

BYU Law Review

Volume 1978 | Issue 3

Article 2

9-1-1978

Justice John Paul Stevens : A11 Initial Assessment

Branch Y. Ball

Thomas M. Uhlma

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>

 Part of the [Courts Commons](#), [Judges Commons](#), and the [Legal Biography Commons](#)

Recommended Citation

Branch Y. Ball and Thomas M. Uhlma, *Justice John Paul Stevens : A11 Initial Assessment*, 1978 BYU L. Rev. 567 (1978).
Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1978/iss3/2>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Justice John Paul Stevens: An Initial Assessment

Branch Y. Ball and Thomas M. Uhlman***

Compared to other recent nominations to the Supreme Court, the selection and confirmation of John Paul Stevens was relatively uneventful. One of the five men seriously considered for the position, he was nominated by President Ford on November 28, 1975, only sixteen days after Justice Douglas tendered his resignation. Confirmation hearings began in the Senate shortly thereafter. Following three days of routine testimony,¹ the Senate Judiciary Committee unanimously endorsed the Stevens nomination with less than a minute's debate. Over the next six days he was roundly praised on the floor of the full Chamber and then confirmed as the 101st Justice of the Supreme Court by an overwhelming vote of ninety-eight to zero.²

Several factors contributed to the relative ease of the Stevens nomination. First, he possessed the criteria established by President Ford for choosing Douglas' successor: relative youth (middle aged), competence in law, and integrity.³ Fifty-five at the time of his nomination, Stevens graduated Phi Beta Kappa from the University of Chicago, attended Northwestern University Law School where he edited the law review and graduated first in his class, clerked for Supreme Court Justice Wiley Rutledge, became a partner in a prominent Chicago firm, and received high marks as a judge on the Seventh Circuit Court of Appeals.⁴

* B.A., 1973, Oregon State University; M.A., 1978, University of Missouri-St. Louis. Mr. Ball specializes in the area of judicial biography.

** Assistant Professor of Political Science, University of Missouri-St. Louis. B.A., 1968, University of Rochester; M.A., 1971, Ph.D., 1975, University of North Carolina at Chapel Hill. Dr. Uhlman is the recipient of the 1976 Edward S. Corwin Award given by the American Political Association for the best doctoral dissertation during the previous two years in constitutional law, courts, or the judicial process.

1. See *Hearings Before the Committee on the Judiciary, United States Senate, on Nomination of John Paul Stevens, of Illinois, to Be an Associate Justice of the Supreme Court of the United States*, 94th Cong., 1st Sess. (1975) [hereinafter cited as *Hearings Before the Senate Judiciary Committee*].

2. 121 CONG. REC. 39883, 40477, 40895-96, 41123-28 (1975).

3. Matthews, *Ford Lists His Criteria for Picking Court Justice*, St. Louis Post-Dispatch, Nov. 16, 1975, at 2A, col. 1.

4. For a more detailed analysis of Justice Stevens' background and career, see Elsasser, *Ford Nominates Judge in Chicago to Supreme Court*, Chi. Tribune, Nov. 29, 1975, at 1, col. 1; McFadden, *The President's Choice: John Paul Stevens*, N.Y. Times, Nov. 29, 1975, at 1, col. 6; Rich, *Ford Picks Chicago Jurist*, Wash. Post, Nov. 29, 1975, at A1, col. 1.

Strong support within the Ford administration and the legal profession also greatly facilitated the nomination. Attorney General Levi was probably instrumental in bringing forth Stevens as a possible nominee. The two had come to know each other well at the University of Chicago School of Law where Levi had been dean and Stevens had taught occasionally. Levi's enthusiastic support was evident as soon as the nomination was made public. "For the many who know Judge Stevens and for those who will come to know him, I am sure it will be realized that the nomination is a commitment to excellence."⁵ Typical of the remarks made of the Stevens nomination was one by Jerome Kurland, professor of law at the University of Chicago. "He's a first-rate lawyer, a first-rate judge and a first-rate person—more than that you can't ask for."⁶ Plaudits were also forthcoming from the American Bar Association's Committee on the Federal Judiciary which stated that Stevens "meets high standards of professional competence, judicial temperament and integrity—the committee's highest evaluation."⁷

Finally, Justice Stevens maintained a low political profile throughout his professional career and, as a result, encountered little opposition on ideological grounds. While on the court of appeals he rarely appeared in nonlegal circles and once had even delayed for two years an address to a Northwestern alumni group for fear of making some improper public pronouncement. A prominent Chicago attorney characterized Stevens as "almost a non-political animal."⁸ It is not surprising that when Stevens' name was put forward, his political views were virtually unknown to legalists throughout the country and to most Senators on Capitol Hill.⁹

Clearly, Justice Stevens' intelligence, integrity, and career accomplishments contributed greatly to his successful and relatively easy confirmation to the Supreme Court. But he also benefited materially from his noncontroversial tenure as a court of appeals judge and his abstention from partisan political activity. Unpleasant memories of the Fortas, Haynsworth, and Carswell nominations made both the White House and the Senate eager to avoid a similar confrontation over the Douglas replacement.

5. Isaacs, *Specialist in Antitrust Law*, Wash. Post, Nov. 29, 1975, at A5, col. 1 (quoting Attorney General Levi).

6. McFadden, *supra* note 4, at 1, 14, cols. 7, 4 (quoting Jerome Kurland).

7. Rich, *supra* note 4, at A1, col. 5.

8. Isaacs, *supra* note 5, at A5, col. 3.

9. See *Senate Reaction Is Limited by Recess*, N.Y. Times, Nov. 29, 1975, at 14, col. 3.

With Stevens they were able to do so easily. He possessed all the necessary prerequisites for the position in addition to having powerful supporters and only token opposition.

The same factors that led to his successful confirmation also had a significant unintended consequence. Because of his impeccable credentials and apolitical career, much less was known about Justice Stevens' attitudes and beliefs than was known about those of other Justices at comparable stages in their careers. During the confirmation hearings he carefully avoided detailed answers to specific questions about his judicial philosophy and was not pressed by his questioners.¹⁰ Attempts by journalists and legal scholars to place an ideological label on Stevens were just as inconclusive. He has been called a centrist, a moderate, a moderate with conservative leanings, a centrist with progressive leanings, and a conservative.¹¹ Others have found Stevens difficult, if not impossible to categorize.¹²

This Article will remove much of the uncertainty about Stevens' political views by systematically assessing his voting record during his tenure on both the Seventh Circuit Court of Appeals and the Supreme Court. This ideological assessment is made by comparing the votes cast by Justice Stevens in economic and personal liberty cases during his seven-year judicial career to those of his colleagues on both courts. Because similar issues have repeatedly arisen in the approximately 700 cases in which he has participated, Stevens' general political attitudes and values can be inferred from his voting patterns over time.

While not substituting for the systematic analysis that was lacking at the time of his confirmation, this Article looks beyond Stevens' credentials and qualifications to explore performance. Moreover, after nearly two years on the Supreme Court, Justice Stevens has begun to establish a record. This record will be compared to his past decisionmaking as well as to the records of his judicial colleagues. The result will be a better understanding of

10. During the course of the judiciary hearings, for example, Senator Kennedy asked Stevens whether he would label himself an "activist" or a "strict constructionist." He replied, apparently satisfactorily, that he would not label himself. *Hearings Before the Senate Judiciary Committee*, *supra* note 1, at 32. See also Siddon, *Easy Senate OK Expected for Stevens*, *Chi. Tribune*, Dec. 8, 1975, at 7, col. 3.

11. Boyd, *Judge Stevens—His Views on Law*, *Chi. Tribune*, Nov. 30, 1975, at 6, col. 3; Matthews, *Decisions Indicate Nominee for Court Is a Conservative*, *St. Louis Post-Dispatch*, Nov. 30, 1975, at 2A, col. 1; Oelsner, *Ford Chooses a Chicagoan for Supreme Court*; *Nominee Is Appeals Judge*, *N.Y. Times*, Nov. 29, 1975, at 1, col. 8.

12. See Lewis, *The Stevens Nomination*, *N.Y. Times*, Dec. 4, 1975, at 41, col. 4; Oelsner, *Factors in Court Choice*, *N.Y. Times*, Nov. 30, 1975, at 1, col. 1; *Court Nominee Is Hard to Label*, *N.Y. Times*, Nov. 30, 1975, § 4, at 1, col. 3.

the one member of the Burger Court who remains an ideological enigma.

I. THE RESEARCH APPROACH, METHODS, AND DATA

The primary approach to be used in analyzing Stevens' performance and, in turn, his ideology is called issue voting analysis. His votes and those of his colleagues will be classified both by the principal substantive question at issue in a large number of cases and by the degree of liberalism or conservatism expressed by their votes in each case. Used frequently in judicial research,¹³ the approach facilitates the comparison of judicial positions, patterns of interaction, and the values and attitudes of individual jurists. While not "better" than the more traditional analysis of individual opinions in selected cases, this approach does have certain advantages. With cases in each subject matter area weighted equally, an occasional publicized vote or opinion in a "landmark" case will not have an inordinate influence on a Justice's overall position. Also, in studying voting behavior across a series of cases, trends become evident. This is particularly important here, where one objective is to contrast Stevens' positions on two separate courts.

During five years of service on the Seventh Circuit Court of Appeals, John Paul Stevens participated in 539 cases; 534 are included in this analysis.¹⁴ After taking his seat on the Supreme Court in January 1976, Stevens voted in 159 cases that had been decided with full opinions by May 1, 1977; 152 of these are examined.¹⁵

13. C. Herman Pritchett in his landmark study, *C. PRITCHETT, THE ROOSEVELT COURT: A STUDY IN JUDICIAL POLITICS AND VALUES 1937-1947* (1948), was the first legal scholar to uncover regularities in Supreme Court voting patterns that could be linked to similar attitudes and values among the Justices. This pioneering work has been meaningfully extended in a number of directions in subsequent years. See, e.g., G. SCHUBERT, *QUANTITATIVE ANALYSIS OF JUDICIAL BEHAVIOR* (1959); Goldman, *Conflict and Consensus in the United States Courts of Appeals*, 1968 *Wis. L. Rev.* 461; Lamb, *Warren Burger and the Insanity Defense—Judicial Philosophy and Voting Behavior on a U.S. Court of Appeals*, 24 *Am. U.L. Rev.* 91 (1974); Loeb, *Judicial Blocs and Judicial Values in Civil Liberties Cases Decided by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit*, 14 *Am. U.L. Rev.* 146 (1965); Schultz & Howard, *The Myth of Swing Voting: An Analysis of Voting Patterns on the Supreme Court*, 50 *N.Y.U.L. Rev.* 798 (1975); Ulmer, *Voting Blocs and "Access" to the Supreme Court: 1947-1956 Terms*, 16 *JURIMETRICS J.* 6 (1975).

14. These cases may be found in volumes 435-527 of the *Federal Reporter, Second Series*. Three labor cases not included in the *Federal Reporter* may be found in volumes 64, 68, and 69 of *CCH Labor Cases*. A complete list is also available from the authors at the University of Missouri-St. Louis. Cases dealing with jurisdictional rather than substantive issues were excluded along with cases heard by Stevens sitting alone.

15. See Appendix I. These cases can be found in volumes 423-30 of the *United States*

Both sets of cases were divided into two broad categories; those dealing with economic matters comprise one group,¹⁶ and personal liberty suits comprise the other.¹⁷ While other classificatory schemes are possible,¹⁸ the one adopted here is patterned after similar, widely accepted efforts by leading scholars in the field.¹⁹ The primary advantage of this partition is its capacity to distinguish among these major and distinct types of policy-relevant cases while retaining comprehensiveness within each category. As a result, judicial differences on broadly defined ideological positions can be compared across the variety of specific economic and personal liberty questions that are considered by the courts. At times classification was not easy, particularly when several substantive issues were raised simultaneously. After reading the opinions in each case, however, a relatively straightforward judgment was usually possible based on the primary thrust of the majority opinion.

After the cases were divided into categories, liberalism-conservatism indices were developed as general indicators of judicial attitudes and values for each type of case heard before each court.²⁰ Based on operational definitions of liberal and conservative positions on most major legal questions, the indices are summary measures and as such can be meaningfully applied across a number of subject matter areas. A liberal position in a case was defined as support for federal regulation or for the litigant who represented the less privileged or relatively disadvantaged social, economic, or political group or interest in society. Conversely, conservatism was operationalized as support for the party that

Reports. Cases were excluded if they focused on jurisdictional matters, were disposed of via an order, or were decided by a Justice sitting alone on an appeals bench.

16. Cases in the economic category present substantive issues concerning: bankruptcy, business, consumer interests, environmental protection, insurance claims, labor-management disputes, patents, copyrights, antitrust, personal injury, social security claims, stockholders' claims, taxation, landlord-tenant controversies, unemployment compensation, and federal-state or state-state economic disputes.

17. Cases in the personal liberty category present substantive issues concerning: criminal law suits, criminal defendant petitions, and civil rights litigation involving ethnic or racial minorities, aliens, or conscientious objectors.

18. See, e.g., Ulmer & Stookey, *Nixon's Legacy to the Supreme Court: A Statistical Analysis of Judicial Behavior*, 3 FLA. ST. U.L. REV. 331 (1975) (criminal cases and noncriminal cases in which government is a litigant).

19. The first such classification was developed by Pritchett and has been utilized with slight modification by Schubert and Goldman, among others. See C. PRITCHETT, *THE ROOSEVELT COURT: A STUDY IN JUDICIAL POLITICS AND VALUES 1937-1947*, at 253-63 (2d ed. 1969); G. SCHUBERT, *THE JUDICIAL MIND* 97-157 (1965); Goldman, *Conflict on the U.S. Courts of Appeals 1965-1971: A Quantitative Analysis*, 42 U. CIN. L. REV. 635, 642 (1973).

20. These indices complement but do not replace detailed analyses of judicial positions on specific legal questions.

enjoyed the relative social, economic, or political advantage or favor in each case.²¹ For example, in a landlord-tenant controversy (an economic case) a vote in favor of the landlord was classified as a generally conservative position while support for the tenant was considered liberal. Similarly, a vote against a party making a civil rights claim was treated as conservative while a position in favor of this type of personal liberty issue was considered liberal.²²

Within this classificatory scheme, values were assigned to Justice Stevens' votes as well as those of his colleagues sitting with him on a case. The author of the majority opinion usually received a score of either +1 or -1 depending upon whether he took a liberal (positive score) or conservative (negative score) position in the case.²³ When the author of the majority split on the issue, for example, by upholding a personal liberty claim in part and denying it in part, he received a score of 0. Judges joining the author of the majority opinion received the same score (+1 for a liberal stance, -1 for a conservative position, 0 for a split opinion).

Judges concurring with the majority, assuming the opinion was liberal, received a score of either +1.5 or +0.5 depending upon whether their concurrence was more or less liberal than the opinion of the majority. Likewise, judges concurring with the majority in a conservative decision received either a -1.5 or -0.5 score. Judges concurring in a split majority opinion were assigned a score of either +0.5 or -0.5 depending upon whether the concurrence was more or less liberal than the majority opinion.²⁴ Judges concurring in part and dissenting in part were given scores of 0. A dissenting judge usually received a score opposite in sign from that of the author of the majority opinion. Therefore, scores for various judges' positions in an individual case could conceivably range from +1.5 to -1.5.

Some subjectivity and error are inevitable in interpreting judges' general ideological positions from their votes and opinions across a broad range of specific cases. The usefulness of the resulting measure, however, far outweighs its shortcomings, and in the

21. These definitions are derived from those developed by MacIver and Nagel. See R. MACIVER, *THE WEB OF GOVERNMENT* 162 (rev. ed. 1965); Nagel, *Political Party Affiliation and Judges' Decisions*, 55 AM. POL. SCI. REV. 843, 846-47 (1961).

22. Appendix II presents a complete listing of liberal and conservative positions on the various legal questions that came before the courts on which Stevens sat.

23. The sign designations of liberal-positive and conservative-negative were arbitrarily assigned.

24. Concurring opinions that could not be distinguished ideologically were assigned values identical to the majority opinion.

vast majority of cases the distinctions were clear and could be made without difficulty. The scale itself represents an improvement over similar efforts undertaken in the past. Goldman utilized only three categories in differentiating ideological voting on the United States Courts of Appeals (equivalent to +1 (liberal), 0 (split), -1 (conservative)); differences of opinion that motivated judges to author concurring opinions or separate dissents were ignored as the judges were grouped in one of the three primary categories.²⁵ When these differences of opinion based on varying ideological perspectives appeared in the present study, they were measured by adjusting scale scores in the appropriate liberal or conservative direction (+.5 or -.5); these adjusted scores were then utilized along with the more common joint opinion scores in computing the ideological voting average for each judge.²⁶

After the cases in each category were examined and values assigned, the scores were totaled and averaged for each judge. The result is a relative ranking that is useful in understanding the ideological complexion of both courts on which Justice Stevens has served, his relative position within them, and possible changes in his position as he moved from one court to the other.

Except for occasional absences due to illness or disqualification, the same group of Justices voted with Stevens in the 152 Supreme Court cases included in this analysis. This constancy makes the ideological scores for all the Justices representative and the comparisons among them reliable. As a group, they responded to the same sets of facts, issues in controversy, and public policy questions. Unfortunately, group stability is not found on the court of appeals bench. Justice Stevens heard cases with thirty-one different judges in economic suits and thirty-six different jurists in personal liberty cases. Because of the varying composition of circuit panels, several of these jurists sat with Stevens only once or twice. In order to avoid misleading conclusions based on a small number of cases decided in common, only judges who sat with Stevens a minimum of fifteen times in either economic or personal liberty cases are retained in the court of appeals anal-

25. See Goldman, *supra* note 19, at 642; Goldman, *Voting Behavior on the United States Courts of Appeals 1961-1964*, 60 AM. POL. SCI. REV. 374 (1966).

26. When actually classified, the judges' votes were coded at +1 or -1 in the majority of instances. In fact, the more subtle ideological distinctions reflected in separate concurrences or dissents appeared, on the average, in less than 10% of the votes cast by each judge. When they did occur, they followed expected patterns. For example, the most liberal positions (+1.5) were embraced exclusively by judges whose overall voting averages were liberal.

ysis. After using the fifteen case cutoff, ten judges, including Stevens, remained in each category.

II. ECONOMIC CASES

During his tenure on the Seventh Circuit Court of Appeals, John Paul Stevens sat on 233 panels which rendered decisions in economic cases. As indicated in Table 1, his ideological position as measured by his votes in these cases was moderate. The slight liberal tendency (+0.15) should be minimized because, when viewed from the perspective of the entire scale (+1.5 to -1.5), Stevens departs only marginally from an ideologically neutral position. Stevens' score in relation to those of his colleagues on the Seventh Circuit indicates perhaps more clearly that he was an economic moderate. While the "court" as a whole (more appropriately this group of ten justices) may have voted in a slightly liberal manner, only Judge Castle's voting average (+0.75) falls outside the middle third of the scale (+0.5 to -0.5). Stevens lies in the center of this group of economic moderates with a voting record nearly identical to the average of his colleagues.²⁷ On the Supreme Court, Stevens has confronted a different collection of economic cases with a different group of judicial colleagues. Has his response varied?

TABLE 1—*Economic Cases: Average Ideological Voting Scores of Justice Stevens and Other Judges on the Seventh Circuit*^a

Judge	Ideological Scores ^b	Number of Cases
Castle	+0.75	16
Sprecher	+0.29	63
Campbell ^c	+0.20	15
Hastings	+0.16	24
Stevens	+0.15	233
Fairchild	+0.07	42
Pell	+0.07	72
Kiley	+0.06	50
Cummings	-0.11	38
Swygert	-0.11	44
Court mean =	+0.15	

^a The judges included sat with Stevens on a minimum of 15 cases.

^b Scores may range from +1.5 (liberal) to -1.5 (conservative).

^c Judge Campbell was a district court judge sitting by designation.

27. Because they comprise a major portion of the total, Justice Stevens' votes heavily influence the court of appeals averages in Tables 2 and 4. Nevertheless, these figures, when interpreted in conjunction with the individual scores, represent useful indicators of the general ideological complexion of the court.

Table 2 indicates that it has not. Based on his votes in the first seventy-two economic cases in which he participated as a Supreme Court Justice, Stevens' record is again only slightly removed from the midpoint of the ideological scale, and his average (+0.18) lies well within the moderate third. While there is some variation among individual Justices, the voting average for the entire Court in economic cases (+0.10) is quite close to Stevens'. Individually, Stewart, Powell, and Rehnquist are the only Justices on the conservative side of the scale's midpoint. Marshall, Brennan, and White are the Court's most progressive members, while Blackmun and Burger, in addition to Stevens, comprise a centrist third. In spite of this modest voting variation among individual Justices, the Court, like Justice Stevens, appears to be basically moderate on economic policy.

TABLE 2—*Economic Cases: Average Ideological Voting Scores of Supreme Court Justices*

Justice	Ideological Scores	Number of Cases
Marshall	+0.35	72
Brennan	+0.34	72
White	+0.23	72
<u>Stevens</u>	+0.18	72
Blackmun	+0.17	71
Burger	+0.03	72
Stewart	-0.10	71
Powell	-0.10	68
Rehnquist	-0.16	72
Court mean =	+0.10	

The moderate position taken by individual Justices over all cases may obscure significant differences among them on various types of economic controversies. To observe these patterns of agreement/disagreement, Table 3 presents the voting alignment among individual pairs of Justices. The top right-hand portion of the table indicates the frequency with which any two Justices voted together in the majority (++), the dissent (--), or took opposite positions (+- or -+). The bottom left-hand portion displays the overall degree of voting compatibility between pairs of Justices; the figures are the percentages of votes cast together in both the majority or dissenting opinions in the economic cases.²⁸

28. No distinction is made between concurring and joint opinions. To facilitate presentation, the table simply indicates the general alignment of pairs of Justices in majority or dissenting opinions.

TABLE 3—Voting Relationships Among Supreme Court Justices in Economic Cases

	MA	BR	WH	JPS	BL	BU	ST	PO	RE
		+ -	+ -	+ -	+ -	+ -	+ -	+ -	+ -
MA		+58 4 - 0 10	+60 2 - 7 3	+52 10 - 6 4	+57 4 - 9 1	+59 3 -10 0	+48 13 - 7 3	+51 7 - 9 1	+51 11 -10 0
BR 94.4			+56 2 -11 3	+50 8 - 8 6	+54 3 -12 2	+56 2 -13 1	+44 11 -13 3	+49 5 -11 3	+47 11 -14 0
WH 87.5	81.9			+55 12 - 3 2	+62 4 - 4 1	+64 3 - 5 0	+50 16 - 5 0	+55 8 - 5 0	+56 11 - 5 0
JPS 77.8	77.8	79.2			+54 3 -12 2	+55 3 -14 0	+44 13 -11 3	+48 6 -12 2	+49 9 -12 2
BL 81.7	78.9	88.7	78.9			+65 1 - 3 2	+52 13 - 2 3	+56 6 - 4 1	+56 10 - 4 1
BU 81.9	79.2	88.9	76.2	94.4			+54 14 - 1 2	+59 6 - 1 2	+60 9 - 1 2
ST 71.8	66.2	70.4	66.2	78.6	78.9			+48 4 -12 4	+54 1 - 6 10
PO 76.5	76.5	80.9	73.5	85.1	89.7	76.5			+52 8 - 5 3
RE 70.8	65.3	77.8	70.8	80.3	86.1	90.1	80.9		

MA=Marshall, BR=Brennan, WH=White, JPS=Stevens, BL=Blackmun,
 BU=Burger, ST=Stewart, PO=Powell, RE=Rehnquist
 Upper right: +vote cast in majority
 -vote cast in dissent
 Lower left: percentage agreement in both majority and dissent

The absence of sweeping differences among the Justices over general economic policy first noted in Table 2 is confirmed in Table 3. All the Justices agree substantially more often than they disagree. This is not to say, however, that differences fail to emerge. Rates of agreement vary significantly from Brennan-Marshall, Burger-Blackmun, Burger-Powell, and Stewart-Rehnquist, who voted together over 90% of the time, to Rehnquist-Brennan who agree on less than two-thirds of their votes.

With one exception, Justice Stevens joins with his colleagues between 70 and 80% of the time. In fact, he displays the smallest variation in agreement rates on the entire bench and is the only member of the Court not to vote with a fellow Justice in at least 80% of the cases. Stevens' highest rates of agreement are with Justices White (79.2%) and Blackmun (78.9%), the two men closest to him in their overall ideological scores (Table 2).

One interpretation of Stevens' record might be that as a new member of the Court he is feeling his way, waiting until he has gained experience to establish firm positions on economic matters. His behavior may be contrasted to more senior Justices who have strongly held views on certain types of economic controversies and would therefore be in more consistent agreement or disagreement when these issues are heard. Considering his court of appeals record, however, a more likely explanation is that as a true economic moderate, Justice Stevens frequently finds himself in agreement with both the moderate/liberal and the moderate/conservative Justices on the Court.

This initial assessment of Justice Stevens' voting highlights his moderate stance on economic issues and the consistency with which he has maintained his position on both benches. Perhaps facilitating his transition to the Supreme Court is the ideological congruence between the two courts. Stevens confronted a strikingly similar configuration of attitudes on economic policy as he moved from one court to the other. In both, moderate views have dominated, and within both, Stevens assumed a centrist position.

III. PERSONAL LIBERTY CASES

The picture of John Paul Stevens as a centrist is not markedly altered by examining his votes in personal liberty cases while a court of appeals judge (Table 4). However, differences do appear when the court's general voting patterns in personal liberty and economic cases are contrasted. The most notable may be a shift from a liberal to a conservative decisionmaking trend. While the court as a whole, and Justice Stevens in particular, must still

be considered moderate rather than either conservative or liberal, the consistency in the voting averages may highlight what amounts to an ideological emphasis in both types of cases.

TABLE 4—*Personal Liberty Cases: Average Ideological Voting Scores of Justice Stevens and Other Judges on the Seventh Circuit*^a

Judge	Ideological Scores ^b	Number of Cases
Castle	-0.05	19
Fairchild	-0.06	58
Kiley	-0.15	55
Sprecher	-0.17	67
Hastings	-0.23	33
Swygert	-0.26	88
Stevens	-0.37	301
Cummings	-0.41	91
Pell	-0.58	97
Duffy	-0.63	20
Court mean =	-0.29	

^a The judges included sat with Stevens on a minimum of 15 cases.

^b Scores may range from +1.5 (liberal) to -1.5 (conservative).

If such an ideological emphasis exists, it is more pronounced in personal liberty cases. Justice Stevens is the fourth most conservative in this ranking with an average score of -0.37. All of the judges are on the conservative side of the scale compared to eight out of ten on the liberal side in economic cases. Two judges, Pell and Duffy, fall in the conservative third of the personal liberty scale while only one judge is within the liberal third of the economic scale. Finally, the average score for the court as a whole is nearly twice as far from the ideological midpoint on the scale in personal liberty cases (-0.29) than in economic cases (+0.15). These patterns may mean that while moderate positions predominate on both types of issues, judges on the Seventh Circuit would, for example, be somewhat more likely to decide cases against the criminal defendant or civil liberties claimant than they would be to decide in favor of a consumer, employee, or insurance claimant.

On the Supreme Court, Justice Stevens' relative position on personal liberty cases has changed slightly (Table 5). Though his score is still negative (-0.07), his votes rank him as the third most liberal member of the Burger Court. Together with Justice Stewart, Stevens has remained essentially unaligned in the decision of all eighty personal liberty cases, relatively far removed ideologically from the liberals Marshall and Brennan, the conservative Rehnquist, and the moderate/conservative Burger.

TABLE 5—*Personal Liberty Cases: Average Ideological Voting Scores of Supreme Court Justices*

Justice	Ideological Scores	Number of Cases
Marshall	+0.62	77
Brennan	+0.61	80
<u>Stevens</u>	-0.07	80
Stewart	-0.09	80
White	-0.21	80
Blackmun	-0.25	79
Powell	-0.34	80
Burger	-0.43	80
Rehnquist	-0.64	80
Court mean =	-0.09	

The Court as a whole has been more sharply divided over personal liberty than economic questions. This is evident initially in the wide range of average scores (+0.62 to -0.64) and by the three Justices (Marshall, Brennan, and Rehnquist) whose voting averages fall outside the middle or moderate third of the scale. These intracourt divisions are further highlighted by the patterns of agreement/disagreement among pairs of individual Justices (Table 6).

Voting agreement is extremely high among several Justices. Only once in seventy-seven cases did Marshall and Brennan fail to agree whether in the majority or in the dissent. Likewise, in the vast majority of cases, Burger and Rehnquist (88.8%), Stewart and Powell (88.8%), and White and Blackmun (87.3%) voted together. This ideological compatibility stands in sharp contrast to the frequent disagreement between the Court's liberal members (Marshall and Brennan) and conservative Rehnquist and moderate/conservative Burger. Agreement among these various pairs of Justices of between 40 and 51% is far lower than the lowest agreement rate in economic cases.

Stevens' moderate position in personal liberty cases is illustrated by his consistent rate of agreement with his colleagues on both ends of the Court's ideological spectrum. While personal liberty conservatives disagree with their liberal counterparts more often than not, Justice Stevens has aligned himself nearly equally with both factions on the Court; he voted with Marshall and Brennan as well as Burger and Rehnquist between 65 and 68% of the time. Stevens again demonstrates the most consistent level of agreement with the rest of his colleagues, ranging from a high of 78.8% with Justice Powell to a low of only 64.9% with Justice Marshall. His most frequent dissents have come with the

TABLE 6—*Voting Relationships Among Supreme Court Justices in Personal Liberty Cases*

MA	BR		JPS		ST		WH		BL		PO		BU		RE	
	+	—	+	—	+	—	+	—	+	—	+	—	+	—	+	—
MA	+47	1	+41	6	+46	2	+42	6	+41	7	+46	2	+39	9	+31	17
	— 0	29	—21	9	—22	7	—23	6	—24	5	—29	0	—29	0	—29	0
BR	98.7		+	—	+	—	+	—	+	—	+	—	+	—	+	—
			+43	6	+47	2	+43	6	+41	7	+47	2	+39	10	+32	17
			—20	11	—24	7	—25	6	—26	5	—31	0	—31	0	—31	0
JPS	64.9	67.5			+	—	+	—	+	—	+	—	+	—	+	—
					+57	6	+52	11	+51	11	+62	1	+53	10	+50	14
					—14	3	—16	1	—16	1	—16	1	—17	0	—13	3
ST	68.8	67.5	75.0		+	—	+	—	+	—	+	—	+	—	+	—
					+60	11	+59	11	+70	1	+62	9	+62	9	+55	16
					— 8	1	— 8	1	— 8	1	— 8	1	— 8	1	— 8	1
WH	62.3	61.3	66.3	76.3			+	—	+	—	+	—	+	—	+	—
							+62	5	+66	2	+62	6	+62	6	+57	11
							— 5	7	—12	0	— 8	4	— 6	6	— 6	6
BL	59.7	58.2	65.8	75.9	87.3				+	—	+	—	+	—	+	—
									+65	2	+63	4	+63	4	+57	10
									—12	0	— 6	6	— 5	7	— 5	7
PO	59.7	58.8	78.8	88.8	82.5	82.3					+	—	+	—	+	—
											+69	9	+63	15	+63	15
											— 1	1	— 0	2	— 0	2
BU	50.6	48.8	66.3	78.8	82.5	87.3	87.5								+	—
															+62	8
															— 1	9
RE	40.3	40.0	66.3	70.0	78.8	81.0	81.3	88.8								

MA=Marshall, BR=Brennan, JPS=Stevens, ST=Stewart, WH=White
 BL=Blackmun, PO=Powell, BU=Burger, RE=Rehnquist
 Upper right: +vote cast in majority
 —vote cast in dissent
 Lower left: percentage agreement in both majority and dissent

liberals Marshall and Brennan while he has yet to dissent with Burger and has done so only once with White, Blackmun, and Powell.

Even though Stevens' decisions on the circuit court level were slightly more conservative than his Supreme Court votes in personal liberty matters, no real liberal trend is indicated. Some of the difference in his absolute scores on both courts may be due to the types of personal liberty cases heard. Because of the nature of the claims and/or the claimants, it may have been more difficult to take a liberal position on cases heard by the Seventh Circuit. Although his relative position changed somewhat, he has remained within the broadly defined center of both courts. In sum, any slight ideological shift in personal liberty cases by Stevens is clearly overshadowed by both an overall position of moderation within each court and frequent alignment with the two sharply divided ideological factions on the Burger Court.

IV. CONCLUSIONS

At the time of his confirmation, John Paul Stevens may well have been considered to be a conservative or a progressive by some of those who scrutinized his credentials. However, a systematic examination of his judicial performance reveals that these labels were as inappropriate two years ago as they are today. Alternative assessments of Stevens as a moderate with liberal or conservative leanings are also wide of the mark, as his votes in over 700 cases fail to reveal a significant or sustained trend in one ideological direction or another. While perhaps not generating as much interest or attention as a more exotic political label, moderation and moderation alone appears to be the most accurate characterization of Justice Stevens' attitudes toward economic and personal liberty questions. In five years of service on the court of appeals and two years on the Supreme Court, Justice Stevens has maintained a centrist position with a marked degree of consistency.

If his moderate positions enable Stevens to bridge the ideological gap between left and right, particularly in personal liberty cases, the Court as a whole will be strengthened. Based on his record to date, this outcome appears increasingly probable. Stevens has passed through his initial period of adjustment without becoming closely aligned with either an ideological bloc or another Justice on the Court. In all likelihood, Stevens will continue to utilize his considerable legal skills in conjunction with his independence and political moderation to become a unifying force on

the Court in the years ahead. In cases where compromise is not possible and the Court remains closely divided, Stevens' moderate views will often enable him to cast the determinative vote. His pivotal position as a "swing" Justice may arise frequently in the future, particularly if the votes of President Carter's initial appointments to the Court offset those of the more conservative Justices chosen during the Nixon years.

Misperceptions about Stevens' political ideology at the time of his selection highlight a serious shortcoming in the confirmation process. While infrequently acknowledged candidly, a candidate's general ideological or political outlook is an important factor in a Senator's decision to support or oppose confirmation.²⁹ While perhaps justified on other grounds, both opposition and support have been shown to be strongly related to the congruence or incongruence between a Senator's own ideology and his perceptions of the candidate's ideology.³⁰ Depending upon the source in Stevens' case, these perceptions may well have been wrong. Major political decisions such as a vote on a Supreme Court appointment should not remain based, as they have been, on impressions, partial truths, or misinformation derived from a hasty or incomplete sampling of a nominee's prior public record. A comprehensive examination of the entire record emphasizing the general political factors that will, at least in part, determine a Senator's vote is a necessary supplement to the traditional analyses of education, career, and professional credentials.³¹ For Justice Stevens, it would have served as an accurate and useful predictor of his initial Supreme Court voting record.

Would this information, if known at Stevens' confirmation hearings, have changed the ultimate outcome? Given the political circumstances at the time, almost certainly not. Partisan differences between a Republican White House and a heavily Demo-

29. The same factors are considered by the President, the Attorney General, and their staffs in making Supreme Court as well as most lower court nominations. See J. SCHMIDHAUSER, *THE SUPREME COURT: ITS POLITICS, PERSONALITIES AND PROCEDURES* (1960); Black, *A Note on Senatorial Consideration of Supreme Court Nominees*, 79 *YALE L.J.* 657 (1970); Goldman, *Judicial Appointments to the United States Courts of Appeals*, 1967 *WIS. L. REV.* 186; Goldman, *Characteristics of Eisenhower and Kennedy Appointees to the Lower Federal Courts*, 18 *W. POL. Q.* 755 (1965).

30. D. ROHDE & H. SPAETH, *SUPREME COURT DECISION MAKING* 98-117 (1976). These findings indicate that Senators already heed Professor Black's suggestion and scrutinize Supreme Court nominees on ideological grounds. Black, *supra* note 29.

31. Although recent Supreme Court nominees have not all been judges, they have all had extensive records of public service. Therefore, similar examinations for candidates without prior judicial experience should also be possible using different indicators of attitudes and beliefs.

cratic Senate, the furor generated by previous nominations, and fears expressed by some over a sharp swing to the right by the Burger Court made a political moderate with exceptional credentials such as Stevens the ideal choice. In the future, as in the immediate past, however, political necessities may not mesh with a nominee's qualifications so nicely. If so, there may well be a compelling need to accurately assess ideology as well as legal craftsmanship and integrity in evaluating a Supreme Court nomination. Hopefully, information will be available to make such an assessment possible.

APPENDIX I

SUPREME COURT CASES INCLUDED IN THE ANALYSIS

A. *Economic Cases*

Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682 (1976) (corporations, international law).

American Motorists Insurance Co. v. Starnes, 425 U.S. 637 (1976) (corporations).

Atlas Roofing Co. v. Occupational Safety & Health Review Commission, 430 U.S. 442 (1977) (government regulation of business).

Bayside Enterprises, Inc. v. NLRB, 429 U.S. 298 (1977) (labor-management).

Boston Stock Exchange v. State Tax Commission, 429 U.S. 318 (1977) (government regulation of business).

Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477 (1977) (antitrust).

Bryan v. Itasca County, 426 U.S. 373 (1976) (taxation).

Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1976) (labor-management).

Califano v. Goldfarb, 430 U.S. 199 (1977) (social security).

Califano v. Webster, 430 U.S. 313 (1977) (social security).

Cantor v. Detroit Edison Co., 428 U.S. 579 (1976) (antitrust).

Cappaert v. United States, 426 U.S. 128 (1976) (government regulation of business).

Carey v. Sugar, 425 U.S. 73 (1976) (government regulation of business).

City of Charlotte v. Local 660, International Association of Firefighters, 426 U.S. 283 (1976) (labor-management).

City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668 (1976) (government regulation of business).

City of Philadelphia v. New Jersey, 430 U.S. 141 (1977) (federal-state).

Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976) (government regulation of business).

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) (taxation).

Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977) (damages).

Diamond National Corp. v. State Board of Equalization, 425 U.S. 268 (1976) (taxation).

Donovan v. Penn Shipping Co., 429 U.S. 648 (1977) (personal injury).

E.I. duPont de Nemours & Co. v. Train, 430 U.S. 112 (1977) (environmental regulation).

EPA v. California ex rel. State Water Resources Control Board, 426 U.S. 200 (1976) (environmental regulation).

Farmer v. Carpenters & Joiners Local 25, 430 U.S. 290 (1977) (labor-management).

FEA v. Algonquin Sng, Inc., 426 U.S. 548 (1976) (government regulation of business).

FPC v. Conway Corp., 426 U.S. 271 (1976) (government regulation of business).

FPC v. Transcontinental Gas Pipe Line Corp., 423 U.S. 326 (1976) (government regulation of business).

Flint Ridge Development Co. v. Scenic Rivers Association, 426 U.S. 776 (1976) (government regulation of business).

G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977) (taxation).

Hancock v. Train, 426 U.S. 167 (1976) (environmental regulation).

Hospital Building Co. v. Trustees of Rex Hospital, 425 U.S. 738 (1976) (antitrust).

Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976) (government regulation of business).

Jones v. Rath Packing Co., 430 U.S. 519 (1977) (government regulation of business).

Juidice v. Vail, 430 U.S. 327 (1977) (bankruptcy).

Kleppe v. New Mexico, 426 U.S. 529 (1976) (federal-state).

Kleppe v. Sierra Club, 427 U.S. 390 (1976) (environmental regulation).

Knebel v. Hein, 429 U.S. 288 (1977) (welfare).

Local 3489, United Steelworkers v. Usery, 429 U.S. 305 (1977) (labor-management).

Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission, 427 U.S. 132 (1976) (labor-management).

Mathews v. De Castro, 429 U.S. 181 (1976) (social security).

Mathews v. Diaz, 426 U.S. 67 (1976) (social security).

Mathews v. Lucas, 427 U.S. 495 (1976) (social security).

Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976) (taxation).

Nader v. Allegheny Airlines, Inc., 426 U.S. 290 (1976) (damages).

National Bank of North America v. Associates of Obstetrics & Female Surgery, 425 U.S. 460 (1976) (damages).

NLRB v. Pipefitters Local 638, 429 U.S. 507 (1977) (labor-management).

National League of Cities v. Usery, 426 U.S. 833 (1976) (federal-state).

New Hampshire v. Maine, 426 U.S. 363 (1976) (state-state).

Nolde Brothers v. Local 358, Bakery & Confectionary Workers, 430 U.S. 243 (1977) (labor-management).

Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649 (1976) (property rights).

Norton v. Matthews, 427 U.S. 524 (1976) (social security).

Oil, Chemical & Atomic Workers v. Mobile Oil Corp., 426 U.S. 407 (1976) (labor-management).

Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977) (government regulation of business).

Pearson v. Dodd, 429 U.S. 396 (1977) (taxation).

Piper v. Chris-Craft Industries, Inc., 430 U.S. 1 (1977) (damages).

Radzanower v. Touche Ross & Co., 426 U.S. 148 (1976) (damages).

Ralston Purina Co. v. Louisville & Nashville Railroad, 426 U.S. 476 (1976) (government regulation of business).

Sakraida v. Ag Pro, Inc., 425 U.S. 273 (1976) (patent).

Santa Fe Industries, Inc. v. Green, 430 U.S. 462 (1977) (stockholdings).

South Prairie Construction Co. v. Local 627, International Union of Operating Engineers, 425 U.S. 800 (1976) (labor-management).

Texas v. Louisiana, 426 U.S. 465 (1976) (state-state).

Union Electric Co. v. EPA, 427 U.S. 246 (1976) (environmental regulation).

United States v. Chesapeake & Ohio Railway, 426 U.S. 500 (1976) (government regulation of business).

United States v. County of Fresno, 429 U.S. 452 (1977) (taxation).

United States v. Florida, 425 U.S. 791 (1976) (federal-state).

United States v. Foster Lumber Co., 429 U.S. 32 (1976) (taxation).

United States v. Hopkins, 427 U.S. 123 (1976) (personal injury).

United States v. Orleans, 425 U.S. 807 (1976) (personal injury).

United States v. Pomponio, 429 U.S. 10 (1976) (taxation).

United States Steel Corp. v. Fortner Enterprises, Inc., 429

U.S. 610 (1977) (antitrust).

Walsh v. Schlecht, 429 U.S. 401 (1977) (labor-management).

Don E. Williams Co. v. Commissioner, 429 U.S. 569 (1977) (taxation).

B. Personal Liberty Cases

Aldinger v. Howard, 427 U.S. 1 (1976) (civil rights).

Andresen v. Maryland, 427 U.S. 463 (1976) (criminal rights).

Bishop v. Wood, 426 U.S. 341 (1976) (civil liberties).

Brewer v. Williams, 430 U.S. 387 (1977) (criminal rights).

Brown v. General Services Administration, 425 U.S. 820 (1976) (civil rights).

Bucolo v. Adkins, 424 U.S. 641 (1976) (criminal rights).

Castaneda v. Partida, 430 U.S. 482 (1977) (criminal rights).

Chandler v. Roudebush, 425 U.S. 840 (1976) (civil rights).

City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission, 429 U.S. 167 (1976) (civil liberties).

Codd v. Velger, 429 U.S. 624 (1977) (civil liberties).

Concerned Citizens, Inc. v. Pine Creek Conservancy District, 429 U.S. 651 (1977) (civil liberties).

Connally v. Georgia, 429 U.S. 245 (1977) (criminal rights).

Connor v. Coleman, 425 U.S. 675 (1976) (civil liberties).

Costello v. Wainwright, 430 U.S. 325 (1977) (criminal rights).

Craig v. Boren, 429 U.S. 190 (1976) (civil liberties).

Davis v. Georgia, 429 U.S. 122 (1976) (criminal rights).

Doyle v. Ohio, 426 U.S. 610 (1976) (criminal rights).

East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976) (civil liberties).

Estelle v. Gamble, 429 U.S. 97 (1976) (civil rights).

Fisher v. District Court, 424 U.S. 382 (1976) (civil liberties).

Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) (civil rights).

Gardner v. Florida, 430 U.S. 349 (1977) (criminal rights).

General Electric Co. v. Gilbert, 429 U.S. 125 (1976) (civil rights).

Goldberg v. United States, 425 U.S. 94 (1976) (criminal rights).

Gregg v. Georgia, 428 U.S. 153 (1976) (criminal rights).

Guste v. Jackson, 429 U.S. 399 (1977) (civil liberties).

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976) (civil liberties).

Henderson v. Morgan, 426 U.S. 637 (1976) (criminal rights).

Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976) (civil liberties).

- Hutto v. Ross*, 429 U.S. 28 (1976) (criminal rights).
Immigration & Naturalization Service v. Bagamasbad, 429 U.S. 24 (1976) (civil liberties).
Electrical Workers Local 790 v. Robbins & Myers, Inc., 429 U.S. 229 (1976) (civil rights).
Jurek v. Texas, 428 U.S. 262 (1976) (criminal rights).
Liberty Mutual Insurance Co. v. Wetzel, 424 U.S. 737 (1976) (civil rights).
Ludwig v. Massachusetts, 427 U.S. 618 (1976) (criminal rights).
Marks v. United States, 430 U.S. 188 (1977) (criminal rights).
McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976) (civil liberties).
McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273 (1976) (civil rights).
Meachum v. Fano, 427 U.S. 215 (1976) (criminal rights).
Montayne v. Haymes, 427 U.S. 236 (1976) (criminal rights).
Moody v. Daggett, 429 U.S. 78 (1976) (criminal rights).
Moore v. United States, 429 U.S. 20 (1976) (criminal rights).
Morales v. Turman, 430 U.S. 322 (1977) (criminal rights).
Mount Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1976) (civil liberties).
NAACP v. FPC, 425 U.S. 662 (1976) (civil rights).
Nebraska Press Association v. Stuart, 427 U.S. 539 (1976) (civil liberties).
New York Civil Service Commission v. Sneed, 425 U.S. 457 (1976) (civil liberties).
Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977) (civil liberties).
Oregon v. Mathiason, 429 U.S. 492 (1977) (criminal rights).
Planned Parenthood v. Danforth, 428 U.S. 52 (1976) (civil liberties).
Proffitt v. Florida, 428 U.S. 242 (1976) (criminal rights).
Roberts v. Louisiana, 428 U.S. 325 (1976) (criminal rights).
Roemer v. Board of Public Works, 426 U.S. 736 (1976) (civil liberties).
Runyon v. McCrary, 427 U.S. 160 (1976) (civil rights).
Serbian Eastern Orthodox Diocese for the United States & Canada v. Milivojevic, 426 U.S. 696 (1976) (civil liberties).
Singleton v. Wulff, 428 U.S. 106 (1976) (civil liberties).
South Dakota v. Opperman, 428 U.S. 364 (1976) (criminal rights).
Stanton v. Stanton, 429 U.S. 501 (1977) (civil liberties).

- Stone v. Powell*, 428 U.S. 465 (1976) (criminal rights).
Swain v. Pressley, 430 U.S. 372 (1977) (criminal rights).
Tennessee v. Dunlap, 426 U.S. 312 (1976) (civil liberties).
Town of Lockport v. Citizens for Community Action, Inc.,
430 U.S. 259 (1977) (civil liberties).
United Jewish Organizations, Inc. v. Carey, 430 U.S. 144
(1977) (civil liberties).
United States v. Agurs, 427 U.S. 97 (1976) (criminal rights).
United States v. Board of Supervisors, 429 U.S. 642 (1977)
(civil liberties).
United States v. Dieter, 429 U.S. 6 (1976) (criminal rights).
United States v. Donovan, 429 U.S. 413 (1977) (criminal
rights).
United States v. Kopp, 429 U.S. 121 (1976) (criminal rights).
United States v. MacCollom, 426 U.S. 317 (1976) (criminal
rights).
United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (criminal
rights).
United States v. Miller, 425 U.S. 435 (1976) (criminal rights).
United States v. Morrison, 429 U.S. 1 (1976) (criminal
rights).
United States v. Rose, 429 U.S. 5 (1976) (criminal rights).
United States v. Sanford, 429 U.S. 14 (1976) (criminal
rights).
United States v. Santana, 427 U.S. 38 (1976) (criminal
rights).
Washington v. Davis, 426 U.S. 229 (1976) (civil rights).
Weatherford v. Bursey, 429 U.S. 545 (1977) (criminal rights).
Whalen v. Roe, 429 U.S. 589 (1977) (civil liberties).
Woodson v. North Carolina, 428 U.S. 280 (1976) (criminal
rights).
Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976)
(civil liberties).

APPENDIX II

IDEOLOGICAL VOTING BY ISSUE TYPE

A. Economic Cases

A judge was considered to have taken a liberal (conservative) position when he voted for (against):

1. The debtor in a bankruptcy suit.
2. The regulatory agency or government in a business regulatory suit.
3. The smaller of two businesses or the subcontractor in an exclusively business suit.
4. The individual and against (for) the business.
5. The consumer in a consumer-seller suit.
6. The proenvironmentalist or government in an environmental suit.
7. The insurance claimant.
8. The labor union in a labor-management suit.
9. The employee in an employee-labor union, employee-management, or employee-labor union and management dispute.
10. The national union in a local-national union suit.
11. The alleged patent or copyright infringer in a patent or copyright suit.
12. The party alleging antitrust law violations.
13. The injured party or party claiming damages in a personal injury or damage suit, or the party claiming the greater injury or damage in suits where both parties are seeking relief.
14. The social security, welfare, or pension claimant.
15. The individual stockholders in a stockholder-corporate suit.
16. The government in taxation suits.
17. The tenant in landlord-tenant litigation.
18. The unemployed in unemployment compensation suits.
19. The federal government in a suit against a state.
20. The state in an inferior economic position in a suit against a state in a superior position.

B. Personal Liberty Cases

A judge was considered to have taken a liberal (conservative) position when he voted for (against):

1. The accused criminal defendant.
2. The incarcerated prisoner seeking relief via petition.
3. The expansion or broad interpretation of criminal rights.
4. The party alleging the infringement of civil rights or liberties.