

**REVIEW OF *ILLINOIS JUSTICE: THE SCANDAL OF 1969 AND THE RISE OF JOHN PAUL STEVENS\****

**BY**

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Book: *Illinois justice: The scandal of 1969 and the rise of John Paul Stevens*

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Justice John Paul Stevens became the 101<sup>st</sup> Justice of the Supreme Court after being nominated by President Gerald Ford and unanimously confirmed by the United States Senate in 1975. Ford's selection of Stevens to succeed Justice William O. Douglas surprised most political pundits because he was not very well known beyond the Illinois borders. He was selected because President Ford wanted to nominate a justice of "unquestioned integrity and talent" in the aftermath of Watergate and because Stevens had admirers in high places, including then U.S. Attorney General Edward Levi and Republican Senator Charles Percy from Illinois. In *Illinois Justice: The Scandal of 1969 and the Rise of John Paul Stevens*, we come to learn this admiration was earned during Stevens' investigation of two Illinois Supreme Court Justices accused of judicial malfeasance in 1969. Kenneth A Manaster, who worked under Stevens during this investigation, chronicles in exhaustive detail the facts associated with this extraordinary case and how it catapulted Stevens from relative obscurity to the nation's highest bench.

In 1958, Sherman H Skolnick sued a brokerage firm for mishandling \$14,000 worth of stocks, representing his life savings. Skolnick's case was dismissed at the lower court. On appeal, the Illinois Supreme Court upheld the lower court's dismissal of the suit. This experience so enraged Skolnick that he decided to devote his life to rooting out corruption in the Illinois judicial system. Skolnick, paralyzed from polio since the age of six, formed the Citizen's Committee To Clean Up The Courts. This 1960's Illinois organization combined the modern litigious talents of Larry Klayman's Justice Watch, with Matt Drudge's proclivity to hurl sensational and sometimes far reaching accusations against public officials. Skolnick, an irascible sort, "wore thick glasses, had buck teeth, dressed forgettably, and showed absolutely no respect for authority."

After receiving a tip from a friend, Skolnick examined the stockholder records of Chicago's newly opened Civic Center Bank (CCB). His investigation uncovered that two Illinois Supreme Court Justices owned a substantial number of shares in the bank. Skolnick grew suspicious because the Illinois Supreme Court had just upheld the dismissal of criminal charges against Theodore J. Isaacs, who served as the General Counsel for the very same Civic Center Bank. The investigation also revealed that Chief Justice Roy Solifsborg and Associate Justice Ray Klingbiel acquired the CCB stock immediately prior to rendering the Isaacs decision.

Ironically, Justices Solifsburg and Klingbiel both served on the Supreme Court when Skolnick's case was dismissed years earlier.

After incessant prodding by Skolnick, the Alton Evening Telegraph, a local newspaper, broke the story that Justice Ray Klingbiel upheld the dismissal of criminal charges against an officer of the Chicago bank, while holding \$2,000 of that bank's stock. It was later revealed that Chief Justice Solifsburg also earned approximately \$3,500 after selling his shares in the bank a year later. The political timing of these accusations could not have been any worse for Justices Klingbiel and Solifsburg. In the spring of 1969, U.S. Supreme Court Justice Abe Fortas had just resigned over an inappropriate fee arrangement with financier Louis Wolfson. The story quickly became front-page fodder for all of the state's newspapers. The Illinois legislature even weighed in, voting unanimously to appoint a special committee to investigate the matter. State legislator Henry Hyde, who would later become well-known for his role as Chairman of the House Judiciary Committee during the Clinton Impeachment hearings, was charged with finding an impartial counsel for the Illinois House Committee.

Skolnick also filed a legal motion requesting that the Illinois Supreme Court appoint a special commission to investigate the matter. Justice Klingbiel, ironically, chaired the Committee responsible for investigating judicial malfeasance. Amidst the political firestorm brewing across the State, the Illinois Supreme Court granted Skolnick's motion and appointed the president of the Chicago Bar Association and the president of the Illinois Bar Associations as co-chairs of the Committee. The Commission then named private practitioner John Paul Stevens independent counsel, thus setting the stage for Stevens' meteoric rise to the U.S. Supreme Court.

Stevens delved into the investigation in a thorough, plodding, and meticulous manner. He scheduled hearings for mid-July and was instructed to furnish the Commission with a report by July 31<sup>st</sup>. Stevens went right to the source. Justice Klingbiel initially stated that he purchased the stocks long after the Isaacs decision had been rendered. However, Stevens later uncovered that CCB stocks were given to Justice Klingbiel prior to the Isaacs decision by Robert M. Perbohner, an Isaacs associate. Klingbiel then claimed the stocks were given as a campaign contribution, even though his campaign had already run its course, with a surplus of funds remaining in his campaign coffers. The investigation also revealed that Chief Justice Solifsburg also owned \$14,000 worth of CCB stock, raising further questions on the integrity of the Isaacs decision. Complicating matters was the fact that Chief Justice Solifsburg was one of the most well respected jurists in the country at the time. Senator Dirksen (R-IL) and Senator Percy (R-IL) had even sponsored his nomination as a replacement for Justice Fortas, who resigned from the U.S. Supreme Court a few months prior.

Stevens's investigation soon revealed odd instances in which owners of CCB stock were not identified on certificates, which demonstrated that many were going to great lengths to conceal their ownership of CCB stocks. Stevens also learned that Justice Klingbiel was assigned the Isaacs case even though it was not his turn in the court's rotation. The plot thickened immensely when Stevens learned that it was actually Chief Justice Solifsburg who ultimately recommended that CCB officials "do something nice for Judge Klingbiel". This testimony enabled Stevens to paint a conspiratorial link between the two justices and CCB officials.

Stevens proved to be as feisty in the hearings as he was meticulous in his research. He was able to weave the truth through testimony that was at times combative, evasive and even perjurious. His fair-minded but relentless search for the truth even won him praise from opposing counsel. In summation, he cogently and persuasively argued that Chief Justice Solifsburg established a trust fund for the sole purpose of concealing from the public record that he was the owner of CCB stock. He also thoroughly and passionately explained the unlikelihood of Justice Klingbiel receiving the stock as a campaign contribution. The sheer volume of corroborating facts presented by Stevens left little doubt that there was at the very least an appearance of impropriety.

As an independent investigator, Stevens thought it was inappropriate for him to recommend a particular sanction for the justices. This is interesting because some of Stevens's modern critics believe his attention to legal detail, and emphasis on a balanced approach prevent his opinions from establishing sweeping legal precedents. He is also criticized for deferring to other institutions. In any event, he simply closed the hearing by stating he "respectfully submits that Theodore J. Isaacs, Robert M. Perbohner, Ray I. Klingbiel, and Roy Solifsburg are each guilty of gross impropriety." The special Commission appointed by the Illinois Supreme Court ultimately recommended that Justice Klingbiel and Chief Justice Solifsburg resign from the bench. They reluctantly did a short time later.

Sherman Skolnick, the Chicago gadfly who exposed the scandal, refused to participate in the hearings because he expected the Commission to do a "whitewash job" with the investigation, even though he was the one who requested the formation of the Commission in the first place. He was even placed in jail for contempt, and bailed out by social activist Dick Gregory. Even Skolnick, however, came to publicly recognize the thoroughness of Stevens.

The Court never revisited the criminal case against Isaacs because the Justices concluded their decision would not likely stray from the original opinion authored by Justice Klingbiel. However, Isaacs was later indicted with former Illinois Governor Kerner for tax evasion, bribery, and other inappropriate actions involving a racetrack. Justices Klingbiel and Solifsburg both continued careers in Law, with Solifsburg even returning to argue before the Illinois Supreme Court.

Stevens's ability to weave through the complexity of the investigation and to effectively stare down Chicago's best legal minds during a week of hearings elevated Stevens in the eyes of the legal community. He became a local hero and was featured on front-page stories across the state as a tenacious fighter for truth and integrity in the Illinois judicial system. A year later, he was nominated by President Richard Nixon to serve on the United States Court of Appeals for the Seventh Circuit, where he served until he was nominated to the U.S. Supreme Court in 1975.

Kenneth A. Manaster does a masterful job of taking the reader through the beaded curtain of Chicago Politics in the 1960s. The book also reminds us that the remnants of a local Illinois scandal in the 1960s are still with us today in the judicial opinions of John Paul Stevens. While the attention to legal details might grow a little tiring for non-attorney types, Manaster does ultimately move from legal itemizations to political conceptualizations at the end. The book is also an enjoyable read. While Manaster's case study approach makes it somewhat difficult for advancing generalizations in the field of judicial politics, the book does forward the discussion on important themes. The author, for example, implicitly questions the wisdom of judicial

elections. As the nation continues to grapple with various judicial selections process at the state level, including partisan elections, non-partisan elections, gubernatorial appointments, legislative appointments, and the merit system, the author points out some of the trappings associated with judicial elections. Not coincidentally, Justice Stevens and Justice Kennedy are the only Supreme Court Justices to publicly rail against judicial elections. In an interview with the San Francisco Examiner, for instance, Justice Kennedy argued that judicial elections have “frightening conflicts of interest” and a year later Justice Stevens public stated that he believes judicial elections are “profoundly unwise.”

What truly makes this book worth reading though is the insight it provides into the worldview of Justice Stevens. In the foreword to the book, Justice Stevens writes that the investigation has influenced his work as an appellate judge in substantial ways. He has always been viewed as an independent thinker and a legal maverick on the bench. Avoiding the conservative or liberal label, Stevens employs a “logical reasoning” approach to judicial decision making, preferring to examine the facts of each case separately and deciding it on the specifics of the case. This approach can be found in his opinion in the Federal Communications Commission vs. Pacifica Foundation (1978) case and in the landmark Bush vs. Gore (2000) decision. In Pacifica, where a father complained against a radio station for airing George Carlin’s “Filthy Words” routine during the afternoon, Stevens grappled with the specific facts of the case rather than on freedom of speech as a legal abstraction, as some of the other Justices viewed the case. He ultimately voted with the majority in concluding that the FCC had a compelling interest in regulating radio content during times children are most likely to be listening.

In Bush vs. Gore Stevens deferred to the sanctity of state institutions by voting against Bush’s challenge to the Florida Supreme Court. In his dissenting opinion, Stevens criticized the Petitioner’s “unstated lack of confidence in the impartiality and capacity of the state judges who would make the critical decisions if the vote count were to proceed.” The predisposition toward logical reasoning and deferring to other institutions can clearly be found in Stevens’s orientation to his responsibilities as independent counselor. Stevens’s closing statement to the Commission simply restated the facts of the investigation, allowing the Commission and the Supreme Court to draw it’s own conclusions.

While Stevens does stress the need for judicial independence in the judicial selection process, he does believe justices should be held accountable in the opinions they write. Accordingly, he writes more dissenting and concurring opinions than any other justice on the bench today, because he believes dissenting and concurring opinions reveal insight into the judicial decision making process. This tendency stems from his days as an independent counselor, where Justice Schaefer failed to make his dissent public in the Isaacs case.

Compared to the other Supreme Court Justices, Stevens is also much more sympathetic to *pro se* petitions, or petitions filed without the assistance of counsel. While most *pro se* petitions do not merit the review of the Court, Stevens harkens back to the petition filed by rebel rouser Sherman Skolnick in 1969. While Skolnick “occasionally had difficulty separating reality from fantasy” according to Chair Greenberg, he was chiefly responsible for sparking the investigation. Stevens has therefore consistently fought against any attempt to restrict the ability of litigants to

file “repetitious claims or to proceed without the payment of costs”, thus helping to keep the doors of justice open to all American citizens.

The New York Times once reported that it is difficult “to characterize Justice Stevens in political terms because customary labels did not seem to suit him” and because he is a “man whose modesty is sometimes taken for shyness.” *ILLINOIS JUSTICE* does more than simply reveal interesting facts about a judicial scandal in Chicago in the 1960s. It provides insight into the core values of a Justice who has shaped the direction of the Supreme Court for 28 years while flying under the political radar, at least until now.

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