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Supreme Court Sluggers: John Paul Stevens is no Stephen J. Field

**Ross Davies, Craig D. Rust & Adam Aft,
George Mason University School of Law**

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Supreme Court Sluggers ♦ October Term 2009



John Paul Stevens



Catcher

EX POST

When we say that a statesman has “compiled an enviable record of achievement,” or that a baseball pitcher has “compiled a 1.87 earned run average,” we do not mean that those individuals have pulled together papers that show those results, but rather that they have *generated* or *produced* those results.

John Paul Stevens

John Doe Agency v. John Doe Corp.,
493 U.S. 146, 161 (1989) (*dissenting*)



SUPREME COURT SLUGGERS

JOHN PAUL STEVENS IS NO STEPHEN J. FIELD

Ross E. Davies, Craig D. Rust & Adam Aft

ASSESSING THE GREAT LENGTH of John Paul Stevens’s service as a Supreme Court Justice (34 years, 6 months, 10 days) should involve more than just adding up time. By the calendar, he is in third place on the list of longest-serving members of the Court, just behind Stephen J. Field (34 years, 6 months, 11 days) and further behind William O. Douglas (36 years, 6 months, 26 days). An argument might be made, however, that Stevens’s length-of-service ranking should be higher – that he ought to be recognized as standing a little bit ahead of Field, and perhaps closer to Douglas as well. It is an argument that depends on what it means to “serve” on the Court. After all, it is “Service[]” that the Constitution expects of the “Judges, both of the supreme and inferior Courts.”¹

Among the many definitions of “serve” in the *Oxford English Dictionary*, two are enough to make the point. If serving on the Court is like “serving time” in prison, then to serve there means simply “[t]o go through” – to endure – the time one spends as a Justice, just as a convict must “go through” a term of imprisonment.² But if serving

Ross Davies is an editor of the Green Bag and a law professor at George Mason University. Craig Rust and Adam Aft will later this summer begin clerking for, respectively, Judge Samuel Wilson (W.D. Va.) and Judge Theresa L. Springmann (N.D. Ind.).

¹ U.S. CONST., art. III, § 1.

² See *serve, v.*, I.2.c., OED Online (vis. June 5, 2010).

on the Court is like “serv[ing] one’s country” as a soldier, then it means working “to benefit” or to “render useful service to” the United States.³ If serving on the Court is, in fact, like imprisonment, then merely holding the office of Justice equals service;⁴ if it is more like soldiering, however, some judgment might be called for, about benefits conferred and usefulness of time spent.

Consider Justice Field. Appointed to the Court by President Abraham Lincoln in 1863, he was an able and energetic lawyer and Justice. By the early 1880s, however, Field was sometimes distracted by his own presidential campaigns, and there are grounds for wondering whether some of his opinions during that time were written to serve Court and country, or to serve the candidate.⁵ More concretely, for purposes of measuring length of “service,” in 1881 Field abandoned Court work in favor of an extended overseas vacation. As the *Washington Post* reported on July 16, 1881,

Mr. Justice Field . . . left yesterday for New York, where he will take the Arizona on the 19th instant for Europe. After a tour of England and Ireland, he will proceed to Asia Minor, stopping at Smyrna, where he spent two and a half years when a boy. From thence he will go to Athens He expects to return in November.⁶

Thus, as was widely noted in the press,⁷ the Court opened its

³ *Id.* at I.12.a., I.12.b, I.16.a.

⁴ Although a time-serving Justice might get time *on* the bench for “good Behaviour,” while a time-serving prisoner might get time *off* a prison sentence for behavior of the same sort. Compare U.S. CONST., art. III, § 1, with 18 U.S.C. § 3624(b); *Barber v. Thomas*, 78 U.S.L.W. 4509 (2010).

⁵ See Robert McCloskey, *Stephen J. Field*, in 2 THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES 1789-1978 at 1073-81 (Leon Friedman & Fred L. Israel eds., 1980); PAUL KENS, JUSTICE STEPHEN FIELD 169-245 (1997).

⁶ *Justice Field’s Long Tour*, WASH. POST, July 16, 1881, at 1. Editorial reactions varied widely. *E.g.*, *A Crippled Court*, N.Y. TIMES, Oct. 12, 1881, at 4; *Current Topics*, ALBANY L.J., Oct. 22, 1881, at 321. Field did not spend the entire vacation frivolously. *Current Topics*, ALBANY L.J., Sept. 17, 1881, at 221 (Association for the Reform and Codification of the Law of Nations conference in Cologne).

⁷ *E.g.*, *Supreme Court*, COLUMBUS DAILY ENQ., Oct. 11, 1881, at 1; *The Supreme Court*, BOSTON EVENING J., Oct. 4, 1881, at 1; *United States Supreme Court*, EVE-

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October 1881 Term with a bare quorum of six: of the nine members of the Court, Field was overseas, Justice Nathan Clifford had died on July 25 and no replacement had been appointed,⁸ and Justice Ward Hunt had long been and remained so severely disabled that he could not function as a judge.⁹ This meant not only (1) a heavier workload for the six sitting Justices and (2) the loss of three perspectives and votes in deliberations and decisionmaking, but also (3) the danger that a recusal or another illness or death would incapacitate the Court. On October 13, the *Washington Post* reported Field's response to this situation:

Justice Field, who is now in Europe, has written to friends in Washington that he will not return before December, the Supreme Court having a quorum without him.¹⁰

Chief Justice Morrison R. Waite was one of those to whom Field wrote. In his letter to Waite he offered an excuse for his absence:

For eighteen years I have taken only one vacation of sixty days. I think I may therefore now venture to claim some little indulgence if I overstay my proposed time.¹¹

A technically accurate factual statement, perhaps, but also a neatly crafted self-serving one. Field may have taken "only one vacation of sixty days," but he had also enjoyed long breaks of other durations. Indeed, the Court had granted itself a 27-day midwinter recess during February of that same year.¹²

NING CRITIC, Oct. 4, 1881, at 3.

⁸ Moreover, Clifford had been mentally incompetent, and possibly permanently so, since October 1880 (see CHARLES FAIRMAN, 2 RECONSTRUCTION AND REUNION 521-23 (1987)), which would mean that when Field began his vacation on July 15 he knew he was likely leaving the Court with only a quorum.

⁹ See CHARLES FAIRMAN, MR. JUSTICE MILLER AND THE SUPREME COURT 376-84 (1939); *Mr. Injustice Hunt*, THE PEOPLE AND N.H. PATRIOT, Dec. 29, 1881, at 2.

¹⁰ *City Personals*, WASH. POST, Oct. 13, 1881, at 4.

¹¹ Letter from Stephen J. Field (in Vienna) to Hon. M.R. Waite, Sept. 21, 1881.

¹² 42 Minutes of the Supreme Court of the United States, Jan. 31, 1881 (Microcopy No. 215, Roll 4, NARA 1954) (hereafter "Minutes"). The Justices knew how to take breaks without unduly disrupting Court business. The ill took time off to recover, of course. *E.g.*, FAIRMAN, 2 RECONSTRUCTION AND REUNION, *supra* note

In any event, when the unfortunate event – loss of a quorum – came to pass during Field’s European frolic, the Court was in a bind. Its response was controversial then and probably would be today too. According to news reports,

Justice Hunt was on the bench of the United States Supreme Court on the 30th inst. [November, 1881], for the first time in two years. The case under consideration was one in which Justice [Stanley] Matthews had been counsel previous to taking his seat on the bench, and the presence of Justice Hunt was necessary to make a quorum.¹³

In fact, it was on November 29 that Hunt had been trundled in for his one-case sitting.¹⁴ As the *Evening Critic* of Washington, DC observed a few days later,

The lawyers of the country are making the dust fly about the condition of things in the Supreme Court. . . . No one will doubt that the legal fraternity are justified in objecting to such procedure in the court of highest appeal in the United States. . . . It is certainly mortifying enough to know that the court is years behind on its docket, without witnessing this resort to an incapacitated judge to complete an official quorum.¹⁵

8, at 771-72 (Waite in Florida in December 1884). And vacationers traveled when the Court was not in session. *E.g.*, *id.* at 545 (Justice Samuel Miller in Texas to visit family during another month-long midwinter recess in February 1879); *Justice Matthews and His Bride Sail*, WASH. POST, June 25, 1886, at 1 (“Justice Stanley Matthews and his bride sailed for Europe on the steamer Celtic today. . . . Justice Matthews said: ‘We shall be absent about three months. . . . We shall sail for home from Havre on September 18 and proceed directly to Washington, so as to be present when the Supreme Court meets on October 11.’”). Field’s in-Term vacation may not have been unique (proving that negative might be difficult), but it was at least extraordinarily long and inconvenient.

¹³ MACON TELEGRAPH & MESSENGER, Dec. 4, 1881, at 2.

¹⁴ Minutes, Nov. 29, 1881. The issue for which Hunt’s presence was required related to an appeal bond in the case, not the merits (*id.*), and the case does not appear to have reached final judgment in the Supreme Court. Matthews had argued the case before Justice John Marshall Harlan on circuit. *Pittsburg, C. & St. L. Ry. Co. v. Columbus, C. & I.C. Ry. Co.*, 19 F. Cas. 772 (C.C. Ind. 1879).

¹⁵ EVENING CRITIC, Dec. 9, 1881, at 2; COLUMBUS DAILY ENQ., Dec. 9, 1881, at 2.

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Eventually, Field did return from Europe and go back to work. He was on the bench in Washington on December 5, 1881.¹⁶ The only official acknowledgment the Court seems to have made of Field's absence is in the front matter of the first volume of reports of the October 1881 Term: "MR. JUSTICE FIELD *took no part in deciding the cases reported in this volume which precede Wood v. Railroad Company, p. 329.*"¹⁷ Many cases preceding p. 329 were decided on December 5, 12, or 19, and *Wood* was decided on December 19, but there were also a few December 12 decisions reported after *Wood*, all of which suggests that regardless of the specific day on which Field returned to the Court, we can be pretty sure his re-engagement in work on the bench occurred in mid-December 1881, roughly two months after the opening of the Term.¹⁸

Field remained a productive and important contributor to the work of the Court until the mid-1890s, when his declining physical and mental powers impaired his competence to serve. But he clung to office, at least in part to prevent his political enemy President Grover Cleveland from appointing his replacement. According to a story attributed to Justice John Marshall Harlan by Charles Evans Hughes (who was at the time of the telling between his bouts as Associate Justice and Chief Justice), Field fiercely resisted a request from his colleagues that he step down. He finally retired in 1897, after President William McKinley succeeded Cleveland.¹⁹

¹⁶ Minutes, Dec. 5, 1881.

¹⁷ 104 U.S. v (1882). Another note on that page ("MR. JUSTICE HUNT, *by reason of sickness, took no part in deciding the cases reported in this volume.*") contradicts both the Court's minutes and the news reports of Hunt's brief November participation. Note the contrasting absence of an explanation for Field's non-participation.

¹⁸ 104 U.S. 329 (1881); Anne Ashmore, *Dates of Supreme Court Decisions and Arguments* 159 (2006).

¹⁹ See CARL BRENT SWISHER, *STEPHEN J. FIELD* 440-45 (1930); CHARLES EVANS HUGHES, *THE SUPREME COURT OF THE UNITED STATES* 75-76 (1928); KENS, *STEPHEN FIELD*, *supra* note 5, at 262-63. Several fine scholars have dealt more broadly and deeply with behavior of the sort described above. See, e.g., Vicki C. Jackson, *Packages of Judicial Independence*, 95 *GEO. L.J.* 965 (2007); ROGER C. CRAMTON & PAUL D. CARRINGTON, *REFORMING THE COURT* (2006); David J. Garrow, *Mental Decrepitude on the Supreme Court*, 67 *U. CHI. L. REV.* 995 (2000).

Thus, for Stevens's service on the Court to be comparable to Field's, Stevens would have to be an able, energetic, long-tenured, and important contributor to the work of the Court. All of that rings true. But he would also have to be so self-absorbed, or so jaded or casual about the job of Justice, that he would (1) gallivant around the globe while his Court was sitting, and do so even when his absence might either shut down the Court or leave it with no creditable options for carrying on; (2) cling to the job until he was too feeble to do it well, and then cling some more; and (3) cling at least in part in order to gratify some personal peeve or ambition rather than to benefit the country he was supposed to be serving. That is where Stevens is no Field. First, no gallivanting. Stevens's attendance was not perfect (most famously he missed one week of arguments in January 1996 when a snowstorm stopped-up air travel between his home in Florida and the Court in Washington²⁰), but as a general matter, when the Court sat, he sat.²¹ Second, no clinging. By all accounts the ability and energy Stevens displayed before his appointment to the Court by President Gerald Ford in 1975 was on continuous display throughout his 34-plus years of service.²² Indeed, it was in his last Term that he delivered one of his most

²⁰ Linda Greenhouse, *High Court Hears Arguments for Census Alteration by Race*, N.Y. TIMES, Jan. 11, 1996, at 10; Journal of the Supreme Court of the United States, October Term 1995 at III ("Blizzard closes Washington, Court open for business week of January 8, 1996; Stevens, J., absent for oral arguments due to weather").

²¹ When the Court wasn't sitting, he often worked at home in Florida (Jeffrey Rosen, *The Dissenter*, N.Y. TIMES, Sept. 23, 2007), a practice frowned on by some (e.g., EDWARD LAZARUS, CLOSED CHAMBERS 279 (1998)), albeit without evidence that it hurt his job performance. Some Justices have reportedly worked constantly in the Court's building (TINSLEY E. YARBROUGH, DAVID HACKETT SOUTER 150 (2005)), while for others, "[o]ne of the nice things about the job – or one of the not nice things about the job – is you don't have to be here to be working. . . . I do like to come in, but that has no relationship to how many hours I'm putting in." THE SUPREME COURT 57-58 (Brian Lamb et al. eds., 2010) (quoting Justice Antonin Scalia). Before the full occupation of the Court building in the late 1930s, most of the Justices' work other than hearing oral arguments was done at home. WILLIAM H. REHNQUIST, THE SUPREME COURT 229 (2001).

²² See BILL BARNHART & GENE SCHLICKMAN, JOHN PAUL STEVENS chs. 7-11 (2010); John P. Elwood, *What Were They Thinking*, 4 GREEN BAG 2D 17, 19-21 (2000).

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elaborate and emphatic opinions, concurring and dissenting in *Citizens United v. Federal Election Commission*.²³ Third, in the absence of gallivanting or clinging, or of some demonstration or declaration of a desire to hold office for personal gratification rather than public benefit – that is, absent any objective or subjective manifestation of intent to engage in self-service on the Court – it seems only fair to presume that Stevens was always there to serve us, not himself.

And so to say that Stevens is just behind Field on the list of longest-serving members of the Court is to give Stevens less credit than he deserves. Field certainly treated service on the Court as a prison term some of the time – as something to be temporarily escaped in 1881 (how on earth can those autumn vacation months be counted toward his years of service?!) and something to be endured in the mid-1890s, perhaps to the detriment rather than the benefit of Court and country. Stevens apparently never did. For him, service on the Court seems to have always been an honorable tour of duty, a role to which he was perennially committed and in which he was perennially competent.²⁴



The back of the new John Paul Stevens “Supreme Court Sluggers” trading card presents another aspect of his long service: the tremendous volume of his work product. As discussed below in Part II of this article, Stevens is probably the record-holder in several categories of opinion production.

²³ 130 S. Ct. 876, 929 (2010). Stevens stumbled when delivering his statement of that opinion from the bench (Adam Liptak, *At 89, Stevens Contemplates the Law, and How to Leave It*, N.Y. TIMES, Apr. 4, 2010, at A1), “[b]ut Justice Anthony Kennedy fared no better reading from his majority opinion beforehand, tearing through the first part of his summary, then losing his place and stumbling through the holding” (Dahlia Lithwick, *The Pinocchio Project*, SLATE, Jan. 21, 2010), making the possible inferences difficult to sort out.

²⁴ THE SUPREME COURT (Lamb et al. eds.), *supra* note 21, at 47-48. Justice Douglas might suffer as much as Justice Field from a similar comparison to Justice Stevens, but such a project would be too large for the *Green Bag*. See BRUCE ALLEN MURPHY, WILD BILL pt. II (2003); *Rosoto v. Warden*, 1 Rapp 321 (1963) (Harlan, J., in chambers); REHNQUIST, THE SUPREME COURT, *supra* note 21, at 226.

But first, a reminder of the *Green Bag*'s ambitions for the "Sluggers" project:

- (a) to develop and share comparable measurements of the work of every member of the Supreme Court since 1789;
- (b) to gradually expand and refine those measurements with an eye to making them as useful and interesting as possible;
- (c) to create informative, entertaining, and unorthodox yet respectful portraits of the Justices by first-rate artists; and
- (d) to present all of this material in a way that will be enjoyable for the producers, consumers, and subjects of the "Sluggers" cards.

What follows are short descriptions of what went into the development of the front and back of the Stevens card. The front is a work of art that makes connections between its subject and baseball. The back is packed with statistics from his judicial work.

PART I THE FRONT OF THE CARD: A VISUAL PORTRAIT

John Sargent painted the portrait of Justice Stevens.²⁵ It is based on the classic Charles Leo "Gabby" Hartnett trading card pictured on the next page.²⁶ Why Hartnett? Because:

- He was a catcher, #2 on the diamond, just as Stevens was #2 in seniority on the Court when this card was made.²⁷
- He played for Stevens's favorite team, the Chicago Cubs.
- He was very good at what he did – "among the greatest defensive catchers in the history of baseball."²⁸ He batted .297

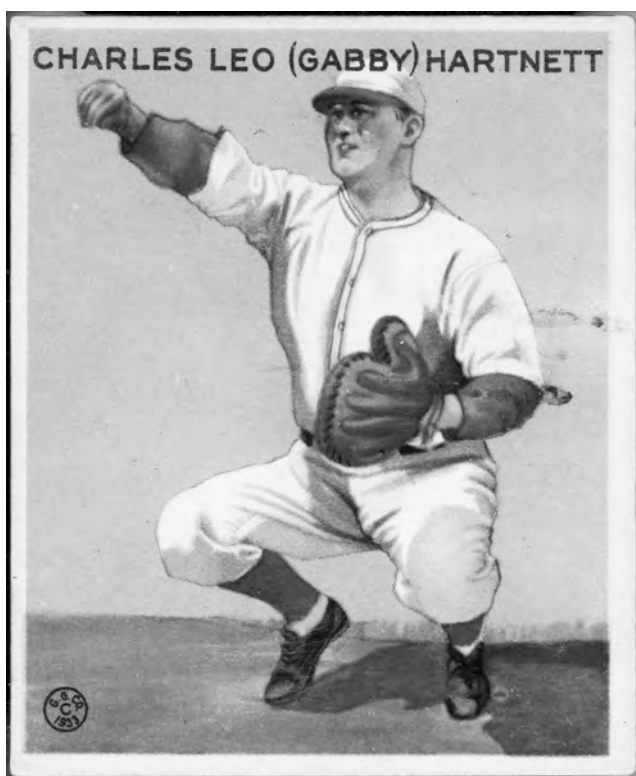
²⁵ See page 463 above. John A. Sargent III, *Supreme Court Justice John Paul Stevens, Catcher* (2009) (oil on canvas). See www.johnasargent.com.

²⁶ Charles Leo "Gabby" Hartnett, *Chicago Cubs*, No. 202 (Goudy Gum Co. 1933).

²⁷ WILLIAM F. MCNEIL, GABBY HARTNETT (2004); 28 U.S.C. § 3; THE SUPREME COURT (Lamb et al. eds.), *supra* note 21, at 47.

²⁸ THE NEW BILL JAMES HISTORICAL BASEBALL ABSTRACT 375 (2001).

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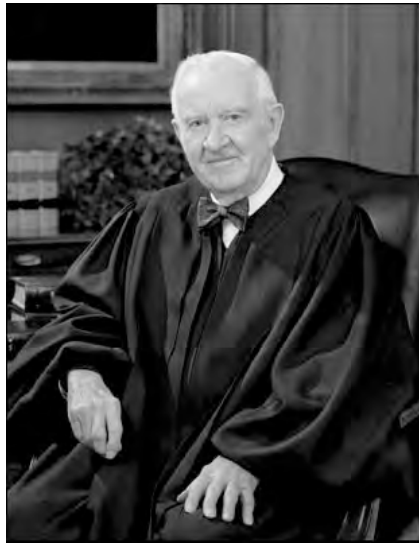


for his long career (1922-1941), including the “Homer in the Gloamin’” that put the Cubs in first place near the end of their 1938 pennant race with the Pittsburgh Pirates. He was elected to the Hall of Fame in 1955.²⁹

- Like Stevens (in the stands), Hartnett (behind the plate) was at Wrigley Field for the October 1, 1932 Cubs-Yankees World Series game in which Babe Ruth hit his “called shot.” Thus, Ruth is portrayed on deck on the Stevens “Sluggers” card.

Stevens and Hartnett differ, however, on some details relating to that last item. On the one hand, Jeffrey Toobin reports of Stevens:

²⁹ *Gabby Hartnett*, RETROSHEET, www.retrosheet.org/boxesetc/H/Phartg103.htm (vis. June 11, 2010); MCNEIL, GABBY HARTNETT at 254-59.



Babe Ruth (left) and John Paul Stevens (right).

“My dad took me to see the World Series, and we were sitting behind third base, not too far back,” Stevens, who was twelve years old at the time, told me. He recalled that the Cubs players had been hassling Ruth from the dugout earlier in the game. “Ruth did point to the center-field scoreboard,” Stevens said. “And he did hit the ball out of the park after he pointed with his bat. So it really happened.”³⁰

On the other hand, William McNeil reports of Hartnett:

Gabby Hartnett, who was the closest player to Ruth, said “I don’t want to take anything away from the Babe, because he’s the reason we made good money, but he didn’t call that shot. He held up the index finger of his left hand, looked at our dugout, not the outfield, and said ‘It only takes one to hit.’”³¹

People who know more about Stevens and Hartnett might well come up with other interesting connections.

³⁰ Jeffrey Toobin, *After Stevens*, NEW YORKER, Mar. 22, 2010.

³¹ MCNEIL, GABBY HARTNETT, *supra* note 27, at 174.

PART II
THE BACK OF THE CARD:
STATS & RESEARCH

We quickly discovered that the research methods we used for the Chief Justice John Roberts “Sluggers” card³² would be impracticable for gathering the volume of data required for the Stevens card, given the length of his tenure as a federal judge, first as a member of the Seventh Circuit Court of Appeals and then as a Justice of the Supreme Court. We thus adopted a somewhat different, hybrid approach.

First, we collected both opinion and citation data regarding then-Judge Stevens’s work on the Seventh Circuit in much the same way that we collected the data for then-Judge Roberts’s work on the D.C. Circuit.³³ Specifically, we ran a search in Westlaw’s federal cases database (ALLFEDS) using the following search string:

Stevens /10 Judge or “Stevens, J.” & da(aft 11/20/1970 & bef 12/19/1975)³⁴

Next, we retrieved each opinion individually to determine whether Stevens participated in the opinion, and if so, whether he wrote or joined that opinion. This search also returned information on all of the federal cases that cited Stevens by name, allowing us to collect the citation data from this period as well.

To account for Stevens’s opinions written (or joined) after his elevation to the Supreme Court, we utilized a new database. We were fortunate enough to discover that the researchers at the Supreme Court Database (“Database”) had already collected much of the information we sought regarding the votes and opinion data for

³² Ross E. Davies & Craig D. Rust, *Supreme Court Sluggers*, 13 GREEN BAG 2D 215, 219-23 (2010).

³³ *Id.* at 220-23.

³⁴ The results of this search are listed in the “Stevens Search Data” spreadsheet (“Stevens Search Data”) in the tab labeled “OT1970-75.” This spreadsheet is available on the *Green Bag*’s website, www.greenbag.org.

all Supreme Court cases since 1953.³⁵ The Database is used by the popular website oyez.org in its visual display of how each Justice voted in any particular case. The Database also collects information on which Justices wrote opinions in a given case, and what types of opinions those were.³⁶ Having all of this data available in one place made it unnecessary for us to scrutinize each case Stevens ever participated in to determine this information for ourselves.

To decode this massive data file, we pulled all of the data into a software program called SSPS,³⁷ which allowed us to view the data in a readable format. Then, we cleaned up the data and transported it into a Microsoft Excel file.³⁸ Once we had the data in Excel for all the Terms during which Stevens served, we removed all of the cases in which he did not participate. For example, he joined the Court in the middle of the 1975 Term, so he only participated in about half of the cases during that Term. We split the remaining data into Terms. Then, within each Term we split the cases into two groups: cases in which Stevens wrote an opinion, and cases in which he joined an opinion.³⁹

After splitting the data in this manner, we could sort and then compile it year-by-year and across his career to get the necessary totals for each of our categories of “Sluggers” performance. For cases in which Stevens wrote an opinion, we sorted by decision type and majority vote.⁴⁰ Then we counted the majority, concurring,

³⁵ The Supreme Court Database, scdb.wustl.edu/index.php (vis. May 11, 2010).

³⁶ About the Oyez Project, www.oyez.org/about (vis. May 12, 2010).

³⁷ SSPS – About SSPS, www.ssp.com/corpinfo/?source=homepage&hpzone=nav_bar (vis. May 12, 2010).

³⁸ It should be noted that the Database also tracks many other aspects of each case that we did not use for the Stevens card. The Database key provides information on all aspects of each opinion recorded in the database. The Supreme Court Database Code Book 2010 Release 01, scdb.wustl.edu/_brickFiles/2010_01/SCDB_2010_01_codebook.pdf (Feb. 9, 2010; vis. May 11, 2010).

³⁹ The relevant portions of the data we utilized from the Database are sorted by term and listed on the appropriate tab of the “Stevens Data” spreadsheet, also available on the *Green Bag*’s website, www.greenbag.org.

⁴⁰ See Supreme Court Database Code Book at 43, 53.

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¹The Numbers (as of May 31, 2010)

Court	Term	TO	MO	UO	PO	CO	DO	PC	JN	OO	IC	CN
7th Cir.	1970	41	27	24	0	2	12	9	36	0	0	1
7th Cir.	1971	51	37	30	0	2	11	15	55	0	1	6
7th Cir.	1972	45	35	31	0	3	7	12	48	0	0	10
7th Cir.	1973	31	18	15	0	6	7	20	55	0	0	13
7th Cir.	1974	47	38	29	0	7	1	19	47	0	1	25
7th Cir.	1975	14	9	9	0	2	3	7	19	0	0	4
7th Cir.	1976	0	0	0	0	0	0	0	1	0	0	-
Tot.		229	164	138	0	22	41	82	261	0	2	59
Avg.		38	27	23	0	4	7	14	43	0	0	10
S. Ct.	1975	43	7	1	2	12	19	18	36	2	1	76
S. Ct.	1976	65	14	4	1	17	29	42	70	3	1	177
S. Ct.	1977	47	14	2	0	11	20	19	83	2	0	182
S. Ct.	1978	54	14	5	1	12	21	23	82	5	1	172
S. Ct.	1979	50	13	2	1	14	20	20	86	1	1	216
S. Ct.	1980	59	12	3	0	18	25	18	73	2	2	223
S. Ct.	1981	61	13	2	2	17	23	26	90	6	0	251
S. Ct.	1982	62	15	4	0	14	24	11	101	9	0	245
S. Ct.	1983	93	16	6	0	24	32	9	89	21	0	235
S. Ct.	1984	73	16	5	0	10	32	15	82	14	1	302
S. Ct.	1985	85	16	4	1	16	35	13	81	16	1	283
S. Ct.	1986	74	16	5	0	18	28	13	84	12	0	306
S. Ct.	1987	65	18	6	1	8	18	8	94	19	1	303
S. Ct.	1988	80	15	6	1	15	24	14	78	25	0	311
S. Ct.	1989	73	10	4	2	19	26	9	73	16	0	285
S. Ct.	1990	45	14	7	0	6	24	14	68	1	0	274
S. Ct.	1991	53	12	5	0	12	23	7	66	5	1	278
S. Ct.	1992	46	11	5	2	11	21	8	66	0	1	269
S. Ct.	1993	37	11	4	0	11	14	8	51	0	1	282
S. Ct.	1994	43	9	1	0	6	21	5	50	5	2	301
S. Ct.	1995	42	7	3	1	6	25	8	41	2	1	280
S. Ct.	1996	38	10	3	0	5	20	9	52	3	0	299
S. Ct.	1997	37	6	0	2	11	17	5	59	1	0	285
S. Ct.	1998	47	9	1	0	9	24	5	44	5	0	284
S. Ct.	1999	42	7	0	0	8	23	5	42	4	0	283
S. Ct.	2000	32	9	1	0	5	16	8	46	2	0	321
S. Ct.	2001	27	8	2	0	3	14	9	50	1	1	352
S. Ct.	2002	35	8	1	0	12	9	9	44	4	2	260
S. Ct.	2003	31	7	1	1	9	10	6	46	4	0	263
S. Ct.	2004	32	7	0	0	9	12	5	46	3	1	500
S. Ct.	2005	29	7	4	0	7	13	17	43	2	0	567
S. Ct.	2006	35	7	1	0	9	16	4	37	3	0	535
S. Ct.	2007	31	5	0	1	7	13	1	42	5	0	515
S. Ct.	2008	33	8	0	0	5	15	8	45	5	0	579
S. Ct.	2009	25	3	1	0	8	10	11	24	4	0	333
Tot.		1724	374	99	19	384	716	410	2164	212	19	10627
Avg.		52	11	3	1	12	22	12	66	6	1	322



John Paul Stevens
Associate Justice
Oath: Dec. 19, 1975

serial no.

/2000

¹Acronym definitions and back-up for The Numbers are at www.greenbag.org. Please send corrections and suggestions to editors@greenbag.org.
²These are partial Terms, thus the low numbers.
³Because he spent the entire 1976 Term on the S. Ct. (sitting on the 7th Cir. only as a Circuit Justice), we did not use this Term when calculating his 7th Cir. averages.

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plurality, and dissenting opinions he wrote. Some opinions defied easy categorization, such as the Court's opinion in *Gregg v. Georgia*. In this case and in others like it, several Justices seem to have written a joint opinion which was then announced by a single Justice.⁴¹

⁴¹ 428 U.S. 153, 158 (1976).

In these cases, we gave the Justice who announced the opinion credit for writing the opinion, and the remainder of the Justices received credit for joining the opinion.

We then moved on to gathering data for the opinions that Stevens joined, and sorted this data by decision type as well. Here, we counted signed opinions joined and per curiam opinions joined.⁴² We also counted “decrees” as per curiam opinions joined.

Unfortunately, the data did not identify when an opinion received the support of a majority of Justices for one part of the opinion, and less than a majority for other parts. In order to properly track these types of opinions, we had to double-check each majority opinion in every Term using Westlaw to ensure each opinion was properly categorized. While reviewing Stevens’s majority opinions we counted unanimous majority opinions as any case where no other Justice participating filed a concurring or dissenting opinion.

Lastly, the Database also did not provide us with data regarding the number of times Stevens was cited by name in a federal court opinion. For each Term, we reverted to the approach we used for the Roberts card – doing a search in Westlaw’s ALLFEDS database using the following search string:

(Stevens /5 Judge) (Stevens /5 Justice) “Stevens, J.”⁴³

After receiving our search results, we again imported this information into an Excel spreadsheet and checked each opinion to verify that the opinion cited to Stevens individually by name. This search method also had the benefit of catching any “opinions relating to orders”⁴⁴ that were not tracked in the Database.

⁴² See Supreme Court Database Code Book at 43 (“The database does not contain all of the non-orally argued per curiam decisions. . . . The Reports contain large numbers of brief, non-orally argued per curiam decisions. The database includes only those for which the Court has provided a summary, as well as those without a summary in which one or more of the justices wrote an opinion.”).

⁴³ We also confined each individual search to one particular Supreme Court term. See, e.g., Stevens Search Data, tab “OT76.”

⁴⁴ Opinions relating to orders are “written by individual Justices to comment on the summary disposition of cases by orders. Such an opinion might, for example, dissent from the denial of certiorari or concur in that denial.” 2009 Term Opin-

Supreme Court Sluggers

After all of this, we inputted all of the results into one central Excel spreadsheet. The complete version of this spreadsheet is available for viewing on the *Green Bag*'s website.⁴⁵

The Categories

As with the Roberts "Sluggers" card, the statistical categories we tracked for the Stevens card are intended to quantify the general productivity, and to a lesser extent, the influence, of a Justice by year and by career. These categories include: majority opinions, unanimous majority opinions, plurality opinions, concurring opinions, dissenting opinions, standard opinions joined, per curiam opinions joined, opinions relating to orders, in-chambers opinions, and finally, citations by name.⁴⁶

These categories, and the parameters that define them, are nearly identical on the Roberts and Stevens cards. We did create one new category: "Single Judge Panel." This category appears separately only in the spreadsheet on the *Green Bag*'s website, not on the actual card, where it shows up in "IC" column in the Court of Appeals rows. We created this category to recognize the rare instances in which Stevens, while sitting as a member of the Seventh Circuit, wrote an opinion in a case he heard by himself, and not as part of a three-judge panel.⁴⁷

511 Wins, 1,406 Stolen Bases, and . . .

716 Dissents

In major league baseball, some players have set performance records so unbelievably high that it is difficult to imagine anyone ever surpassing their accomplishments. For example, Cy Young won 511 games as a starting pitcher (Walter Johnson is second with

ions Relating to Orders, www.supremecourt.gov/opinions/relatingtoorders.aspx (vis. May 12, 2010).

⁴⁵ www.greenbag.org.

⁴⁶ Davies & Rust, *supra* note 32, at 223-26.

⁴⁷ See, e.g., *United States v. Int'l Longshoremen's Ass'n*, 1971 WL 2992 (7th Cir. 1971).

417, Greg Maddux is tops among moderns with 355, and no active player is in the top 25); Rickey Henderson stole 1,406 bases (Lou Brock is second with 938, and no active player is in the top 25); and Ted Williams had a career on-base percentage of .482 (Babe Ruth is a close second at .474, but among moderns Barry Bonds is tops at .444, while Albert Pujols is at .427).⁴⁸

In his long judicial career, Stevens has also posted some impressive numbers. While we have not completed (in fact we have barely started) the sort of comprehensive database that would enable us to compare all Justices (let alone all judges), it seems likely that we will eventually conclude that Stevens has earned some records of his own. For example, we found that he has written 716 dissents during his tenure on the Supreme Court (757 if we include his Seventh Circuit service).⁴⁹ According to the *Supreme Court Compendium*, Justice William O. Douglas is in second place all-time with 486, and the Database has Justice Antonin Scalia second among moderns with 201.⁵⁰ Other likely records include Stevens's total of 1,954 judicial opinions of all sorts during his tenure as a federal judge, his 384 concurring opinions as a Justice, and his 10,627 citations by name during his active service on the Supreme Court.

While it remains to be seen whether these can be considered "records" at all, let alone ones that will never be broken, they are pretty clear indicators of Stevens's impressive durability, productivity, and influence as a member of the federal judiciary.



⁴⁸ *Major League Career Leaders*, RETROSHEET, www.retrosheet.org/boxesetc/M/XCL_ML.htm (vis. June 11, 2010).

⁴⁹ Our data only goes through May 31, 2010, and so he may add to these numbers.

⁵⁰ LEE EPSTEIN ET AL., *THE SUPREME COURT COMPENDIUM* 635 (4th ed. 2007); Supreme Court Database Analysis, scdb.wustl.edu/analysisCaseListing.php?sid=1001-PUSHBACK-5961 (search conducted May 12, 2010).