

January 5, 1984

Dear Sissy,

Jo and I so much appreciate the warm Christmas greetings from you and Thurgood.

We did not send Christmas messages to members of the Court, as perhaps we should have.

I also wanted to tell you both about my visit to the Wilmer Institute in Baltimore just before we left for Richmond for Christmas. Everyone there, from Dr. Maumanee to the nice receptionist, Mrs. Jarrett, asked me about Thurgood. They think he is simply great, and said he was a wonderful patient. They also liked Thurgood's stories (I hope he wasn't telling them some of the stories he has told us!).

Please remember me to Goody and John when you see them, and our special best to both of you.

Sincerely,

Mrs. Thurgood Marshall
6233 Lakeview Drive
Falls Church, Virginia 22041

lfp/ss

Justice

February 20, 1984

Dear Potter:

If you have not engaged a law clerk for 1984-85, you may wish to consider Rory K. Little - whose resume I enclose.

Rory was recommended highly to me by my former clerk John Jeffries, who knew Rory well when John was teaching at Yale for a year. Rory was very much in contention with me, and ended up on my final list of half-a-dozen names.

Rory is now with Miller, Cassidy, and I am sure you could get a report on his work there from Bill Jeffress - although I think Rory has been there only briefly.

I hope your most recent trip to France was both pleasant and productive. We look forward to seeing you on your return.

As ever,

Justice Stewart

lfp/ss

bc: Rory K. Little, Esquire

anonymous
Justice

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 21, 1984

Confidential

MEMORANDUM TO THE CONFERENCE

At the risk of incurring the displeasure of one or more esteemed colleagues, I would like to suggest that two procedural questions merit discussion at a conference in order to determine the Court's policy: (1) whether a spectator's failure to rise should be regarded as a contempt of Court within the meaning of 28 U.S.C. §401, and, if so, what action the Court should take in response; (2) whether a lawyer may use a visual aid that is not in the record during oral argument when his adversary does not object. On the first question, apparently there is some sentiment for the view that the answer should be provided by the Chief Justice, rather than by the Court. I disagree. On the second question, there was general acquiescence in Thurgood's view during the Vaughn argument. Again, I disagreed with that view, but felt that it would unduly disrupt the argument to make my disagreement known at the time. I believe questions of this kind should be discussed by all of us at conference when there is time for everyone to be heard and to hear the views of the others.

Respectfully,

S. M.

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<p>Distressed by your father's death. You have our sympathy and affection.</p> <p>Josephine and Lewis Powell</p> <p style="text-align: right;">= (SP) (SP)</p>							
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 11, 1984

This may be of interest.

L.F.P., Jr.



Free reserved parking at busy Washington-area airports is only one of the many privileges enjoyed by members of Congress.

Congress Shuns Its Own Budget-Cutting Medicine

Fat payrolls, plush offices, three-day workweeks—big deficits or not, the good life on Capitol Hill goes on.

In their search for ways to cut federal spending, the nation's lawmakers are leaving one stone notably unturned: The soaring cost of Congress itself.

Most Democrats and Republicans seem to agree that, despite the budget deficit, not much needs to be done to curb Capitol Hill's own spending, including regular pay increases and a widening array of perquisites for members.

As Representative James Olin (D-Va.) puts it: "At present, there's very little real effort by Congress to tighten its own belt." What riles critics are examples such as these—

- In 1984, members of Congress are likely to post some 800 million pieces of mail free of charge—nearly double the amount sent in 1983, a nonelection year. The cost to taxpayers: About 107 million dollars, more than twice the total spent in 1980.

- Members' office allowances still are ballooning. One freshman representative who arrived in Washington in 1983 saw his permissible spending rise by 36 percent in one year—from \$89,000 to \$121,000.

- The Congressional Budget Office in 1983 received 15 percent more money than the year before. For 1984, an additional 10 percent increase has been earmarked. Yet over the two-year period, inflation will equal about 9 percent.

- Congress has almost as many police officers guarding Capitol Hill as are employed in Miami, Fla., a city with a population of around 350,000. The 1,222-member

force will cost 33.5 million dollars this year, 38 percent more than in 1980.

- Congressional committees, now costing 133 million dollars a year to operate, show no sign of contracting. Despite a drop in legislative activity, total committee outlays in the House have grown 30 percent since 1982. One House panel, Merchant Marine and Fisheries, has quadrupled its staff and boosted its budget five times since 1973.

- Plans to build a third congressional parking garage at a cost to taxpayers of at least 70 million dollars—equivalent to \$127,272 per car—are progressing despite opposition from some lawmakers.

Over all, Congress in 1984 is budgeting about 1.7 billion dollars, 10 percent more than in 1983, for expenditures of the legislative branch, including arms such as the Library of Congress and General Accounting Office. If trends continue, critics estimate, a 2-billion-dollar Congress will be a reality before 1990.

Some limited efforts are under way to restrain this spending juggernaut.

Members' salary hikes—3.5 percent this year following a 15 percent raise only 15 months ago—will be below the current rate of inflation. Senators no longer want this increase, but the House will not cancel it.

Committee-staff salaries in the House on average are being held to 1983 levels. And attempts to buy more computers for Capitol Hill have been slowed.

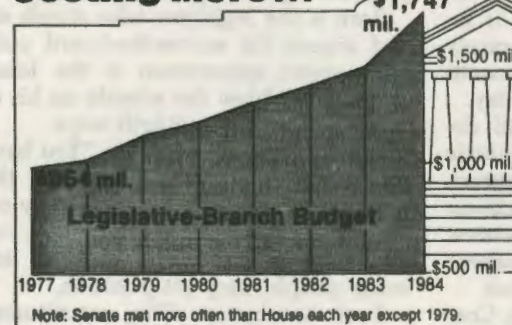
Lower output. Still, the figures reflect a Congress that is spending more each year to maintain its comforts and expand its facilities and staff. At the same time, it is meeting less frequently, passing fewer bills and generally appearing less productive than in years past.

Some lawmakers find the proliferation of staff—Congress last year added more than 900 new employees for a total work force of nearly 21,000—particularly hard to justify. "If you put all the House committee staffers end to end," says Representative Trent Lott (R-Miss.), "you would find that that is precisely where many of them are already sitting, and with very little to do."

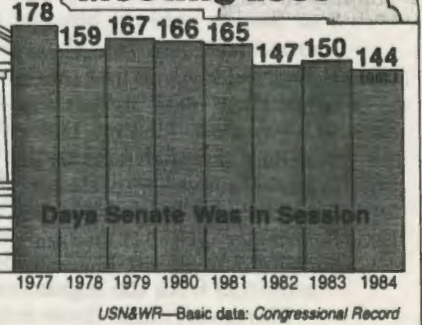
Many critics are puzzled by the inverse relationship they see between Congress's rising expenditures and its declining productivity, achievements so sparse they were described recently by House Minority Leader Bob Michel (R-Ill.) as "a disgrace . . . a blot on our record and a blow to what integrity and pride we have left with the American people."

Congress this year is expect-

Congress: Costing More...



And Meeting Less



Note: Senate met more often than House each year except 1979.

USN&WR—Basic data: Congressional Record

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

✓
May 1, 1984

MEMORANDUM TO THE CONFERENCE

Judge Webster's office asked me to advise each of you that Mrs. Webster passed away this morning. Some of you already will know this.

There will be a memorial service at the National Presbyterian Church on Thursday at 10:00 a.m. The Director's office would like to know who, if anyone, from here will attend so that they may reserve seats for us. If you will let me know, I shall pass the word along.

Harry

*Go & I will
go. We are
fond of Mr
Websters.*



A Cornucopia of Goodies

Besides their \$72,200-a-year salaries, members of Congress qualify for dozens of perquisites that cost taxpayers millions of dollars yearly—

- Generous personal-staff allowances. For senators, annual amounts range between \$875,896 and \$1,550,560, depending on their state's population. Each member of the House is eligible to receive up to \$379,488 a year for staff salaries.

- Free, furnished offices at the Capitol and in home districts. Members also may lease mobile offices at public expense and buy back office furniture at cut-rate prices.

- Liberal expense allowances—not subject to federal audit—covering travel, telephones, telegrams, newsletters and official costs outside Washington. Yearly claims in the House range between \$88,850 and \$279,470, in the Senate from \$36,000 to \$156,000.

- Subsidized official travel at home and abroad, including foreign spending allowances of between \$75 and \$108 a day. Free hospitality from U.S. embassies. On protocol trips overseas, spouses may accompany lawmakers free of charge.

- Use of the government's Federal Telecommunications System to make free, unlimited long-distance telephone calls. Cheap rates at radio and television studios maintained at public expense on Capitol Hill.

- Sizable retirement benefits after only five years of service, plus automatic, yearly cost-of-living hikes. Top pension for 32 years of service now exceeds \$54,000.

- A \$75,000 life-insurance policy for \$468 a year. A health-insurance program subsidized by the government. Free emergency medical care. Free electrocardiograms on demand.

- Opportunity to boost incomes. House members may earn \$21,660 a year extra from all outside sources. No limit on senators' earnings apart from a \$21,660 ceiling on honorariums. Tax deductions for Washington living costs.

- Exclusive use of free swimming pools, gymnasiums with steam rooms and basketball courts. Low-cost barber and beauty shops for members and staffs. Cut-rate meals in subsidized, private dining rooms.

- Congressional license plates with parking privileges. Free garage space. Free package-wrapping service.

- Free legal counsel. Free help from the Library of Congress. Free photography service. Free storage of official papers in government warehouses.

- Franked mail privileges costing over \$100 million a year. Free calendars, maps, pamphlets for constituents.

- Potted plants on loan from Congress's own Botanic Garden. Merchandise at cut prices from special stores. Subsidized vacations in national parks.

ed to be in session—with at least one of its two houses meeting—on about 144 days, the fewest business days in more than a decade. The 98th Congress also is likely to enact fewer laws than any other since World War II.

Comments Representative Barber Conable (R-N.Y.): "So far in 1984, we have had only about 40 votes on the floor of the House, most of those not worthy of a marketplace of great ideas." He attributes much of the sloth to Democratic and Republican wrangling over how to handle the budget deficit.

Representative Dan Glickman (D-Kans.) cites another, more basic reason for Congress's evident lethargy. He believes the trend away from federal activism and toward decentralized government has left Congress with less work to do. "The era of repetitive legislation has ended," he asserts.

One consequence of that is apparent as Congress takes on the appearance of a Tuesday-to-Thursday club. A House or Senate vote on Monday now is increasingly unusual. The House rarely meets at all on Friday, and few committees of either body meet on that day.

Natural diversion. Capitol Hill defenders maintain that such facts say little about the real effectiveness of Congress. They point out that this year's elections, with 33 Senate and all 435 House seats at stake, are bound to divert lawmakers' attention from the legislative grind.

Moreover, claim these insiders, Con-

gress's productivity is not necessarily related to the number of bills it passes or the days it is in session. Members spend much time, for example, on constituents' problems. Some lawmakers, headed by Senate Majority Leader Howard Baker (R-Tenn.), even argue that Congress would be a better forum if it met less, allowing members more time to spend among their constituents.

For the moment, though, such ideas win little support. Instead, the drift is the other way—toward more and plusher buildings, more-advanced technology, larger staffs, bigger budgets.

Congress's propensity for expansion, as old as the Republic itself, excites little controversy on Capitol Hill. Individual members will denounce individual excesses—for instance, the tradition of proposing hundreds of obscure, costly commemorative occasions such as National Brick Week and Frozen Food Day—but few, if any, seek to curb congressional spending as a whole.

Rare is the legislator who stands up and argues for across-the-board cuts. Even more uncommon is the loner prepared to blow the whistle on his or her colleagues' spendthrift ways.

Why? Glickman explains: "You have to keep the system honest, and the only way is to get in people's craw occasionally. But if you rail too much, you get nowhere, and if you upset too many people, they get punitive."

Back home, says Olin, constituents

are "livid" about the unchecked increase in congressional spending—when they know what is happening. "It's totally demoralizing for the population, and it sets a very bad example for the federal government," he argues. "But most people aren't even aware of what is going on."

Why the situation persists is hardly a mystery. At its crudest, too many people benefit to want to alter anything. Contends Olin: "A kind of reverse psychology exists. The argument goes, 'If the Pentagon can get away with paying \$435 for hammers, so can we.' The fact is that the leadership in Congress likes to have money to do what it wants."

Confining targets. Few of the tiny band of lawmakers who criticize congressional outlays expect the situation to change much after the November elections. Consequently, these mavericks are now concentrating their fire on the more blatant examples of waste in the hope that a series of small victories eventually will add up to a major change of heart by Congress as a whole.

Typical is the saga of House restaurant menus. Prized as souvenirs by visitors to Capitol Hill, these menus once cost an extra \$100,000 a year to be printed daily. After pressure from several crusading members, menus now are dated weekly. Even so, the extra annual tab to the taxpayer still exceeds \$50,000. □

By ROBIN KNIGHT and ROBERT BARR

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 25 ('84)

Dear Lewis and Jo,

We are so pleased
you can join us Monday
night. The dress is informal.
The time is 6:30 PM and
we will look for you
close to the main entrance.
Among the group we will
be with are Jean and
Les Douglas, Phyllis and
Bill Draper (he is head
of Ex - Im. Bank), Shirley
and Ebersole Gaines (he
is met with Bob & Daphne - tennis
with 20.

Gaines played tennis with 5 members

is deputy director of
OPIC), Daphne and Bob
Murray of Houston, Texas,
and Gail and Harry
Holmes (he is president
of the Pebble Beach ~~Club~~
Corp. and Aspen Corp.)

We will look
forward to seeing
you both on Monday.

Sincerely,

Sandra

Bob Murray (duys & all Frank's
Princeton ~~too~~ (Leola's brother
Daphne - granddaughter ~~of~~ was
Gen Wood
Bayou Club - (helped Jo &
Richard)
Son at U. Va. (Nelson)

Murray's
"quail shooting"

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

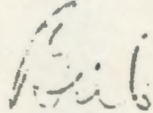
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 4, 1984

Dear Chief,

Lewis has been good enough to let me have Nos. 83-245 and 83-291, Pension Benefit Corp. v. Gray, etc., and I'm happy to have it. I assume that Davis v. Scherer, No. 83-490, in which Lewis has suggested writing a per curiam, will be assigned to him.

Sincerely,



The Chief Justice

Copies to the Conference

Justice William J. Brennan, Jr.

By Chief Justice Warren E. Burger

In his 28th year as a Justice of the Supreme Court of the United States, it is highly appropriate that *The Reporter*, the official publication of the Passaic County Bar Association - with which he has had a close professional relationship for more than 50 years - should honor William J. Brennan.

No one facet about a public figure can tell the whole story of the person, and the introduction I have been invited to make will undertake to do no more than touch a few aspects of the man. This is especially true of a broad gauge person like Justice Brennan. Were I to single out just one characteristic of Justice Brennan, for this kind of comment, I would focus on his warmth and facile talent in personal relationships.

In a position calling for intellectual vigor, constant study, sturdy independence, courage of conviction, willingness to stand alone, the qualities that aggregate personal warmth may, to some, seem not to rank high in a catalog virtues of a Justice of the highest Court in the land. But that approach would overlook the true nature of the role of the Supreme Court in our system and the role of each one of the nine.

Many years ago a columnist described the Court as "nine scorpions in a bottle." Even accepting that journalistic extremism, this can be read as a wholly unintended tribute to an institution and to its members. Scorpions, unlike some species do not resolve their hard problems by "trade-offs," as may be entirely appropriate in some fields of human endeavor; right or wrong they fight to the death for convictions.

In our system, with a Constitution cast largely in broad general terms, the work of the Supreme Court is not readily and fully understood by even regular "Court Watchers" or others who assume the mantle of "experts." Few commentators, even some who should know better, grasp the essence of the really hard questions that reach the Court; they miss the important aspect of the route by which a case comes before the Court and the timing. Superficial observers repeat Mr. Dooley's comment of more than a century ago that the Court, "follows the 'election' returns."

The vast burdens thrust on the Congress, with changing concepts of the role of government, could hardly have been anticipated by the Framers of the Constitution. Today, legislation is drawn increasingly in general terms that barely define the objectives, let alone provide clear guidance to the Executive and the Judiciary for administration. This phenomena cannot be precisely dated but it is essentially a post-World War II development.

Dealing with such legislation in the past 20-25 years, the Court is often charged with "legislating" but in a large number of such cases, Justices have no choice but to try to fill in the interstices. To the difficult process of interpreting what Congress mandates, Justice Brennan brings a rich background of private legal experience and long service on the Bench.

In this task, Justice Brennan brings strong, often even fierce, feelings about the Law, the Constitution and the Court's role. His writing is perhaps the most vigorous among the nine Justices; his positions are as clear to those who agree as to those who disagree. He recognizes that Justices are not in these chairs to deal with hard problems by the accommodation and compromise that is entirely appropriate in the legislative process.

A Justice who has a long tenure inevitably experiences periods when he or she is largely in the majority and other periods in frequent dissent. A most valuable mark of a Justice is the capacity to engage in the inescapable disagreements without being disagreeable about it and this, Justice Brennan does with a warm smile and a cheerful countenance that all judges could use as an exemplar.

I am pleased that the Passaic County Bar of Justice Brennan's "home state" invited me to participate in the process of honoring him.

* * *

"I am not one of those who think that procedure is just folderol or noxious moss. Procedure—the fair, orderly and deliberative method by which claims are to be litigated—goes to the very substance of law."

—Justice Felix Frankfurter, in *Cook*
v. *Cook*, 342 U.S. 126, 133 (1951).

* * *

"The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual as well as an unjust way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Portection Clause does enable us to strike down discriminatory laws relating to status of birth where—as in this case the classification is justified by no legitimate state interest, compelling or otherwise."

—Justice Lewis F. Powell, Jr., in
Weber v. Aetna Casualty & Surety
Co., 406 U.S. 164, 175 (1972).

The Reporter
— An Antidote to Law Reviews

The Reporter

(A N.J. Bar publication)

The Opinion of the Court

File on Members of Court

In my view, Justice Brennan will go down in history as one of the truly great Justices of the Supreme Court. He brought to his duties here an exceptionally broad experience for a relatively young lawyer. He also is a gifted legal scholar. Over the long tenure of his service on the Supreme Court, he has written a number of the landmark decisions - decisions that will shape our law for decades to come. When one also considers the number of his dissenting and concurring opinions, Justice Brennan may well have added more pages to the United States Reports than any other Justice in the Court's history.

Despite the occasional sharpness in the language of some of his dissents, Justice Brennan is a warm and generous human being - liked personally by all of us who live rather closely together in this handsome building. As inexact as the terms "liberal" and "conservative" are, Justice Brennan is more liberal in his view of the commands of the Constitution than I am. This is not to say, of course, that he is always right! He also thinks I sometimes err egregiously. Despite differences, he and I remain warm friends - a friendship that dates back a number of years before I came to the Court.

—Lewis F. Powell
*Justice of the Supreme Court
of the United States*

The long and distinguished career of Justice William J. Brennan and his impact on the Supreme Court of the United States and the nation has been the subject of many comments through the years and will continue to be so whenever the Supreme Court is discussed.

When I came to the Court in September, 1981, Justice Brennan was the senior justice in terms of service, and I, of course, was the junior justice. We share the distinction of being the only present members of the Court to have served previously as state court judges. From the day of my arrival Justice Brennan was friendly, gracious, thoughtful and considerate. His analysis and discussion of issues is clear and thorough. He is always warm and cheery, with a perennial twinkle in his eye, a bright smile on his face, and a hearty handshake whenever we meet.

He is always calm and deliberate. He is the ultimate professional, knowing where he is, where he wants to go, and how he wants to get there. It is that sureness of position and approach which is the source of the confidence that pervades his manner of dealing with problems, counsel, and his fellow justices.

Justice Brennan's opinions are now printed in more than 100 volumes of the Supreme Court Reports and span more than a quarter of a century of service on the Court. From his days as a state court judge and still today he has walked down the pathway of the rule of law with a sure step and a clear road map to guide him on his way.

Part of the pleasure for me in serving as a member of the Court has been the pleasure of serving with Justice William J. Brennan of the State of New Jersey.

—Sandra Day O'Connor
*Justice of the Supreme Court
of the United States*

Justice William J. Brennan is my friend. He is a fine lawyer, a fine Justice, and a fine man.

He is the only remaining Member of the Court who was there when I came in 1958. I hope he stays there a long time.

—Potter Stewart
*Justice of the Supreme Court
of the United States (Ret.)*

Many thanks for your letter of January 6th, in which you extended your sympathy about the death of my beloved Betty, who had often read and enjoyed some of the lighter content of the Reporter. In the same letter you requested a short statement as to our great New Jersey friend, Justice Bill Brennan. By coincidence, these two items fit together.

Shortly after my marriage to Betty Hughes, I was serving as Superior Court Judge and Bill Brennan was a Justice of the N.J. Supreme Court. Chief Justice Vanderbilt had appointed Bill to chair an important judicial committee. Betty and I hosted the committee for dinner at our home in Trenton. Betty offered Brennan a cocktail saying, "I don't know whether to call you Justice or Judge." Justice Brennan said, "Do it the easy way, -just call me Bill!" They became fast friends immediately.

It seems coincidental that in 1952 a distinguished Republican Governor Alfred E. Driscoll appointed the great Nathan Jacobs to be a Supreme Court Justice, and the late Sidney Goldmann to succeed him as Superior Court Judge; and on the same day elevated Bill Brennan to the Supreme Court and me to succeed him as Superior Court Judge. Two Jews, two Irish Catholics! Legend has it that a distinguished committee of White Anglo Saxon Protestants (WASPS) visited with Governor Driscoll to complain about this apparent discrimination against WASPS. Governor Driscoll, himself a WASP, stood his ground, saying he had appointed the best men available. Fortunately, at this time in our history, women had not yet become a counter force, or the situation might have been more complicated. In fact, I think the expression Male Chauvinist Pig (MCP) had not then even arrived in the national vocabulary.

More seriously, it is natural that I have a high personal regard for Justice Brennan. Our fathers were friends when we were but children. I served under Bill when he was Assignment Judge in Hudson County, many years ago. I have admired him as a dedicated American, an incomparable judicial scholar and craftsman, and as a man of deep courage, responsive to his own conscience, regardless of controversy. In my opinion he has reflected much credit on his profession, the State of New Jersey, the Supreme Court and the Nation itself. My thanks to the Reporter for the privilege of expressing this opinion.

My best wishes to you and the Reporter.

—Richard J. Hughes
*Chief Justice
of the Supreme Court
of New Jersey (Ret.)*

Spring, 1984

*Spring issue of "The Reporter"
A N.J. Bar Publication*

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

May 1984

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Dear Lewis
We've been friends
so long, & I've cherished
our friendship so much,
that it's hard to find
the words adequately to

Thank you for that so generous
piece in the current issue of the
Pasare County Tax Reporter.

Just know that Mary, my
children & I are deeply, deeply
touched by it - & thank you

This refers
to a statement
I made about
Bill
L & P.

Sincerely
Bill

Supreme Court of the United States

Memorandum

6/4/84

Lewis,

the only decant light in
the room is shining on the
saints. Is this the plan or
is the C.J. saving money
by turning down the lights?

Byron

Above note sent to me
by Justice White while Court
was in session, & the C.J.
had the lights cut down low.
Z.F.P.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 13, 1984

MEMORANDUM TO THE CONFERENCE

During the past three Terms, several of you have made use of the services of my law clerk during those portions of the year when I have not needed him or her on a full-time basis. I trust that this arrangement has proved beneficial both to you and to my clerk. I anticipate that there will be times during the next Term when I will not be keeping my incoming law clerk, Rory Little, busy. During those periods, I would be happy to make his services available. If any of you are interested in using Rory, please let me know so that we can apportion this time in a manner agreeable to all.

Best wishes to each of you for a good summer.

P.S.
P.S.

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

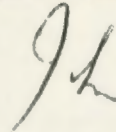
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 29, 1984

MEMORANDUM TO THE CONFERENCE

Toni House has advised us that she has received a great many calls on the subject of the "Case of the Vanishing Justice" including one that indicates that Tim O'Brien intends to put it on the national news tonight. Just for your information, I have not thought that the matter was worthy of comment but I thought you would like to know that the only request that I ever made to anyone at the Court concerning the exhibit was the discussion that we had in the Conference on Monday. I was not advised that the cartoons of me were being removed and first learned of it from the Baltimore Sun.

Respectfully,



Enclosure

Case of the vanishing justice: Sketches disappear

By Lyle Denniston
Washington Bureau of The Sun

WASHINGTON — Justice John Paul Stevens has, in a way, ceased to become a visible member of the Supreme Court — by his choice.

Likenesses of him sketched by courtroom artists, and put on display months ago in the court's most prominent exhibit hall, have vanished. No sketches of other justices have been removed.

A court source, asking not to be identified, said: "Any likeness having to do with him [Justice Stevens] is down, at his request."

Another source reported that Justice Stevens had indicated to the court curator's office that he did not like those portrayals.

The justice could not be reached for comment. A person who answered the telephone in his chambers said that he was "not in a position" to relay any questions about the incident to Justice Stevens.

The court's press officer, Toni House, said she would have no comment.

The exhibit contains the work of artists, employed by newspapers and television, who regularly draw the court when it is in public session because the court does not allow photographs. A few of the sketches are from the past; most are of the current court.

When the exhibit was opened to the public in the exhibit hall inside the court's ground-floor

entrance February 21, a reception was held and several of the justices attended; Justice Stevens was not there.

The only unfavorable comments about the sketches heard during that reception were made by John J. O'Connor, the husband of the court's only woman member, Justice Sandra Day O'Connor. He told a reporter at his side that the images of her did not look like her. But he did find one that led him to remark: "Well, at least in this one she looks like she has teeth." Her likenesses remain on display.

The exhibit had remained unchanged until a few days ago, when regular inhabitants of the courthouse noticed that some sketches had been removed.

The Baltimore Sun

June 29, 1984

1023(W)

Sally - Put in my
file on Correspondence
with Justice.

Remarks by Justice John Paul Stevens

at

The Dedication of The Arthur Rubloff Building
Northwestern University School of Law

Saturday, August 4, 1984 - Chicago, Illinois

In some ways an invitation to speak on an occasion of this kind is like being asked to sing the Star Spangled Banner at the World Series. No matter how the anthem is sung, the glory of the occasion will infuse the crowd. While listening to the rocket's red glare, they will think of the great deeds that brought the event to Chicago and of the future they are about to witness and to share.

Chicago is a city where we think about the World Series in July and August and where the real thing--or something even better--may happen at any time of the year. Today is one of those special occasions--a time when we can pay homage to the history of an institution, when we can celebrate its present condition, and when we can remind ourselves that the future always contains an ever-increasing abundance of new opportunities.

At home on the wall of my study I proudly display the original drawing of the McCutcheon cartoon that appeared on the

front page of the Chicago Tribune on November 22, 1924. A small figure is looking up at a Chicago skyline that contains a dozen magnificent structures that were then no more than a vision of the future but are now familiar hallmarks of a great city. Among the dozen--which of course includes the Tribune Tower, the Wrigley Building, the 'Strauss Building, and the Stevens Hotel--is this--and I quote--"New N.W.U. Campus." The small figure, with his arms outstretched, summarizes what is happening to Chicago at that time in the one word--"Gosh!"

In 1924, the Northwestern Law School, though still a young institution--it was approximately the same age Art Seder and I are today--had earned the respect of the community and of the profession. Wigmore was our dean. I have been told by ^{some of} his students--my father among others--that he was a great teacher. The evidence of his prodigious scholarship is on the shelves of law libraries throughout the world. His respect for the rule of law characterized both his legal writing and his administration. Thus, an entire volume of his classic Treatise on Evidence is devoted to the discussion of exclusionary rules--rules ^{of law} that require the exclusion of admittedly probative evidence to protect a societal interest of greater importance than the outcome of a particular case--^{social interests such as} the institution of marriage, the relationship between lawyer and client, between priest and penitent, doctor and patient, and the sanctity of jury deliberations, to name only a few. In the same tradition, as dean, Wigmore knew that academic freedom of individual members of the faculty must be

protected--as Jim Rahl's history of the school relates--"not only against the public, the alumni, the trustees, the University officials, and the students, but against the faculty itself." "'Tyranny,' he thundered, 'is conceivably as possible under a democracy as under an autocracy.'"¹

When Wigmore was dean, the Law School was permanently located on its present site. Rachel Mayer's generous gift made it possible to construct Levy Mayer Hall, which, together with the Gary Library and Thorne Hall, constituted the Law School during the deanship of Leon Green. Dean Green's tenure extended into the years immediately following World War II, when returning veterans learned that the pressures of combat had not prepared them for the pressure of standing up to recite in the Dean's torts class. Few of them will ever forget his withering response to an assertion that a case was correctly decided because it was based on grounds of "public policy," a label that was sometimes invoked by both adversaries in the same case.

Dean Green taught us that lawyers had to be able to think under pressure and that litigation was a process in which it is often more important to identify the correct decisionmaker and the relevant facts than it is to parrot the appropriate legal formulae. Above all, he taught us to be skeptical of black

¹Northwestern University School of Law--A Short History by James A. Rahl and Kurt Schwerin, p. 34.

letter rules that are found in hornbooks as well as in appellate court opinions. The inevitable gaps in the law are not filled by simple logical extrapolation from an accepted proposition, but rather from concentration on the novel as well as ~~the~~ familiar aspects of specific cases and controversies that are debated between adversaries under procedures that enable a neutral decisionmaker to make a wise choice.

There is a remarkable contrast between Dean Green's skeptical appraisal of the black letter rule and my present colleagues' enthusiastic attempts to codify the law instead of merely performing the judicial task of deciding the cases that come before them. A few of the cases decided this Term highlight that contrast. In Firefighters Union v. Stotts, a case that required nothing more than the construction of the terms of a consent decree, the Court elected to make a far reaching pronouncement concerning the limits on a court's power to prescribe affirmative action as a remedy for a proven violation of Title VII. ^{of the Equal Employment Act of 1964} In Grove City College--a case that merely required the Court to decide whether federal grants to students constituted federal assistance to the college within the meaning of Title IX of the Education Amendments, the Court went out of its way to announce that the statute did not forbid sex discrimination throughout the assisted institution even though neither party ^{had} argued that it did. And in Colorado v. Nunez, the Court unanimously concluded that it had no jurisdiction to review a decision of the Colorado Supreme Court; nevertheless,

three Members of the Court who are often described as "conservatives"--and who expressly agreed with the Court's jurisdictional holding--could not resist the opportunity to volunteer their opinion about the rule of law that should have been applied to the merits of the case. In the Leon and Sheppard cases, the Court leaped at the opportunity to promulgate the widely heralded good faith exception to the exclusionary rule without even pausing to consider whether the rule itself was applicable. If the Court had not grasped that opportunity--and had just decided what was necessary to dispose of the case before it--in time it might have been required to acknowledge that there is a real scarcity of cases in which the same search can be both unreasonable within the meaning of the Fourth Amendment and reasonable within the meaning of the Court's newfangled exception.

There has always been a division among judges and also a division among educators about how best to serve our jealous mistress. On the one hand, some judges and some professors are apostles of the true rule, the unambiguous answer to the bar exam question, and the simple formula for ordering conduct throughout society. Fortunately, their approach to the law has dominated in fields like negotiable instruments and real property, where certainty and predictability are interests of paramount importance. But even in subjects like contracts and insurance law, Harold Havighurst was a master at teaching his students that the law is seldom quite as certain as it seems. And, of course,

if we move into the area of constitutional adjudication--the course many of you will remember as "Nat's Mystery Hour"--we find that both the history of the past and the unpredictability of the future can raise doubts concerning the issues that must be confronted today, tomorrow, and the day after tomorrow. Nat Nathanson himself explained ^{it}~~it~~, he endeavored to provide ^{his} "students with a firm foundation for grappling with problems that none of us can foresee, except in their most elemental and perhaps abstruse terms, separated from the contemporary garb of the future which will give them a new vitality and significance." For Nat the law surely was not a Napoleonic code to be served up to his students on a silver platter ready for instant digestion. Instead, as he wrote: "We are the sworn enemies of the glittering half truths, the over simplified explanations. We are constantly at war with our own offspring, the black letter law, the restatements, the hornbooks, and their latest West Publishing Company incarnation, which purport to give the basic law of each subject 'in a nutshell.'"²

Some of you may believe Nat was speaking of the work of judges rather than teachers, and, indeed, the law schools and the law courts are constantly learning from one another, just as practicing lawyers are constantly teaching and learning from both professors and judges. We all know some of the answers to ~~some~~ ^{some}

²Nathanson, "The Mystery of Teaching Law", p. 9 (Winter 1977 edition of The Northwestern Reporter).

questions of law. Those of us who are fortunate enough to have been trained at Northwestern also know how to ask some of the right questions, and, on occasion, how to go about the task of answering the endless stream of questions that clients ask and that neither judges nor professors have anticipated. We are indeed a dynamic, integrated profession. The impact of legal writing on the development of the law is well known, though perhaps not fully appreciated. Less well known are the countless contributions to the profession that are made by members of the great law school faculties, of which I shall name only one. I suspect that few, if any, lawyers have done more to improve the quality of the law enforcement profession throughout the United States than Fred Inbau, ^{WHOSE LEADERSHIP AND CONSISTENT STABILITY AS STILL LAW} who ~~has~~ done so much to teach both prosecutors and defense lawyers how a professional should do his job.

So now I have almost exhausted the class hour without explaining Marbury v. Madison, ^{WITHOUT EXPLAINING WHY JUDGES ARE MUST LIKE TO MAKE MISTAKES WHEN THEY TRY TO ACT LIKE LEGISLATORS, AND WITHOUT} or even mentioning the Arthur Rubloff Building or the magnificent generosity and the organizational skills that made a dream come true--indeed, it all happened so quickly that the dream seems to have come true ^{WHILE WE ARE STILL FASTING} ~~before we have finished~~ even our breakfast coffee. You must, however, be patient for another minute or two while I sing the second stanza.

In 1984--as in 1924--the Northwestern School of Law has earned the respect of the community, the profession and the

nation. What greater evidence of esteem for the work of men like Jack Ritchie, Jim Rahl and David Ruder and their colleagues and their students, than this magnificent building. Indeed, the name of the building is itself significant. Of course, Mr. Rubloff's generous contribution is appreciated by all as a true act of charity, but I perceive a more relevant explanation for the building's name. When I was practicing law, I did not have a black letter rule for advising clients on how to make a good deal. My experience taught me, however, that men with judgment, character and vision, seemed to have a special gift for making arrangements that were good for both parties, not merely before the contracts were signed, but also when they were performed and implemented years and years thereafter. The commitments that have produced the Arthur Rubloff Building are unquestionably good for Northwestern and its future well being. And, I suspect, Mr. Rubloff has had the vision to recognize that it is literally well worth millions of dollars to have his name permanently associated with the prospect that the future of this unique institution will actually exceed the greatness of its past. So I close my dedication--not with the sound of bombs bursting in air--but rather with a somewhat dated but nevertheless accurate tribute to the future of Chicago and the N.W.U. Campus: "Gosh!"

9/10/84

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

24

Dear Lewis,

Thank you very
much for sending me
a copy of your kind
and generous introductory
remarks from the
American College of Trial
Lawyers banquet.
I am pleased to
have them.

Sincerely,

Sandra

Sept 24

September 17, 1984

MEMORANDUM TO THE CONFERENCE:

The Chief suggests that my birthday be celebrated at lunch time on Monday, September 24. Although the Chief is much older than I am, he also has a birthday. We can make it a "doubleheader" on Monday, and it is my turn to provide the wine.

L.F.P., Jr.

ss

bc: Mr. Joseph McFalls

Joe: Please provide two bottles of white wine for the lunch break next Monday. I suggest that you purchase a case of what you think is a moderately priced good white wine, and I will take the remaining bottles. If you wish the money in advance, let Sally know.

Ash Nat to be in dining room to serve the wine

~

Relevant
to "recusal"

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 4, 1984

MEMORANDUM

I agreed with T.M.
LTP

Since my appointment to the federal bench in 1961, I have routinely disqualified myself from all cases in which the NAACP has participated as a party or as an intervenor. Now, 40-odd years after I severed my ties with that organization, I believe that continued adherence to this self-imposed blanket rule is no longer necessary.¹ Accordingly, for the reasons set out below, I plan in the future not to recuse myself in cases in which the NAACP is a party or an intervenor, unless the circumstances of an individual case persuade me, as with all cases, to do otherwise.

My initial decision to disqualify myself in NAACP cases was a result of the personal and professional affiliation with the organization that I had developed before coming on to the federal bench. For at least a time after leaving the organization, I deemed it proper not to participate in any NAACP matters before the Court, both to quell any appearance of impropriety and to assure, prophylactically, that I did not decide cases involving issues that were in the office while I was there. The distancing effect of time convinces me that that rationale no longer is applicable, and that the basis for my blanket disqualification rule has therefore evaporated.

¹From the mid-1940s, the NAACP had to operate separately from the NAACP Legal Defense Fund because of rulings by the Internal Revenue Service.

For more than 20 years, I have been wholly removed from the NAACP, the NAACP Legal Defense Fund and all other like organizations. In that time, I have become uninvolved in the internal workings of the organizations. I have not kept track of their priorities, their hiring practices, their personnel, their case load, their policy choices, or their trial strategies. I have, of course, not retained my membership or received any form of remuneration. Time therefore has erased the ties to the organizations that initially led me to adopt a broad disqualification policy. It is clear to me now that my participation henceforth would be proper as a general matter, under any ethical standard, and would be in keeping with the statutory rules and ethical canons on judicial disqualification.

I begin by considering issues raised by the special nature of the NAACP, which at once plays the role both of public policy advocate and counsel. In almost every instance in which NAACP cases now arrive in this Court, the association participates in order to further a certain conception of public policy in which its members, along with many others, have an interest.

There is of course nothing improper about participating in a case because of a sympathy with the public policy goals that one side advocates. The congruity between my views and those of the NAACP on matters of law and policy has never been the cause of my disqualification in NAACP matters, nor should it have been. Nor would it have been improper to participate because I held and announced particular views when I was affiliated with the NAACP. I agree with the analysis of this question offered by JUSTICE

REHNQUIST in Laird v. Tatum, 409 U.S. 824 (1972), and accepted by many commentators, that the mere fact that sitting judges made known, prior to their appointments, their views on what the law is or ought to be, does not and should not preclude them from deciding cases that raise those issues. That a litigant is aware that a judge has expressed a view contrary to that which the litigant would like the court to accept does not warrant disqualification, and never has.

Nor should my former affiliation with the organization preclude all participation today. When the organization's role is that of advocate, my relationship to the organization is analogous to a judge's relationship to the judge's prior law firm. There is no dispute that a judge generally may participate in a case in which counsel is a law firm with which the judge was affiliated, as long as the matter at hand was not in the office while the judge was at the firm. See Code of Judicial Conduct for United States Judges, Canon 3C(1)(b); Frank, Disqualification of Judges, 56 Yale L.J. 605, 630-631 (1947). This is of course especially true after a substantial passage of time. Indeed many of my predecessors have participated in such cases much sooner than will result from my decision to begin sitting in cases involving the NAACP. It is not precedent alone that supports this view; the rule also makes sense. If a judge has neither acted as a lawyer in a given controversy, nor practiced with a lawyer who served, during their association, as counsel in that controversy, there has been no opportunity to prejudge the facts of the case at hand. I have no doubt that I am capable of

judging each case in which the NAACP participates on the basis of its own facts.

Nor, surely, should the mere fact of a past affiliation forever bar a judge from hearing a case. Perhaps the leading commentator in this area, John P. Frank, has pointed out the absence of a convincing reason for a judge to follow a blanket rule of disqualification when former law partners argue before the judge. He argues that the basis for such disqualification can only be a belief "that the previous association creates an intimacy which causes the arguments of counsel to have excessive weight with the judge." Frank, Disqualification of Judges, 56 Yale L. J. 605, 631 (1947). Yet, he points out, it is almost impossible to draw any rational distinction between the relationship of a judge with a former partner and with a former faculty colleague, government associate, law clerk or old friend, ibid., and none of these prior relationships is, or necessarily should be, perceived either as reasonably creating an appearance of impropriety or requiring routine disqualification. Since there is no reasonable appearance of impropriety when such former associates appear before a court, there should not be one when former colleagues in law practice appear before it. Given the role the NAACP plays in the cases I have described, I find no logical distinction between former law partners and my former organizational affiliation. And after 40 years, I am fully satisfied that the intimacy of which Professor Frank speaks is no longer present.

Additionally, both the Code of Judicial Conduct and advisory

opinions to the Code make clear that judges and justices are free to hear argument, where former law firms are counsel, as long as the matter was not in the office when the judge was there, and as long as the judge no longer receives remuneration from the law firm he has left. Otherwise, the opinions speak in terms of a matter of months before it would be proper to hear the cases. My separation easily suffices to meet that standard. See Code of Judicial Conduct for United States Judges, Canon 3C(1); Advisory Committee on Judicial Activities, Advisory Opinion Nos. 56 and 62.

Finally, since my appointment, federal law has placed Supreme Court Justices within the scope of 28 U.S.C. § 455. The statute, enacted in 1974, contains a general, objective prohibition on participation in cases where impartiality might reasonably be questioned. 28 U.S.C. § 455(a). It then enumerates several specific grounds for disqualification, one of which, subsection (b)(1) of § 455, requires a judge to disqualify himself when "he has a personal bias or prejudice concerning a party." This latter provision bars personal bias or prejudice. As the foregoing makes clear, my participation in cases in which the NAACP is an intervenor or a party is not in all cases contrary to these principles. Under these rules it is well-accepted that neither personal bias nor prejudice is necessarily implicated when a judge or justice hears argument by a former law partner, or about a legal issue on which he has declared beliefs. Most significantly, the more than 40 years that have passed since I was associated with the NAACP should remove any perceived or

actual impropriety that might have attended my participation in cases involving the NAACP immediately after my appointment. And of course, in those instances where I believe my prior affiliation might create a reasonable appearance of impropriety, or otherwise warrant disqualification, I will not participate.

October 5, 1984

Dear Thurgood:

I approve of your proposal with respect to participation in cases in which the NAACP and the NAACP Legal Defense Fund are involved.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference