

# Powell Link to Case Before Court Is Bared

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Justice Lewis F. Powell Jr. has participated in an anti-trust case now before the Supreme Court involving Falstaff Brewing Corp., even though he has a financial interest in one of Falstaff's major competitors.

Powell owns 880 shares of stock worth more than \$78,000, in Anheuser-Busch Inc., which manufactures Budweiser, the top-selling beer in the country. Falstaff is the fifth best-selling beer nationally.

The case involves the Jus-

tice Department's attempt to force Falstaff to divest itself of Narragansett Brewing Co., which the company acquired in 1965 while trying to become a national brewery in competition with Anheuser-Busch and other firms.

On Feb. 28, with Powell participating in the decision, the Supreme Court agreed to hear the Justice Department's appeal of a lower court ruling that turned down the department's request for divestiture.

The case is now scheduled to be argued before the high court in mid-October, with a

final ruling probably being handed down sometime early next year.

Powell declined yesterday to answer questions about his participation in the Falstaff case. A spokesman said that the justice will make no announcement as to whether he intends to participate in the actual ruling in the case.

If he disqualifies himself, the spokesman said, Powell simply will not be present at the oral arguments next month.

The new code of Judicial See POWELL, Page A-6

come of the proceeding."

The purchase of Narragansett — for \$19 million — put Falstaff in the competition for beer sales in New England for the first time. Anheuser-Busch has been selling beer there for many years.

## Damage Seen

The Justice Department contends in its suit that the acquisition of Narragansett, then the biggest-selling beer in New England, violated the Clayton Antitrust Act by lessening the competition among breweries for beer sales in New England.

Attorneys for the department argue that Falstaff has the capacity to move into the New England beer market on its own. Thus if Falstaff wants to enter that market, it should do so on its own—without acquiring Narragansett, the government lawyers contend.

Officials of Falstaff say, however, that the divestiture of Narragansett would severely damage the company in its competition in the national beer market and tend to aid its competitors.

Lawyers for Falstaff argue in their brief submitted to the Supreme Court that the effect of the purchase has not been to lessen competition.

Powell, who was sworn in as a member of the high court last Jan. 7, has disqualified himself from several cases, mostly those involving his former clients or the clients of his old law firm in Richmond.

The ownership of the 880 shares of stock in Anheuser-Busch—has led to Powell's disqualification in one other case.

This was the suit brought by former baseball player Curt Flood, who attempted to have the clause which allows teams to trade players against their wishes ruled invalid. Flood's suit lost in the Supreme Court.

Powell sat in on the oral arguments in the case last winter, but then withdrew, noting that Anheuser-Busch owns the St. Louis Cardinals, a major league baseball team.

## POWELL

Continued From Page A-1

Conduct adopted by the American Bar Association last month states that a judge should disqualify himself when he "has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the out-