

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

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

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

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

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

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

Thank you very much, Mr. Chairman.

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

QUESTIONS SUBMITTED BY SENATOR MCCLELLAN

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

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

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

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

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

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

(5) In *Mapp v. Ohio*, 367 U.S. 643, 686 (1961), Mr. Justice Harlan stated: "I am bound to say that what has been done is not likely to promote respect either for the Court's adjudicatory process or for the stability of its decisions. He further said:

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

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

Please discuss fully.

REPLIES TO QUESTIONS SUBMITTED BY SENATOR MCCLELLAN

DECEMBER 8, 1975.

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

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

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

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

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

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

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

Respectfully,

JOHN PAUL STEVENS.

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

Now, you had an operation——

Judge STEVENS. Yes, that is correct.

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

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