



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1985

Hon. Lewis F. Powell, Jr.
c/o Mrs. Lewis F. Powell, Jr.
Kahler Hotel
20 S.W. Second Ave.
Rochester, Minnesota 55902

Dear Justice Powell,

The O'Connor law clerks would like to send you our best wishes. We hope that you are feeling well and will soon be back at the Court. Please don't let the Minnesota weather have a "chilling effect" on your spirits -- but if it does, we'll do our best to warm them up again for the rest of the term!

Sincerely,

Gail Agrawal

Gail Agrawal

Kent Syverud

Kent Syverud

Scott Bales

Scott Bales

Barbara Woodhouse

Barbara Woodhouse

[JAN. 4, 1985]

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dear Lewis,

Surely you know how concerned your colleagues are about you. You will be in our thoughts and our prayers each day until you are among us again.

Surgery is never easy. Mayo's is the best place to be for it and we shall stand by and be ready to help you in any way we can.

With every good
wish for your speedy
recovery,

Fondly,

Sandra

1/4/85

1/14 Linda Blandford and Sandra called
the hotel & talked to Jo

[AM. 4, 1985]

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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concerned your colleagues
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be in our thoughts and our
prayers each day until

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Jun 4, 1955

Dear Lewis -

The Chief told me about your
illness at Cooper this morning.
Needless to say, we send our
sincere wishes for your a
speedy and complete recovery. In
the meantime, if I can do
anything at all to be helpful,
just let me know -

See you soon.

Sincerely,

John

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

I called Bill

January 18, 1985

The Honorable Lewis F. Powell, Jr.
Khler Motel
20 S.W. 2nd Street
Rochester, Minnesota 55902

Dear Lewis,

Coming out of Conference today, I made the comment that I had heard the weather forecaster say that it was going to turn cold here tomorrow; whereupon Sandra exclaimed, "Turn cold--it has been cold here for the last ten days!"

I guess it all depends on your point of view. But thinking of the predicted lows here tomorrow night (Saturday) of between zero and ten above, I can imagine what the temperature must be getting down to in dear old southern Minnesota. I am sure that for you and Jo, having grown up in the mild and salubrious Virginia climate, that the weather out there, as well as other things, must be trying.

13 We have now finished our January argument calendar, of course, and I must say I can't ever remember a less interesting or stimulating group of cases. If you had to miss one oral argument session, I don't think you could have picked a better one to miss. Even the Conference today got a little bit testy, as it does at times. Some of

The Honorable Lewis F. Powell, Jr.
Page 2

the Chief's discussion is quite good, when he feels very strongly about something and when he feels he has a majority with him; but some of it can be singularly uninspiring. Sometimes when he runs out of things to say, but doesn't want to give up the floor, he gives the impression of a southern senator conducting a filibuster. 18

I sometimes wish that neither the Chief nor Bill Brennan would write out all their remarks beforehand and deliver them verbatim from the written page. Bill is usually thorough, but as often as not he sounds like someone reading aloud a rather long and uninteresting recipe. Then of course Harry Blackmun can usually find two or three sinister aspects of every case which "disturb" him, although they have nothing to do with the merits of the question. And John Stevens, today, as always, felt very strongly about every case, and mirabile dictu had found just the right solution to every one. As you might imagine, my conference discussion was, as always, perfectly suited to the occasion: well researched, cogently presented, and right on target!

Not only have you missed several conference discussions, but you have missed a very interesting rhubarb between Harry and the Chief, which would be incomprehensible to anyone who did not know them both. Harry sent around a note sometime yesterday (Thursday) saying in a rather opaque way that he was dissatisfied with the way that the cert lists had been handled in the weeks since the Christmas recess; apparently he

2/11 [1985]

file

50c

Dear Lewis and Jo,
welcome home! I
am delighted to learn you
are back.

I brought you these
cookies from Park City where
John and I spent a few
pleasant days skiing.
Mrs. Fields has moved
her headquarters to
Park City and her cookies
are guaranteed to add
pounds to your body.
Please eat.

We had a lovely
day at Deer Valley on
Saturday in the company
of Molly and Kit. We
so enjoyed seeing them.
They are both very
special.

Fondly,

Sandra

February 14, 1985

Dear Sandra:

With all of the luggage (not to mention briefs) that you and John must have had, I cannot imagine your bringing me those lovely cookies of Mrs. Fields' all the way from Park City!

The cookies are delicious, and I have shared them with Jo not withstanding the "guarantee" of added pounds.

Again, you and John were typically thoughtful of our Utah children. Molly and Kit report a happy experience with you both on the "slopes" and at lunch.

As for me, I continue to be gaining strength far more slowly than I would have hoped. I am reminded that recovery from major surgery (five weeks in the hospital) is slower than I had anticipated. I am managing to do a modest amount of Court work each day, although it is modest.

With appreciation and warm thanks to both you and John.

As Ever,

Justice O'Connor
LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

3/25/85

Dear Lewis -

Your return to the bench yes -
Today made our sitting a truly
joyful one - something that is hard
to say about most of them.

Truly
Bill

April 8, 1985

Dear Sandra,

I spent a part of Sunday looking through some of the hundreds of letters and cards that came to me as a result of the national publicity given my surgery.

I found, for the first time, your note of January 4. It is typically generous and thoughtful, as you always have been with me. Quite apart from your high professional qualifications that have added strength to the Court, I have the greatest admiration for you as a human being of exceptional quality.

My recovery continues, though more slowly than I would wish. I am preparing to sit for the April arguments.

As ever,

Justice O'Connor

lfp/ss

April 9, 1985

Dear John,

I spent a part of Sunday going through some of the hundreds of letters and cards that were sent to me as a result of the national publicity given my illness. I found your note of January 4 for the first time.

This is to thank you for writing so promptly and so warmly. Initially, my surgeon at Mayo - nationally known - thought that I would be able to sit for the last week of the January arguments! Unexpected complications nullified this expectation. Apart from all of the other negatives, I have particularly missed being on the Court and my association with all eight of you.

One of the great joys of serving is that, despite sometimes sharp differences as to doctrine and issues, we are personally harmonious. I recall your agreeing with that in your talk to the Richmond Bar Association.

Jo reports that Maryan looked very well indeed at the recent ladies' luncheon. I send special best wishes to you both.

As ever,

Justice Stevens

lfp/ss

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April 15, 1985

Dear Justice O'Connor's Law Clerks,

In continuing to go through the hundreds of letters and cards that came to me during my long illness, I finally came to your note of January 4.

It was particularly thoughtful of the four of you to write.

I note that you agreed to help lift my spirits for the rest of the Term. Although we will not be together in some cases, whether I agree with the "bottom line" or not, the quality of work from your Chambers is impressive.

With best wishes to each of you.

Sincerely,

ss

Court

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 28, 1985

MEMORANDUM TO THE CONFERENCE:

I recently sent a copy of The Mini Page to the Chief, and my clerks tell me that at least one other Chambers would like to have a copy. Accordingly, I send one to each of you.

The Mini Page appears in the Sunday Post regularly for the education and pleasure of children - I would guess ages 8 to 12. It is written by Betty Debnam, a friend who lives here at Harbour Square, whose married name is Mrs. Richard Hunt. She has her studio at Harbour Square, employs an artist, and a part time researcher but does most of the work herself. The Mini Page is syndicated in over 450 newspapers and the U.S. and Canada.

L.F.P.

L.F.P., Jr.

SS

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

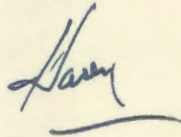
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 30, 1985

Dear Lewis:

I have three opinions circulating in which you participated at the cert. stage but were absent at the time of the oral arguments. They are: Nos. 83-1569 and 83-1733, Mitsubishi Motors v. Soler Chrysler-Plymouth; No. 83-1673, Devine v. Nutt; and No. 84-48, United States v. Bagley. In line with what I think was the decision made at this morning's conference, I shall change your nonparticipation to relate only to the "decision" of these cases. If this is not in line with your desire, please let me know.

Sincerely,



Justice Powell

cc: The Conference

June 22, 1985

Mesdames,

As Mrs. Powell and I will be out of the city on July 8, we are not able to accept your kind invitation to the ceremony here in honor of Justice O'Connor.

We regret not being present as you could not possibly have found a more appropriate or deserving person to honor. Sandra O'Connor is making a superb Justice of this Court.

Sincerely,

Foundation for Women Judges
1225 15th Street, N.W.
Washington, D. C. 20005

lfp/ss

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July 1, 1985

To Law Clerks of Justice O'Connor,

This is to thank you for the invitation to the "End of the '84 Term Picnic".

As attractive as it sounds, I think it best for me to decline. It has been a few decades since I played volleyball or baseball. The watermelon would appeal to me.

As the Term ends, I am happy to have this opportunity to say that all of us in my Chambers have had a high opinion of the quality of work from your Chambers. The pool memos have been excellent, and I know you have been as helpful to Justice O'Connor as my clerks have been to me. Indeed, I think the quality of assistance from law clerks generally here at the Court has been quite high during the 1984 Term.

I wish for each of you great success in our profession. I have no doubt that you will achieve it.

Sincerely,

Ms. Gail G. Agrawal
Mr. W. Scott Bales
Mr. Kent D. Syverud
Ms. Barbara Woodhouse

lfp/ss

JUL 29 1965

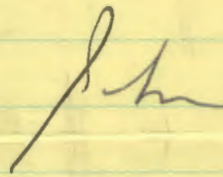
JULY 18, 1965

DEAR LEWIS:

HERE IS SOME MORE EVIDENCE OF
THE GOOD SENSE FOUND IN THE EDITORIALS
IN THE CHICAGO TRIBUNE.

MARYAN + I ARE HAVING A VERY
ROUSTING + RELAXING VACATION IN CHICAGO
(+ VICINITY) - HOPE ALL IS WELL WITH
YOU + VZ -

Sincerely,



(Justice Stevens)

Chicago Tribune

FOUNDED June 10, 1847

STANTON R. COOK, *Publisher*
CHARLES T. BRYMBACK, *President*
JAMES D. SQUIRES, *Editor*

JACK FULLER, *Editorial Page Editor*
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COLLEEN DISHON, *Associate Editor*
DENIS GOSSELIN, *Associate Editor*

22 Section 1 ★

Thursday, July 18, 1985

The qualities of a justice

The rumor, which was quickly denied, that Supreme Court Justice Lewis Powell is considering retirement raised once again the question of what qualities a conservative President should look for in a nominee to the high court.

To hear Atty. Gen. Edwin Meese talk, the President ought to be looking for a historian. Mr. Meese believes that in order to restrain the power of judges and prevent them from substituting their political preferences for those of the majority, the Supreme Court should confine itself to discovering precisely what the framers of the Constitution meant by the words they used.

This approach, like the idea of "strict constructionism," which was the vogue during the Nixon administration, has little intellectual force. While the thinking of the 18th Century drafters of the Constitution stands as a model of political wisdom, it is not so easy to determine their collective will nor to apply it to problems that simply did not exist when they did their extraordinary work.

In the Senate, which has the power to confirm nominees to the federal courts, there is some sentiment that a justice should hold certain views on particular cases: abortion, the death penalty and so forth. But that kind of test is more suitable to the popular selection of a legislator than to the appointment of a justice whose duty is to act on the basis of principle in cases that present challenging, unpredictable and very particular fact situations.

Some folks who have held themselves out as arbiters of judicial conservatism make it clear that they do not want justices who believe too strongly in the force of precedent. Though one meaning of conservatism is a proper respect for tradition, these people are uncomfortable

with the case law of the last 30 years and want very much to sweep it away as quickly as possible.

It is not an easy thing to try to fashion a coherent theory of the way Supreme Court justices should behave when they determine the meaning of the Constitution's prudent generalities. Appeals to pure logic eventually lead to self-contradiction, in part because there is tension even among the Constitution's own established rules. It is quite right to demand that judges restrain themselves from vetoing the political majority just because they disagree with the majority's view, but pure deference to legislatures will not do, either. After all, the idea of judicial review is to constrain the majority when it conflicts with an enduring ideal of constitutional government.

Perhaps the best tests are, in effect, tests of character: Foremost, a Supreme Court justice should possess a sense of intellectual humility, a willingness to recognize the ambiguities of judgment and to draw back from the temptation to make sweeping pronouncements, no matter how satisfying it may be to imagine them quoted in the history books. Next, perhaps, a combination of toughness and deference, the ability to allow the political institutions leeway even to commit folly, coupled with the strength of resolve to draw a line and defend it. Finally, a decent regard for precedent and the patience to move slowly, by degrees, when undertaking a fundamental revision in the law.

These qualities of suppleness and subtlety ought to be standards by which new justices are chosen to lead the federal courts back from arrogance and whim. And if an example would help in guiding the choice, none better could be found than Lewis Powell, whose retirement would be a significant loss.

July 25, 1985

Dear Andy and Potter:

This is to say again how much Jo and I appreciated your telephone calls during my recent hospitalization in Rochester.

This has not been a good year for us, and the support of dear friends like both of you has meant a great deal to Jo and me.

As you know, after a serious injury or surgery, it takes a long time - sometimes a year or more - to recover anything like normal strength. I find my own recovery in this respect slower than I had hoped. Jo and I have given up plans to spend the remainder of the brief summer weeks in our Richmond home, and so I am spending a few hours here at the Court on most days but basically we are resting.

With affection.

As ever,

Honorable and Mrs. Potter Stewart
Bowen Brook Farm
Franconia, New Hampshire 03580
LFP/vde

Justice

August 1, 1985

Dear John:

It was typically thoughtful of you to send me a copy of the editorial from the Chicago Tribune.

It seems to me that more "rubbish" was written about the last Term than usual. Even professors in the law schools, including some who have clerked here, sound almost like reporters when they are quoted. But, I do cherish what the Chicago Tribune said - even though I well understand that it was written in a spirit of undeserved generosity.

I am glad that you and Maryan are having a restful and relaxing vacation. I am resting most of the time, trying to regain my strength. I find that having surgery twice within six months takes a great deal out of one.

As ever,

Justice Stevens

lfp/ss

Fisher

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

D

CHAMBERS OF
JUSTICE POTTER STEWART

August 15, 1985

MEMORANDUM TO THE CONFERENCE

Since my retirement, several of you have utilized the services of my law clerks when they have not been occupied full-time with my own work. I trust this arrangement has been mutually beneficial, for you as well as my clerks.

My newest clerk, Robert B. Stack of Georgetown Law School, has just arrived at the Court. He is a former editor in chief of the Georgetown Law Journal and also has an M.S. degree in Foreign Service from Georgetown. He clerked last year for Judge Flannery of the United States District Court for the District of Columbia.

Bob will soon be helping me prepare for a sitting with the Eleventh Circuit in early October. Otherwise, I anticipate that Bob will be relatively free during the fall and early spring, at least. If any of you are interested in making use of Bob's talents, please let me know so that we can make arrangements that are satisfactory to all.

Best wishes to you all for a pleasant summer and a fruitful 1985 Term.

P.S.
P.S.

August 23, 1985

Services of Your Law Clerk

Dear Potter:

This refers to your memorandum of August 15 in which you inquire whether Justices would utilize the services of your law clerk when he is not fully occupied with your work.

I would be glad to have Robert Stack's assistance for one or two of our seven two-weeks Court sessions - preferably in January, February or March. I would defer to other Justices who may really need your clerk as I manage quite well with my own clerks.

I do appreciate your offer, and am sure the opportunity to work with other Justices when you do not need Bob Stack would be mutually beneficial.

Sincerely,

Justice Stewart

lfp/ss

cc: The Conference

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED
CHAMBERS OF
CHIEF JUSTICE

'85 SEP -9 AM

SEP 10 1985

Dear Chief,

I trust your summer
gave you a few days
respite. The time went
by too quickly it seems.

I spent a day
recently in Pennsylvania
and in visiting an
Old Order Amish farm
I spotted an excerpt
from an Amish meeting
minutes book. A copy
(hand written because
they have no Xerox

machines) is attached.
You will be interested,
I think.

Sincerely,

Sandra

MINUTES OF THE OLD ORDER SCHOOL COMMITTEE

The 1972 Annual Meeting was held at Christian G. Eshe's in Lancaster County. The U.S. Supreme Court decision of May 15, 1972 was discussed at length at this meeting. It made us feel humble to read through Chief Justice Burger's opinion, we were made to realize that our way of life is being looked upon and is better known to the outside world than we had ever thought likely. The principles stated, the ideals set forth, and the humble God fearing people described by the judge in the opinion handed down, caused us to re-examine ourselves and wonder if we are really living up to these standards.

Of all the court decisions over the past years, this was the first decision handed down that fully upheld our way of life. To quote from the opinion "There can be no assumption that today's majority is "right" and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different."

However, in light of this favorable Court decision, it was still the general opinion of all present that there were to be no major changes in the parochial nor the vocational class programs here in Pennsylvania. Rather it was felt that Chief Justice Burger seemed to be telling Wisconsin that he wished them to follow the example set by the Pennsylvania program.

Pennsylvania Amish Directory, 1973.

Julien

September 9, 1985

Dear Potter,

In a talk recently with Justin Stanley of Chicago, he asked if I knew about studies made by the Institute for Civil Justice - particularly a study on product liability suits and punitive damages.

Justin said that you were now one of the Institute's Trustees. If this study is available, I would like to have a copy. Perhaps you could let me know how to obtain one.

As I write this note, I do not know whether you will be back at the Court this week. We look forward to seeing you and Andy when you return.

As ever,

Justice Stewart

lfp/ss

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

September 25, 1985

Re: A-220 Wainwright v. Booker

MEMORANDUM TO THE CONFERENCE:

Yesterday I received Lewis' memorandum concerning the above case in which he starts off by stating, "I was absent from the city on Monday, and did not know that the order in this case - accompanied by a dissenting opinion - was issued in my absence."

Since he aims his memorandum at my dissent I would like to keep the record straight that I circulated my dissent to all of the Justices Chambers on Monday morning. I don't know what else I could have done to prevent Lewis' problem.

J.M.

T.M.

Dear Thurgood - ^{to} being away
I implied ~~no criticism~~
of your writing on Monday.
My reference ~~to~~ in my
note ~~was~~ merely to explain
my ~~delay~~ in ~~not~~ circulating
an opinion.

Sincerely

cc The Conference

September 25, 1985

A-220 Wainwright v. Booker

Dear Thurgood:

I implied no criticism of your writing on Monday.
My reference in my note was merely to explain my delay in
circulating an opinion.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference

olha Junior

October 1, 1985

MEMORANDUM TO THE CONFERENCE:

The enclosed article from the October 7 issue of U.S. News & World Report entitled "As Liability-Insurance Squeeze Hits Everyone" may be of interest.

It is not easy to disagree with the insurers that the cause of this intolerable situation lies primarily with "lawyers, juries and the courts". The article is relevant to the cert petition we considered today involving the new statute enacted by California with respect to the liability of physicians.

L.F.P., Jr.

Justice

October 17, 1985

MEMORANDUM TO THE CONFERENCE:

You may have seen the enclosed story in yesterday's Post to the effect that a bipartisan group of influential members of the House want to terminate our right to use the reserved parking area at National Airport.

The story quotes the Congressmen as saying that "many of the spaces are being used by Court and embassy staffers". This statement was rebutted by Toni House. I think we should make a more positive rebuttal on behalf of the Court directly to the senior Republican and Democratic members of this selfish group. None of my "staffers", to my knowledge, have ever used the parking ~~area~~ *lot*.

As I have done little or no traveling by air in recent years until my three trips to Mayo this year, my use of the lot has been quite limited. We have used it when our children who live in Houston and Salt Lake City visit us. In sum total this would be no more than a half a dozen times a year. Nevertheless, having the lot is a great convenience - particularly when we drive our own car.

At the very least, a study should be made over, say, a six-months' period to determine what use is made of the lot by Justices and Court personnel before any rash and unfair decision is made.

L.F.P., Jr.

Legislators Want Airport Lot to Themselves

38 Representatives Ask FAA to Oust Justices, Diplomats

10/16/85

By Sandra Sugawara
and Michael Specter
Washington Post Staff Writer

Thirty-eight members of Congress, complaining they often are forced to use the public parking lots at National Airport, have asked the Federal Aviation Administration to kick Supreme Court justices and diplomats out of their free parking lot.

Representatives have to cope with "irregular and unpredictable time constraints not imposed upon either members of the Supreme Court or the Diplomatic Corps,"

said a letter from Rep. Philip M. Crane (R-Ill.) and 37 other Republicans and Democrats. Members of Congress "who truly need the ready access to parking because of the unpredictable nature of the voting" in Congress need to be assured that they will have convenient parking available whenever they drive to the airport, the group said.

The congressional lot, located within a few steps of the main passenger terminal, has long been one of the most controversial perks accorded the 535 members of Congress, the nine Supreme Court justices and diplomats. Local officials

and many passengers have eyed the lot and its approximately 100 spaces with envy and called for its closing, but because the airport is operated by the federal government the complaints have gone unanswered.

In their letter, the representatives dismissed the needs of the justices and diplomats. "... Supreme Court Justices and Ambassadors are traditionally driven to the airport," said the letter. Thus, it said, many of the spaces are being used by court and embassy staffers.

Not so, said Toni House of the

See PARKING, A8, Col. 5

Representatives Want to Keep Airport Lot to Themselves

PARKING, From A1

Supreme Court public information office. "I'm quite certain that those spaces are not used by the Supreme Court staff," she said yesterday. "They're used only by the justices or by a car going to pick them up."

When the congressional lot is full—and FAA police said it is most of the time—the officials are directed to a nearby public lot, where a few more spaces are reserved for them. If those are filled, the legislators must join the public in seeking space in public lots that are often filled to capacity.

"Most of the time there is competition to get into those [VIP] spaces," said Thomas Holderness, who until recently was head of the airport police.

"Of course, you have a lot of resentment on the part of the general public," said Holderness. "When you are hassled and a poor old Joe Blow citizen carrying his bags across a highway, and some congressman pulls into his private space, there's bound to be some animosity."

Carol Carmody of the FAA government affairs office said that a letter responding to the complaint

would be sent in a few days. She said the FAA will probably review the parking to assess the severity of the legislators' problem.

The congressional parking issue arose earlier this year during hearings on a Senate bill to transfer National airport from the FAA to a regional authority.

Alexandria Mayor James P. Moran Jr. suggested that the authority should open the convenient VIP lot to the public. But Virginia supporters of the bill quickly hushed such talk, fearing it would kill the bill.

The bill has been approved by the Senate Commerce committee and, if enacted, is expected to contain some assurance that members of Congress can have continued parking privileges at Washington's two federally owned airports, National and Dulles.

The parking dilemma appears to have generated bipartisan concern. Signers included House Minority Leader Robert H. Michel (R-Ill.), Guy Vander Jagt (R-Mich.), Helen D. Bentley (R-Md.) and Democrats E (Kika) de la Garza (Texas), Carl C. Perkins (Ky.), Leon Panetta (Calif.), George Miller (Calif.), and Martin A. Russo (Ill.).

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

File correspondence with Justice

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

'85 OCT 17 A11:16

October 17, 1985

MEMORANDUM TO THE CONFERENCE:

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At the very least, a study should be made over, say, a six-months' period to determine what use is made of the lot by Justices and Court personnel before any rash and unfair decision is made.

L.F.P.
L.F.P., Jr.

SS

agree
The boys on the Hill are getting "pushy" WAB

Lewis: "this lot is on the 7 mile WAB"
in "Saucer" agenda

Justice

October 31, 1985

Dear Potter:

I understand that Bob Stack is available for February and March, subject to your needs.

I would be happy to have him with me certainly for February, and unless some other Chambers has a particular need for Bob in March, I would be glad for Bob to stay with us for two months.

Sincerely,

Justice Stewart

lfp/ss

lfp/ss 11/07/85

84-5872 Daniels v. Williams
84-6470 Davidson v. Cannon

Passed to me on the Bench
during arguments of
Supreme Court of the United States
84-5872 Memorandum
and 84-6470 - L.F.P. Nov 6, '85
-----, 19-----

Lewis -

I am ready to confess
error in my Parratt
opinion & say that I should
have agreed with your
separate concurrence
wm

The above long-hand, pencil note from Bill Rehnquist was passed to me on the bench during the arguments on November 6, 1985, of 84-5872 Daniels v. Williams and 84-6470 Davidson v. Cannon. Both of these cases involve the application of Parratt in which Bill wrote the opinion with which I strongly disagreed in my concurrence only in the judgment.

As it is rare that one of us has the candor evidenced by Bill's note, I preserve the note as an interesting bit of Court history.

L.F.P., Jr.

ss

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 21, 1985

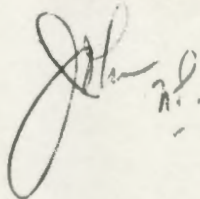
Re: Group Admissions

Dear Chief:

You have my proxy on the question of Courtroom admissions, but I strongly favor continuing our practice of announcing our opinions orally.

Bill Rehnquist will have my votes for the Conference on Wednesday as I will not be back until Friday.

Respectfully,

A handwritten signature in dark ink, appearing to be "J.P. Stevens", written over a faint circular stamp.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 22, 1985

Dear Mr. Friendly:

I have your letter of November 11, and enclosure, concerning your proposal for a program "The Justices on the Justices".

I cannot consider this on an individual basis. I would prefer to consider the matter along with the other members of this Court and maybe we can reach a conclusion which will include me. I have no interest whatsoever in engaging in a public discussion on television concerning any Justice on this Court but I am open to change.

Sincerely,

Thurgood Marshall

Mr. Fred W. Friendly
Columbia University Seminars
Graduate School of Journalism
Columbia University
New York, New York 10027

Edwin M. Yoder Jr.

A Judge And The War

Post
12/10/85

The death of Justice Potter Stewart at 70 is untimely in all but one respect. His admirable Supreme Court career inspires timely reflection upon the qualities that made him a superior judge.

For quite a while after President Eisenhower appointed Stewart to the court in 1958, he served as a kind of loyal opposition to the "Warren Court" majority. His frequent dissents made a literate and penetrating commentary on the judicial activism that was its trademark.

But Stewart, more a maverick than a mossback, found his center of gravity not in judicial naysaying but in a patrician individualism that was difficult to stereotype. Depending on the principle involved, he was often the ally of unexpected causes.

For instance, after his retirement from the court four years ago, Stewart confided to Fred Graham of CBS (the interview was to be sealed until his death) how he had urged the court in the mid-1960s to take a case testing the constitutionality of the Vietnam war and the draft. Had the court done so, it would have engaged in "activism" by anybody's standard, given the long tradition that the court treats great issues of war and peace as "political questions" beyond judicial scrutiny.

At that time of upheaval, there were known to be stray votes within the court for that excursion onto spongy turf. (The court will hear discretionary cases that at least four justices vote to hear.) William O. Douglas, for instance, advertised his sympathy with the anti-war protest; but then he was a liberal activist by inclination. That the urbane, discreet Potter Stewart stood also among the advocates of judicial intervention was not widely noticed at the time.

Yet it was Stewart's view that the war, never formally declared, violated an express constitutional command. "The Constitution," he told Graham, "clearly provides that only Congress can declare war. And Congress had never declared war." As for the draft, "here were people being unwillingly taken, under that law . . . for peacetime military training and service, and sent thousands of miles away . . . to be shot at and some of them killed."

Stewart knew as well as anyone the practical limits of judicial competence. He was, he often said, a lawyer not a philosopher-king. It was therefore the more revealing that a justice such as Potter Stewart was willing to act. And that inclination points to the limited usefulness of facile formulas by which the judicial role is sometimes defined in theory.

It was primarily as a constitutional literalist that Stewart was speaking. But in a longer perspective, it was an outlook of familiar and honorable vintage. Though their views on other matters diverged, there was in Stewart's view on Vietnam an echo of his fellow Ohioan Robert A. Taft.

What Taft was saying with his usual directness in 1950 about the failure to declare war in Korea is all but indistinguishable from what constitutional critics—older but now wiser—were saying some 20 years later about Vietnam.

Taft's views disturbed "internationalist" opinion (they helped him lose the 1952 presidential nomination), but Taft was unsympathetic to the argument that changing circumstance had altered the stated limits of the presidential war power. So, apparently, was Stewart.

Stewart's advocacy failed; and might indeed have caused a destructive uproar had it succeeded and the court taken a Vietnam draft case and declared the war unconstitutional.

But it must have been quite an argument within the court. Among the justices of that period sat Abe Fortas, who had carried his role as a war counselor to Lyndon B. Johnson well beyond the usual limits of judicial discretion. How others divided we do not know.

But the story of Stewart's pursuit of an old maxim ("let justice be done, though the heavens fall") suggests that the qualities of the superior judge are ultimately inseparable from qualities of mind and character. Invoke jurisprudential theory as one will, it leads only to the threshold of understanding how a superior judge views his duties—and not far beyond.

December 14, 1985

Dearest Andy:

At the outset, I ask you to forgive me for this typewritten letter. But I can best say what is in my heart by writing you this way.

You have known since my early years on the Court that Potter and I had a special relationship. All of us have many friends, but friendship can vary in degrees and quality. There were no limits to the feelings I had for Potter: he was a fine human being, one of the ablest Justices ever to serve on this Court; and the kind of friend with whom I could discuss without reservation any subject or problem whether legal or personal.

Due to his absences from Washington, and our pre-occupation with the heavy workload here even when Potter was in his Chambers, I saw him far too infrequently. Yet, there was never the slightest break in our friendship.

Jo and I were gratified but not surprised by the overwhelming turnout of friends who attended the services at the Cathedral, and many of whom accompanied the procession to Arlington. This was a tribute few persons, public or private, ever receive at the time of their death. I know you must have been proud of the way David spoke so well, and indeed of the obvious affection for you that each of your children displayed. I could see Potter, Jr.'s arm around you during the services, and when "Taps" was played, tears came to my eyes (and to Jo's) as, of course, they did even to your grandchildren.

I told Jo today that I would write you, and she asked me to say that she joined in everything praiseworthy that I could say about Potter. We will keep in touch.

With love,

Mrs. Potter Stewart
5135 Palisade Lane
Washington, D. C. 20016

lfp/ss

P.S. In the event you may not have them, I enclose copies of two tributes that I wrote for law reviews.

December 30, 1985

Dear Sandra:

In the event you may not have seen it, the enclosed editorial from the Post of December 28 may be of some interest.

The primary basis of the DC's opinion in Thornburg was the finding of "block voting" - a finding based on what I suspect are dubious statistics and "expert" testimony. There may well be some "block voting" in North Carolina, but I am inclined to agree with the Post editorial that "electorates, north and south, are increasingly willing to look beyond the race of the candidates."

I know from experience this is true in Virginia, as was evidenced in last November's election. It may be that the Library could supplement the examples cited in the editorial where black candidates were elected in large part by white voters.

Sincerely,

Justice O'Connor

lfp/ss
Enc.