SUPREME COURT OF THE UNITED STATES

No. 97–1802

DAVID CONN AND CAROL NAJERA, PETITIONERS *v.* PAUL L. GABBERT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[April 5, 1999]

JUSTICE STEVENS, concurring in the judgment.

Respondent claims that petitioners violated his constitutional right to practice his profession by unreasonably timing the service and execution of a warrant to search his papers. There is, however, no evidence that respondent's income, reputation, clientele, or professional qualifications were adversely affected by the search. Nor is there any real evidence or allegation that respondent's client was substantially prejudiced by what occurred. See App. to Pet. for Cert. B–17. Accordingly, despite the shabby character of petitioners' conduct, I agree with the Court that it did not deprive respondent of liberty or property in violation of the Fourteenth Amendment.

My conclusion that the judgment of the Court of Appeals must be reversed is reached independently of the question whether petitioners may have violated the Fourth Amendment because their method of conducting the search was arguably unreasonable– an issue not squarely presented and argued by petitioners in this Court. If their conduct had violated the Due Process Clause of the Fourteenth Amendment, there is no reason why such a violation would cease to exist just because they also violated some other constitutional provision. Thus the suggestion in the penultimate paragraph of the Court's opinion– that the possible existence of a second source of constitutional

protection provides a sufficient reason for reversal, *ante*, at 6–7– is quite unpersuasive. Indeed, if that ground for decision were valid, most of the reasoning in the preceding pages of the Court's opinion would be unnecessary to the decision.