

January 7, 1981

Dear Chief:

Here is the opinion in the Bob Jones University case that was noted recently in the press.

Although I am inclined to agree with Bill Rehnquist's opinion in the Prince Edward County case now pending on certiorari, it definitely is not a good case for us to address the rather emotional-laden issue. Unhappily, the name of that county itself is synonymous in the minds of many people with dead-end segregation.

I am not sure that Bob Jones presents a better case. The issue is not identical, although it does seem close. I am sending Bill Rehnquist a copy of the opinion also, and will be interested in his views.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Rehnquist



cg  
January 8, 1981

Dear Chief:

Please put the following cases on the discuss list  
for the January 9, 1981 Conference:

79-2065      Horwitz v. United States, p. 1

80-436      Turkish v. United States, p. 1

80-5136      Perez v. United States, p. 1

Sincerely,

The Chief Justice

LFP/lab



January 15, 1981

Dear Chief:

Please put the following cases on the discuss list for the January 16, 1981 Conference:

- |        |  |
|--------|--|
| 80-470 | <u>Air Line Pilots Assn. v. Trans Intl. Airlines, p. 1</u>     |
| 80-478 | <u>Int. Brotherhood Teamsters v. Trans Int. Airlines, p. 1</u> |
| 80-480 | <u>Trans Intl. Airlines v. Brotherhood Teamsters, p. 1</u>     |
| 80-516 | <u>Air Line Pilots Ass'n. v. Stevens, p. 2</u>                 |

Sincerely,

The Chief Justice

LFP/lab



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 27, 1981

RE: No. 79-1952 California Medical Association v. F.E.C.  
No. 79-2006 Barrentine v. Arkansas-Best

Dear Chief:

Thurgood has agreed to write for the Court in No. 79-1952  
California Medical Association v. F.E.C. and I'll try my hand  
at No. 79-2006 Barrentine v. Arkansas-Best.

Sincerely,

*Bill*

The Chief Justice

cc: The Conference



c9

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

January 27, 1981

Dear Chief:

Your assignment to me of the opinion in Payne v. Chrysler Motors Corp. may present some problems, in view of my recollection of the Conference discussion. Since my notes are very impressionistic and often inaccurate, I do not pretend to be referring to anything akin to a transcript, but the notes indicate that Byron, John, and I, while agreeing with the other five members present at the Conference that there should be no automatic damage rule under the Robinson-Patman Act, felt that there was actual testimony as to damages (albeit very weak testimony) sufficient to survive a directed verdict but not a motion for new trial. The remaining colleagues present at the Conference, again according to my notes, would have affirmed outright the judgment of the Court of Appeals which directed dismissal of the complaint.

Thus I would have no trouble writing an opinion conforming to what I believe to have been the Conference vote as to the first question presented -- the automatic damages question -- but would have a great deal more difficulty writing an opinion which affirmed the judgment of the Court of Appeals in this particular case in the light of earlier precedents such as Bigelow v. RKO Radio Pictures, 327 U.S. 251 (1946) and Story Parchment Co. v. Paterson Co., 282 U.S. 555 (1931). I am perfectly willing to try my hand at an opinion which rejects the automatic damages rule, but I am not sure that the Court of Appeals was completely correct in its application of Story Parchment Co. and Bigelow as to proof of damages. Nonetheless, my position at Conference was not firmly held, and I think I would be able to undertake the assignment for the Court.

On the basis of these sentiments, I would certainly not be offended if you re-assigned the case. However, since a couple of the assigned opinions which I have written do not seem to have fared too well, I will be glad to undertake this assignment unless I hear otherwise from you.

Sincerely,

The Chief Justice  
Copies to the Conference

*WHR*



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

CHAMBERS OF  
THE CHIEF JUSTICE

Dear Lewis 7/3/84

I have not scanned  
the Gregia-Jaworski  
debate but I doubt  
I would wholly  
agree with either.

In the name of the  
"Living Constitution"  
this Court has  
spewed out some  
incredible nonsense  
— including the



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

CHAMBERS OF  
THE CHIEF JUSTICE

past ten years.

We are doing it  
now in Carter v. Kentucky  
just as in Barrentine  
+ in the past in  
such as Brooks  
v. Tennessee + Jackson  
v. Virginia. I  
could go on!

One day I  
hope to do a  
series of lectures

Aug 7/84

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

CHAMBERS OF  
THE CHIEF JUSTICE

Dear Lewis

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the Graglia-Jaworski  
debate but I doubt  
I would wholly  
agree with either.  
+ name of the



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

CHAMBERS OF  
THE CHIEF JUSTICE

on this past  
decade of the 70s!

Regards

W. B.

Jim off to the ABA  
Thursday - if Dr. Carg  
agrees! W. B.

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

CHAMBERS OF  
THE CHIEF JUSTICE

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& in the past in  
such as Brooks



c0

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 12, 1981

MEMORANDUM TO THE CONFERENCE:

Please advise the Marshal whether you will be attending the Joint Session of the Congress for the President's State of the Union Message on Wednesday, February 18, 1981.

Special seating has been arranged for the wives, and the Marshal will have tickets for those wives who wish to attend.

The motorcade will depart at 8:20 p.m.

Regards,

*WRB/pw*

CC: The Marshal



February 12, 1981

Dear Chief:

As unenthusiastic as I am about listening to Presidents address the Congress, I have understood that the Court usually attends a State of the Union Message.

I am inclined to think it would be viewed as ungracious if we departed from that tradition when President Reagan delivers his first Message. After all, he paid a courtesy call on the Court.

Accordingly, my vote is that we attend.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



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

*Etha Hill*

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 12, 1981

Dear Chief:

Your address on the ineffectiveness of the criminal justice system was most appropriate.

I have been particularly gratified, as you must be, by the wide coverage in the media and the generally favorable reaction. Even your friends on the Washington Post wrote a favorable editorial.

It is true, however, as the editorial in the Star pointed out, that a major effort was initiated in the mid-60's to accomplish your broad objectives. There was the ABA project on Criminal Justice, in which you and I both played major roles. At the national level, President Johnson appointed the Commission on Law Enforcement and the Administration of Justice - on which I served. We had a staff of about 80 people, a strong Commission, and Administrative support - at least until Ramsey Clark became Attorney General. Some of our recommendations bore fruit. These included added impetus to the enactment of the Omnibus Crime bill (including Title III), the statute authorizing the granting of immunity, and a vastly improved level of cooperation between the FBI and state and local law enforcement.

Yet, the crime rate - particularly violent crime - has continued to increase. This is not to say that your address was not needed and exceptionally well timed. Indeed, with the present Administration sharing similar views, and with the new composition of the Senate Judiciary Committee, there may be a unique opportunity to make the sort of progress that your address may stimulate.

You have in mind a number of specific reforms, and I hope that the Judicial Conference will follow your leadership in recommending promptly many of these. I do suggest one that I have not seen mentioned.



Would it not be desirable for the federal courts to be directed, at all three levels, to give a top priority status to all habeas corpus petitions? I have not thought enough about this to make a judgment whether a time limitation should be imposed on district courts and courts of appeals. It might suffice if a Federal Rule were adopted that required all three levels of federal courts to accord first priority treatment of habeas corpus cases. There is little prospect of rehabilitation as long as the prisoner is litigating.

We have a case pending here, from CA5, raising - as I recall - the question whether a petitioner must present in a single petition all habeas corpus claims that under existing law could have been presented. If this were a requirement, it could minimize to some extent the repetitious filing of claims and appeals.

A more fundamental reform that could be initiated by the Judiciary Committee, and supported by the Judicial Conference, would be a revision of §2254 to require specifically a clear showing of constitutional error before a federal court has jurisdiction.

I hope your brief "vacation" has been pleasant for you and Vera, and that you will return refreshed.

Sincerely,

The Chief Justice

lfp/ss



February 12, 1981

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Sincerely,

The Chief Justice

lfp/ss



February 13, 1981

Dear Chief:

The enclosed editorial from the Richmond Times-Dispatch is "on target".

It is gratifying to see that the reaction to your speech continues to be favorable and widespread.

Thank you for sending me a copy.

Sincerely,

The Chief Justice

lfp/ss



cg  
February 19, 1981

Dear Chief:

Please add the following cases to the Discuss List for the February 20, 1981 Conference:

80-299     John Nuveen v. Sanders, p. 30  
80-629     Maren Engineering v. Velmohos, p. 21  
80-644     G. D. Searle & Co. v. Cohn, p. 21  
80-663     Kelsey Hayes, Inc. v. Hopkins, p. 21  
80-913     Ill. Central Gulf Ry. Co. v. Ingle, p. 14

Sincerely,

The Chief Justice

LFP/lab



CO

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 20, 1981

✓

RE: 1981 Court Schedule

Dear Chief:

The proposed schedule for the October Term 1981  
is satisfactory to me.

Sincerely,

Wil

The Chief Justice  
cc: The Conference



cg  
February 21, 1981

Dear Chief:

The calendar that the Clerk has proposed for the 1981 Term looks fine to me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



cg  
March 5, 1981

Dear Chief:

I would appreciate your advice with respect to the enclosed copy of Mr. McHenry's letter to me of February 25.

The DeWitt Wallace interests are establishing a separate foundation for supporting activities at Colonial Williamsburg, and I am inclined to accept the invitation to serve as an outside trustee unless you see some impropriety. I suppose the trustees would have some responsibility for investing the endowment capital. Yet, as I have done in connection with Colonial Williamsburg, I would decline to serve on the investment committee.

I note that you are serving on what Mr. McHenry describes as a "similar foundation". I suppose, therefore, my question is whether your foundation appears to be similar.

Sincerely,

The Chief Justice

lfp/ss  
Enc.



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

CHAMBERS OF  
THE CHIEF JUSTICE

March 9, 1981

Honorable William French Smith  
Attorney General  
Department of Justice  
Attorney General's Office, #5111  
10th and Constitution, N.W.  
Washington, D. C. 20530

Dear Mr. Attorney General:

Recently you issued regulations governing 42 U.S.C. §1983, pursuant to The Civil Rights of Institutionalized Persons Act of 1980, Pub. L. No. 96-247, §7, 94 Stat. 349 (42 U.S.C. §1997).

This has come to my notice only within the last few days. So far as I know the Judicial Conference has not seen these Regulations except by way of the Federal Register.

I have not had time to study them carefully but my preliminary examination suggests that there may be some serious problems which merit further study.

I assume these Regulations can be amended and I believe this may well be indicated after we have an opportunity to examine them closely. My purpose now is simply to focus attention on problems which we see lurking in the Regulations. Most of the questions raised may well "wash out" but I feel it important to examine the problem more fully before the Regulations are used.

Cordially,

*Warren E. Burger*

Warren E. Burger

✓ bc: Justice Powell

*I called CJ's attention  
to these absurd Regulations*



March 26, 1981

Dear Chief:

Thank you for sending me the copy of Attorney General Smith's reply to your letter of March 9.

It is good to see that at least you have been assured that the Justice Department will take a fresh look. I hope the staff attorney to whom Attorney General Smith assigned this problem is not the author of the complex and self defeating regulations previously recommended by the Justice Department. The basic problem is that the statute itself is badly drafted.

The enclosed pages from the 1980 Annual Report of the Administrative Office should be required reading for the Judiciary Committees and key staff people, the Attorney General and policy people in the White House like Ed Meese.

If I read the Report correctly, the following facts stand out:

Petitions by state and federal prisoners in 1980 totaled 23,287 and comprised 13.8% of all civil litigation in the District Courts.

Although a decrease in the number of federal prisoner petitions occurred, state prisoner petitions continued to increase, reaching an all time high of 19,574 cases. The decline in federal prisoner petitions corresponds to the decrease in the number of federal prisoners.

The number of state prisoner petitions has increased from 872 in 1960 to 19,574 in 1980, an increase of 2,144.7%.

These totals include both habeas corpus and 1983 petitions. Table 21 shows the breakdown, indicating that of the 19,574 state petitions filed in 1980, 12,544 appear to be 1983 cases.

I was most disappointed by the vote in Parratt (the loss by an inmate of a \$23 "hobby" parcel), in which even Bill Rehnquist perceived a constitutional violation.



In this connection, I invite your attention to my "hold" memorandum on a case held for Kassel. Under Thiboutot, the number of 1983 cases is certain to increase and the ancient American rule with respect to recovering attorneys' fees will become a relic of the past in these cases. Although this Court shares with Congress the responsibility for converting federal courts into small claims tribunals, and in minimizing if not eliminating the administrative resolution of trivial disputes, it may be too late for the judiciary to restore a rational balance. If the legislative and executive branches understood the situation, one could hope that overdue reforms would be achieved.

This certainly is not a partisan issue or concern. The question fundamentally is what sort of a system for dispute resolution is best and fairest for society as a whole. Griffin Bell was quite interested in this, as you know, although not primarily in the abuse of § 1983.

Resolving even the most trivial dispute by litigation - particularly in the federal courts - is certainly not in the public interest. Apart from burdening the courts, undermining federalism, and driving competent people from government service, much § 1983 litigation (not limited to prisoner suits) redistributes wealth episodically and unevenly.

The occasional meritorious criminal case (e.g., Gideon) can still reach the federal courts through habeas corpus, after exhaustion of state remedies. The problem centers primarily on the civil rights acts of 1871, and the way Congress and the courts have expanded and distorted their original meritorious purpose. In the end, lawyers are the principal beneficiaries of the present system, and society generally the loser.

I may say a few words on this subject at the forthcoming Circuit Judicial Conferences.

Sincerely,

The Chief Justice

lfp/ss



March 26, 1981

Dear Chief:

The enclosed letter was dictated before receiving your request for comments on the Attorney General's proposed Regulation.

I will do what I can, although I understand the 30-day period expires on April 8. I will be in New York on April 7 and 8, and we have arguments through next week. Thus, I really will have no opportunity for thoughtful consideration.

Joe Caldwell has volunteered to help. With your approval I will ask Joe to give me a memorandum.

Sincerely,

The Chief Justice

lfp/ss

cc: Joseph R. Caldwell, Esquire



April 16, 1981

Dear Chief:

Please put the following case on the discuss list  
for the April 17, 1981 Conference:

80-5972      Ruhl v. Alabama State Bar, p. 7

Sincerely,

The Chief Justice

LFP/lab



CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

79-1734 Perratt

Chief -

I had overlooked,  
until this afternoon,  
that you have joined  
W H R's opinion in  
this case.

In view of your  
desire to limit 1983  
petitions (suits), I  
would have thought  
you would agree with  
me. W H R's theory  
depends on existence  
of an adequate state  
remedy - which will



not always be present.

I would hold that  
ordinary negligence  
is not a Constitutional  
deprivation.

The Court again  
has missed a large  
opportunity to limit  
the abuse of § 1983.

Sincerely,

Lewis

April 30, 1981



May 5, 1981

Dear Chief:

I think you will be interested in the enclosed letter from Dr. Dumas Malone, and particularly his revised page 346 of his volume on Jefferson's second term.

He refers to our tapes case, and particularly to your historic opinion.

Dr. Malone, now well into his eighties, is a nationally known historian - as I am sure you know.

Sincerely,

The Chief Justice

lfp/ss

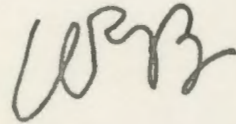


Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 18, 1981

MEMORANDUM TO: The Reporter  
FROM: The Chief Justice



From now on, as soon as you receive a request from my office to prepare a headnote on a case, you are authorized to immediately request Mr. Cornio to send you copies of any and all printed opinions on the case. In this way, you will be able to work along with my law clerks on the lineup and check with them any discrepancies you discover.

I hope this system will provide you with more information and ensure that our headnotes are always available when needed as well as accurate.

Copies to the Conference



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

CHAMBERS OF  
THE CHIEF JUSTICE



May 20, 1981

RE: Distribution of Draft Opinions to the  
Reporter's Office

MEMORANDUM TO THE CONFERENCE

I agree with Byron that there is absolutely no need for the Reporter's Office to receive early drafts of the printed opinions that are circulated among the Chambers. I also doubt that he has any interest in seeing the evolving early drafts because of the number of changes that are made and the volume of material that circulates.

By the time a printed draft opinion gets four votes, however, I am convinced that Henry should get - and he will get from me - not only a copy of the majority opinion, but also copies of any and all other opinions in the case. In no other way can he make sure that his headnote accurately reflects what is in circulation; he can check for any discrepancies between the information given to him by the law clerks from the Chambers and that which appears in the various separate opinions, concurring, dissenting and "mixed."

I find that prior to June 1979, Lou Cornio sent Henry Lind drafts of all of the printed opinions in a case as soon as Henry indicated that he had received a request from a law clerk to prepare a headnote in the case. Last June, the Conference directed Lou Cornio to stop sending drafts of the printed opinions to Henry Lind. The Conference decided instead that the Justices' law clerks should keep Henry informed of what opinions were being written in a case. This is a fine idea if it is executed 100% in all cases.

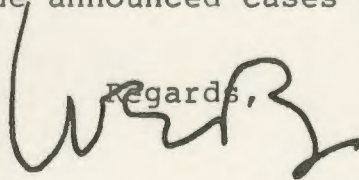


At the beginning of this term, Henry sent a letter to me suggesting a procedure for the law clerks to follow to get the information to him that he needs for writing headnotes. I forwarded this letter to the Conference. Henry informs me that the procedure he suggested in September is not being followed (except by two Justices, with my return to the former practice) and, that he has not always been getting complete information from the law clerks on the lineup in cases.

A few weeks ago in Ball v. James, (No. 79-1740), for example, Henry did not know until an hour before the case was announced from the bench that there was a concurring opinion in the case. On Monday, the same thing happened again; Henry did not know that Potter had filed a concurring opinion in Parrett and Lugenbill v. Taylor (No. 79-1944) until shortly before the opinion was announced from the bench.

In short, the new system of relying totally on the staffs to keep Henry informed of what is going on in cases is not working. As we come down to the end of the Term, it is more important than ever that Henry be kept informed of who is writing what in which cases. In order to assure that Henry is getting accurate information for his headnotes, my practice from now on will be to instruct Henry that as soon as he receives a request from my staff to prepare a headnote in a case, he is to ask Lou Cornio to begin sending him copies of any and all printed opinions written in the case. In this way, the system will be reasonably fail-safe; Henry and the clerks will be able to check on each other, and the headnotes in the announced cases will be accurate.

Regards,

A handwritten signature in dark ink, appearing to be 'W. R. B.', written over the typed word 'Regards,'.



May 20, 1981

Dear Chief:

Please put the following case on the discuss list  
for the May 21, 1981 Conference:

80-6165      Williams v. Kelley, p. 6

Sincerely,

The Chief Justice

LFP/lab



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1981

MEMORANDUM TO THE CONFERENCE

Having in mind the "hatchet job" that the 60 Minutes program did on the Chief, you will be interested in the enclosed article on the ethics of the producers and participants in that "show".

And Janet Cooke who wrote the Pulitzer Prize winning piece on "Jimmy" was fired!

L. F. P.

LFP/lab



# The Stung

Dozens of corporations and private citizens complain of having been set up and ill-used by CBS's *60 Minutes*. A number of those who consider themselves victims are fighting back and documenting the journalistic flaws.



LET THERE BE NO MISUNDERSTANDING. *60 Minutes* has contributed great and wonderful moments to television journalism. There have been compelling interviews with the likes of Vladimir Horowitz and Fidel Castro, charming glimpses of faraway places, and exposés—the show's featured attraction—on subjects ranging from giant chemical companies to con-men, quacks, and charlatans. But in its twelve-year climb to Number One in the Nielsen ratings, *60 Minutes* has also evolved a style and method that occasionally erode the very trust and rigor at the heart of investigative journalism. Too often the show has impaired its own effectiveness with theatricality or slanted editing. The need to maintain the loyalty of forty million viewers can spawn an overwhelming desire to please. Were *60 Minutes* the subject of one of its own exposés, that compulsion might evoke some troubling questions.

A key problem lies in the misconstrued role played by *60 Minutes*' four correspondents, Dan Rather, Harry Reasoner, Morley Safer, and Mike Wallace. Given our addiction to heroes—a habit bred in the glamor gossip of *People* magazine and on the talk-show circuit—it's inevitable perhaps that these on-screen stars should have become television's Four White Knights, indefatigable hounds of justice who pursue and nail the corrupt meat inspector, the Medicaid swindler, the mail-order minister. But, appearances notwithstanding, our heroes often play walk-on roles in the weekly Sunday drama. In fact, *60 Minutes* is largely the work of producers.

There are twenty producers at *60 Minutes*. Once a story idea is "blue-sheeted"—given the go-ahead—it's the producer who hits the field, prepares research, sets up interviews, and generally tailors a segment's focus. Then, and only then, does the correspondent arrive on-scene to be briefed for the interview segment. This division of labor places the correspondent at a dangerous remove from a story's development. It also makes his interview less a flexible probe for information than a mock trial with the verdict already determined by the producer's pre-set questions. Moreover, the producer decides in most instances who should, and who should *not*, be interviewed. And that decision may be influenced by a segment's predetermined slant.

On December 9, 1979, in a segment called "Garn Baum vs. the Mormons," Harry Reasoner reported on the travails of a Utah cherry processor, Garn Baum, who claimed the Mormon Church had conspired to drive him out of business. Not only had the church spearheaded a successful boycott among Utah cherry growers, Baum charged, but the church's all-pervasive influence made it virtually impossible for Baum to obtain lawyers in his subsequent antitrust suit against the church. "We have really had a hard time getting legal counsel," he told Reasoner, in an un rebutted statement that suggested Baum had had no lawyers. In truth, he'd been through five lawyers in four years, among them a top antitrust attorney, Dan Berman,

who represented Baum for two years and ran up almost \$8,000 in litigation costs alone. Berman was not interviewed for the segment because he had "checked first with the church on what line to take," according to producer Dick Clark. Berman vehemently denies this. But even if it were so—would that be sufficient reason to omit any mention of Berman, or of Baum's four other attorneys? In response to an irate 240-page complaint from the church-owned CBS affiliate in Salt Lake City, *60 Minutes* conducted an internal investigation and conceded the report "flawed . . . by the inadvertent omission of Baum's five lawyers." "Inadvertent" seems a diplomatic way of putting it. Allusion to Baum's attorneys clearly would have eroded the segment's thrust.

There was certainly nothing inadvertent in another producer's decision to censor vital data in a Reasoner report aired two weeks earlier. "Who Pays? You Do" reported on the shocking cost overruns at Illinois Power's (IP) nuclear reactor under construction at Clinton, Illinois. In painting his picture of waste and mismanagement, Reasoner interviewed several former IP employees—one, the "sharpest critic," as Reasoner described him, being cost engineer Steve Radcliff. There was only one problem: Radcliff had totally falsified his credentials. He'd never graduated from the Georgia Institute of Technology as he claimed he had, never received a PhD from Walden University, and was never a professor at Fairleigh Dickinson. These lies emerged long before broadcast, during testimony before the Illinois Power Commission, which was hearing IP's request for a consumer rate hike (and which refused to recognize Radcliff as an "expert witness"). The segment's producer, Paul Loewenwarter, knew of that testimony. CBS vice president Robert Chandler later admitted that "It was a very wrong decision. If I'd known, I would have insisted that be part of the story." One wonders. Had Radcliff's lies been made "part of the story," the case against IP would have been badly weakened.

In any case, the IP report was flawed by two other flagrant errors committed during that broadcast. Reasoner declared that IP requested a fourteen percent rate hike. In fact, only one quarter of that amount was slated for the reactor at Clinton. And the Illinois Power Commission had *agreed* to IP's rate increase, not denied it, as Reasoner said.

"The IP story got by us, I'm not proud of that one," admits Don Hewitt, the show's executive producer, founder, and mastermind. Yet as with all segments where flaws are occasionally acknowledged, Hewitt and his colleagues insist the essence of the piece remains intact and accurate. Perhaps so. But an investigative news show risks its credibility when the errors accumulate. Nor is it reassuring when *60 Minutes*' correspondents minimize flaws by charging critics with what Dan Rather calls "misplaced attacks on the show's integrity." He says, "I plead for some perspective. When attention focuses on our mistakes, it's not whether Illinois Power did the job *they*

by Jonathan Black Apr./May '81  
Channels

Jonathan Black is a senior editor at Quest/81 magazine.



Usually, people burned by *60 Minutes* must nurse their outrage privately, because the show's most common infractions—the subtle distortion, the innuendo, the misleading statistic—don't warrant a day in court.

should have done—it's whether *60 Minutes* did."

In a similar vein, Mike Wallace shrugs off the slipshod research in "Over the Speed Limit," a 1976 report on amphetamine abuse, because the man who eventually sued, a maligned diet doctor, was "not the proper subject of investigation." The report's prime target was Dr. Feridun Gunduy, who eventually lost his license thanks to Wallace's exposé.

It was only briefly and toward the end of the segment that Dr. Joseph Greenberg was put in the hot seat. Wallace interviewed Mrs. Barbara Goldstein, who claimed that the Long Island endocrinologist had given her "eighty ... eight-o" pills daily to reduce her weight, among them four to six amphetamine-type drugs. She then told Wallace that her complaints to Greenberg went unheeded, and that as a result of the medication she spent two years feeling utterly confused. Worse, she blamed Greenberg's pills for the birth defects of a daughter born later. Greenberg wasn't deterred by his brief moment of infamy. He slapped the show with a \$30 million libel suit.



**T**HOUGH THE FILES at *60 Minutes* are crammed with outraged, threatening letters, in its twelve-year history less than two dozen libel suits have been filed against the show, and not once has CBS lost. Few people stung by *60 Minutes* have the wherewithal, determination, or actionable complaint to sustain a long costly suit against CBS's crack attorneys. Dr. Joseph Greenberg, however, appeared to have money and outrage to spare, and as the trial progressed in a Long Island courtroom last spring, it seemed he might actually shatter *60 Minutes*' winning streak.

For starters, the doctor's sole on-air accuser, Mrs. Goldstein, had been a patient ten years before the segment ran. The "amphetamine-type" drugs were not strictly amphetamines as defined by the *Physicians Desk Reference*. The most damaging fact was that Wallace had never confronted Dr. Greenberg with Mrs. Goldstein's charges, never pressed Mrs. Goldstein for the exact names of her medication, and relied almost entirely on the tips of a former secretary and on the research of his producer, Grace Diekhous. Mid-trial, however, as CBS was set

to prepare its defense, Greenberg mysteriously dropped his suit and settled for an apology that was hardly an apology. "CBS regrets any embarrassment he feels [italics added] he sustained as a result of that broadcast," is the crux of the CBS statement. The statement was never aired and CBS cites the dropped charges as vindication—proof the doctor was guilty as charged (if not by Mrs. Goldstein, at least by several other witnesses CBS had ready to testify). Greenberg's attorney, Jonathan Weinstein, disagrees. The doctor achieved his aim, clearing his tarnished medical reputation.

Wherever the truth lies, Greenberg succeeded where most have failed. He aired his grievance in public. Usually, people burned by *60 Minutes* must nurse their outrage privately, because the show's most common infractions—the subtle distortion, the innuendo, the misleading statistic—neither warrant a day in court nor induce *60 Minutes* to issue one of its rare on-air "retractions."

In the course of a 1977 report on the hazards of excess sugar consumed by children, for instance, Dan Rather reported that General Foods' pre-sweetened breakfast cereal, Cocoa Pebbles, contained, astonishingly, "53 percent sugar." That charge was but one of a half-dozen slurs that prompted General Foods president Jim Ferguson to fire off an irate complaint, tagging the segment, "shallow, slanted ... resorting to sensationalism." In fact, Rather was measuring Cocoa Pebbles' sugar content by weight—a misleading standard since sugar is so heavy. (General Foods also claims his figure was 8 percent too high.) The exact per-serving amount would be two rounded teaspoonfuls—somewhat less sugar than is found in a medium-sized apple or orange. During a three-hour interview with Rather, the General Foods spokesman had repeatedly pointed this out, but his protests got left in the editing room.

"But was 53 percent wrong?" asks Rather in defense. No, not exactly. Not grounds for libel. It was more a little white lie of ambiguity, not so different from an infraction Wallace committed that same year in a piece on Valium.

In building his case against the reckless marketing of the Hoffmann-La Roche drug, Wallace interviewed Dr. Bruce Medd, La Roche's "in-house medical expert," and asked him if he knew a Dr. Fritz Freyhan. "Reliable fellow as far as you know?"

"A knowledgeable person in psychiatry," answered Medd (thereby violating

the first rule of combat with Wallace: Never attest to the credibility of a potentially hostile witness).

"A knowledgeable person in psychiatry," intoned Wallace, and proceeded to read from a Senate transcript: "Senator Gaylord Nelson asked him, 'If you were the editor of a medical journal, would you accept an ad like that?' He's talking about a Valium ad, and Dr. Freyhan says, 'I would not. As a matter of fact, I am editor-in-chief of a psychiatric journal, and my contract provides that I can accept or reject specific commercial advertisements.' He would not accept the ad," said Wallace.

As it stood, the statement was accurate. But a footnote would have revealed the following: Nelson's hearings on drug abuse were conducted in 1969, eight years before the broadcast. Furthermore, while the viewer might be left with the impression that Dr. Freyhan opposed Valium advertising, the truth was quite the opposite. The year of the Nelson hearings, as well as the year following, Freyhan ran Valium ads in every issue of his quarterly magazine, *Comprehensive Psychiatry*.

Misleading? Clearly. Just as the "cap" to the Garn Baum story gave viewers a false impression that nicely fit the segment's slant. "Garn Baum," read Wallace, "has now found a lawyer who will argue his case, but a federal judge in Utah says there isn't enough evidence for a trial. So Baum and his attorneys are appealing to a federal court in Colorado." What Wallace seemed to be suggesting was that even judges in Utah were so under the church's influence that poor Garn Baum had to seek impartial justice out-of-state. In fact, the Tenth Circuit Court of Appeals covering the Southwest region happens to be located in Denver and was merely Baum's next judicial recourse.

"Mistakes" like these are no doubt bred in that highly-charged Nielsen atmosphere where, of necessity, subtlety is sacrificed for impact. There's no room at the top for dull shades of gray, a fact that slowly dawned on the "stung" as the show achieved its notoriety (at their expense). Increasingly then, potential interview subjects have grown wary of the predictable dangers that lie in wait at 7 P.M. on Sundays. And not a few have taken steps to protect themselves. Before its segment aired, Hoffmann-La Roche sent 400,000 physicians and pharmacists a brochure offering free copies of the entire, *unedited* transcript. Illinois Power had the wherewithal and cunning to counter-punch in a more unprecedented fashion. It decided to film *60 Minutes*



while *60 Minutes* was filming IP, and just two months after the December 1979 broadcast, uncorked its own forty-five-minute tape—"60 Minutes/Our Reply"—styled and paced just like a slick Hewitt production, with Reasoner's on-air broadcast repeatedly interrupted to amplify, or correct and admonish, its accusers. To date, more than twenty-five hundred tapes of "Our Reply" have been dispatched to Kiwanis Clubs, utility companies, journalism schools, and members of Congress.



**I**N THE CORPORATE COMMUNITY, there is now a trend toward hiring public relations consultants to avert a disaster on the tube. For years—even before Rather's report on sugar—General Foods has been sending vice presidents and employees to Dorothy Sarnoff, a New York consultant who specializes in grooming politicians and businessmen for jousts with the media. Not only does Sarnoff coach clients on poise and preparedness, but she stresses their "rights" as interview subjects—such as controlling the interview site. General Foods, for instance, had selected the modest office of its on-air spokesman, although Rather vetoed the office and maneuvered the company into its giant wood-paneled boardroom. Finally, Sarnoff urges clients, "Never do a show unless it's live and unedited." Clearly, if this advice were followed it could seriously impair *60 Minutes*' access to future interview subjects.

A similar strategy prevails at Media Comm—an offshoot of the giant public relations firm Carl Byoir Associates—that also prepares naïfs for likely combat with the man whom Media Comm president Virgil Scudder calls "Mike Malice." When a large company embroiled in labor disputes was approached by *60 Minutes* for an interview, its management went to Scudder with the question, how do we wriggle out and not risk one of those "refused to appear" charges? Scudder's strategy: "Tell them you're willing to go on provided the interview runs intact and unedited. Now I happen to know they just won't do that." Sure enough, no interview was filmed.

"*60 Minutes* scares the hell out of my clients," says Scudder. "It's the tremendous pressure to stay Number One. Everyone knows the program's got to have a

hanging each Sunday."

Yet despite the awaiting hangman's noose, *60 Minutes* is still surprisingly effective at enlisting the cooperation of even wary interview subjects. Why, one wonders, have so many victims of *60 Minutes* aided and abetted their own hoisting? "We don't have subpoena powers and they don't have suicidal tendencies," says Wallace. "Something must persuade them it's in their own self-interest."

The temptations of ego have led more than one innocent soul to the gallows. Who, after all, can resist the macho challenge of hand-to-hand combat with Wallace? Who doesn't secretly think he can best the Grand Inquisitor at his own game? Then, too, the journalists at *60 Minutes* often disguise their motives. Richard Aszling, the General Foods vice president who supervised the Rather interview, claims he was duped by producer Andrew Lack's description—"A show on children's nutrition and what they eat." Of course it wasn't that at all.

In a celebrated interview with Daniel Schorr soon after the House Ethics Committee cleared him of leaking a secret CIA report to *The Village Voice*, Schorr claims Wallace lured him with the line, "You're the champion of the First Amendment, you're the hero of the week." Indeed, that was the topic of the first half of the interview. But the second part—the part that aired—was a distinctly unworshipful grilling on Schorr's suspension from CBS and his rumored slurs at CBS colleagues.

Obtaining an interview under false pretenses lies at the crux of Billie Young's pending \$25 million libel suit against *60 Minutes*. According to Young, she was asked to participate in a segment on "New Authors," and being the publisher of Ashley Books, a small Long Island press, she readily cooperated. In truth, the piece was an exposé of "vanity publishing"—"So You Want To Write a Book"—a fact that dawned on Young too late, well into her interview with Morley Safer. "What percentage of your authors' books are subsidized?" Safer suddenly asked. Ambushed, Young began protesting the interview was "dishonest" and "out of context." (Ashley Books publishes very few subsidized books, unlike Vantage Press, the segment's prime subject, which publishes any author willing to pay the costs.) She demanded, "Cut!" She tried to pull off her microphone. "I can't get it off, I don't know how," she wailed, and the interview continued, with Young a literal prisoner of her own naïveté.

But even those who are neither duped

nor naïve may be induced to cooperate after weighing the risks of non-appearance. Absence can look quite incriminating, especially with Dan, Mike, Morley, or Harry at center stage to point out that empty chair—"So and so, after repeated letters and queries..." In a Rather segment last spring—"The Kissinger-Shah Connection"—Henry Kissinger had considerable trouble weighing the pros and cons of appearing on the program. Granted an "equal time" interview after the piece, he agreed but later changed his mind. Whether he made the right decision will never be known. What is clear is that the piece prompted more outrage and criticism than any in the show's history.

The segment purported to document a "link" whereby Kissinger, during 1973 and 1974, acquiesced in the raising of Iran's oil prices so that the Shah could buy costly U.S. weaponry and serve as America's policeman in the Persian Gulf (recently abandoned by the British). The piece relied on four witnesses to connect Kissinger, the Shah, and "the price we're now paying for gasoline." By all accounts, the evidence was flimsy: Two of the four witnesses—former Undersecretary of State George Ball and James Akins, U.S. Ambassador to Saudi Arabia from 1973 to 1975—had openly hostile relations with Kissinger. Iran's Ambassador to the United Nations, Mansour Farhang, could only cite a "confluence of interests" between the Shah and Kissinger. William Simon, former Treasury Secretary, did little to confirm Rather's thesis, though he did concede, "Well, there could very well be some truth in that." (He later claimed his remark had been taken out of context.)

Critics, ranging from high-powered chums of Kissinger to newspaper columnists, lambasted the show for its biased witnesses and Rather's inadequate grasp of complex Mideast oil policies. "The argument made no sense," charged Thomas Bray, associate editor of the *Wall Street Journal's* editorial page. "Supply and demand, not OPEC's or the Shah's blandishments, led to the quadrupling of prices in late 1973." Kissinger himself called the segment "malicious, ridiculous, and untrue" and, in an irate sixteen-page letter fired off to CBS News president William Leonard, charged, "The problem is that all your witnesses gave only one point of view, which was both tendentious and demonstrably erroneous, while no independent participants were presented to give a different view."

Apparently, Dr. Kissinger failed to grasp Hewitt's Nielsen-winning formula.



the urge to shoot down any acclaimed success—the same temptation that lures *60 Minutes* into toppling a power-block grown too strong.

A balanced in-depth probe on Mideast oil politics would have evoked a mighty yawn from *60 Minutes*' viewers, accustomed as they are to news presented as theater. And theater requires not only its stars—those heroic Knights—but an occasional villain. If Rather reduced a large, intricate topic to individual drama, the fault belongs largely to Hewitt's eagerness to personalize issues. Small wonder *60 Minutes* is often accused of squeezing the world into a hyped-up formula. Ideally, such topics belong to the networks' hour-long documentaries—*CBS Reports*, *NBC White Paper*, or *ABC Close-Up*. But ironically, the very success of *60 Minutes* has worked to weaken both the impact and frequency of those documentaries. "Has *60 Minutes* damaged other longer vehicles? Yes," concedes CBS's Chandler, "to a degree that's true." Meanwhile, every tick of that relentless stopwatch provides another confirmation of the viewer's narrowed attention span.



**I**N DWELLING ON some *60 Minutes* flaws—the hype, the slant, the impulse to dramatize—there's always the danger of losing, as Rather says, "perspective." Debunking *60 Minutes* has become something of a popular sport. Why? Perhaps from the urge to shoot down any acclaimed success—the same temptation that lures *60 Minutes* into toppling a powerblock grown too strong, an idol verging on hubris. But then, just as one questions one's motives, there looms from the past that most troubling of stories: the seven-year-old, \$22.5 million libel suit filed by Colonel Anthony Herbert.

Herbert was a Korean War hero and decorated battalion commander in Vietnam who was abruptly relieved of his command after he reported a My Lai-type massacre (six prisoners shot by American soldiers) that his commanding officer, Colonel Ross Franklin, allegedly ignored. Herbert's best-selling book, *Soldier*, recounted this shocking cover-up, as well as other atrocities, and landed Herbert on the Dick Cavett show, where he became an instant media celebrity. But Wallace and producer Barry Lando had their doubts. In twenty minutes they totally shattered the legend of Colonel Anthony Herbert by discrediting him as a fraud, a liar, and probably a brutal sol-

dier prone to criminal acts of violence himself.

In this 1973 program, Wallace interviewed Herbert's commanding officer, Franklin, who claimed Herbert *never* reported the atrocity. Wallace produced receipts from the Hawaiian hotel that Franklin, recuperating on a brief R&R, seemingly left the day *after* the alleged report. General John Barnes, the man who had relieved Herbert of his command, described him to Wallace: "I thought he was a killer, enjoyed killing..." Barnes added that Herbert had never reported any war crimes or atrocities. In the interview with Herbert, Wallace showed him Franklin's canceled hotel check, and a flustered Herbert could only reply, "m-hmm. I can probably find you checks—I don't know. I can probably find you—I don't know about this check. I can probably find..."

The segment was tough and convincing and, if correct, gave its audience not just terrific drama but a worthy insight into the perils of blindly promoting media celebrities. However, during seven years of pre-trial discovery proceedings, and with a mass of data gathered by Herbert and his attorneys under the Freedom of Information Act, numerous disturbing facts have come to light. Among them:

—Franklin, during a *second* interview with producer Lando, admitted that Herbert said "such fantastic things sometimes... people could very easily disregard them, tune out, turn off." "Could you yourself have done that?" asked Lando. "Yeah," replied Franklin, "I have done that frequently with Herbert." That second interview was neither shown nor mentioned.

—During a Pentagon interview with Franklin and other Army officers, secretly taped by the Army, Wallace is heard pressing, "Ideally, if we can get somebody on the film to say, 'I don't know whether he reported but he is capable of doing that sort of thing himself [acts of brutality].'" Wallace, searching for evidence to support the segment's thesis, seemed anxious to present Herbert as a brutal soldier.

—Franklin's canceled check—"made out to the exact amount," said Wallace—was, in fact, \$25 short. Mistake? Confusion over a \$25 deposit? Or could Franklin have returned to Vietnam one crucial day before he said he had?

Most important, numerous interviews and pieces of testimony were omitted by

Wallace or Lando. "I do know for certain that Herbert reported the killing of six detainees," read the sworn statement of a certain Captain Jack Donovan—never aired. Another captain, Bill Hill, said he heard Herbert report the incident by radio to a superior—meaning either Franklin or Barnes. Interviews with men who served under Herbert, stressing his care for prisoners, were never mentioned or aired.

Ironically, Lando had first proposed a pro-Herbert piece "to take a look at the original charge of atrocities... whether the Army has tried to whitewash the whole affair." But with Herbert already a hot media item, neither Wallace nor Hewitt was interested. Then too, in 1971, CBS had aired its celebrated *The Selling of the Pentagon*, and perhaps a second military exposé would not have delighted CBS president Frank Stanton—who had recently received a contempt citation for refusing to turn over *Pentagon* outtakes. In a lengthy *Atlantic* article, Lando himself summed up his abrupt about-face: "Something finally snapped. The inconsistencies, the evasions I had been so eager to overlook now took on a different hue."

Whatever the motives that launched the Herbert exposé, Lando pursued his quarry with a zeal that, in hindsight, raises some serious questions about *60 Minutes*' commitment to fair, unbiased reporting (ones that may be resolved if *Herbert v. Lando* reaches trial later this year). In their eagerness to nail Herbert, the producer and Wallace may have calculatedly blindfolded themselves to contradictory data. Like the Mormons, like Illinois Power, like Dr. Joseph Greenberg and Daniel Schorr, Colonel Herbert may have been felled by Hewitt's all-consuming realpolitik: the desire for impact.



**B**UT THE ULTIMATE QUESTION IS, has Hewitt performed an important public service by alerting countless millions to the dangers of sugar and Valium, to the hazards of church hegemony? Or has he not also further narrowed our vision of what to expect from the medium? Catering to our crudest entertainment reflexes, after all, risks demeaning the imagination, and thwarts the patient groping for reality that makes us not just informed but enlightened. To accept less turns us all into victims of *60 Minutes*.

—END



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

CHAMBERS OF  
THE CHIEF JUSTICE

May 26, 1981

MEMORANDUM TO THE CONFERENCE:

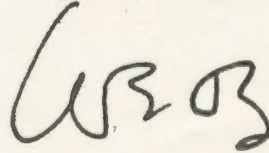
Vera and I would like to have a Court dinner on:

TUESDAY, JUNE 23

If any are not available that day, our "fallback" date would be Monday, June 22.

We would appreciate your holding the date. Nature allowing, we will dine partly in the open.

Regards,

A handwritten signature in dark ink, appearing to be "WR OJ", written in a cursive, stylized script.



29  
May 28, 1981

Dear Chief:

Jo and I have accepted an invitation for dinner on Tuesday, June 23.

We are free on Monday, June 22, and would be delighted to attend your party if that date should be chosen.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



May 28, 1981

Dear Chief:

I write merely to say how pleased I am with Reston's column, carried in the Star of May 27.

It is rare indeed that even a columnist says anything complimentary about a public figure, and especially about the Chief Justice. A large majority of the lawyers of our country recognize and applaud your leadership on behalf of improvements in our system of justice. It is especially gratifying when the most respected columnist in the country recognizes some of your contributions.

As ever,

The Chief Justice

lfp/ss



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

CHAMBERS OF  
THE CHIEF JUSTICE

Dear Lewis

Many thanks for  
your good note &  
enclosures. That I  
do not let the  
Media Mafia "get to  
me" in no way  
lessens my appreciation.

Long ago I decided  
that the importance of any  
attack is the impact on  
the target: no impact, no  
importance. Regards  
Clerman

5/29/81



August 6, 1981

79-880 Kissinger v. Halperin

Dear Chief:

In your memorandum to the Clerk of August 5, you request that the above case be relisted for the September Conference for the purpose of calling for a response.

You will remember that Mitchell is a party, and therefore as long as this case is pending before us, Bill Rehnquist has said that he will not participate in either of the Fitzgerald cases. This prompted us, at a June Conference, to affirm Kissinger v. Halperin by a 4-4 vote, and therefore clear the way to address the immunity issues in the Fitzgerald cases.

I was surprised that the Solicitor General did not understand this situation. If he had, it seems unlikely that he would have even filed a petition for rehearing.

In sum, it seems desirable to deny promptly the SG's request. Otherwise the argument in the Fitzgerald cases will be delayed.

I am sending a copy of this letter only to John Stevens. With Potter no longer on the Court, you, John and I are the only members of the Court who agreed on absolute immunity for the President.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



*file*

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

August 12, 1981

Dear Lewis:

This is just to let you know that I have decided to retain my middle seat at the Conference table. I had promised to inform you when I had reached a decision on this "very important" matter. I suppose this enables you to move over to the corner place previously occupied by Potter.

Sincerely,

*Harry*

Mr. Justice Powell

*In view of Harry's  
decision, I will  
move up to Potter's  
place at the  
Conference table.*

1981 AUG 13 PM 12 43

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

*Lewis*

*✓  
OK - indeed excellent!  
RWB*



August 13, 1981

PERSONAL

The "Bumpers" Amendment in S. 1080

Dear Chief:

One of my former partners is a leader in the ABA Coordinating Group that is supporting the Bumpers Amendment to S. 1080.

My partner is disappointed in the position taken by the Judicial Conference as reported to Congressman Danielson in Bill Foley's letter of July 20. I am told that Senators Laxault and Bumpers - and others - also are disappointed, and are not sure that the Judicial Conference followed carefully the legislative history and changes made in S. 1080 and the Bumpers Amendment.

I would not bother you with this except for my understanding that S. 1080, as proposed to be amended by Senator Bumpers, would have the effect of terminating certain provisions conferring exclusive jurisdiction on CADC. I have long thought that this would be highly desirable, and understand that you share this view.

It makes little sense to require litigants and lawyers across this vast country of ours to come here to Washington to litigate matters that are within the competency of the federal courts in their home districts and circuits.

I am not familiar with other provisions of S. 1080. It would be unfortunate, however, if opposition of the Judicial Conference to some provisions of the bill would endanger a reform that I have thought was long overdue.

On a happier note, I hope that you and Vera soon get off to China. It should be a fascinating trip.

Sincerely,

The Chief Justice

lfp/ss



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

CHAMBERS OF  
THE CHIEF JUSTICE

August 25, 1981

MEMORANDUM TO THE CONFERENCE

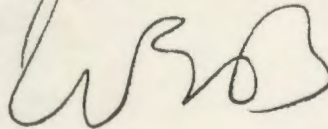
Assuming that a new Justice will be confirmed and available to begin work by September 28 when our pre-argument conference begins, a number of problems are raised.

1) The "installation" of a new Justice must, of course, be consummated before September 28 if the new Justice is to participate in conference decisions. If there is any delay beyond that date, certain cases may be relisted for consideration after the qualification of the new Justice.

2) Since we know the new Justice wishes to take the oath of office in the Courtroom in the presence of the entire Court we are tentatively proceeding on the assumption that confirmation will take place by September 23.

This narrows the time frame for the ceremony to some date between September 23 and 25 and the date tentatively fixed is September 25 at 2:00 p.m.

Regards,



9/25  
at 2 PM



Mr. Powell

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

CHAMBERS OF  
THE CHIEF JUSTICE

September 22, 1981

MEMORANDUM TO THE CONFERENCE:

Now that Judge O'Connor has been confirmed by the Senate, we can proceed with plans that have been evolving for the last five weeks. The event being unique, the pressures for attendance at the ceremony and the reception and for press coverage are far beyond anything we have experienced and far beyond our capacity. This has given rise to a good many problems, most of which have been worked out.

Some of you have made your requests for seats on the usual basis and all of those will be honored. Tentatively, those seats will be marked "reserved," probably with the name of the guests to make certain they are available. The demand for seats is far beyond the capacity of the Courtroom. It may be that we will have the proceedings amplified by wire into the Lawyer's Lounge for at least part of the overflow crowd.

The requests for press coverage were well above 100 and they will be accommodated to the extent possible in the corridor back of the press box, which will be occupied by the press "regulars."

The reception following the ceremony will be in the two Conference Rooms and the adjoining Courtyards. Even with that space, it will likely be a matter of "wall-to-wall" guests.

The security problems are somewhat complicated by the fact that the President will be here, occupying the chair reserved for Presidents in the guest box. Justice Brennan's guests will be in the front row of the box with Mrs. Reagan, Mr. O'Connor and the three O'Connor sons, along with Mrs. Burger. The usual allotment of seats to each Justice in the guest box will be made. I do not intend to have any other guests in the guest box or the Courtroom. The Law Clerks will be seated in their usual place in the Courtroom and other staff members of the Justices, unless occupying seats reserved by the Justice, will be accommodated in the corridor along with other Court employees.

The reception will commence as soon after the ceremony as the new Justice and President and Mrs. Reagan can be free from the "photo opportunities" requested by the media, which will be in the Courtyard adjoining the Lawyer's Lounge.



Because of the anticipated large attendance at the reception, no Court employees will be invited, except for the Justices and Officers of the Court.

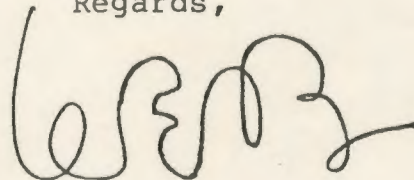
Tentatively, the "statutory oath" will be administered in the Conference Room with only the Justices present and the "Constitutional" oath provided for in Article 6, Section 3 will be administered in the Courtroom. Because of the oath given in the Conference Room, the buzzer will ring at 1:45 p.m.

Because of the need to use both Conference Rooms for the reception on Friday, the fall meeting of the Judicial Conference of the United States must be moved elsewhere and the Justices' Dining Room is the only space large enough for that purpose. For anyone lunching on that day, the Ladies' Dining Room will be made available.

I should add that the aggregate amount of time in working out the plans for this novel occasion has involved the diligent work of a half dozen of the Court's staff to say nothing of a substantial number of hours I have devoted to it myself.

If there are any questions with regard to the proceedings, please let me know.

Regards,

A handwritten signature in dark ink, appearing to be 'W. B. B.', written in a cursive style.

11/2/60  
W. B. B.



September 22, 1981

Dear Chief:

Please put the following cases on the discuss list  
for the September 28, 1981 Conference:

80-1960    Willson v. State Personnel Bd., p. 2

80-219    First WV Bancorp v. Sec. Natl. Bank, p. 4

80-1895    Exxon Corp. v. FTC, p. 10

Sincerely,

The Chief Justice

LFP/lab



September 23, 1981

Dear Chief:

Please put the following case on the discuss list  
for the September 28, 1981 Conference:

81-99 Kolom v. CIR, p. 51

Sincerely,

The Chief Justice

LFP/lab



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

September 23, 1981

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE:

The White House has requested an opportunity for the President to have a photograph with all the Justices (including Justice O'Connor) along the lines of the one taken last November 19.

The logical time to do this is immediately before we go into the Courtroom at about 1:50 p.m. on Friday while we are assembled for the "private" oath in the Conference Room.

Regards,

WRB



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

September 23, 1981

MEMORANDUM FOR THE CONFERENCE

Subject: White House Reception - Luncheon

It has been learned that the Reception from 11:30 A.M. to 12:00 P.M. will be held in the Rose Garden, and the luncheon from 12:00 P.M. to 1:15 P.M. will be held in the "Old Family Dining Room" (next to the State Dining Room).

Weather forecast is fair, sunny, high 70°. In view of the outdoor reception, suitable attire is recommended for spouses.

Alfred Wong  
Marshal

cc: Mark Cannon  
Stewart, J.



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

File

CHAMBERS OF  
THE CHIEF JUSTICE

September 24, 1981

MEMORANDUM TO THE CONFERENCE:

The buzzer is now scheduled to ring at 1:35 p.m.  
to allow sufficient time for photographs following  
the oath given in the Conference Room.

Regards,

WJ

O'Connor's

Swearing-in

9/25/81



September 24, 1981

Dear Chief:

In view of your expressed interest I pass on to you - for your Committee - the names of clerk applicants who made a particularly good impression on me.

I interviewed 23 applicants. All of them had excellent credentials, and there were 10 or more who made particularly fine impressions on me. I chose four of these but quite easily could have selected a half a dozen others. There include:

George Howell, honor graduate of Princeton and at or near the top of his class at the U.Va. Law School.

Lawrence P. Tu, honor graduate of Harvard College, Rhodes scholar and at or near the top of his class at the Harvard Law School.

Kathleen Smalley, honor graduate of Rice and the Harvard Law School.

I enclose copies of their impressive resumes.

I would have been happy to take all three of these.

Sincerely,

The Chief Justice

lfp/ss



September 29, 1981

Circuit Assignments

Dear Chief:

This refers to John's letter and your asking me about my recollection.

I enclose copies of relevant correspondence. As my letter of August 20 to John Godbold and Charles Clark makes clear, I did not think you had made a decision as to these assignments. More recently Paul Roney called and asked if the assignments had been made, as he was in charge of the printed program for the Atlanta meeting and would like to list me as Circuit Justice. I advised him that although, based on conversations, I thought you would assign me to the Eleventh, the formal action had not been taken. Therefore, I advised that the program should not identify me as Circuit Justice.

I sent you a copy of my letter of August 20.

I also enclose a copy of my letter to you of June 5 in which I indicated a preference for the Eleventh, and a copy of your reply of June 8, in which you stated an intention to make no "final decision before June 25" because you "may do some 'reshuffling'". Although I believe the subject was mentioned in a Conference late in June, it is clear that I did not understand a decision had been made.

I bring the foregoing to your attention only because of our conversation. So far as I am concerned, I was entirely content for you to make the decision in your own time. I am still acting as Circuit Justice for the entire Fifth, and the decision did not have to be made until October 1. I did not know about the statute until Byron mentioned it to me during the summer, and I did not look at it then.

It seems to me that this is simply a misunderstanding.

Sincerely,

The Chief Justice

lfp/ss



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

File in  
correspondence  
with Justice  
(Conference)

CHAMBERS OF  
THE CHIEF JUSTICE

CONFIDENTIAL

September 30, 1981

Dear Lewis:

This response to your memo of September 29 on Circuit Assignments in part restates what I said at the Conference, but it may be useful to record it.

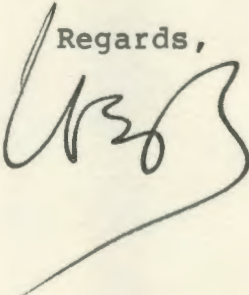
1. I agree no "decision" was made by the Conference in June as to Circuit Assignments. But there was definitive discussion on which the September 25 announcement was based.

2. Because I did not regard the June discussion as final Conference action, I expressly asked Mr. Stevas to "clear with all Justices" before the September 25 oath-taking. With all that was going on the failure of Stevas and Lorson to carry out my directive is perhaps understandable, but obviously it generated a problem - albeit small. However, on the other side, the assignments made on September 25 falls literally within the provisions of 28 U.S.C. §42 - exclusively for the Chief Justice. Notwithstanding that I had directed clearance with all Justices.

3. When a President of the United States is in our building, we must assume people cannot just "walk in off the street." We have had enough assassinations for one lifetime and it is unrealistic to set aside seats for "casuals," especially when the new Justice and others are entitled to certain priorities. That procedure will prevail while I am here.

Perhaps a good solution would be to tell the next Justice to take the oath at the White House or elsewhere, as has been done at times.

Regards,





October 8, 1981

Dear Chief:

Apparently the Legal Officers are pressed to the point of being almost overwhelmed on the eve of some of our Conferences.

I am dictating this letter at midday on Thursday, October 8, with a Conference scheduled tomorrow. There are at least a half a dozen petitions and motions that we understand are under consideration by the Legal Officers, and until their memoranda are delivered the preparation of my Conference books cannot be completed. I could, of course, have my own clerks assume the responsibility for this work now assigned to the Legal Officers.

If, however, the Chambers took over all of the Conference work now assigned to the Legal Officers, I suppose they would be underutilized. Rather than take an "all or nothing position", I suggest the following:

A Chambers at its election, could have its own clerks prepare memoranda (or brief their Justice) on late arriving petitions and motions whenever the Legal Officers cannot deliver their memos by some deadline - (e.g., by noon on Wednesday preceding a Friday Conference. Chambers clerks then could do the necessary reviewing and briefing of the Justice, supported by the papers. The Legal Officers should provide by the cutoff date a list of the matters as to which they cannot deliver memos on schedule.

It is helpful to have the Legal Officers assist as they have in the past, provided their work product can reach us at a reasonable time prior to Conference. When memos come in on a Thursday afternoon - sometimes late in the afternoon - it gives one little time to consider the matter and virtually no time to examine the papers when this seems necessary.

Perhaps the fundamental problem is that the Legal Officers do not receive many of these petitions and motions until a day or two prior to Conference. This prevents them



from doing quality work. Would it not be desirable to instruct the Clerk to carry over to a subsequent Conference all petitions and motions that cannot be circulated by a comfortable, designated cutoff date, except in cases of genuine emergency?

The present system of Chambers being swamped on the afternoons before Conference is hardly conducive to the careful consideration that some of these matters deserve.

I appreciate that each Chambers has its own routine procedure. I nevertheless am sharing this letter with all of you, as the present situation is close to being intolerable.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



cg  
October 8, 1981

Dear Chief:

Please put the following cases on the discuss list for the October 9, 1981 Conference:

81-249 Chardon v. Fernandez, p. 5  
81-198 Ins. Co. of N. Am. v. Forty-Eight Ins.,  
p. 4  
81-199 Liberty Mutual Ins. Co. v. Forty-Eight  
Ins., p. 4  
81-200 Aetna Casualty & Surety Co. v. Porter,  
p. 4

Sincerely,

The Chief Justice

LFP/vde



October 14, 1981

Dear Chief:

I believe I mentioned sometime ago that a longstanding commitment to the Law School at the University of Virginia will keep me away from the Court on Monday and Tuesday of next week.

As we will have only the order list, and perhaps admissions to our bar on Monday, you will not need me. I regret missing the clerks' "briefing" on Tuesday morning, but I will make sure that my clerks attend.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



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

CHAMBERS OF  
THE CHIEF JUSTICE

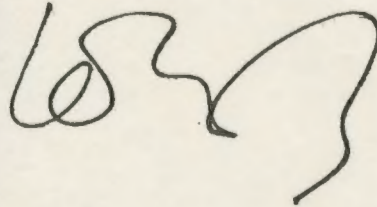
October 27, 1981

MEMORANDUM TO THE CONFERENCE:

This will confirm that the "official" photograph of the Court will be taken at 9:30 a.m. on Wednesday, October 28. Individual photographs of the Justices will follow. Justices who have previous commitments during the afternoon will be photographed first.

Because of conflicting engagements, the photograph of the wives has been rescheduled for the evening of Thursday, November 19, prior to the dinner being hosted by Justice and Mrs. Rehnquist. When the arrangements have been finalized, you will be advised of the time.

Regards,

A handwritten signature in black ink, appearing to be 'W. R. H.', is written below the 'Regards,' text.



October 27, 1981

Dear Chief:

The 9:30 a.m. "official" picture taking is fine with me.

I do have an engagement for lunch tomorrow at noon with a group from Richmond, and so I must leave the Court about 11:45 a.m.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



November 12, 1981

Dear Chief:

Please add the following cases to the discuss list  
for the November 13 Conference:

81-525 Bowen v. United States Postal Service, p. 3

81-593 Michigan v. Thomas, p. 4

Sincerely,

The Chief Justice

lfp/ss



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

CHAMBERS OF  
JUSTICE POTTER STEWART

Tuesday, November 17, '81

Dear Jo -

It was a lovely dinner party -  
the setting, the food, the guests, and  
most of all the gracious host and hostess -  
all were perfect. It was typically  
thoughtful of you and Lenni to invite  
the people that you did. My only  
regret is that Andy could not be  
there to enjoy it too.

Affectionate best wishes, and many  
thanks, to you both.

Potter



c9

December 4, 1981

Court Pictures

Dear Chief:

I customarily give a Court picture to my law clerks. My understanding is that many - if not all - of the Chambers give autographed Court pictures to law clerks. One could view this as almost an institutional expense.

In addition to four pictures for that purpose, I would like an additional four - or a total of eight pictures. Unhappily, a Florida Supreme Court Judge has requested a copy - no doubt thinking the government pays for these. I also have another request that I cannot decline.

When the informal picture is available. I would like two copies of it.

I will send my check whenever this is appropriate.

I very much appreciate your making all of these arrangements.

Sincerely,

The Chief Justice

lfp/ss

P.S. I also would like to purchase several copies of the fine picture taken in the Conference Room on the day Sandra was sworn in. If your Chambers would let me or Sally Smith know how these can be ordered, I would be grateful.



December 4, 1981

Dear Chief:

The proposed Court schedule for the October 1982  
Term looks fine to me.

Sincerely,

The Chief Justices

lfp/ss



December 17, 1981

Dear Pat:

Here is my check for \$31.50 covering the two Court photographs from National Geographic.

I also would like copies of the now famous photograph taken in the Conference room the day Justice O'Connor was sworn in, the one that includes the President. The Chief Justice told me sometime ago that these pictures should be requested only through his Chambers. When the Christmas holidays are over, perhaps you could advise me how to go about this.

Meanwhile, I wish for you and your associates in the Chief's well run Chambers the very best possible holiday season.

Sincerely,

Ms. Pat Bazil

lfp/ss



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

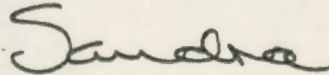
December 14, 1981

Re: Summary Disposition of Cases

Dear Chief,

There has been some discussion of the possibility of requiring briefs prior to some of our summary disposition of cases by per curiam. Would it help to amend our Rules to provide for the <sup>option</sup> of ordering briefs without oral argument? If so, a simple revision in the form attached might suffice. If you agree, perhaps it could be considered at a Conference.

Sincerely,



The Chief Justice

Copies to the Conference

Encl. (1)

SO'C/sd



Rule 23 (current)

.1 After consideration of the papers distributed pursuant to Rule 22, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

.2 Whenever a petition for writ of certiorari to review a decision of any court is granted, an order to that effect shall be entered, and the Court forthwith shall notify the court below and counsel of record. The case then will stand for briefing and oral argument. If the record has not previously been filed, the Clerk of this Court shall request the clerk of the court possessed of the record to certify it and transmit it to this Court. A formal writ shall not issue unless specially directed.

.3 ...

Rule 23 (proposed)

.1 After consideration of the papers distributed pursuant to Rule 22, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

.2 Whenever a petition for writ of certiorari to review a decision of any court is granted, an order to that effect shall be entered, and the Court forthwith shall notify the court below and counsel of record. The case then will stand for briefing and oral argument, unless the Court orders the briefs to be submitted without oral argument. If the record has not previously been filed, the Clerk of this Court shall request the clerk of the court possessed of the record to certify it and transmit it to this Court. A formal writ shall not issue unless specially directed.

.3 ...



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

CHAMBERS OF  
THE CHIEF JUSTICE

12/15/81

Mr. Justice Powell:

The two extra formal Court photographs  
you requested will cost \$31.50. A check  
in that amount should be made out to  
the National Geographic Society.

Pat Bazil

*Pat - Check attached.  
Many Thanks*

[



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

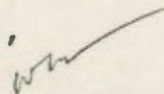
CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 15, 1981

Dear Chief:

As one who earlier proposed something in the nature of what Sandra has suggested in her letter to you of December 14th, I am in substantial accord with the proposed change in Rules which she suggests in that letter.

Sincerely,



The Chief Justice

Copies to the Conference



December 15, 1981

Dear Chief:

I could agree with Sandra's proposed change in Rule 23.2.

My only concern is that we might abuse this privilege. I believe in the utility of oral argument, and also in the symbolism it portrays for the public. Accordingly, if the Rule is changed as suggested, I would hope that we would use this option sparingly.

Sincerely,

The Chief Justice

lfp/ss

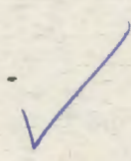
cc: The Conference



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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 16, 1981



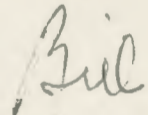
Dear Chief:

I could not agree to Sandra's proposed change in Rule 23.2.

I expect my reaction is influenced by my New Jersey experience. A prime target of the Vanderbilt reform group was the practice of the highest court in deciding almost all cases on briefs without oral argument. The low quality of final judgments was traced directly to that practice. Also, the feeling at the bar generally was that the few instances when oral argument was allowed always by happenstance favored cases in which lawyers with particular audience in the Court represented the parties. Thus the New Jersey Supreme Court rule requires oral argument of every case granted review. That's still in effect in New Jersey.

Lewis rightly says that one of the values of oral argument is the "symbolism it portrays for the public." For me that is a very cherished value because it enhances the public image of our complete impartiality. I feel so strongly about this that I must publicly dissent if the rule is changed.

Sincerely,



The Chief Justice

cc: The Conference



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

CHAMBERS OF  
THE CHIEF JUSTICE

December 30, 1981

MEMORANDUM TO THE CONFERENCE:

Enclosed is a "sample" of the kind of work produced by the publisher who is doing the pictorial book on the Supreme Court for the Supreme Court Historical Society.

Happy New Year!

Regards,

LSR B



29

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

✓

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

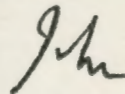
December 18, 1981

Dear Chief:

Over the Christmas break I hope to write out my views on how we can best confront the problems associated with our mounting caseload. I would hope that we could postpone a decision on Sandra's proposed amendment to Rule 23.2 until a time when we can consider it in the context of other changes in our procedures that we might want to adopt. In the meantime, if a case should arise in which we decide that we want to act summarily and also want the parties to submit briefs on the merits, I should think we would have ample power to take such action without a formal amendment to the rules. For what it is worth, moreover, I am inclined to share the view that others have expressed to the effect that we have been deciding more cases summarily than we really should.

In sum, for the present at least, I am opposed to making any changes in our rules without first having the thorough discussion that has previously been suggested.

Respectfully,



The Chief Justice

Copies to the Conference



29  
December 31, 1981

Dear Chief:

The "sample" of the work of Harry N. Abrams, Inc.  
(The National Museum of American History) is indeed  
impressive!

The book on the Court should be a best seller.

Sincerely,

The Chief Justice

lfp/ss