

This is why I say the second reason is really not persuasive at all.

Mr. BROTZMAN. But you feel, then, that the basic reason for the decision was the statement made in the caucus, as it were, that they did not want to disturb the industry?

Mr. MORGAN. That is a subjective matter. And all I can say is: that was my judgment at the time, and it still is.

Mr. BROTZMAN. It still is your judgment now?

Mr. MORGAN. Yes. I don't make any flat allegations—

Mr. BROTZMAN. You don't have to explain any further.

Mr. MORGAN. That is my judgment.

Mr. BROTZMAN. I understand your answer now. The next question I have is this: You have mentioned one specific case, Commissioner, that is the *Idaho Power* case—and I am certainly not familiar with all the cases that you have decided over a period of time, but I would imagine they are many. The question I now would like to ask you is, How prevalent was this particular type of activity? Were there other cases that you thought were decided on this particular basis, that is, did they assign one reason in caucus but wrote another reason in the opinion?

Mr. MORGAN. Well, as I started to explain yesterday and was cut off, it depends on the circumstances as to whether this is a bad thing or not. Let's say you have a case that can be decided on three issues, A, B, and C. If it can be disposed of on issue A, in may not be necessary to get to B and C, or if a decision can properly be based on A and B it may not be necessary to pass judgment on C.

Courts do this all the time. We do it all the time. It only becomes a serious matter and possibly destructive of the public interest when, instead of deciding on the major issue, which is A, you decide on the minor issue, which is C, and leave the real issue out of account. Now, this happens only rarely, I am glad to say, in any jurisdiction.

Mr. BROTZMAN. Of those 2,500 cases you decided in Oregon, did you decide any of them that way?

Mr. MORGAN. I am sure that I decided quite a number of them in the way I first described, but none that I know of in the way I described later. That would have been improper.

Mr. BROTZMAN. You decided them on one set of facts, and then recited another set of facts in your opinion?

I was merely saying that it is sometimes proper to decide a case on one issue without ruling on another issue.

Mr. MORGAN. I am sure that this has happened, and that I have done it. As I say, the Supreme Court does this. It is not a problem unless the public interest suffers as a consequence, and unless it is done for ulterior motives to conceal a reason which just won't stand the light of day.

Mr. BROTZMAN. Like the *Idaho Power* case?

Mr. MORGAN. Well, in that case the majority's reason, whatever it was, certainly was not exposed to the light of day, because they didn't discuss the dissent; there is no answering language at all.

Mr. BROTZMAN. So in that particular case it was your intention to say that they were guilty of conformity, timidity, and personal security, as you said in your letter; isn't that correct?

Mr. MORGAN. Well, how did I put it yesterday?