10-1978

United States v. Helstoski

Lewis F. Powell Jr.

Could vote to G

Q whether S. & D. clause may be waived by testimony before G/J w/out claiming its protection.

Q whether, in proving receipt of bribes, testimony as to incidental conduct supplement to connect the briber to the legislature may be introduced as non-legislature action by the Congressman.

PRELIMINARY MEMORANDUM

December 8, 1978 Conference
List 1, Sheet 2

No. 78-349

UNITED STATES

v.

HELSTOSKI

Cert to CA 3
(Seitz, Staley & Hunter)

Federal/Criminal

Timely per extn

Congressman charged with accepting bribes for introducing private bill for aliens who desire not to be deported.

No. 78-546

HELSTOSKI

v.

UNITED STATES

Cert to CA 3
(Seitz, Staley & Hunter)

Federal/Civil

Timely per extn

SUMMARY: These curve-lined petitions raise Speech and Debate Clause problems. In No. 78-349, the Government seeks review of the CA's ruling that it may not introduce any evidence containing references to past legislative acts of Congressman Helstoski. In No. 78-546, Helstoski contends the CA should have granted him a writ of mandamus directing the district court to dismiss an indictment charging him with conspiring to violate the official bribery statute, 18 U.S.C. § 201(c)(1) and with three substantive violations of that statute.

Please see p. 11.

FACT: At the time of indictment, and at all times specified therein, Helstoski was a member of the United States House of Representatives. In June 1976, he was charged in a four-count indictment. Count I charges a violation of 18 U.S.C. § 371, and alleges that Helstoski conspired to violate 18 U.S.C. § 201 (c)(1) by soliciting and obtaining bribes from resident aliens for introducing private immigration bills in the House. Four of the sixteen overt acts specified in the indictment allege Helstoski introduced particular bills in the House to benefit named individuals. Counts II-IV charge the defendant with soliciting and obtaining money from certain aliens for introducing private legislation on their behalf. The underlying indictment grew out of eight grand jury investigations that covered a two-year span and resulted in several indictments and convictions of persons associated with Helstoski.

Helstoski voluntarily testified before several of those grand juries. In his testimony, he described his motives for introducing the bills, the procedures by which he presented the bills in the House, and the procedures used by his office in handling requests for private immigration bills. Helstoski also voluntarily produced copies of the bills and voluminous correspondence concerning them. Prior to his first grand jury appearance and on each subsequent appearance, Helstoski was advised of his right not to incriminate himself and of his right to counsel. He also was told that he was not under complusion to produce any documents, and that anything he did produce might be used against him. It was not until

Helstoski's last appearance before the grand jury in May 1976 that he asserted any Speech and Debate Clause immunity, after the Government had refused to answer his inquiry as to whether he was a target of the grand jury's probe. At none of Helstoski's prior appearances was he ever specifically advised of his Speech and Debate Clause privilege.

After the indictment was filed, Helstoski moved to dismiss it on the ground that, in charging bribery and conspiracy to solicit and accept bribes for the performance of particularly alleged legislative acts, the indictment was facially invalid under the Speech and Debate Clause. After the DC denied this motion, the Government filed a motion in limine seeking a pretrial ruling on the admissibility of particular items of evidence, including the expected testimony of various witnesses and more than 200 documents obtained from the files turned over by Helstoski.[1/] Rather than rule on each item of evidence offered, the DC held generally that the Speech and Debate Clause precluded introduction of any evidence of a past legislative act of the defendant. The DC then turned to the Government's claim that Helstoski had waived his Speech and Debate Clause immunity. Finding it unnecessary to decide the question of whether an individual legislator could waive the Speech and Debate Clause privilege, the DC ruled that, if such a waiver were possible, it was so

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1/ Representative samples of the evidence at issue have been submitted under seal in a special appendix filed with the Court. Helstoski has filed his own appendix under seal, which contains an affidavit before the DC that controverts the Government's contentions as to what the witnesses' testimony will be.

> "only where it has been clearly demonstrated that a legislator has expressly waived his . . . immunity for the precise purposes for which the Government seeks to use the evidence of his legislative acts."

And, under that standard, Helstoski had not waived his rights.

The Government then appealed the DC's ruling to the CA under 18 U.S.C. § 3731, and Helstoski filed a petition for a writ of mandamus seeking an order compelling the DC to dismiss the indictment.

HOLDINGS BELOW: On appeal Helstoski argued that he was clearly entitled to a writ of mandamus directing dismissal of the indictment because it charged him with the performance of legislative acts, namely, the introduction of the private bills referred to in the particular counts charged. As the indictment thus required proof of the performance of legislative acts, it infringed the Speech and Debate Clause on its face. Alternatively, Helstoski argued that the indictment was invalid because it was returned by a grand jury that had heard evidence privileged under the Clause. Finally, he argued that the DC had "constructively amended" the indictment in violation of the Fifth Amendment by prohibiting the Government from proving what it had alleged in the indictment, i.e., the performance of legislative acts.

The CA held that, although it had jurisdiction to issue the writ sought, mandamus was an "extraordinary" remedy that was to be issued only in "exceptional circumstances" amounting to a judicial "usurpation of power." Kerr v. United States District

Court, 426 U.S. 394, 402 (1976). Issusance of a writ of mandamus was, in large measure, "a matter of discretion" that was called for only when the party seeking the writ had no other remedy and had shown a clear right to the relief sought. Id. at 403.

The court held that issuance of the writ sought would be inappropriate in the circumstances of this case. The indictment at issue was not materially distinguishable from the one upheld by this Court in United States v. Brewster, 408 U.S. 501 (1972), and all the Government was required to prove to support its case was the taking of the bribes alleged, not the performance of any of the legislative acts mentioned therein. The indictment, moreover, was valid on its face and had been returned by a competent grand jury. That was all that was necessary to establish the DC's jurisdiction to try the indictment. Costello v. United States, 350 U.S. 359, 363 (1956). Accordingly, any argument that the Speech and Debate Clause required dismissal of an indictment returned by a grand jury that had heard evidence privileged by the Clause was better left for decision on appeal of a final judgment, for such an argument did not go to the jurisdiction of the district court to try the case. Finally, the DC's evidentiary ruling did not amount to a "constructive amendment" of the indictment, for proof of the defendant's performance of a legislative act was not an essential element of the crimes charged. The basic theory of the offense and facts considered by the grand jury, thus, were unaltered by the DC's evidentiary ruling.

The CA then turned to the Government's appeal of the DC's order precluding the Government from presenting "evidence of the performance of a past legislative act . . . derived from any source and for any purpose." At the outset the CA rejected Helstoski's contention that no jurisdiction to hear the Government's appeal existed under 18 U.S.C. § 3731 because the DC had not suppressed or excluded any specific items of evidence. That made no difference, said the CA, for the statute was to be broadly construed to effectuate its purposes and the practical effect of the DC's order was to suppress much of the evidence contained in the specific offers of proof made below, evidence that "otherwise almost certainly would have [been] introduced at trial."

Turning to the merits, the CA rejected the Government's alternative arguments (1) that all its evidence was admissible for the limited purpose of proving the defendant's intent in taking the bribes; and (2) that at least the correspondence and conversations of the defendant that were not themselves legislative acts were admissible to prove the defendant's purpose in taking the bribes even though such evidence might contain references to the performance of past legislative acts.

Though the CA agreed that Brewster permitted the Government to show the defendant's purpose in taking the bribes, the court read Brewster as precluding the Government from showing such purpose by proving how the defendant had spoken, debated, voted or acted in the Congress. Brewster flatly prohibited "any showing" of legislative acts for any purpose. See 408 U.S. at

526-28. And, the Government could not circumvent this requirement by introducing correspondence and statements that, "though not legislative acts themselves, contain reference to past legislative acts." This would permit the Government to accomplish indirectly what it was absolutely prohibited from doing directly. Finally, the Government's waiver arguments were unavailing, for they misconstrued the central purpose of the Speech and Debate Clause. The Clause was designed to protect the integrity of the legislative process by insuring the independence of individual legislators. It was not a "privilege against non-disclosure" like the attorney-client privilege; nor was it designed to prevent the use of unreliable evidence like the rule against use of coerced confessions. Accordingly, even assuming the privilege could be waived by an individual legislator, a question the CA found unnecessary to decide, something more than a "voluntariness" standard of waiver was required. In view of the separation-of-powers principles underlying the Clause, any waiver in the context of a criminal prosecution "must be express and for the specific purpose for which the evidence of legislative acts is sought to be used against the member." Under that standard, no express waiver of Helstoski's Speech and Debate Clause privilege could be found in the mere fact that he had voluntarily testified and produced documents concerning his legislative acts before the grand jury.

CONTENTIONS: The parties essentially reiterate the arguments raised and rejected in the courts below.

In No. 546, Helskoski claims the indictment is invalid because it charges the performance of specific legislative acts privileged under the Speech and Debate Clause, and because it was returned by a grand jury that had heard evidence privileged under the Clause. He also claims the DC's ruling constructively amended the indictment. Finally, he claims issuance of a writ of mandamus is necessary because no other remedy exist to protect his right under the Speech and Debate Clause not to put on trial for performing legislative acts.

In response, the Government relies on the CA's reasoning below, argues that Helskoski has an adequate remedy by way of appeal, and contends the CA did not abuse its discretion in denying the writ.

In No. 78-349, the Government again claims that it should be allowed to introduce evidence concerning correspondence, conversations and acts occurring outside the legislative process itself even though such evidence might contain references to the performance of past legislative acts. The Government relies on Gravel v. United States, 408 U.S. 606 (1972), for the view that acts and conversations occuring outside the halls of Congress are unprotected by the Speech and Debate Clause. Furthermore, Brewster itself is inconsistent with the CA's broad ban on any evidence that simply refers to a past legislative act, a ruling that the DC has subsequently interpreted to prohibit even evidence of payments of money to Helstoski subsequent to any legislative act on the theory that the jury might infer performance of the legislative act from

receipt of the money. If permitted to stand, the CA's ruling will effectively insulate members of Congress from any bribery prosecutions. Finally, the Government contends that the CA adopted a "waiver" standard that is so strict as to preclude any waiver of the Speech and Debate Clause privilege, and that is inconsistent with the Seventh Circuit's ruling in United States v. Craig, 528 F.2d 773, 780-81 (1976), vacated on other grounds, 537 F.2d 957 (7th Cir. 1977), that a state legislator could waive his Speech and Debate Clause privilege by voluntarily testifying before a grand jury.

Helstoski answers that the Speech and Debate Clause protects "acts, not actors," and that the Government is attempting simply to evade the flat ban on direct or indirect proof of legislative acts laid down in Brewster and United States v. Johnson, 383 U.S. 169 (1966). Moreover, he observes that there is dispute between the parties as to what the testimony of certain witnesses might be. Accordingly, this case provides a poor vehicle for resolving the reach of the Speech and Debate Clause with respect to specific items of evidence, particularly as the DC refused to rule on the admissibility of the specific offers of proof made by the Government. Finally, Helstoski stresses that he was never advised that he was a target of the grand jury proceedings. He cooperated fully with the grand juries only because he believed that his aide was the target and that no Speech and Debate Clause immunity existed covering a third-party's crime. See Gravel, supra at 628-29. Helstoski notes that, after the

Government refused to answer his inquiry as to whether he was a target of the grand jury probes, no further cooperation was forthcoming from him. Accordingly, it is absurd to suggest, as the Government does, that he ever knowingly or intelligently waived his Speech and Debate Clause immunity, even assuming such a waiver is possible.

ANALYSIS: I believe that Brewster leaves open at least two issues presented here, namely, whether and under what circumstances an individual legislator may waive his Speech and Debate Clause immunity, and whether the prohibition of proof of legislative acts forecloses the use of any evidence that makes incidental reference to legislative acts or permits an inference that they have been performed. Moreover, the indictment at issue here alleges the performance of legislative acts with a particularity not present in the indictment in Brewster. Arguably, the references to the performance of particular legislative acts alleged in the indictment does not provide cause to distinguish Brewster, for those references can be deleted as mere surplusage in that the allegations that Helstoski actually introduced private bills in the House are not essential to the prosecution's case under 18 U.S.C. § 201(c)(1). The introduction of the private bills, however, does appear to be an essential aspect of the conspiracy charged in count one of the indictment. And, accordingly, at least that count seems troubling in light of United States v. Johnson, 383 U.S. 169, 185 (1966).

In any event, the issues presented in these petitions seem sufficiently important and likely to recur as to warrant the Court's attention, whatever one's views on the merits. There is not, however, any clear conflict in the Circuits as to the issues raised. Craig, on which the Government relies for its waiver argument, involved only a state Speech and Debate Clause question, and the panel's decision was later vacated anyways.

There are responses.

11/29/78 Walsh Opn in Govt's petn.

aml

Despite the absence of a conflict, the question seems significant. I agree that Brewster leaves ~~the~~ ~~issue~~ open the issues presented here. In light of the rash of criminal charges against legislators, it might be important to [redacted] take this case.

E.G.

Dec. 8, 1978 Conf.
List 1, Sheet 1

PRELIMINARY MEMORANDUM

No. 78-546

HELSTOSKI (indicted Congressman) Cert to CA 3
(Seitz, Staley & Hunter)

v.

UNITED STATES Federal/ Civil Timely per extn

SUMMARY: See preliminary memorandum in No. 78-349, with which this petition is curve-lined.

There is a response.

11/29/78 Walsh opn in petn No. 78-349

Argued ....., 19... *Assigned* ....., 19... No. 78-349

Submitted ....., 19... *Announced* ....., 19...

UNITED STATES

vs.

HELSTOSKI

Note: Appendix in these cases sealed. Time for filing extended by Justice Brennan until October 3, 1978.

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓											
Brennan, J.		✓											
Stewart, J.		✓											
White, J.			✓										
Marshall, J.		✓											
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.			✓										
Stevens, J.		✓											

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Submitted ....., 19... *Announced* ....., 19...

HELSTOSKI

vs.

MEANOR

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Rev w mandamus

Grant + consolidate 1 hour.

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Stevens, J.		✓											

Office of the Solicitor General
Washington, D.C. 20530

March 27, 1979

Honorable Michael Rodak, Jr.
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: United States v. Helstoski, No. 78-349
Helstoski v. Meanor, No. 78-546

Dear Mr. Rodak:

My response to a question asked during the oral argument in this case may have left the impression that the government has decided to abandon the contentions made in Part I(B) of the Brief for the United States, pages 76-88. The purpose of this letter is to affirm that in all respects the position of the United States remains that stated in the government's brief. I regret any confusion that may have arisen during the oral argument.

Sincerely yours,

Wade H. McCree, Jr.
Solicitor General

cc: Morton Stavis, Esq.
744 Broad Street
Newark, New Jersey 07102

Stanley M. Brand, Esq.
General Counsel to the Clerk
U.S. House of Representatives
Washington, D.C. 20515

Office of the Solicitor General
Washington, D.C. 20530

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General Counsel to the Clerk
U.S. House of Representatives
Washington, D.C. 20515

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

CHAMBERS OF
THE CHIEF JUSTICE

March 28, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 78-349 U.S. v. Helstoski
78-546 Helstoski v. Meanor

I was not surprised to receive the enclosed memorandum today from the Solicitor General. When he responded on this point, I thought it was one of those things that happen when four or five "inquisitors" are at you.

Regards,

WEB

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

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THE CHIEF JUSTICE

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78-546 Helstoski v. Meanor

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Regards,

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 25 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-546

Henry Helstoski, Petitioner, v. H. Curtis Meanor, United States District Judge, et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

Out as result of my Surgery L.F.P.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question in this case is whether mandamus is an appropriate means of challenging the validity of an indictment of a Member of Congress on the ground that it violates the Speech or Debate Clause of the Constitution.[1] The Court of Appeals declined to issue the writ. We affirm.

I

Petitioner Helstoski served in the United States Congress from 1965 through 1976 as a Representative from New Jersey. In 1974 the Department of Justice began investigating reported political corruption, including allegations that aliens had paid money for the introduction and processing of private bills which would suspend the application of the immigration laws so as to allow them to remain in this country.

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[1] The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Art. I, § 6.

This case was argued in tandem with No. 78-349, *United States* v. *Helstoski*, which concerns the restrictions the Speech or Debate Clause places on the admissibility of evidence at a trial on charges that a former Member of the House accepted money in return for promising to introduce and introducing private bills.

In June 1976, a grand jury returned a 12-count indictment charging Helstoski and others with various criminal acts. Only the first four counts are involved in this case. The first count charged that Helstoski and others had conspired to violate 18 U. S. C. § 201 (c)(1) by accepting money in return for Helstoski's "being influenced in the performance of official acts, to wit: the introduction of private bills in the United States House of Representatives." The charge recited 16 overt acts, four of which referred to the actual introduction of private bills; a fifth referred to an agreement to introduce a private bill. The entire conspiracy was charged as a violation of the general conspiracy statute, 18 U. S. C. § 371.

Counts II, III, and IV were substantive counts charging violations of 18 U. S. C. §§ 201 (c)(1) and (2):

> "Whoever, being a public official . . . directly or indirectly, corruptly *asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive* anything of value for himself or for any other person or entity, in return for:
>
> "(1) being influenced in his performance of any official act; or
>
> "(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States;
>
> . . . . . .
>
> "Shall be [fined or imprisoned]." (Emphasis added.)

"Public official" and "official act" are defined in 18 U. S. C. § 201:

> "(a) For the purpose of this section:
>
> " 'public official' means Member of Congress . . . ; and
>
> . . . . . .
>
> " 'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit."

Each count charged that Helstoski, acting through his legislative aide, had solicited money from aliens in return for "being influenced in the performance of official acts, to wit: the introduction of private bills in the United States House of Representatives on behalf of" the aliens. Essentially the charges against Helstoski parallel those dealt within *United States* v. *Johnson*, 383 U. S. 169 (1966), and *United States* v. *Brewster*, 408 U. S. 501 (1972).

Each count also charged that Helstoski, again acting through his aide, had accepted a bribe, "in return for his being influenced in the performance of official acts, to wit: the introduction of private bills in the United States House of Representatives on behalf of" the aliens. Finally, each count charged that a private bill had been introduced on a particular date.

Helstoski neither appeared before nor submitted material to the particular grand jury that returned the indictment. The prosecutor provided that grand jury with transcripts of most, but not all, of the testimony of witnesses, including Helstoski, before eight other grand juries.[2] The United States Attorney explained that to avoid any possible prejudice to Helstoski he had not told the ninth grand jury of Helstoski's invocation of his privilege under the Fifth Amendment. Moreover, he sought to avoid any challenge resulting from the fact that the District Judge had appeared before one grand jury to rule on Helstoski's claim of that privilege.

Helstoski moved to dismiss the indictment, contending that the grand jury process had been abused and that the indictment violated the Speech or Debate Cause. He supported his allegation of abuse of the grand jury by characterizing the eight grand juries as "discovery tools." The effect, he contended, was to permit the prosecutor to select the information presented to the indicting grand jury and to deprive that

[2] The proceedings before the various grand juries are described in No. 78-349, *United States* v. *Helstoski*.

grand jury of evidence of the demeanor of witnesses, especially that of Helstoski himself.

District Judge Meanor denied the motion after examining a transcript of the evidence presented to the indicting grand jury. He held that there had been no such abuse to justify invalidating the indictment. He found that most of the material not submitted to the indicting grand jury "was either prejudicial to the defendants, or neither inculpating nor exculpating in nature." He also found that the testimony of two grand jury witnesses should have been presented to the indicting grand jury and concluded that *Brady* v. *Maryland*, 373 U. S. 83 (1963), required that the Government provide Helstoski with transcripts of their testimony. Judge Meanor also held that the Speech or Debate Clause did not require dismissal.

Approximately three months later, in June 1977, Helstoski petitioned the Court of Appeals for a writ of mandamus directing the District Court to dismiss the indictment.

The Court of Appeals declined to issue the writ of mandamus. 576 F. 2d 511 (CA3 1978). It concluded that the indictment in this case was indistinguishable from that in *United States* v. *Brewster*, *supra*, where an indictment was held not to violate the Speech or Debate Clause even though it contained references to legislative acts. The Court of Appeals rejected Helstoski's argument that the indictment was invalid because the grand jury had heard evidence of legislative acts, which he argues was in violation of the Speech or Debate Clause. The court declined to go behind the indictment holding that it was valid on its face.

In seeking reversal here of the Court of Appeals' holding, Helstoski argues that the extraordinary remedy of mandamus is appropriate in this case to protect the constitutional command of separation of powers. He contends that the Speech or Debate Clause assigns exclusive jurisdiction over all legislative acts to Congress. The indictment itself, he urges, is a

violation of that Clause because it represents an impermissible assertion of jurisdiction over the legislative function by the grand jury and the federal courts. He challenges the validity of the indictment on two grounds. First, the indictment itself refers to legislative acts. Any attempt at restricting the proof at trial, as approved by the Court of Appeals, will amount to an amendment of the indictment, thereby violating a Fifth Amendment right to be tried only on an indictment in precisely the form issued by a grand jury. Second, he contends the Speech or Debate Clause was violated when the grand jury was allowed to consider evidence of his legislative acts notwithstanding that such evidence and testimony was presented by him.

II

Almost a hundred years ago this Court explained, "The general principle which governs proceedings by *mandamus* is, that whatever can be done without the employment of that extraordinary writ, *may not be done with it*. It lies only when there is practically *no other remedy*." *Ex parte Rowland*, 104 U. S. 604, 617 (1882) (emphasis added). More recently we summarized certain considerations for determining whether the writ should issue:

> "Among these are that the party seeking issuance of the writ have no other adequate means to attain the relief he desires, and that he satisfy 'the burden of showing that [his] right to issuance of the writ is "clear and indisputable."' Moreover, it is important to remember that issuance of the writ is in large part a matter of discretion with the court to which the petition is addressed." *Kerr* v. *United States District Court*, 426 U. S. 394, 403 (1976) (citations omitted).

Helstoski contends that his petition for a writ of mandamus should not be governed by the rules which we have developed for assessing mandamus petitions generally. He argues that

the writ is especially appropriate for enforcing the commands of the Speech or Debate Clause. We agree that the guarantees of that Clause are vitally important to our system of government and therefore are entitled to be treated by the courts with the sensitivity that such important values require. We are unwilling, however, to accept the contention that mandamus is the appropriate vehicle for assuring protection of the Clause in the circumstances shown here. Helstoski could readily have secured review of the ruling complained of and all objectives now sought, by direct appeal to the Court of Appeals from the District Court order denying his motion to dismiss the indictment.

Only recently in *Abney* v. *United States*, 431 U. S. 651 (1977), we held that "pretrial orders rejecting claims of former jeopardy . . . constitute 'final decisions' and thus satisfy the jurisdictional prerequisites of [28 U. S. C.] § 1291." *Id.*, at 662. The reasoning undergirding that holding applies with particular force here. The language of the *Abney* opinion is particularly apt, even though the context was the Double Jeopardy Clause:

> "[T]here can be no doubt that such orders constitute a complete, formal and, in the trial court, a final rejection of a criminal defendant's double jeopardy claim. There are simply no further steps that can be taken in the District Court to avoid the trial the defendant maintains is barred by the Fifth Amendment's guarantee." *Id.*, at 659.

This is equally true for a claim that an indictment violates the fundamental guarantees of the Speech or Debate Clause. Once a motion to dismiss is denied there is nothing the Member can do under that Clause in the trial court to prevent the trial; but it is equally clear an appeal of the District Court ruling was available.

Second, we noted:

> "[T]he very nature of a double jeopardy claim is such that

it is collateral to, and separable from, the principal issue at the accused's impending criminal trial, *i. e.*, whether or not the accused is guilty of the offense charged. In arguing that the Double Jeopardy Clause of the Fifth Amendment bars his prosecution, the defendant makes no challenge whatsoever to the merits of the charge against him. Nor does he seek suppression of evidence which the Government plans to use in obtaining a conviction. Rather, he is contesting *the very authority of the Government to hale him into court to face trial on the charge against him.*" [8] *Ibid.* (Emphasis added; citations omitted.)

Abney concludes:

"[T]he rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence. . . . [T]his Court has long recognized that the Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to *trial* for the same offense." *Id.*, at 660–661.

That characterization of the purpose of the Double Jeopardy Clause echoed this Court's statement in *Dombrowski* v. *Eastland*, 387 U. S. 82, 85 (1967), that the Speech or Debate Clause was designed to protect Congressmen "not only from the consequences of litigation's results but also from the burden of defending themselves."

Here the holding of *Abney* becomes highly relevant; by analogy, if a Member "is to avoid *exposure* to [being questioned for acts done in either House] and thereby enjoy the

[8] It is true that Helstoski challenges the admissibility of evidence at his trial; that challenge, however, is raised only if the indictment is allowed to stand.

full protection of the Clause, his . . . challenge to the indictment must be reviewable before . . . exposure [to trial] occurs." *Abney, supra,* at 662.

Helstoski argues that he should not be penalized for failing to predict our decision in *Abney*. But he cannot be viewed as being penalized since the controlling law of the Third Circuit was announced at the time of the District Court order denying dismissal of the indictment, and our holding did no more than affirm the correctness of the law of that Circuit. See *United States* v. *DiSilvio*, 520 F. 2d 247, 248 n. 2a, cert. denied, 423 U. S. 1015 (1975). Cf. *United States* v. *Venable*, 585 F. 2d 71, 74–75 (CA3 1978); *United States* v. *Inmon*, 568 F. 2d 326, 329 (CA3 1977) (referring to the "*Abney-DiSilvio* rule"). We hold that if Helstoski wished to challenge the District Court's denial of his motion to dismiss the indictment, direct appeal to the Court of Appeals was the proper course under *DeSilvio, supra.*[4]

Affirmed.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

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[4] If the petition for a writ of mandamus were treated as an appeal it would, of course, have been jurisdictionally out of time. Fed. Rule App. Proc. 4.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1979

Re: No. 78-546 - Helstoski v. Meanor

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

Sally - no letter is necessary.

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: MAY 29 1979

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

Out as result of my Surgery. LFP

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve important questions concerning the restrictions the Speech or Debate Clause [1] places on the admissibility of evidence at a trial on charges that a former Member of the House had, while a Member, accepted money in return for promising to introduce and introducing private bills.[2]

I

Respondent Helstoski is a former Member of the United States House of Representative from New Jersey. In 1974, while Helstoski was a Member of the House, the Department of Justice began investigating reported political corruption, including allegations that aliens had paid money for the introduction of private bills which would suspend the application of the immigration laws so as to allow them to remain in this country.

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[1] The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Article 1, § 6.

[2] This case was argued in tandem with No. 78-546, *Helstoski* v. *Meanor*, which involves the question of whether mandamus is an appropriate means of challenging the validity of an indictment on the ground that it violates the Speech or Debate Clause of the Constitution.

The investigation was carried on before nine grand juries. The grand juries were called according to the regular practice in the District of New Jersey, which was to have a different grand jury sitting on each of six days during the week; on two days there was a second grand jury. When the United States Attorney was ready to present evidence he presented it to whichever grand jury was sitting that day. There was therefore no assurance that any grand jury which voted an indictment would see and hear all of the witnesses or see all of the documentary evidence. It was contemplated that the grand jury that was asked to return an indictment would review transcripts of relevant testimony presented to other grand juries.

Helstoski appeared voluntarily before grand juries on 10 occasions between April 1974 and May 1976. Each time he appeared he was told that he had certain constitutional rights. Different terms were used by different attorneys for the United States, but the following exchange, which occurred at Helstoski's first appearance before a grand jury, fairly represents the several exchanges:

> "Q. You were told at that time [at the office of the United States attorney earlier]—and just to repeat them today—before we begin you were told that you did not have to give any testimony to the Grand Jury or make any statements to any officer of the United States. You understand that, do you not?
>
> "A. I come with full and unlimited cooperation.
>
> "Q. I understand that. . . .
>
> . . . . .
>
> "Q. And that you also know that anything that you may say to any agent of the United States or to this Grand Jury may later be used in a court of law against you; you understand that as well?
>
> [Affirmative response given.]
>
> . . . . .

"A. Whatever is in my possession, in my files, in its original form, will be turned over. Those files which I have—some of them are very, very old. I've been in Congress since 1965. We mentioned this.

* * * * *

"Q. The Grand Jury wants from you simply the records that are in your possession, whether it be in your office in East Rutherford, New Jersey, Washington, D. C., your home, wherever they may be, the Grand Jury would like you to present those documents. Of course, you understand if you wish not to present those documents you do not have to and that anything you do present may also, as I have told you about your personal testimony, may be used against you later in a court of law?

"A. I understand that. Whatever I have will be turned over to you with full cooperation of [*sic*] this Grand Jury and with yourself, sir.

* * * * *

"A. I understand that. I promise full cooperation with your office, with the FBI, this Grand Jury.

"Q. The Grand Jury is appreciative of that fact. They also want to make certain that when you are giving this cooperation that you understand, as with anyone else that might be called before a United States Grand Jury, exactly what their constitutional rights are. And that is why I have gone through this step by step carefully so there will be no question and there will be no doubt in anybody's mind.

"A. As I indicated, I come with no request for immunity and you can be assured there won't be any plea of the Fifth Amendment under any circumstances."

Helstoski testified as to his practices in introducing private immigration bills and he produced his files on numerous private bills. Included in the files were correspondence with a former legislative aide and with individuals for whom bills

were introduced. He also provided copies of 169 bills introduced on behalf of various aliens.

Beginning with his fourth appearance before a grand jury, in October 1975, Helstoski objected to the burden imposed by the requests for information. The requests, he claimed, violated his own right of privacy and that of his constituents. In that appearance he also stated that there were "some serious Constitutional questions" raised by the failure of the United States Attorney to return tax records which Helstoski had voluntarily delivered. He did not, however, assert a privilege against producing documents until the seventh appearance, on December 12, 1975. Then he declined to answer questions, complaining that the United States Attorney had stated to the District Court that the grand jury had concluded that Helstoski had misapplied campaign funds. He asserted a general invocation of rights under the Constitution and specifically listed the Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendments.

At the next, and eighth, appearance on December 29, 1975, he repeated his objections to the conduct of the United States Attorney. After answering questions about campaign financing, personal loans, and other topics, he declined to answer questions about the receipt of a sum of money. That action was based upon his privilege under the Fifth Amendment "and on further grounds that to answer that question would violate my rights under the Constitution."

Because the grand jury considered that Helstoski's invocation of constitutional privileges was too general to be acceptable it adjourned and reconvened before Judge Meanor to seek a ruling on Helstoski's claim of privilege "under the Constitution." After questioning Helstoski, Judge Meanor stated that the privilege against self-incrimination was the only privilege available to Helstoski. The judge assisted Helstoski in wording a statement invoking the privilege that was satisfactory to the grand jury. Thereafter, Helstoski invoked his Fifth Amendment privilege in refusing to answer further

October 1975, Helstoski complained that he had been served with a subpoena directing him to appear before a grand jury on a day that Congress was in session.[5]

At his 10th and final appearance before a grand jury Helstoski invoked his Fifth Amendment privilege. But he also referred repeatedly to "other constitutional privileges which prevail." Nevertheless, he continued to promise to produce compaign and personal financial records as requested by the grand jury and directed by the District Judge.

II

In June 1976, a grand jury returned a multiple-count indictment charging Helstoski and others with various criminal acts. Helstoski moved to dismiss the indictment, contending that the grand jury process had been abused and that the indictment violated the Speech or Debate Clause.

The District Judge denied the motion after examining a transcript of the evidence presented to the indicting grand jury. He held that the Speech or Debate Clause did not require dismissal. He also ruled that the Government would not be allowed to offer evidence of the actual performance of any legislative acts. That ruling prompted the Government to file a motion requesting that the judge pass on the admissibility of twenty-three categories of evidence. The Government urged that a ruling was necessary to avoid the possibility of a mistrial. Helstoski opposed the motion, argu-

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[5] He offered this explanation to an Assistant United States Attorney:

"A. [Helstoski] Do you want to get into the Constitutional question of whether or not you could serve a member of Congress while Congress is in session?

"You know very well that can't be done . . . .

. . . . . .

"Q. Congressman, you've used the term 'illegal subpoena.' Who told you it was illegal?

"A. That's my own judgment based on the Constitution and the Rules of Procedure of the House of Representatives."

ing that the witnesses would not testify as the Government indicated in its proffer.

The District Judge declined to rule separately on each of the categories. Instead, he ordered that

> "the Government may not, during its case-in-chief, introduce evidence, derived from any source and for any purpose, *of the past performance of a legislative act by defendant Henry Helstoski.*" (Emphasis added.)

The Government filed a timely appeal from the evidentiary ruling, relying upon 18 U. S. C. § 3731:

> "An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence . . . not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.
>
> "The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.
>
> * * * * *
>
> "The provisions of this section shall be liberally construed to effectuate its purpose."

The Court of Appeals affirmed the District Court's evidentiary ruling. 576 F. 2d 511 (CA3 1978). It first concluded that an appeal was proper under § 3731, relying primarily upon its earlier decision in *United States* v. *Beck*, 483 F. 2d 203 (CA3 1973), cert. denied, 414 U. S. 1132 (1974), and upon the language in the section mandating that it be "liberally construed."

Turning to the merits of the Government's appeal, the Court of Appeals rejected both of the Government's arguments: (a)

that legislative acts could be introduced to show motive; and (b) that legislative acts could be introduced because Helstoski had waived his privilege by testifying before the grand juries. The court relied upon language in *United States* v. *Brewster*, 408 U. S. 501, 527 (1972), prohibiting the introduction of evidence as to how a Congressman acted on, voted on, or resolved a legislative issue. The court reasoned that to permit evidence of such acts under the guise of showing motive would negate the protection afforded by the Speech or Debate Clause.

In holding Helstoski had not waived the protection of the Speech or Debate Clause, the Court of Appeals did not decide whether the protection could be waived. Rather, it assumed that a Member of Congress could waive the privilege, but held that any waiver must be "express and for the specific purpose for which the evidence of legislative acts is sought to be used against the member." 576 F. 2d, at 523–524. Any lesser standard, the court reasoned, would frustrate the purpose of the Clause. Having found on the record before it that no waiver was shown, it affirmed the District Court's order under which the Government is precluded from introducing evidence of past legislative acts in any form.

In seeking review of the judgment of the Court of Appeals, the Government contends that the Speech or Debate Clause does not bar the introduction of all evidence referring to past legislative acts. It concedes that, absent a waiver, it may not introduce the bills themselves. But the Government argues that the Clause does not prohibit it from introducing evidence of discussions and correspondence which describe and refer to legislative acts if the discussions and correspondence did not occur during the legislative process. The Government contends that it seeks to introduce such evidence to show Helstoski's motive for taking money, not to show his motive for introducing the bills. Alternatively, the Government contends that Helstoski waived his protection under the Speech

or Debate Clause when he voluntarily presented evidence to the grand juries. Volunteered evidence, the Government argues, is admissible at trial regardless of its content.

Finally, the Government argues, by enacting 18 U. S. C. § 201, Congress has shared its authority with the Executive and the Judiciary by express delegation authorizing the indictment and trial of Members who violate that section—in short an institutional decision to waive the privilege of the Clause.

III

The Court's holdings in *United States* v. *Johnson*, 383 U. S. 169 (1966), and *United States* v. *Brewster*, *supra*, leave no doubt that evidence of a legislative act of a Member may not be introduced by the Government in a prosecution under § 201.[6] In *Johnson* there had been extensive questioning of both Johnson, a former Congressman, and others about a speech which Johnson had delivered in the House of Representatives and the motive for the speech. The Court's conclusion was unequivocal:

"We see no escape from the conclusion that such an intensive judicial inquiry, made in the course of a prosecu-

[6] We agree with the Court of Appeals that 18 U. S. C. § 3731 authorized the Government to appeal the District Court order restricting the evidence that could be used at trial. All of the requisites of § 3731 were met. There was an order of a district court excluding evidence; a United States attorney filed the proper certification; and the appeal was taken within thirty days. The final clause of § 3731 provides, "The provisions of this section shall be liberally construed to effectuate its purposes." In *United States* v. *Wilson*, 420 U. S. 332, 337 (1975), we concluded that the purposes of the section were "to remove all statutory barriers to Government appeals and to allow appeals whenever the Constitution would permit." See also *United States* v. *Scott*, 437 U. S. 82, 84–85 (1978); H. R. Conf. Rep. No. 91–1768, p. 21, reprinted in 1970 U. S. Cong. Code & Admin. News 5842, 5848; S. Rep. No. 91–1296, pp. 2–3 (1970); 116 Cong. Rec. 35659 (1970) (remarks of Sen. Hruska). There are no constitutional barriers to this appeal and we conclude that the appeal was authorized by § 3731.

> tion by the Executive Branch under a general conspiracy statute, violates the express language of the Constitution and the policies which underlie it." 383 U. S., at 177.

In *Brewster,* we explained the holding of *Johnson* in this way:

> "*Johnson* thus stands as a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the motivation for legislative acts. A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duities and into the motivation for those acts." 408 U. S., at 512.

The Government, however, argues that exclusion of references to past legislative acts will make prosecutions more difficult because such references are essential to show the motive for taking money. In addition, the Government argues that the exclusion of references to past acts is not logically consistent. In its view, if jurors are told of promises to perform legislative acts they will infer that the acts were performed, thereby calling the acts themselves into question.

We do not accept the Government's arguments; without doubt the exclusion of such evidence will make prosecutions more difficult. The Speech or Debate Clause was designed to make it difficult, if not impossible, for the Executive to prosecute a Member of either House for legislative acts. The Clause protects "against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts." *Brewster, supra,* at 525. It "precludes any showing of how [a legislator] acted, voted, or decided." *Id.,* at 527. Promises to perform an act in the future by a Member are not legislative acts. *Brewster* makes clear that

the "compact" may be shown without impinging on the legislative function.

We therefore agree with the Court of Appeals that references to past legislative acts of a Member cannot be admitted without undermining the values protected by the Clause. We implied as much in *Brewster* when we explained, "To make a prima facie case under [the] indictment, the Government need not show any act of [Brewster] *subsequent* to the corrupt promise for payment, for it is taking the bribe, not performance of the illicit compact, that is a criminal act." *Id.*, at 526 (emphasis altered). A similar inference is appropriate from *Johnson* where we held that the Clause was violated by questions about motive addressed to others than Johnson himself. That holding would have been unnecessary if the Clause did not afford protection beyond legislative acts themselves.

The Government argues that the prohibition of the introduction of evidence should not apply in this case because the protections of the Clause have been waived. The Government suggests two sources of waiver, (a) Helstoski's conduct and utterances, and (b) the enactment of § 201 by Congress. The Government argues that Helstoski waived the protection of the Clause by testifying before the grand juries and voluntarily producing documentary evidence of legislative acts. The Government contends that Helstoski's conduct is sufficient to meet whatever standard is required for a waiver of that protection. We cannot agree.

Like the District Court and the Court of Appeals, we perceive no reason to decide whether an individual Member may waive the Speech or Debate Clause's protection against being prosecuted for a legislative act. Assuming that is possible, we hold that waiver can be found only after explicit and unequivocal renunciation of the protection. The ordinary rules for determining the appropriate standard of waiver do not apply in this setting. Compare *Johnson* v. *Zerbst*, 304 U. S.

458, 464 (1938) ("intentional relinquishment or abandonment of a known right or privilege") with *Schneckloth* v. *Bustamonte*, 412 U. S. 218, 248–249 (1973) (proof of knowledge not required for waiver). See also *Garner* v. *United States*, 424 U. S. 648, 654 n. 9, 657 (1976).

The Speech or Debate Clause was designed neither to assure fair trials nor to avoid coercion. Rather, its purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggest that any lesser standard would risk intrusion by the executive and the judiciary into the sphere of protected legislative activities. The importance of the principle was recognized as early as 1808 in *Coffin* v. *Coffin*, 4 Mass. 1, 27, where the court said that the purpose of the principle was to secure to every member "*exemption* from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office." (Emphasis added.)

This Court has reiterated the central importance of the Clause for preventing intrusion by executive and judiciary into the legislative sphere.

> "[I]t is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits . . . but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary.
>
> * * * * *
>
> "There is little doubt that the instigation of criminal charges against critical or disfavored legislators by the executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context of the American system of separation of powers, is the predominate thrust of the Speech or Debate Clause." *United States* v. *Johnson*, 383 U. S. 169, 180–181, 182 (1966).

We reaffirmed that principle in *Gravel* v. *United States*, 408 U. S. 606, 618 (1972), when we noted that the "fundamental purpose" of the Clause was to free "the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator."

On the record before us, Helstoski's words and conduct cannot be seen as an explicit and unequivocal waiver of his immunity from prosecution for legislative acts—assuming such a waiver can be made. The exchanges between Helstoski and the various United States Attorneys indeed indicate a willingness to waive the protection of the Fifth Amendment; but the Speech or Debate Clause provides a separate, and distinct, protection which calls for at least as clear and unambiguous expression of waiver. No such showing appears on this record.

The Government also argues that there has been a sort of institutional waiver by Congress in enacting § 201. According to the Government, § 201 represents collective a decision to enlist the aid of the Executive Branch and the courts in the exercise of Congress' powers under Art. I, § 5, to discipline its Members. This Court has twice declined to decide whether a Congressman could, consistent with the Clause, be prosecuted for a legislative act as such, provided the prosecution were "founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members." *Johnson, supra*, at 185. *Brewster, supra*, at 529 n. 18. We see no occasion to resolve that important question. We hold only that § 201 does not amount to a congressional waiver of the protection of the Clause for individual Members.

Precedent and history suggest important reasons why Congress, as a body, should not be free to strip individual Members of the protection guaranteed by the Clause from being "questioned" by the executive in the courts. The controversy over the Alien and Sedition Acts reminds us how one political

party in control of both the Legislative and the Executive Branches sought to destroy political opponents in the courts.

The Supreme Judicial Court of Massachusetts noted in *Coffin*, "the privilege secured . . . is not so much the privilege of the House as an organized body, as of each individual member composing it, who is entitled to this privilege, *even against the declared will of the house.*" 4 Mass., at 27 (emphasis added). In a similar vein in *Brewster* we stated:

> "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by *insuring the independence of individual legislators.*" 408 U. S., at 507 (emphasis added).

See also *id.*, at 524. We perceive no reason to undertake consideration of the Clause in terms of separating the Members' rights from the rights of the body.

Assuming, *arguendo*, that the Congress could constitutionally waive the protection of the Clause for individual Members, such waiver could be shown only by an explicit and unequivocal expression. There is no evidence of such a waiver in the language or the legislative history of § 201 or any of its predecessors.[7]

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[7] Section 201 was enacted in 1962. Pub. L. 87-849, 76 Stat. 1119. It replaced a section that had remained unchanged since its original enactment in 1862. Ch. 180, 12 Stat. 577. See Rev. Stat. § 1781, 18 U. S. C. § 205 (1958 ed.). The debates on the 1862 act reveal no discussion of the Speech or Debate Privilege. See, *e. g.*, Cong. Globe, 37th Cong., 2d Sess., 3260 (1862). As explained in the House Report accompanying the 1962 act, the purpose of the act was "to render uniform the law describing a bribe and prescribing the intent or purpose which makes its transfer unlawful." H. R. Rep. No. 748, 87th Cong., 1st Sess., 15 (1961). The Senate Report expanded the explanation and said that a purpose of the act was the "substitution of a single comprehensive section of the Criminal Code for a number of existing statutes concerned with bribery. This consolidation would make no significant changes of substance and, more par-

We conclude that there was neither individual nor institutional waiver and that the evidentiary barriers erected by the Speech or Debate Clause must stand. Accordingly, the judgment of the Court of Appeals is affirmed.

Affirmed.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

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ticularly, would not restrict the broad scope of the present bribery statutes as construed by the courts." S. Rep. No. 2213, 87th Cong., 2d Sess., 4 (1962).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 29, 1979

Re: 78-546 - Helstoski v. Meanor

Dear Chief:

Please join me.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 29, 1979

Re: 78-546 - Helstoski v. Meanor

Dear Chief:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1979

Re: No. 78-349 - U. S. v. Helstoski

Dear Chief,

Please join me.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1979

Re: 78-546 - Helstoski v. Meanor

Dear Chief,

Please join me.

Sincerely yours,

The Chief Justice

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1979

Re: 78-349 - United States v. Helstoski

Dear Chief:

Although I will join substantially all of your opinion, I plan to circulate a short partial dissent in the next day or two in which I take the position that evidence which merely refers to the legislative act, but is not offered for the purpose of proving the legislative act, should be admissible.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1979

Re: 78-349 - United States v. Helstoski

Dear Chief:

I shall await John's separate opinion.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1979

Re: No. 78-349 - United States v. Helstoski

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1979

Re: No. 78-546 - Helstoski v. Meanor

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
1st draft 5/25/79	dissent typed draft 5/30/79	join CJ 5/29/79	join CJ 5/29/79	join CJ 6/5/79	join CJ 6/9/79	ant done by CJ	join CJ 6/5/79	join CJ 6/29/79
2nd draft 6/5/79	1st draft 6/5/79 2nd draft 6/7/79 3rd draft 6/12/79							

78-546 Helstoski v. Meanor

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
4/2/79								
1st draft draft Rel 1st revised draft 5/29/79	dissent typed draft 5/31/79 1st draft 6/5/79	await JPS's opinion 5/31/79 join	join CJ 5/29/79	Join C J 6/5/79	Join C J 6/9/75	out done by CO	Join C J 6/6/79	Join most of opinion but wear Circuit Partial dissent 5/31/79
2nd draft 6/11/79 3rd draft 6/13/79								1st draft 6/4/79 2nd draft 6/7/79 3rd draft 6-14-79
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