Residual Areas*

Justice Stewart tried to curb federal judicial access in two other areas: public compensation for participation in governmental proceedings and implied causes of action. The Justice supported the Court's decision to bar the plaintiffs' recovery of attorney's fees in an environmental suit pertaining to construction of the Alaska oil pipeline¹²¹—a holding to which Congress responded in 1976.¹²² The basis for this ruling was the absence of statutory authorization for the payment of such expenses.¹²³ With respect to implied causes of action, Stewart joined a unanimous decision refusing to infer a civil cause of action that would have enabled a stockholder to force corporate officials to repay unlawful federal campaign contributions.¹²⁴ The Court ruled that interceding law made the suit appropriate for Federal Election Commission resolution.¹²⁵

IV. JUSTICE STEWART AND JUDICIAL ACCELERATION

Justice Stewart's philosophy of federal judicial administration encompassed more than merely the use of procedural devices to restrict the access to federal courts. To him, the ability of federal tribunals to keep pace with their caseloads and to render just and expeditious decisions turned on discouraging some litigation and accelerating the conversion of decisional inputs into holdings. His outlook on accelerating federal judicial resolutions falls into three

118. See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).

119. ANNUAL REPORT, *supra* note 50, at 250, 253 (Table 31).

120. *Id.*

121. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975).

122. PUB. L. NO. 94-559, 90 Stat. 2641 (1976), which gives federal courts discretion to award attorneys' fees in civil rights cases, was enacted "to remedy anomolous gaps in our civil rights laws created by . . . *Alyeska Pipeline*. . . ." See S. REP. NO. 94-1011, 94th Cong., 2d Sess. 1 (1976), reprinted in 1976 U.S. CODE CONG. & AD. NEWS 5908, 5909.

123. See *Alyeska Pipeline*, 421 U.S. at 269-71.

124. *Cort v. Ash*, 422 U.S. 66 (1975).

125. *Id.* at 74-77.

areas: structural changes; managerial (or supervisory) actions; and procedural alterations.

A. *Structural Changes*

When Potter Stewart was elevated to the Supreme Court in 1958, the structure of the federal court system was embedded in tradition. It had not changed significantly since 1891 when Congress established courts of appeals to replace the circuit courts, in which Supreme Court Justices and district judges traveled throughout the circuit to hear cases.¹²⁶ During Justice Stewart's years on the bench, however, notable structural changes occurred; others received serious public debate.

One modification was the creation of the Federal Judicial Center in 1967, an agency intended to serve as the research, development, and educational arm of the national court system.¹²⁷ In 1968, Congress provided a second structural alteration—a system of salaried, legally qualified United States Magistrates which supplanted fee-paid, nonlawyer federal commissioners, and which improved the assistance supplied to federal trial judges in coping with their growing caseloads.¹²⁸ Justice Stewart took public positions on neither of these developments, but in light of his definite concern over growing caseloads, it is not unreasonable to assume that he supported them. That assumption would seem to hold also regarding the creation of circuit executives' offices which aided the circuit chief judges,¹²⁹ and provision for an administrative assistant to the Chief Justice of the United States in 1972.¹³⁰

Justice Stewart publicly stated his view on the most controversial proposed structural change for the national court system—the establishment of a seven-member national court of appeals to be jurisdictionally located between the Supreme Court and the Courts of Appeals. Recommended in 1972 by a respected group assembled by Chief Justice Burger, the proposed court was to be staffed with Court of Appeals judges serving on a part-time basis or, in a later version of this proposal, by separate jurists serving on that court only.¹³¹ This would truncate most of the Supreme

126. See P. FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* 3-7 (1973); F. KLEIN, *FEDERAL & STATE COURT SYSTEMS* 167-68 (1977).

127. Act of Dec. 20, 1967, Pub. L. No. 90-219, § 101, 81 Stat. 664.

128. Act of Oct. 17, 1968, Pub. L. No. 90-578, § 101, 82 Stat. 1108-1114.

129. Act of Jan. 5, 1971, Pub. L. No. 91-647, § 1, 84 Stat. 1907, 1908.

130. Act of Mar. 1, 1972, Pub. L. No. 92-238, § 1, 86 Stat. 46.

131. Report of the Study Group on the Caseload of the Supreme Court, 57 F.R.D. 573,

Court's docket by delegating most cases to the new tribunal, which would return annually 400 to 500 (of the total 4,000 cases heard annually) of the most significant disputes to the Supreme Court.¹³²

Shortly after the announcement of this proposal, Justice Stewart expressed his skepticism, due to the timing of this idea.¹³³ As early as 1960, less than two years after coming to the high court, he had publicly complained about the volume of his workload¹³⁴ but had not regarded it as sufficiently onerous to necessitate a drastic structural alteration. In 1973 he favored a national court of appeals if the number of cases before the Supreme Court continued to mount.¹³⁵ Two years later, however, he reiterated his opposition to this proposal.¹³⁶ Even though the number of cases reaching the high court still exceeds 4,000, there has been no sign that he has (before or since his retirement) begun to support the proposed national court of appeals, relying instead on the appointment of competent and diligent Justices.¹³⁷

B. *Supervision*

Justice Stewart's opposition to the proposed national appellate court did not affect his support of stronger supervision within the current federal judicial framework. In 1966 and 1970, Stewart was in seven-member majorities that augmented the managerial authority of the federal circuit councils over the conduct of judges within their regions. In two separate cases involving the same dispute, the Supreme Court declined to strike down an interlocutory council order to prohibit a federal district judge from hearing cases because of his allegedly flagrant behavior, which cases then passed to other members of that circuit.¹³⁸ Justice Stewart rejected

576-577, 611 (1973). See also 1 THE ADVISORY COUNCIL FOR APPELLATE JUSTICE, *Appellate Justice 1975: SUMMARY & BACKGROUND* 24 (1975); 'Mini-High Court' To Screen Appeals Is Urged by Panel, Wall St. J., Dec. 20, 1972, at 19, col. 2.

132. Report of the Study Group on the Caseload of the Supreme Court, *supra* note 131, at 611. See also G. CASPER & R. POSNER, *THE WORKLOAD OF THE SUPREME COURT* 93-118 (1976) (remedies for the workload problem discussed).

133. See *No More a Court of Last Resort?*, N.Y. Times, Jan. 7, 1973, § 4, at 6, col. 1.

134. See *Stewart Differs on Court Burden*, N.Y. Times, Apr. 10, 1960, at 41, col. 4.

135. See *No More a Court of Last Resort?*, *supra* note 133, at 6, col. 6.

136. See *4 Justices Support New Appeals Court*, N.Y. Times, June 13, 1975, at 44, col. 4.

137. See W. BURGER, *YEAR-END REPORT ON THE JUDICIARY* 10 (Dec. 29, 1980), available from the Federal Judicial Center; *Interview with Justice Potter Stewart*, The Third Branch, Jan. 1982, at 6.

138. See *Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74 (1970) [hereinafter cited as *Chandler I*]; *Chandler v. Judicial Council of the Tenth Circuit*, 382 U.S.

the dissent's argument¹³⁹ that the federal circuit council (before it later revoked its order) had, in effect, removed a United States trial judge from the bench and thus had preempted Congress' sole authority to decide whether federal judges should be stripped of their offices, and that such stringent managerial oversight might threaten continued federal judicial autonomy.¹⁴⁰

In 1974, however, Justice Stewart tempered his inclination toward centralized judicial authority by voting to deny United States District judges the authority to delegate habeas corpus evidentiary cases to their magistrates without legislative authorization.¹⁴¹ This holding was premised on the lack of statutory approval for such delegations.¹⁴² In 1976, Congress rectified this situation with the Federal Magistrate Act,¹⁴³ and in 1979 it extended the authority of such "parajudges" to all cases federal trial judges could hear.¹⁴⁴ This extension was subject to the approval of the parties and the right to appeal a magistrate's decision to a supervising district judge.¹⁴⁵

Justice Stewart, however, would have allowed such jurists to remand suits to the state courts because of overcrowded dockets.¹⁴⁶ Furthermore, he favored interlocutory appeals to the Supreme Court in antitrust actions to preclude later direct appeals from the final judgments of district courts. He believed the high court's acceptance of the interlocutory appeals "would serve to lighten the burden on trial courts and litigants alike."¹⁴⁷

Stewart also was willing to send the review of decisions by three-judge federal district panels back to the courts of appeal.¹⁴⁸

1003 (1966) [hereinafter cited as *Chandler I*]. For a thorough account of this controversy, see J. GOULDEN, *THE BENCHWARMERS* 224-84 (1974).

139. *Chandler II*, 398 U.S. at 136-37 (Douglas, J., dissenting), 141-43 (Black, J., dissenting); *Chandler I*, 382 U.S. at 1004-06 (Douglas, J., dissenting).

140. *Chandler II*, 398 U.S. at 140-41 (Douglas, J., dissenting), 141-43 (Black, J., dissenting); *Chandler I*, 382 U.S. at 1006 (Douglas, J., dissenting).

141. *See* *Wingo v. Wedding*, 418 U.S. 461 (1974).

142. *Id.* at 469-73.

143. Act of Oct. 21, 1976, Pub. L. No. 94-577, § 1, 90 Stat. 2729.

144. Act of Oct. 10, 1979, Pub. L. No. 96-82, § 2(a)-(c), 93 Stat. 643 (codified at 28 U.S.C.A. § 636(a)-(c) (1982 Supp.)).

145. *Id.* § 2(c)(1), (4) (codified at 28 U.S.C.A. § 636(c)(1), (4) (1982 Supp.)).

146. *See* *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 360-61 (1976).

147. *Tidewater Oil Co. v. United States*, 409 U.S. 151, 187 (1972) (Stewart, J., dissenting).

148. *See* *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 100-01 (1974).

C. Procedure

A third area where Justice Stewart sought to accelerate federal judicial business centers on procedural changes. Such changes would involve such subjects as Supreme Court rulemaking authority, plea bargaining, courtroom order, the right to counsel, unanimity in jury verdicts, and minimum jury size. He believed that the Supreme Court possessed broad authority to establish litigation procedures for the entire federal judiciary—a position shared by a majority of the Court, but not by Justices Black and Douglas, who saw this matter as a congressional prerogative.¹⁴⁹

Stewart supported the use of plea bargaining to resolve criminal cases without lengthy trials. This support, however, depended on its intelligent and voluntary exercise with the advice of counsel.¹⁵⁰ In 1970, Stewart endorsed high court decisions protecting these agreements from subsequent challenges on such grounds as the possibility of receiving a death sentence in the event of trial and conviction,¹⁵¹ allegedly coerced confessions,¹⁵² and substantial delay between confessions and the entrance of a guilty plea.¹⁵³ A year later he asserted that the defendant must be allowed to withdraw from the agreement if the state violates its side of the plea bargain.¹⁵⁴

In 1970, Justice Stewart sanctioned the right of federal trial judges to remove unruly defendants from courtrooms after warnings against disrupting their trials.¹⁵⁵ In 1971, he supported the majority's extension of the right of counsel in misdemeanor trials when convicted defendants faced possible incarceration.¹⁵⁶ This change may have lessened judicial caseflows by encouraging prosecutors to plea bargain minor criminal cases.

Although he supported six-member juries in state felony tri-

149. See Rules of Evidence for United States Courts & Magistrates, 409 U.S. 1132-34 (1972); Amendments to the Rules of Civil Procedure for the United States District Courts, 383 U.S. 1087-93 (1966), 383 U.S. 1029-37 (1966), 374 U.S. 861-70 (1963), 368 U.S. 1009-14 (1961).

150. See *Boykin v. Alabama*, 395 U.S. 238, 241-43 (1969).

151. See *North Carolina v. Alford*, 400 U.S. 25 (1970); *Brady v. United States*, 397 U.S. 742 (1970).

152. See *McMann v. Richardson*, 397 U.S. 759 (1970).

153. See *Parker v. North Carolina*, 397 U.S. 790 (1970).

154. See *Santobello v. New York*, 404 U.S. 257, 268 (1971) (Marshall, J., joined by Stewart, J., concurring in part and dissenting in part).

155. See *Illinois v. Allen*, 397 U.S. 337 (1970).

156. See *Agensinger v. Hamlin*, 407 U.S. 25 (1972) (Brennan, J., joined by Stewart, J., concurring).

als,¹⁵⁷ Justice Stewart objected to the Supreme Court's approval of felony convictions by less-than-unanimous margins.¹⁵⁸ He described the unanimity rule as "the simple and effective method endorsed by centuries of experience and history to combat the injuries to the fair administration of justice that can be inflicted by community passion and prejudice."¹⁵⁹ In 1978, he joined the majority in overturning a misdemeanor conviction by a five-member jury, which he believed prevented a fair trial.¹⁶⁰ He reasoned that when a state criminal code was excessively broad and unconstitutional on its face, defendants convicted by five-person juries could not be retried on the same charges.¹⁶¹ Consequently, six-person juries are necessary to balance judicial fairness and speed in both criminal and civil suits in federal district courts.¹⁶²

VI. CONCLUSION

This Comment has examined Justice Stewart's philosophy toward federal judicial administration as reflected in the decisions in which he participated as a member of the Supreme Court. He sought to improve the federal judicial system mainly by imposing stringent restraints on the kinds of litigation permitted access to the federal courts. Secondly, he supported structural, managerial, and procedural efforts to accelerate the resolution of these cases. Both methods were necessary, he felt, in order to improve the national judiciary's ability to settle disputes expeditiously and fairly.

Some of Justice Stewart's colleagues, most notably Chief Justices Warren and Burger and Justices Clark, Brennan, and Douglas,¹⁶³ have publicly commented on the necessity of improvement in federal judicial administration and the relative efficacy of various approaches. Chief Justice Warren, and Justices Douglas and Brennan were generally reluctant to impede access to

157. See *Williams v. Florida*, 399 U.S. 78, 143 (1969) (Stewart, J., concurring in part and dissenting in part).

158. See *Johnson v. Louisiana*, 406 U.S. 356 (1972) (Stewart, J., dissenting); *Apodaca v. Oregon*, 406 U.S. 404 (1972) (Stewart, J., dissenting).

159. *Johnson*, 406 U.S. at 399.

160. See *Ballew v. Georgia*, 435 U.S. 223 (1978).

161. *Id.* at 246.

162. Burger, *Chief Justice's Yearend Report 1977*, 64 A.B.A. J. 211, 214 (1978).

163. See, e.g., Gazell, *Chief Justice Burger's Quest for Judicial Administrative Efficiency*, 1977 DET. C.L. REV. 455 (1977); Gazell, *Justice Douglas and Judicial Administration: A Libertarian Approach*, 14 GONZ. L. REV. 785 (1979); Gazell, *Tom C. Clark as Judicial Reformer*, 15 HOUS. L. REV. 307 (1978); Gazell, *Chief Justice Warren's Neglected Accomplishments in Federal Judicial Administration*, 5 PEPPERDINE L. REV. 437 (1978); Gazell, *Justice Brennan's Reflections on Judicial Modernization*, 10 RUT.-CAM. L. REV. (1978).

the federal bench because they believed such limitations particularly hampered the ability of the poor and the powerless to protect their rights. In contrast, Chief Justice Burger and Justice Clark suggested that, unless the federal courts strictly regulate their workloads, virtually all rights will be jeopardized.

Justice Stewart sympathized more with the latter view, which is indicative of his position on federal judicial administration. For instance, in 1974, he declared that "only a narrow construction is consonant with the overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interest of sound judicial administration."¹⁶⁴ Although he was speaking of a specific statute and tribunal, his statement also reflected his general attitude toward the best way of managing the federal courts.

Despite the end of Justice Stewart's involvement with federal judicial administration at the Supreme Court level, his interest in the field will continue. In a January, 1982 interview,¹⁶⁵ Justice Stewart indicated that he will sit in the Courts of Appeals of the Sixth and Seventh Circuits. His continued judicial service will likely further his influence in the area of federal judicial administration.

164. *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 98 (1974).

165. *Interview with Justice Potter Stewart*, *supra* note 137, at 9.