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Agence France-Presse photo

Hostages held for more than two weeks by hijackers of the Kuwait Airways jumbo jet step to freedom early Wednesday in Algiers.

Appellate judge to take Simon's spot

By Joseph R. Tybor
Legal affairs writer

The Illinois Supreme Court ended months of backroom politicking and intrigue Wednesday by choosing Appellate Justice John Stamos, a former colleague of Justice Daniel Ward, to fill the vacancy left by the resignation of Seymour Simon.

Stamos, 64, who replaced Ward as Cook County state's attorney when Ward joined the high court in 1966, was chosen by the 6 sitting justices from among 25 applicants who sought the coveted position after Simon formally stepped aside Feb. 15.

In choosing Stamos, the court's members rejected calls by

Stamos is appointed to office he once failed to win. Page 2.

Mayor Eugene Sawyer and representatives of minority groups that the first black Supreme Court justice be named to the Simon vacancy.

State Comptroller Roland Burris, who was among those calling for selection of a black, said that although Stamos will serve with "dignity and distinction, I am disappointed the court did not see fit to fill Justice Simon's vacancy with a minority."

The choice of Stamos ensures a lively election in 1990, when Simon's term expires and Cook County voters will decide who occupies the seat for the next 10-year term.

Although Stamos said Wednesday that "it's a little bit premature" to declare he will seek election, he said in an interview two weeks ago that he would if he were chosen for the unexpired term. Several of those who applied for the Simon vacancy are considering a run in 1990, and they could be joined by others.

Stamos is a highly regarded jurist who has had close ties with the regular Democratic Party in the past but also has a reputation for independence. He was appointed to the Illinois Appellate Court in 1968, after Mayor Richard J. Daley refused to slate him for election as state's attor-

municipal bonds can be taxed

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William Brennan said: "The
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ment to issue bonds paying lower interest rates than other issuers."

In a stinging dissent, Justice Sandra Day O'Connor wrote: "The court today overrules a precedent that it has honored for nearly a hundred years and expresses a willingness to cancel the constitutional immunity that traditionally has shielded the interest paid on state and local bonds from federal taxation.

and local governments to finance their activities will depend in part on whether Congress voluntarily abstains from tapping this permissible source of additional income tax revenue," O'Connor said.

Tax-exempt bonds are issued by states and municipalities to finance a variety of government projects, including schools, roads and sewers. Because interest on municipal bonds is generally ex-

Stamos

Continued from page 1

ney and chose Edward V. Hanrahan instead.

Stamos was one of only four applicants to receive the highest rating of the three bar groups that evaluated candidates for the Simon vacancy.

A special merit panel established by the Chicago Council of Lawyers called him a jurist with "an excellent reputation for integrity" whose opinions are "well researched, clear and cogent."

The Chicago Bar Association described him as "a scholarly, thoughtful, hardworking justice [who] demands excellence from both himself and those who practice before him."

The Illinois State Bar Association found him "exceptionally well-qualified."

Stamos is unlikely to change the conservative tilt of the court and in fact might moderate its tone even further. Simon very frequently dissented with his colleagues on issues ranging from the constitutionality of the death penalty to criticism of the court's internal procedures.

Because all death-penalty appeals go directly to the Supreme Court, Stamos has not had a chance to rule on the question as a judge, but his most significant experience as a lawyer since receiving his law degree from De Paul University in 1948 has been as a prosecutor.

He was head of the criminal division and first deputy under Ward before taking over as state's attorney.

Despite that background, Stamos has not marched blindly to the interests of prosecutors.

● In 1986, he wrote an opinion striking down a Cook County ordinance to regulate adult book stores, saying it violated 1st Amendment guarantees of free speech. Recently the Illinois Supreme Court overruled him.

● In 1985, he wrote an opinion dismissing charges against four juveniles accused of beating a 29-year-old retarded man because prosecutors failed to give the youths a speedy trial. Stamos ruled that by waiting nearly 700 days after the beating occurred, prosecutors performed a "gross disservice" to the juveniles, the victim and to society and described the prosecutors' tardiness as "lackadaisical conduct that simply cannot be tolerated."

● In 1986, Stamos wrote an opinion throwing out the conviction of a man found guilty of murdering two elderly clerks in a Loop shoe store, saying the trial court judge erred in failing to instruct jurors to presume that the defendant was innocent until proven otherwise.

Stamos joins the Supreme Court at a time when it is facing re-examination of several of its internal procedures.

In addition to being the final authority of law within the state, the court regulates the legal profession and determines the makeup of much of the state's judiciary through its power of appointment.

Currently pending before the court is a proposal for a new code of ethics for attorneys in light of the Operation Greylord investigation, which uncovered and prosecuted much corruption in the courts.

The Attorney Registration and Disciplinary Commission, overseen by the Supreme Court, which is charged with the discipline of attorneys, is undergoing change and a re-examination of its policies and procedures. Its veteran administrator, Carl Rolewick, appears to be on his way out, and a new board, appointed by the court, must grapple with the question of whether nonlawyers should be given a greater role in the discipline of attorneys.

In addition, the court also has before it a proposal to adopt a modified merit-selection system of choosing associate circuit judges.

Stamos is regarded by many observers as the safest choice for the court among those applicants who were rated the highest qualified. He is seen as someone who will readily join in the collegiality of the court and who is unlikely to challenge the court's internal procedures vociferously, as Simon was wont to do.

Appointed
To Illinois Supreme Court
John Stamos

- **Age:** 64
- **Birthplace:** Chicago
- **Family:** Wife, Mary; four children
- **Education:** Studied business at De Paul University, 1941-42, 1945-46; law degree, De Paul, 1948
- **Professional background:** Attorney since 1949; Chicago assistant corporation counsel, 1951-54; Cook County assistant state's attorney, 1954-61; chief of the criminal division, state's attorney's office, 1961-64; first assistant state's attorney, 1964-66; state's attorney, 1966-68; judge, Illinois Appellate Court, 1968-present
- **Other background:** Served in Army, 1943-45

Chicago Tribune Graphic; Sources: Who's Who in America; Stamos' application for appointment

Interpol expects Soviets to join up

PARIS (Reuters)—Interpol, the 142-nation police cooperation agency, said Wednesday that it expects the Soviet Union to join its ranks soon.

From Page 1

Stamos gets what he once failed to win

By Joseph R. Tybor
and Charles Mount

Eight years ago, John Stamos suffered a personal loss when Seymour Simon beat him in a primary and went on to win a 10-year term on the state high court.

So it is no small irony that Stamos, 64, was appointed Wednesday to finish the term left vacant by Simon's resignation in February.

"I'm exhilarated—this is heady stuff," Stamos said Wednesday from his chambers on the 30th floor of the Daley Center, where he has sat as an Illinois Appellate Court judge for the last 20 years.

Before that he was a top assistant in the Cook County state's attorney's office and became state's attorney in 1966, when Justice Daniel Ward left the office to assume his current position on the high court. Ironically, it was Simon as County Board president who engineered Stamos' appointment as interim state's attorney.

Highly regarded as a jurist, Stamos is also considered an affable, self-effacing sort whose greatest advice to young lawyers is four simple words: "Do the right thing."

Criminal defense lawyer William Martin recalls that when he was working for Stamos and assigned to prosecute a high-profile gang murder case in the 1960s, he discovered that the prosecution's key eyewitness apparently was fabricating his story.

"I went to John and said: 'If our eyewintess had seen the murder, he had the ability of seeing through a solid brick wall. I don't know if the defendant did it, but we don't have the evidence to say he did.'"

Martin recalls that at the time Stamos' political career was in the balance. He was trying unsuccessfully to be slated by the regular Democrats for state's attorney in the 1968 elections, and the case was politically sensitive.

"He could have delayed the case until his political career was more settled, or he could have tried it," Martin recalled Wednesday. "Instead, without hesitating a second, he replied, 'If you don't have the horses, you don't run.' "

Martin also said Stamos' self-effacing nature was revealed when he allowed several young lawyers—Martin, George Murtaugh, Joel Flaum and James Zagel—to prosecute Richard Speck for the slaying of eight student nurses in 1967.

Like Martin, Murtaugh is a defense attorney; Flaum is now a judge on the 7th U.S. Circuit Court of Appeals and Zagel is a judge on the U.S. District Court in Chicago.

In addition to being a highly regarded jurist, Stamos is an accomplished artist, carpenter, gardener and an avid student of history.

Tribune photo by

Appellate Judge John Stamos is congratulated by his law clerk, Ruth Woodruff (left), and his secretary, Geri Humbert, after being appoint state Supreme Court seat of Seymour Si

He has been painting since age 7 and was offered a scholarship at the Art Institute while still a pupil in elementary school on the South Side. He offers first-time visitors to his chambers or to his home in Northbrook—whose grounds include a large garden with fish pond and fountains—a miniature painting, usually of a landscape or seascape, his favorite settings.

He says that of all the men he has encountered in history books, literature or real life, "The one I admire most is my father."

Stamos, who received his law degree from De Paul Un 1948, lives with his wif schoolteacher. His first w died in 1981.

Stamos will be sworn i May 2 and will begin sit opening of the court's May 9.

Stamos

Continued from page 1

Appointed
To Illinois Supreme Court
John Stamos

Illinois Supreme Court picks Stamos for vacancy

By Tom Gibbons

Appellate Court Justice John J. Stamos was appointed Wednesday to fill an Illinois Supreme Court vacancy despite efforts by black leaders to have a black appointed to the job.

Stamos, who was Cook County state's attorney from 1966 to 1968 and ran unsuccessfully for the Supreme Court in 1980, was picked unanimously by the justices. He will fill the vacancy created by the February resignation of Seymour Simon.

"I'm elated about it. It's a great honor," said Stamos, 64, who has been on the Appellate Court for 20 years.

Stamos was given top ratings from state and city bar groups and a blue-ribbon panel formed by the Chicago Council of Lawyers. But the appointment didn't please some black leaders who hoped a black could finally serve on the court.

"I think it lacked wisdom," said the Rev. B. Herbert Martin, president of the NAACP in Chicago.

He had called for the appointment of a black, along with Mayor Sawyer, the all-black Cook County Bar Association and an assortment of religious and community groups, including Operation PUSH.

"Very clearly it would have been the right thing to do for the court to have named a black," Martin said. "Even the state of Mississippi has a black on its Supreme Court. When will Illinois catch up?"

John J. Stamos
Up from Appellate Court

Stamos, viewed as a judicial moderate, was one of 25 judges and lawyers to apply for the seat held by Simon, the court's most liberal member. The appointment is not expected to greatly alter the balance of the court.

Among the applicants, who included 14 Appellate Court justices, were six blacks and a woman. A woman also has never been on the Supreme Court.

Jeffrey B. Gilbert, vice president of the lawyers council, said Stamos is an excellent choice, adding that he's a well-respected judge known for his independent thinking.

Chicago Bar Association vice president Roy Hofer said Stamos "brings vast experience and dedication to the Supreme Court. He's an exceptional choice."

Stamos, who will be sworn in May 2, will serve the remainder of Simon's term, to December, 1990.

He said it was "premature" to say if he would run for another term, but noted that unlike earlier appointments to the court his was not contingent on any agreement that he would not seek re-election.

Chief Justice Thomas J. Moran said the court was pleased with the quality of the candidates vying for the $93,266-a-year job, adding that "it goes without saying the court felt Justice Stamos was a good appointment."

Unlike earlier years, the Supreme Court took the unusual step of allowing public comment and carrying out an extensive screening process.

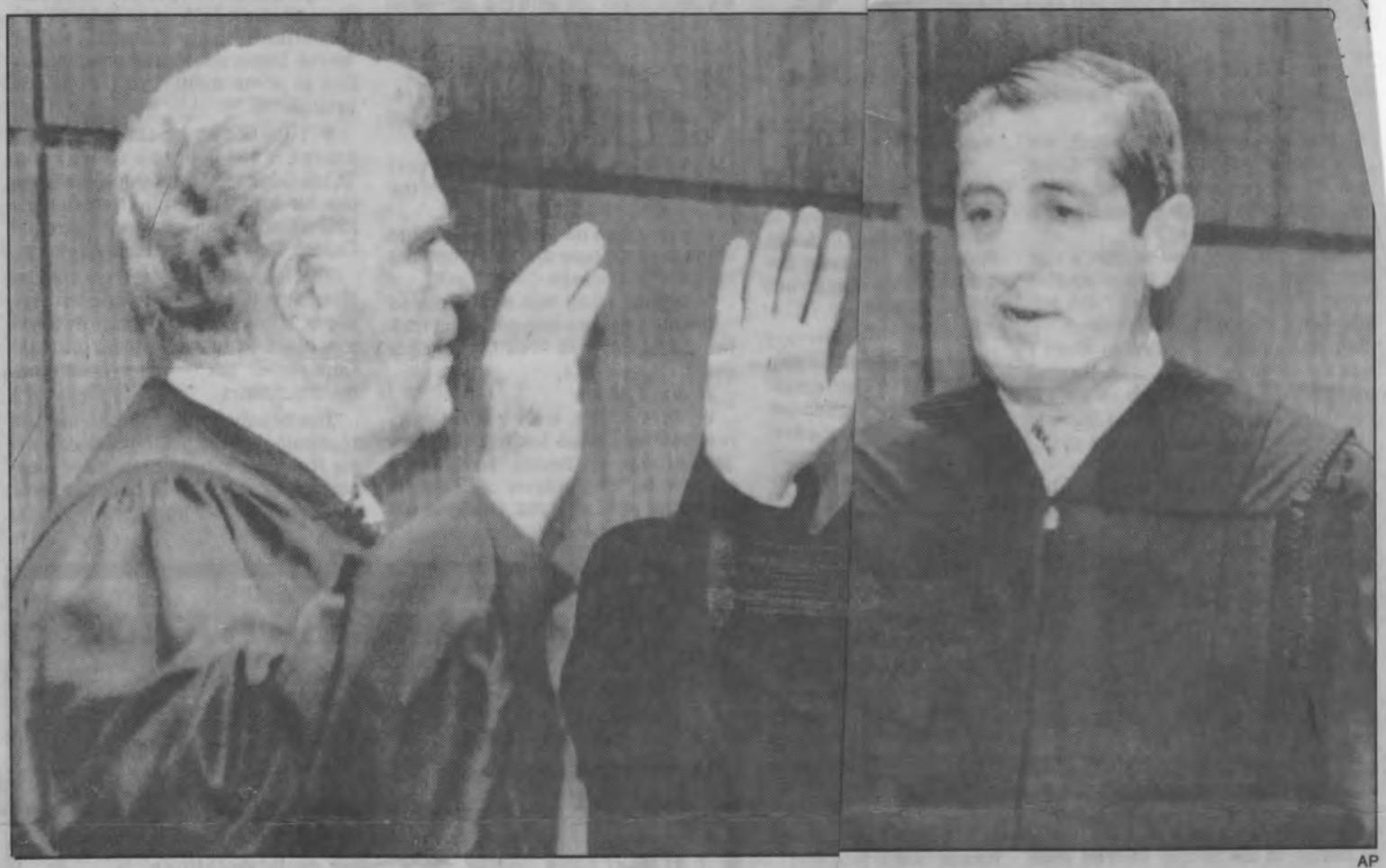
Moran said the court considered race and gender in its deliberations, but wouldn't comment on why Stamos was picked over other candidates.

Ironically, it was Simon who defeated Stamos for a seat on the Supreme Court. Stamos also has close ties to Daniel P. Ward, serving as his first assistant and then replacing him as state's attorney when Ward was elected in 1966 to the Supreme Court.

He ran for the Appellate Court after the late Mayor Richard J. Daley refused to slate him for state's attorney and instead tapped Edward V. Hanrahan for the job.

Stamos, an Army veteran who served in World War II, received his law degree from DePaul University Law School in 1948. Earlier in his legal career, he was an assistant corporation counsel in Chicago.

He lives in Northbrook with his wife, Mary, who is a schoolteacher. His first wife, Helen, died in 1981. Stamos, who is an amateur painter and likes cigars, has four children.



AP

New justice *Illinois Supreme Court Chief Justice Thom eft, swears in John Stamos Monday in Chicago as the newest member t. Stamos was sworn in to succeed Justice Seymour Simon, who retir*

Chicago Lawyer

Volume 11 Number 5 An Independent Monthly May 1

Stamos

AN INTERVIEW

The six sitting members of the Illinois Supreme Court ended months of speculation and jockeying on April 20 by appointing John J. Stamos to their ranks.

Stamos, 64, was selected from among 25 applicants for the vacancy, which was created by the resignation of Judge Seymour Simon. Stamos was one of four candidates who received the highest rating for the job by all three groups that screened the candidates — the Chicago Bar Association, the merit selection panel convened by the Chicago Council of Lawyers, and the Illinois State Bar Association.

The day after his appointment was announced, Stamos was interviewed by *Chicago Lawyer*. Here is an edited text of the interview:

Loren Santow

You have a reputation for being an accomplished amateur painter. Have you had some shows?

Not real shows, just once for a campaign. I won a blue ribbon years ago when the Chicago Bar Association sponsored a show for lawyer-artists, and the Chicago Tribune once asked to take one of my paintings, along with many others, and hang it in the Tribune Tower lobby. Mine was stolen. The poor art guy over there who called me and told me was crestfallen. I told him I hoped the thief liked the painting, not just the frame. I thought it was a nice painting, and I hope somebody is enjoying it somewhere.

How did you start painting?

I started drawing sketches as a child. I do buckeye painting — meaning I have no formal training. A few years ago, I did work with an artist in Northbrook. That was primarily portraits. Then for a while I went to a studio on Ontario on Saturdays to learn a little more technique, but I got kind of lazy because it took up the whole Saturday. I don't go anymore.

You're known for miniature acrylics. Do you do oils and watercolors too?

I do some watercolors and oils, and occasionally I do large ones. But I enjoy doing the little acrylics because they're done quickly, they dry rapidly, and they're available immediately. Last night I did three. It's nice to work with oil, but it stinks up the house with linseed oil and turpentine. I do a watercolor now and then, but they're difficult, and I don't like to do difficult things. I love doing the little acrylics. It's enjoyable and less demanding.

Do you have other hobbies?

see page 19

Stamos

(from page 1)

I do body and fender work on a 1969 Rambler I bought 10 years ago for $300. I restored it in bits and pieces. It's not mint condition, but it's nice looking. I keep it in the garage, and our good car sits out in the driveway in the rain, the snow, the sleet, and the hail. My wife doesn't understand that.

Now that you've been selected by a so-called merit process, what do you think of merit selection?

I embrace it wholeheartedly. I think it's a wonderful idea. But I'm like George Leighton. He was asked about merit after he was slated for the Circuit Court more than 20 years ago. He said, "I'm in favor of it. I was selected by the party on merit, and the people will probably elect me on merit."

Will you embrace merit selection wholeheartedly when it comes to filling vacancies on the Supreme Court and the lower courts?

I would like to answer your question, but it would be presumptuous of me. I'm the new boy on the street. All I can tell you is that I have a view, which I will express to my six new colleagues at an appropriate time, but I don't want them to read it in the public marketplace.

In the past you have expressed yourself publicly on the question, haven't you?

I have expressed the view that every ethnic group that preceded the blacks and hispanics was able to advance socially and economically through the political process. Public office, and I'm not talking just about judgeships, was open to the Poles, the Jews, the Greeks, and the Irish through the political process. Now that it's the blacks' and hispanics' turn, the rules are being changed. They're being told patronage is bad, being a precinct captain is bad. Everybody wants their daughter or son to be president of the United States, but they don't want them to be mixed up with politics. It's like a kaleidoscope. They've shaken it, and now they're looking at things differently. All I have said is that it's regrettable, now that it's the blacks' and hispanics' turn, that their young men and women are being told they can't do what their predecessors did. The rules are being changed. We're telling them, "No, you can't take advantage of patronage. Patronage is bad. No, you can't reward your people. And we're changing the rules on judgeships, too. You can no longer come up like your predecessors." Like every question, there's a downside and an upside.

When the bar associations and the merit panel of the Chicago Council of Lawyers screened you, did they ask your views on merit selection?

I don't think they did. If they did, I gave them the same answer I gave you.

In Illinois, we've seen scandal after scandal in the judiciary — the Greylord convictions and, going back a few years, the resignations of two Supreme Court judges after questions were raised about their integrity. Doesn't that say something about the selection process?

The Greylord convictions are something Illinois is going to have to live with for years and years and years, but even the federal system, with its appointive process and Senate inquiries, has had its problems with integrity. Quite a bit has been written about elective versus appointive systems, but I don't know that anyone has written convincingly that one is better than the other as far as honesty is concerned. I have talked to judges in Colorado, where they have an appointive system, and they say it's somewhat better, but you're dealing with an art, not a science. I don't know what the litmus test is to tell if a person is going to be an honest, upright judge.

Why do you think there is resistance to merit selection?

I think the hang-up is over who does the final appointing. I understand there is reluctance to permit the governor, whoever he or she is, to do it. Some think the power should be reposed in the governor with the consent of the legislature. Others say the power should be reposed in the Supreme Court.

Is that your own hang-up about an appointive method? If it were not for that, would you, in general, favor an appointive method?

I would have to see. I think I'm in a position with a lot of legislative leaders. There have been problems in states that have appointive systems. Missouri had a problem recently with improprieties, where political pressure was brought to bear on its appointive system. That's what everybody fears. There's no point in moving the process from one smoke-filled room to another smoke-filled room. By the way, the Russians have stepped away from appointed judges and gone to elected judges. I understand that the lawyers are very gratified that they got rid of a lot of political hacks who were appointed.

Of the 25 candidates for the Supreme Court vacancy, you were one of four who received the highest ratings of all of the screening groups. But you had better political connections than the others — Mel Jiganti, Warren Wolfson, and Dom Rizzi — having been active in the 10th Ward Democratic Organization, having served as an assistant corporation counsel, and having been the top aide in the state's attorney's office to Dan Ward, who will now be your colleague on the Supreme Court. Did that help you get where you are today?

Oh, sure. I don't see anything wrong with it. I encourage young people to enter politics. It's like anything else. I

(see following page)

A three-handed game

A fanciful account of the appointment of John J. Stamos to the Illinois Supreme Court, contributed by a Cook County Circuit Court judge who wishes to remain anonymous:*

It was a three-handed game, but one guy had to quit. Now Big Danny and Bill would have to pick a new player.

It was not an easy thing. The game was important; it had been around. People looked to it, and at it. The game could go badly with the wrong player. There were lots of considerations, lots to decide.

When it had been three-handed, Big Danny and Bill had been close. Big Danny had been in the game longer, but Bill was a very fast learner. But now it was different. Each had to think ahead — how would the game be with a new player?

They were clear on one thing — neither wanted a guy like the guy who quit. He always disagreed, and sometimes told about the game to people who were not in the game. No.

Also, neither wanted to give the other too much advantage. They weren't being mean, just practical. Two players could gang up on the third, and then the game would not be fun.

But they had to pick. No one else could. It was a three-handed game. Big Danny began: "How about Ed?"

"Nice fellow, but how about Phil?" said Bill.

"Phil doesn't want to be in the three-handed game," said Big Danny.

"I know," said Bill. "Darn. How about another guy named Bill, or maybe Dick?"

"How about Ed?" said Big Danny.

It was tough to decide. There was a lot riding on this. Other players, like Wally, Jim, and Tommy had come before them; and others would follow, too. They were just in the game for a short time. They felt a loyalty to the game — to keep it going, and to keep it going good.

And there were other people who wanted to get in the game on their own. There would be fights to get in the game. Big Danny and Bill didn't want to take sides in any fights.

Besides, at all times the game should look fair. What people thought of the game may be as important as the game itself.

So they couldn't decide. "What about Mary Ann?" one of them asked.

"A girl in the game?" said the other.

They had never had a girl in the game. "There should be a girl in the game, but I'm not sure we should pick *the* girl."

"Who better than us to decide?" said the first.

Finally, Big Danny said, "If not Ed, how about John?"

"John is like Ed's brother," said Bill. "How about Melvin?"

"How about John?" persisted Big Danny.

Bill was speechless for a time.

"John would be good," said Big Danny. "People like John, and John would play right."

Big Danny could be very persuasive.

Bill smiled. He had been around. He knew that John had been Big Danny's helper at one time. They were very close. But they had to decide. The game had to go on. And John was a pretty good guy anyway.

"It could be John, if . . ." said Bill.

"If what?" asked Big Danny gruffly.

"If you remember that I agreed with you this time," said Bill.

The two smiled. John. It was a three-handed game once more.

* Not a candidate for the Supreme Court vacancy.

Stamos

(from preceding page)

think it's a wonderful calling, and I don't think it should be held against anybody. The only thing that should be held against them is how they perform in that political office — whatever it is, precinct captain, or whatever.

Judges here raise large amounts of campaign funds from lawyers who appear before them. Wouldn't you like to eliminate that spectacle?

You have that in all branches of government. If you're running for the Senate, you're talking about millions of dollars. Senators constantly vote on laws that materially affect everybody, not just a couple of litigants. It's an old problem. De Tocqueville talked about it. You can't start with the proposition that all men and women who seek public office are evil — that they cannot overcome the fact that someone contributed to them. You can pick out innumerable public officers from the president, the governor, the mayor on down, and question if they sold their public trust because some organization gave them campaign contributions. That's rampant throughout our entire system. All of our public officers have to raise money. Are they bound then to betray their oaths of office? The public officer has to rise above that, and say to contributors, "I took your money with the idea that you wanted me to come in here and do a good job — not to do what might be in your selfish interest."

Then you think judges should not be different from other public officials in the way they get into office or finance their campaigns?

In my view, in the ideal system, anyone who wanted to be a judge could only come in at the associate judge level. I would like to adopt a European system, where young men or women devote themselves to the bench almost like the priesthood. You would come in at the associate level and establish yourself. Vacancies on the circuit judge level would have to be filled from the body of associate judges. Vacancies on the Appellate Court would be filled only by circuit judges, and vacancies on the Supreme Court only by appellate judges. In other words, you would promote within the system. You would not take unknown commodities, except in the initial step. Young men and women would come into the system with the idea that they were going to devote their entire careers to being judges.

What makes you think good trial court judges make good appellate judges?

Well, you start off with the presumption that they do. You have to look at their administrative ability. A vast amount of a judge's time is spent administering his or her courtroom. Some judges who are absolute scholars lack administrative ability. Other judges are tremendous administrators. They manage their time well. I know right now a number of circuit judges who would make excellent appellate judges because they have a proven record.

You had no trial court experience. Do you think you would have been a better appellate judge if you had been in the trial court first?

I think so. The thing that saved me is that I had a lot of trial experience in the state's attorney's office where I worked with many judges.

Wouldn't your idea limit the diversity of the bench?

Yes it would. But despite that the English system has worked well. English judges are all very knowledgeable, especially on rules of evidence. It makes a difference.

Under such a system, none of the three Cook County members of the Supreme Court — Judges Ward, Clark, and yourself — would be qualified to serve. None of you ever sat as a trial judge.

You're right. We would not be beneficiaries of such a system.

As someone who sat on the Illinois Courts Commission, do you think, in view of Operation Greylord, that the Illinois apparatus for disciplining judges has been effective?

Since I no longer sit on the commission, I only know what I read in the newspapers, and what I read later in the opinions. It's not easy for me to express an opinion, good, bad, or indifferent. I have to assume the commission is doing its job.

Well, you're familiar with how long the cases take. Can't you speak to that — the efficiency, if not the effectiveness, of the system?

Again, I haven't been in there. I'm not familiar with the chronology of when they get cases and how soon they're set out. When I was on the commission, it was relatively new. In fact, when I went on, we never filed opinions. We just came out and said, "Our order is to discipline in the following fashion." Then later on, when Justice [Walter V.] Schaefer was our chairman, the Judicial Inquiry Board said it would provide guidance if we started filing opinions explaining why we arrived at a sanction. Now that the commission has been in business for a long time, I assume the rough edges have been smoothed off and the board and the commission move with alacrity.

Speaking in the broadest of generalities, do you think the courts commission has been too lenient?

I wouldn't want to express an opinion on that. As I said, I'm not familiar with the evidence the commission has heard. In the case of Bob Sklodowski, I understand there was a lot of mitigating evidence. [Cook County Circuit Court Judge Robert L. Sklodowski on April 19 was reprimanded — the commission's lightest sanction — after he pleaded guilty to a misdemeanor charge stemming from an improper Florida real estate transaction.] Bob is a wonderful judge with a wonderful record, very independent and very knowledgeable. I assume the commission did the right thing. I may be partisan about it because I like Bob, and I'm glad to see that he's still on the bench.

The Supreme Court recently added laypersons to the Attorney Registration and Disciplinary Commission, but there are still no laypersons involved in the adjudicative work of the agency. Do you think laypersons should be added to its inquiry and hearing boards?

Let me ask you, does the medical profession have anything where they have lay people participating in their disciplinary proceedings, or the plumbers or the surveyors, do they have anyone other than plumbers and surveyors?

Several states have non-lawyer participation in attorney disciplinary matters. Do you think that's a good idea, regardless of what the plumbers and surveyors do?

I've never really given it any thought.

Under present Supreme Court rules, attorney disciplinary matters are secret until they are filed with the Supreme Court. Do you think that makes sense, or should the process be more open? Once there has been a determination that there is probable cause to believe a lawyer has engaged in misconduct, shouldn't that be made public?

I'm not that familiar with it. It's certainly under the jurisdiction of the Supreme Court, and I will familiarize myself with the exact mechanics. Then I'll have an opinion, and I will make it known.

From your vantage point, after 20 years on the Appellate Court, what do you think the Illinois Supreme Court could do better?

I'm going to find out when I get there.

Well then, what do you think the First District Illinois Appellate Court could do better?

One of the problems I see is that the volume of business has increased dramatically. When I came on this court there were 12 of us, and today there are 21, but I don't think that reflects what we need. I think we need more appellate judges, or an alternative method of disposing of cases. When I first came on the court, we would dispose of about 35 cases a year per judge. Now we're up to more than 100 per judge. In 1981, the National Center for State Courts came out with a study on delays in appellate courts. About a dozen courts were studied, including the First District of Illinois. We didn't look too good. We were on the bottom of the list in numbers of dispositions per judge. When I saw this, I told our then chairman, Judge Downing, "You know, something's wrong. They can't be that much better judges and lawyers than we are. They must have some other way to get rid of cases." I suggested that he go to Salem, Oregon, and study their system. They were showing about 300 dispositions per judge and we, in that study, showed 87. He went to Oregon. When he came back he said, "Well, first of all, they only file opinions in 30 percent of their cases. The rest are disposed of summarily by 'reversed and remanded' or 'affirmed'." That's why we looked so bad and they looked so good. I'm sure the profession would not be too happy if we started giving summary dispositions, reversing cases without saying why, but we do need to look into alternatives.

In the Appellate Court at the present time, you have these static divisions so that the same judges are always together. Other appellate courts, the U.S. Court of

Appeals for the Seventh Circuit, for instance, rotate the judges. Why don't you do that?

It's primarily because it would be a logistical nightmare to rotate 21 judges. We have four judges in a division, and three sit in a case. If I send an opinion over to one of my colleagues, say Judge Scariano, he may say, "I'd like to talk to you about it." We may sit and talk about a sentence, a paragraph, whatever. If we need to talk to the other member of the panel, say Judge Bilandic, he's just down the hall. We go down there and we thrash it out. Assume I had to go look for, say Judge McMorrow. In the meantime, she's looking for Judge Quinlan, and he's looking for Judge Campbell, and he's looking for Judge Lorenz. It is a problem to get the same three people together at the same time on the same date, because they say, "Look, I've got to go see my other judges. I've got 20 other judges that I have cases with." It's just not feasible because of the number of judges we have.

How do the federal appellate courts do it? The Ninth Circuit has 26 active judges and 11 senior judges.

I don't know how they do it, but what's the advantage?

It would stimulate the intellectual interchange, wouldn't it?

Let me give it to you this way — you have the same seven judges on the Illinois Supreme Court and the same nine judges on the United States Supreme Court. Why not rotate them? Justice Jackson once made the observation that when you reach for the stars you can fall in a hole. In an effort to reach the target, you sometimes create different problems that are greater than the ones you were trying to solve. There's an old Yiddish proverb that for every problem there is not necessarily a solution.

What's your view on the importance of precedent — stare decisis?

I just happen to have something here quoting, of all judges, Justice Brennan of the United States Supreme Court, a special concurrence in *Matthews v. U.S.*, 56 U.S. Law Week 4185. It's an entrapment case. He cites previous dissents he had written or joined and then says, "Were I judging on a clean slate, I would still be inclined to adopt the view that the entrapment defense should focus exclusively on the government's conduct. But I am not writing on a clean slate; the Court has spoken definitively on this point. Therefore I bow to *stare decisis* and join in the judgment of the Court." That's Brennan's view. I think its quite formidable and very persuasive. You have to provide certainty to lawyers so they can properly advise their clients. You have to have stability in law. When you depart from precedent, you had better be sure what you're doing is right. Otherwise lawyers can't advise and judges can't apply the law. Our whole system is based on precedent. That's the beauty of the system. Someone dropped Justice Holmes off at court one morning and said, "Go do justice." He turned around and said, "You don't understand. We're not here to do justice. We're here to see that the rules are followed."

Under what circumstances should we depart from precedent?

Under appropriate circumstances. Gotcha!

There has been discussion recently about whether provisions of the Illinois Bill of Rights ought to be interpreted identically to the corresponding provisions of the U.S. Bill of Rights. What's your view?

A lot of people don't know it, but we're dual citizens. We're citizens of the United States and citizens of the state where we reside. There are two bodies of law with protections and duties. Don't forget duties. You're asking if we should interpret the Illinois constitution to provide more rights than the federal constitution. I think yes, in some cases.

Can you be a little more specific?

It would be premature. Assuming I said to you that one provision or another should be interpreted more broadly, I would be telling you how I was going to rule on that issue. It would be improper. It would be unfair to the litigants and to my colleagues on the court.

You're starting to sound like Scalia.

I would certainly give it due consideration. After all, I'm taking an oath not only to uphold the federal constitution but also the state constitution. But I wouldn't want to telegraph now what I would or would not do. I will say to you that I will follow my oath of office.

It has been disclosed that some Illinois Supreme Court opinions that were not unanimous appeared to be unanimous because the dissents weren't written. What do you think of that?

Let me answer it this way: Chief Justice Marshall never permitted dissents. That went on for 15 years. He said it would detract from the prestige of the court. This is the much-vaunted and late lamented John Marshall.

Do you agree with that?

I think dissents serve a purpose. I've, of course, written dissents, and I've written special concurring opinions. If I disagree, I dissent. Members of my division have filed occasional dissents from opinions I have written. While we have had disagreements, no one has been disagreeable. Dissents are necessary if someone strongly feels that a position should be presented. But if you have too many, they lose their import. The judges I admire most on the Appellate Court have not dissented often, but when they have, you know they felt quite strongly. They are saying to the Supreme Court, "Here's one you should take a close look at." If I sat with, say Jack Dempsey, and he dissented, I'd take a long look. I would want to make sure I was on good ground, because if he dissented, you knew damn well he had a strong reason. You can't be constantly dissenting because it detracts after a while.

In your experience, how important are oral arguments?

They're not always important, but they're important enough that we continue having them. There are occasions where the arguments change our initial impression.

Before you hear arguments do you have an inclination about how you are going to decide the case?

Yes. Before we go out on oral arguments we have read not only the briefs but also memorandums that have been prepared by the clerks of each member of the panel. The memorandums say what the appellant alleges, what the appellee alleges, what authorities each one presents, and then there is a discussion of the merits of the respective positions. We exchange these memorandums. In some instances, we're more familiar with the facts than the lawyers because they have written their briefs eight months or a year earlier. We've been looking at the briefs and memorandums for maybe a week, so it's fresh to us. But the orals are very important in many cases. In many other instances they're not, but we have occasionally ordered orals when the lawyers have not requested them. Many times in oral arguments things come out that were not developed in the briefs.

Have you often seen your initial impression changed?

It happens occasionally.

How occasionally?

Occasionally enough to justify the use of oral arguments.

Do you discuss the case with your fellow members of the panel before you go out?

No, we just have the memorandums. After the argument, we take an impression vote, which may change down the road a bit. One thing that may change it is subsequent cited authority. The U.S. Supreme Court or other appellate court, maybe a division of our own court, may decide something on point. That happens occasionally, and sometimes we hold a case to see what the U.S. Supreme Court or Illinois Supreme Court is doing, if we find out they took leave on a case raising the identical point. We will hold our disposition pending their disposition. That happened recently on a couple of post-conviction cases. Finally, the Supreme Court came down. We got our guidance and disposed of the cases.

On the Illinois Supreme Court, with your arrival, we will have four former prosecutors and a former Illinois attorney general. Does all that law enforcement experience make the court a little lopsided?

That doesn't disturb me. I've found in my experience that former defense lawyers who become judges tend to be prosecution-minded. I don't know why. You can surmise that maybe when they hear a defense argument they think, "Hey, I used that myself. I know where that came from." Former state's attorneys tend to go the other way. Sometimes the defense is better off having former state's attorneys.

How will your relationship with Dan Ward affect your work on the Supreme Court?

It will not affect my judgment. When we were in the state's attorney's office we had differences, but at that time we were not equals. Now we will be. I'm sure he respects that, and I respect him.

Eight years ago, when you were opposing Seymour Simon for the Supreme Court vacancy that then existed, you said that he shouldn't have it because he would be forced to retire before he finished his 10-year term. He was 64, and mandatory retirement then was at age 70. Now, when your term ends in 1990, you will be 66. Although mandatory retirement has been raised to 75, you wouldn't be able to finish your term if you seek re-election. Do you still hold the view you held eight years ago — that someone who cannot finish the term should not be a candidate?

Certain things have intervened to alter my sentiments. What was it that Emerson said — that a foolish consistency is the hobgoblin of little minds?