



# SOME CORRESPONDENCE ABOUT SELF-IMPOSED JUDICIAL BURDENS

*John Paul Stevens & Warner W. Gardner*

Two years ago we published a few of Warner W. Gardner's thoughts about the workloads of U.S. Supreme Court Justices.<sup>1</sup> Now seems like a good time to present a little follow-up: The well-tempered response by Supreme Court Justice John Paul Stevens to Gardner's well-informed thoughts, and Gardner's cordial response to Stevens.

— *The Editors*

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*To learn a little bit more about the two extraordinarily accomplished and long-lived lawyers — John Paul Stevens (1920-2019) and Warner W. Gardner (1909-2003) — whose notes to each other are reprinted here, see page 5 of this issue and page 13 of the Autumn 2021 issue of the Green Bag, and Bennett Boskey's remarks on page 271 of the Spring 2006 issue. Thanks again to the Gardner family, and especially Hannah Gardner, for letting us publish more of his work. See, e.g., Warner W. Gardner, *Memories of the 1937 Constitutional Revolution, Parts I & II*, 22 Green Bag 2d 219 & 293 (2019).*

<sup>1</sup> Warner W. Gardner, *A Speculation as to Whether Judicial Burdens Are Self-Imposed*, 25 Green Bag 2d 13 (2021).

*John Paul Stevens & Warner W. Gardner*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 4, 1983

Mr. Warren W. Gardner  
1800 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

Dear Mr. Gardner:

Thank you for sending me a copy of your paper discussing the extent to which our burdens are self-imposed. Indeed, I should more appropriately thank you for taking the time to prepare such a thoughtful and constructive paper. Speaking only for myself, of course, I can assure you that it means a great deal to receive this kind of evidence that concerned lawyers are so interested in preserving and strengthening the institution that is temporarily entrusted to our care.

It will not surprise you that I agree with a substantial portion of what you have written. Perhaps our principle difference is over the value of expressing or suppressing a dissenting position. Contrary to the general view, I have often thought the Country would have fared better if Brown v. Board of Education, had not been released as a unanimous opinion, but rather had contained a full presentation and refutation of the views of the dissenters. Be that as it may, you are no doubt correct in your observation that there is significantly more writing of separate opinions than is really necessary. That phenomenon, of course, also contributes to the length of majority opinions which must confront the arguments to be expected from dissenters in order to be sure that the majority will be retained. Moreover, as I am sure you understand, after an opinion has been joined by enough Justices to command a majority, the author is naturally reluctant to condense arguments that may no longer be necessary.

*Some Correspondence About Self-Imposed Judicial Burdens*

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I note that you do not intend to publish your paper, but I trust that you will not be offended if I plagiarize some of your material when I have occasion to speak publicly about its subject matter.

Sincerely,



*John Paul Stevens & Warner W. Gardner*

1800 MASSACHUSETTS AVENUE, N. W.  
WASHINGTON, D. C. 20036

July 13, 1983

Honorable John Paul Stevens  
Supreme Court of the United States  
Washington, D. C. 20543

My dear Mr. Justice:

I have been slow in noting the pleasure which was given me by your very generous comments on my little foray into judicial administration of last spring. I believe my tardiness reflects my indecision as to whether I should rest content with a polite and formal expression of thanks or whether I could properly go on to say that there is none whose praise could be more important to me. The supplemental comment, while true, seems both (a) effusive, and (b) contrary to sound constitutional principle in that it suggests an elitist departure from the rule of one-Justice, one-vote which exceeds even the 0.6984 percent disallowed by *Karcher v. Daggett*. I am, under either phrasing, most grateful for your kind letter of April 4.

Sincerely yours,

*Warner W. Gardner*

Warner W. Gardner

*GB*