

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

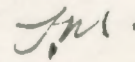
February 2, 1984

Re: Court "Family" Portrait

Dear Chief:

Either of the two dates - February 27th or 28th  
will be OK for us.

Sincerely,



T.M.

The Chief Justice

cc: The Conference



February 2, 1984

Court "Family" Portrait

Dear Chief:

We prefer February 27th, rather than the 28th which is in the middle of the argument period.

We will accommodate to the 28th if this is the wish of a majority.

Sincerely,

The Chief Justice

cc - The Conference

LFP/vde



February 15, 1984

Dear Chief:

Please put the following case on the discuss list  
for the February 17, 1984 Conference:

A-602 Bill Honig v. Students of California School  
for the Blind, p. 37.

Sincerely,

The Chief Justice

LFP/vde



✓✓ = Wed  
~~Thurs~~

February 16, 1984

SUMMARY OF CIRCULATIONS

<u>JUSTICE</u>	<u>OPINIONS ANNOUNCED</u>	<u>ASSIGNED OPINIONS* CIRCULATED AND ANNOUNCED</u>	<u>DISSENTS IN CIRCULATION</u>
<u>JUSTICE O'CONNOR</u> .....	4 .....	7 .....	2
<u>JUSTICE STEVENS</u> .....	1 .....	5 .....	6
<u>JUSTICE REHNQUIST</u> .....	6 .....	11 .....	1
? <u>JUSTICE POWELL</u> .....	2 .....	5 .....	1
<u>JUSTICE BLACKMUN</u> .....	3 .....	4 .....	3
<u>JUSTICE MARSHALL</u> .....	1 .....	4 .....	2
<u>JUSTICE WHITE</u> .....	2 .....	9 .....	0
<u>JUSTICE BRENNAN</u> .....	2 .....	5 .....	3
<u>THE CHIEF JUSTICE</u> .....	2 .....	7 .....	0
<u>TOTALS</u>	23	57	18

Sally  
check !!  
this !!  
you have  
circulated  
7. They  
can't  
count.

\*Does not include Per Curiam Opinions



CIRCULATING OPINIONS

JUSTICE O'CONNOR

✓ 82-374 - Flanagan v. United States  
Circulated January 26, 1984

82-898) - Minn. St. Board for Community Colleges  
v. Knight, et al.  
82-977) - Minn Community College Faculty Assoc. v.  
Knight, et al.  
Circulated December 19, 1983  
JPS dissented and WJB dissented

82-1186) - Twa v. Franklin Mint Corp., et al.  
82-1465) - Franklin Mint Corp. v. TWA  
Circulated January 20, 1984



JUSTICE STEVENS

✓ 82-282 - McCain v. Lybrand, et al.  
Circulated January 6, 1984  
WHR will circulate a dissent

82-975 - Members of City Council v. Taxpayers  
Circulated February 2, 1984

82-1031 - Jefferson Parish Hospital District v. Hyde  
Circulated December 23, 1983

82-1167 - United States v. Jacobsen, et ux.  
Circulated January 17, 1984



JUSTICE REHNQUIST

✓ 81-2110 - United Building and Construction Trades Council of  
Camden County and Vicinity v. Mayor and Council of  
The City of Camden, et al.  
Circulated January 2, 1984  
HAB dissented

82-485 - Keeton, Kathy v. Hustler Magazine, et al.  
Circulated December 7, 1983

✓✓ 82-818) - N.L.R.B. v. Bildisco & Bildisco, et al.  
82-852) - Local 408, Teamsters v. N.L.R.B., et al.  
Circulated November 8, 1983  
WJB dissented in part

82-1271 - INS, et al. v. Herman Delgado, et al.  
Circulated February 13, 1984

82-1401 - Calder v. Jones, et al.  
Circulated December 7, 1983

82-5466 - Welsh v. Wisconsin  
Circulated January 26, 1984  
(PER CURIAM)  
JPS dissented



JUSTICE POWELL

82-15) - Oliver v. United States  
82-1273) - Maine v. Thornton  
Circulated December 6, 1983  
TM will circulate a dissent

82-786 - United States v. John Doe  
Circulated January 4, 1984  
JPS dissented in part.  
TM will circulate a dissent

✓ 82-862 - Consolidated Rail Corp. v. LeStrange  
Circulated January 12, 1984

82-914 - Monsanto Company v. Spray-Rite Corp.  
Circulated February 8, 1984

82-1295 - Escambia Cty., Florida v. McMillian, et al.  
Circulated February 1, 1984  
TM dissented

82-1371 - Heckler, Sec. of H&HS v. Day  
Circulated February 2, 1984  
TM will dissent

82-1432 - Gladys Pulliam, Magistrate for the County of  
Culpeper, Va. v. Allen and Nicholson  
Circulated January 6, 1984  
HAB dissented



JUSTICE BLACKMUN

82-1127 - Helicopteros Nacionales De Columbia v. Hall  
Circulated February 3, 1984



JUSTICE MARSHALL

82-618 - Kosak v. United States

**Circulated January 24, 1984**

JPS will circulate a dissent

✓✓

82-1253 - Solem, Warden v. Bartlett

**Circulated February 3, 1984**

✓✓

82-5279) - Dixson v. United States

82-5331) - Hinton v. United States

**Circulated January 13, 1984**

SOC dissented



JUSTICE WHITE

81-2149 - Solem, Warden v. Stumes  
**Circulated January 5, 1984**  
JPS dissented

82-206) - Firefighters Union No.1784 v. Stotts  
82-229) - Memphis Fire Dept. v. Stotts  
**Circulated January 4, 1984**  
HAB will circulate a dissent

82-729 - Regan, Sec. of Treasury v. Time, Inc.  
**Circulated December 7, 1983**  
WJB will circulate a dissent.

82-792 - Grove City College v. Bell, Sec. of Education  
**Circulated December 29, 1983**  
WJB will circulate a dissent

✓ 82-827 - Minnesota v. Murphy  
**Circulated November 21, 1983**  
TM dissented

82-1479 - Justices of Boston Municipal Court v. Lydon  
**Circulated January 12, 1984**

✓ ✓ 82-1845 - Colorado v. Nunez  
**Circulated January 26, 1984**



JUSTICE BRENNAN

✓✓ 94 Original - South Carolina v. Regan, Sec. of Treasury, et al.  
**Circulated December 13, 1983**  
JPS dissented in part

82-960 - NLRB v. City Disposal Systems, Inc.  
**Circulated February 9, 1984**  
SOC dissented

82-1050 - Heckler, Sec. H&HS v. Mathews  
**Circulated February 14, 1984**



THE CHIEF JUSTICE

82-940 - Hishon v. King & Spalding  
Circulated December 28, 1983

✓✓ 82-1041 - Dickman, et al. v. Comm. of IRS  
Circulated - December 20, 1983  
LFP dissented

✓✓ 82-1047 - United States v. One Assortment of 89 Firearms  
Circulated - December 22, 1983 }

82-1256 - Lynch, Etc., et al. v. Donnelly, et al.  
Circulated November 15, 1983  
WJB dissented

82-5298 - Segura v. United States  
Circulated December 30, 1983  
JPS dissented

January



February 17, 1984

PERSONAL

Circulated Opinions

Dear Chief:

Your "Summary of Circulations", dated February 16 and distributed this morning, understates the number of assigned opinions circulated and announced by me. It states that my total is only 5. In fact I have announced 2 Court opinions and circulated 5 others, for a total of 7.

Actually I have circulated 9 opinions on cases you assigned to me. One of these was Escambia, assigned as a Court opinion, but it proved to be so easy to write that I treated it as a Per Curiam. The other case, Pulliam v. Allen (judicial immunity issue) was properly assigned to me after consideration at a second Conference. At each of these Conferences Thurgood voted with us unequivocally. Yet he joined Harry's dissent within an hour after it was circulated! He said nothing to me about my opinion or why he reversed himself.

In sum, of the 11 cases you have assigned to me to write for the Court, I have circulated a total of 9, one of which I converted to a P.C., and Thurgood defected in Pulliam. I still have two cases to circulate, and hope to get these out next week. I will need three cases from the February arguments to compensate for the P.C. and the loss of Pulliam.

Sincerely,

The Chief Justice

lfp/ss



March 1, 1984

Dear Chief:

As I have engagements in Richmond on Monday, I  
will be absent from the Court.

Sincerely,

Chief Justice Burger

cc: The Conference



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

CHAMBERS OF  
THE CHIEF JUSTICE

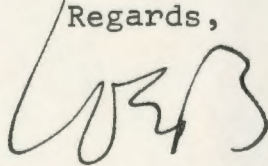
March 7, 1984

MEMORANDUM TO THE CONFERENCE:

Please advise the Marshal whether you will be attending the Joint Meeting of the Congress on Thursday, March 15, 1984, at 11:00 a.m., when the Prime Minister of Ireland, Garret FitzGerald, will deliver the Message in the House Chamber.

Enclosed for your information is a copy of the letter from James T. Molloy, Doorkeeper.

Regards,



Enc.

CC - The Marshal  
Justice Stewart

P.S. If you wish to have me decline all these invitations, except for the Annual Message of the President, please let me know.



March 7, 1984

Dear Chief:

My vote is to decline the invitation to the Joint Meeting of Congress on March 15.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference  
Justice Stewart



March 16, 1984

Dear Chief:

I note that Hustler is listed only as "tentative" to come down on Tuesday.

If it should not be ready, I'll be prepared to announce Blum on Tuesday, if this is agreeable.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



JOHN J. O'CONNOR III  
METROPOLITAN SQUARE  
655 FIFTEENTH STREET, N. W.  
WASHINGTON, D. C. 20005

March 26, 1984

Brennan & Powell  
Clothiers  
U. S. Supreme Court  
1 First Street, N.E.  
Washington, D. C. 20543

Attention: W. Brennan, co-proprietor  
L. Powell, co-proprietor

Gentlemen:

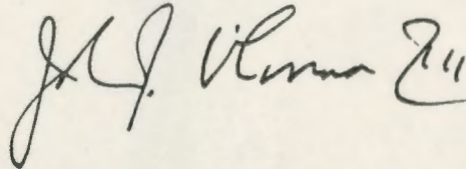
I wish to thank you both for your excellent services to the undersigned on Saturday evening last.

As you know, I was in dire straits at the time. You extricated me from a very awkward situation.

I have decided I could best show my appreciation to you by posting your trade name and business address at various local clubs and mercantile establishments along with my own glowing tribute to both the quality of your service and the reasonableness of your prices. This I have now done.

This community is a better place because the two of you have found a trade in which you excel.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J.J. O'Connor III". The signature is fluid and cursive, with the last name "O'Connor" being more prominent and stylized than the first name and initials.



March 29, 1984

Dear Chief:

Jo and I have accepted another dinner invitation for April 4.

We both appreciate your invitation, and will regret not being with you.

Sincerely,

The Chief Justice

lfp/ss



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

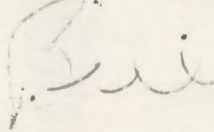
March 30, 1984

Dear Chief,

I'll try my hand at the opinions for  
the Court in No. 83-218, Reed v. Ross,  
and No. 83-18, Dun & Bradstreet, Inc. v.  
Green-Moss Builders, Inc.

Thurgood has agreed to do the  
opinion for the Court in No. 83-264,  
Burnett v. Grattan.

Sincerely,



The Chief Justice

Copies to the Conference



April 3, 1984

CONFIDENTIAL

Dear Chief:

In view of the new standards of "ethics" that apparently the presidential campaign seems to be stimulating (e.g., Bill Smith's embarrassment), perhaps we should discuss at a Conference the two perquisites I have understood since coming to the Court were available for Justices.

The first is the use in the evening of Court cars and drivers. The statutory language of "official use" - if construed strictly - could ban marginal though quite necessary uses of Court vehicles. If a Justice is invited out to dine whether privately or at some official function (such as an embassy), there are two substantive reasons - apart from convenience - that I have understood justified the custom here. First, in view of the unavailability of places to park in most areas of this city, a Justice and his spouse often would have to walk some distance and be targets for mugging (particularly dressed in evening clothes). Secondly, at least for most of us, with the array of beverages customarily served in Washington, there would be real embarrassment if a Justice or his wife were involved even in the most minor accident following dinner.

I believe all of us use Dr. Cary's office for personal health problems that do not require hospitalization or particular specialists. We also have annual physicals, a part of which are given at Bethesda. Finally, we have Kathy and E.J. here at the Court.

In addition to nonprescription items (e.g., aspirin and the like available here at the Court), Dr. Cary's office and his pharmacy provide us with medicine that he prescribes. I inquired of him specifically whether members of Congress or the Court ever paid for the prescription drugs. He answered in the negative.

Of course, I am talking only about prescriptions for members of the Court and not members of our respective



families. Kathy does check Jo's blood pressure from time to time.

I should add that I have used the Court stationwagon, with my messenger driving, to move me back and forth from my Chambers here to my Chambers in Richmond at the end of a Term and again over Labor Day weekend. I reimburse the Marshal's office for this use of a car on the basis of 20 cents per mile. Since I had cataract surgery, I have used a Court car and my messenger to go back and forth to the Wilmer Clinic in Baltimore.

In any event, while it seems to me that none of the foregoing is fairly subject to criticism, I do think it desirable to put the subject on our agenda for discussion.

Sincerely,

The Chief Justice

lfp/ss





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

CHAMBERS OF  
THE CHIEF JUSTICE

April 3, 1984

PERSONAL

Dear Lewis:

Your April 3 memo subject will be on for the next Conference.

I will not here, as a matter of "judicious delicacy," say what I think of these "penny ante punks."

I agree with Secretary Regan in general.

Regards,

Justice Powell



April 6, 1984

Dear Chief:

This refers to your memorandum of this date with respect to Court policy on being photographed.

I agree with your position.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



April 17, 1984

Supreme Court Historical Society

Dear Chief:

The dinner Friday evening was most pleasant, and Jo and I enjoyed being present. Although I know most of the "lines" on the beautiful antique furniture in the two upstairs dining rooms, I liked the way you put it all together - as did our guests.

It is no credit to the 70,000 or 80,000 members of the Supreme Court bar that only about 2,500 of them have joined the Society. What would you think of a plan - now commonly used to raise money - to recognize in some distinctive way members of our bar who have argued three or more cases here?

If Al Stevas has this on a computer, he could tell us whether the number of lawyers in this category would be worth the trouble of working out some plan. This may not be feasible, but I have in mind the idea of the Fellows of the American Bar Association.

Sincerely,

The Chief Justice

lfp/ss



Supreme Court of the United States  
Memorandum

Jews 4/18, 1984

On the Jaycee  
case, I'm in the  
same boat as most  
but I have not the  
remotest thought  
of staying out.

My old law partner  
(Otis) equates "good"

things, with  
Constitutional  
commands! in  
that case.

WFB

Long live the Alibi  
Club and others!

This was delivered to me on the bench during argument  
of the case on April 18, 1984.

L.F.P., Jr.



April 23, 1984

Dear Chief, John and Sandra:

My recollection is that the four of us recently discussed Ambassador Kirkpatrick's lecture in London.

I enclose a copy obtained from the State Department. In my view, her speech is simply superb, and reflects an understanding of trends in the West that if unabated could bring an end to democracy. She quotes a French author, Jean-Francois Revel, as saying in a recent book that:

Democracy may be "first system in history which, confronted by a power that wants to destroy it, accused itself . . ." (p. 3, 4 of the lecture)

The view that the United States and the Soviet Union are "equal" threats to the peace of the world is a myth that has gained an astonishing vitality of its own. The Soviet Union has been an aggressor nation - directly and through proxies - since its invasion of Finland in the 1930s, followed in 1939 by joining the Nazis in invading and partitioning Poland. With the exception of Austria (a special situation), the Soviet Union has never given up control over a foot of the territory it has seized by force of arms.

With the possible exception of limited stewardship over a few of the Pacific islands, we have not retained any other country's territory since the Spanish-American war. The two "wars" we foolishly fought in Asia (with unprecedented "no-win" policies in both) were undertaken to protect other countries from aggression, just as was true of our going to the aid of the democracies in World Wars I and II.

Sincerely,

The Chief Justice  
Justice Stevens  
Justice O'Connor

lfp/ss



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

CHAMBERS OF  
THE CHIEF JUSTICE

April 30, 1984

Sally

Re: April 30, 1984 Assignments

MEMORANDUM TO THE CONFERENCE:

Earlier today I assigned No. 83-490 - Davis v. Scherer to Bill Brennan. Bill is on the "wrong side" in Davis v. Scherer. Since Thurgood is on the right side in Davis v. Scherer, he and Bill have agreed to a switch; Thurgood will take the assignment in No. 83-490 - Davis v. Scherer and Bill will take the assignment in No. 83-710 - Berkemer v. McCarty.

Regards,

WRB



April 30, 1984

CHAMBERS OF  
THE CHIEF JUSTICE

*File in Justice*  
CONFIDENTIAL

MEMORANDUM TO THE CONFERENCE:

Following the Larry Flynt episode and some intimations of possible Courtroom demonstrations in the Lafayette Park case, questions were raised, including one by John in his memo of March 21, 1984.

There are only a few fixed standards as to Courtroom conduct. The relevant statutes are 18 U.S.C. 1507 regarding picketing and parading; 18 U.S.C. 401 pertaining to contempt of court; 40 U.S.C. 13j proscribing certain conduct in the Supreme Court Building or grounds; and 40 U.S.C. 131 which states that "the Marshal of the Supreme Court may prescribe such regulations, approved by the Chief Justice of the United States, as may be deemed necessary for the adequate protection...and for the maintenance of suitable order and decorum within the Supreme Court Building and grounds."

There is no statute or regulation, for example, on wearing apparel in the Courtroom. In some courts, jackets, even neckties, are mandated. In this Court, with the traffic of tourists, that would be too rigid. Unseemly dress, i.e., a person in a swimming suit, would not be allowed to enter, but that rests on tradition rather than regulations or statutes.

By tradition, women may wear hats, men not; but a man wearing a headgear, as some of Jewish faith do, have been permitted for a long time.

I am informed that when visitors refuse to rise when the Court enters, the officers invite them to leave. (This was new to me.) In 15 years we have had a half dozen "episodes," none really serious until this Term.

With any significant disorder, such as Mr. Flynt which requires immediate response, I will act as I have stated. Such episodes cannot be dealt with "by a committee." In reality, standing orders based on tradition long before I came here, take care of most problems but it may be that we need to spell out some standards.

Conceivably, we may be confronted with more demonstrations as persons so disposed look for new fields to "test." I emphasize, I see no problem about a clear case of disorderly conduct, but absent announced regulations on hats, or refusing to rise as the Court is announced, we should set aside a period soon to focus on these matters.

Regards,

*WEB*





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

✓

CHAMBERS OF  
THE CHIEF JUSTICE

MAY 3 1984

May 1, 1984

Dear Lewis:

I am enclosing a copy of the standard form letter that is sent to every person admitted to the Supreme Court Bar.

Like you, I am surprised that the response has been so meager.

Maybe the letter needs another draft - *or draftsman!*

Regards,

*WJP*

Justice Powell





# The Supreme Court Historical Society

111 Second Street, N.E.

Washington, D.C. 20002

(202) 543-0400

## BOARD OF TRUSTEES

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Dear Supreme Court Bar Member:

Congratulations on your recent admission to the Supreme Court Bar. As a new member of the Bar, you enjoy a distinct privilege and become a part of a distinguished tradition. However, you also share a special responsibility to preserve the history and heritage of the Supreme Court of the United States.

In 1974, the Supreme Court Historical Society was founded to preserve important aspects of the Court's rich history. Despite great progress, much remains to be done.

We extend to you a cordial invitation to become a member of this very special organization, and ask you to read the enclosed brochure. By becoming a member, you can help increase public understanding of the Court's great heritage and its important role in American life. By so doing, you contribute not only to the activities of the Society, but also to the on-going education of the American people, encouraging a renewed commitment to the principles and ideals upon which our system of equal justice under law is founded.

Again, we welcome you to the Supreme Court Bar, and encourage you to join with us in this important work.

Sincerely,

Linwood Holton  
President

Warren E. Burger  
Honorary Chairman



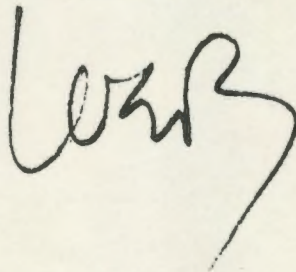
CHAMBERS OF  
THE CHIEF JUSTICE

May 2, 1984

MEMORANDUM TO: Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

See attached.

Regards,

A handwritten signature in dark ink, appearing to be "Lewis F. Powell, Jr.", written in a cursive style.



CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 2, 1984

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

'84 MAY -2 10:50

Memorandum to the Chief Justice

From Justice Brennan and Justice Marshall

Thurgood has examined Davis v. Scherer, No. 83-490, and concluded that he probably cannot write in support of the reversal on the issue of qualified immunity. Accordingly, he is not transferring Berkemer v. McCarthy, No. 83-710, to Bill in exchange.

Therefore, we feel that Davis v. Scherer should be assigned to someone other than either of us. Bill is willing to take anything that any other Justice in the majority to reverse Davis v. Scherer is willing to exchange.

Sincerely,

*Bill*  
W.J.B.

*T.M.*  
T.M.

*Any volunteers?  
Web*



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 2, 1984

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

'84 MAY -2 A10:50

Memorandum to the Chief Justice

From Justice Brennan and Justice Marshall

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Therefore, we feel that Davis v. Scherer should be assigned to someone other than either of us. Bill is willing to take anything that any other Justice in the majority to reverse Davis v. Scherer is willing to exchange.

Sincerely,

*Bill*  
W.J.B.

*T.M.*  
T.M.

*Any volunteers?  
Web*



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

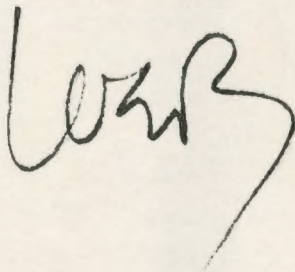
CHAMBERS OF  
THE CHIEF JUSTICE

May 2, 1984

MEMORANDUM TO: Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

See attached.

Regards,

A handwritten signature in dark ink, appearing to be "L. F. Powell, Jr.", written in a cursive style.



May 4, 1984

Dear Chief:

This refers to your letter of May 2 asking for a volunteer to take Davis v. Scherer 83-490 off of Bill Brennan's hands in exchange for a case in which he is in the majority.

As I understand no one has held up his or her "hand", I gingerly raise mine. It seems clear that Bill needs another case. I am reluctant to surrender one of the three cases you assigned to me as I am in a position to write all three of them before the June 1 target date. Also I have lost one case you assigned to me earlier.

But I understand Bill's desire not to be left with only one case from the April arguments. Accordingly, I am glad to offer him 83-245/83-291 Pension Benefit Corp. v. Gray.

I would prefer to retain the other two cases assigned me. But if Bill does not want to write Pension Benefit, he may have Armco (83-297).

Scherer is almost a "non-case", but I will take it for a Per Curiam unless someone would like to write a Court opinion on it.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

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,

*Bul*

The Chief Justice

Copies to the Conference



CHAMBERS OF  
THE CHIEF JUSTICE

May 11, 1984

MEMORANDUM TO THE CONFERENCE:

Since the attached is a unique occasion, I  
will await your response.

Regards,

WLB

CC - The Marshal's Office

From the time of the  
year I learn to stay  
at my desk WLB

Dear Chief,

~~I do not~~

As to the ceremony on  
June 25<sup>th</sup>, I would be  
inclined - as you say -  
to remain at my desk.  
Sincerely,

Solly -  
Write  
C.J.  
with cc

to Conference





RECEIVED  
U.S. DEPT. OF THE  
JUSTICE

Congress of the United States,  
House of Representatives  
Washington, D. C. 20515

James T. Molloy  
Doorkeeper

May 11, 1984

Dear Mr. Justice,

On behalf of the United States House of Representatives, we are respectfully inviting the Members of the Court to attend a ceremony honoring an Unknown Serviceman, who gave his life in the Vietnam War.

On Friday, May 25, 1984 at 2:45 PM, the remains will be carried into the Rotunda of the Capitol to lie in state until burial in Arlington Cemetery on Memorial Day.

If the Members of the Court will be able to attend this brief ceremony, please be present at 2 PM in room H 219, The Capitol, from whence you will proceed in a body to the Rotunda where space will be reserved.

Response to this invitation should be directed to this office, 225-3505, so that arrangements can be finalized.

Sincerely yours,

Warren Earl Burger, Esq.  
Chief Justice of the United States  
One First Street, N. E.  
Washington, D. C. 20543



May 4, 1984

Dear Chief:

This refers to your letter of May 2 asking for a volunteer to take Davis v. Scherer 83-490 off of Bill Brennan's hands in exchange for a case in which he is in the majority.

As I understand no one has held up his or her "hand", I gingerly raise mine. It seems clear that Bill needs another case. I am reluctant to surrender one of the three cases you assigned to me as I am in a position to write all three of them before the June 1 target date. Also I have lost one case you assigned to me earlier.

But I understand Bill's desire not to be left with only one case from the April arguments. Accordingly, I am glad to offer him 83-245/83-291 Pension Benefit Corp. v. Gray.

I would prefer to retain the other two cases assigned me. But if Bill does not want to write Pension Benefit, he may have Armco (83-297).

Scherer is almost a "non-case", but I will take it for a Per Curiam unless someone would like to write a Court opinion on it.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



May 11, 1984

Dear Chief:

As to the ceremony on May 25, I would be inclined  
- as you say - to remain at my desk.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



May 14, 1984

Dear Chief:

As you know, the ABA meets in Washington in July 1985 prior to the London meeting.

The Chairman of the Host Committee for the Young Lawyers Division of the ABA has inquired whether it could give a dinner here at the Court for the "Fellows of the Young Lawyers Division" during the ABA meeting.

My guess is that we will have a large number of requests for use of the building at that time. Probably there should be a policy decision that draws the line. Please tell me how I should respond to this inquiry.

Sincerely,

The Chief Justice

lfp/ss





Supreme Court of the United States  
Washington, D. C. 20543  
May 16, 1984

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

83-529 United States v. Sharpe & Savage

Dear Chief:

As this is a Per Curiam, in which I will join, I would appreciate your making the modest word changes on page 4 as indicated in red on the enclosed copy of that page.

After all, this is "our" Circuit. In the long run, I think it best to assume that this was a mistake. The present language implies deliberate conduct.

Sincerely,

*Lewis*

The Chief Justice

LFP/vde

*Dear Lewis  
Time heals irritations as  
it does wounds. They got off on  
the wrong foot here and  
they deserve a swift  
kick, but get reluctant! See next  
draft  
WRB*



May 16, 1984

CONFIDENTIAL

Dear Chief:

I return the confidential statement of May 7 that you sent to me. It ended up on the bottom of my correspondence file.

Although you did not indicate where you might use this statement, you requested in longhand whether the ABA may need a "push-shove".

I will be happy to discuss this. I am inclined to think it best to let the situation simmer for a while. Your February address was forceful and covered an array of subjects. You would have been pleased with the program of CALL. A morning was spent on abuse of discovery, and an afternoon on attorney's fees under §1988 and other comparable statutes.

Sincerely,

The Chief Justice

lfp/ss  
Enc.



CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 1, 1984

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

83-317 Block v. Rutherford 84 JUN -1 A9:38

Dear Chief:

Since this is your opinion, I certainly do not insist that you make the minor changes I suggested.

If it were my opinion I would at least make clear that many jails and prisons are not equipped with metal detectors, and even where they exist a decision allowing body contacts would probably invite far more family visitations than otherwise.

I defer to your superior knowledge as to body cavity capabilities.

I have written a separate join note.

Sincerely,

The Chief Justice

lfp/ss

*I am in a  
memo - or opinion - The tale of segments of  
a lethal dose smuggled to a life prisoner in  
by his girl friend by the procedure of  
question, I could get dozens of  
comparable episodes - anyone  
they seem. I admit a "superior  
knowledge" of what goes on in  
prisons! not elsewhere!  
WRB*



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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 6, 1984

Dear Chief,

Shall we send our donations in  
memory of Sandra's father individually  
to the Historical Society, or  
collectively through you?

Sincerely,

*Bill*

The Chief Justice

cc: Justice White  
Justice Marshall  
Justice Powell



June 6, 1984

Dear Chief:

You have been good to continue to remind us about donations in Sandra's father's memory, and I have been uncertain as to the status. I spoke to Sandra, and she was quite positive that she did not want donations.

Nevertheless, certainly no harm could come from a collective gift to the Historical Society. My check is enclosed.

Sincerely,

The Chief Justice

lfp/ss

cc: Justice Brennan  
Justice White  
Justice Marshall



June 11, 1984

Dear Chief:

As I have an engagement in Richmond tomorrow (Tuesday), I would appreciate your announcing the Court's decision in 83-297, Armco Inc. v. Hardesty.

Sincerely,

The Chief Justice

Copies to the Conference

LFP/vde



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 11, 1984



Re: Rulemaking

Dear Bill:

To clarify: Mr. Kastenmeier is willing to work for what I stated in my memo, i.e., on rulemaking he is willing to leave it up to us to act or let the Judicial Conference act on its own. However, the only Bill before his committee is H.R. 4144.

Mr. Kastenmeier wants to try to modify this Bill to reflect our views. I favor giving us options to act or to defer.\* A lawyer-lobby wants to get us out because, so I am told - the Judicial Conference will be more amenable to their views on such matters as sanctions, etc.

Hence the request for a letter.

Regards,



Justice Rehnquist

Copies to the Conference

\* If any change is to be made at all



June 12, 1984

Rulemaking

Dear Chief:

Given the unattractive alternatives, I would prefer that the ultimate rulemaking authority be retained by this Court - subject, of course, to congressional review.

The dissent by three of us in 1980 to the inadequate amendments of the Civil Rules is the only example I recall of any of us having disapproved of the recommendations by the Judicial Conference. The dissent was beneficial and may have prompted the more recent amendments that certainly are an improvement.

If there were any way, consistent with retention of our primary authority, to relocate responsibility for the Bankruptcy Rules, this would be welcome. I know of no proper way to do this.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



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

June 10, 1984

CHAMBERS OF  
THE CHIEF JUSTICE

Dear Lewis

I don't give a  
Finker's Dam what the  
media thinks about  
our holdings. But  
if anyone does, they  
should look to the  
non-conservative  
Monitor - if they value  
common sense!

Regards  
RJR



# Common sense and evidence

THE US Supreme Court has made a modest but important exception to the principle it had held for 70 years — that no evidence obtained illegally could be used in court. The court's new ruling is sound: If the evidence would have been turned up legally anyway, it can be admitted.

The decision represents the dropping of only one shoe. In the next month the court is expected to rule on a broader aspect of illegal evidence and that is whether it can be used in a trial if the law-enforcement or judicial officials who obtained it were unaware they were making a mistake — the so-called "good faith" issue.

The court's Monday ruling comes against a backdrop of a changing mood in America toward crime in recent years. It has swung from concern for the rights of the accused to attention on the rights of victims. There has been increasing sentiment in American society, as well as among political leaders, for swifter and stiffer punishment of the guilty — and increasing displeasure that some persons who did in fact commit crimes escaped conviction through technicalities.

The court's ruling will have little immediate impact on the operation of many lower courts and police. Illegally obtained evidence that would have surfaced anyway has been used increasingly in court cases.

Yet the Supreme Court's approval of this practice offers a challenge to the hard-pressed American law-en-

forcement system: not to substitute illegally gathered information for hard investigative work.

Until future cases yield firm guidelines it will be difficult for police to know what kinds of illicitly obtained evidence will be judged admissible in court and what will be ruled out. To cope with these problems many police need additional training in legal issues and in professional methods that incorporate the latest technology.

The challenge to law enforcement would be redoubled if the Supreme Court were to allow courts to consider evidence obtained in good faith even if it were discovered illegally.

Police then would find it in their interest to be uninformed on fine points of the law. However, it is in society's best interests for police to continue to increase their knowledge of the law, thereby improving the quality of work they are able to do. In addition, some law-enforcement officers might be tempted to claim they knew less law than in fact they did.

Courts at all levels now should rigorously examine requests to admit evidence obtained illegally to make certain that it would have been found anyway. This exception to the concept of excluding illegal evidence should be used when necessary, to protect victims and society at large. But it also is important that neither police nor prosecutors take advantage of the ruling. The accused still has rights.

C. SC Monitor 6/14/84



CHAMBERS OF  
THE CHIEF JUSTICE

6/15/84

Dear Lewis

I am sorry our exchanges struck you as they did. I have looked again and fail to see the "personal" aspect you discern. Surely none such was intended.

It disturbs me profoundly to have this Court repeat a sound classic holding like Williams v. New York with a fuzzy, ambiguous holding on the point in Pearce. I retreat in no sense from my position that it is sheer nonsense - the misstatement I can employ - to say that the "time frame"



should control over reality in  
the sentencing process. To allow  
Hugo's opinion in Williams to be  
castrated subsiditio by an  
ambiguous holding that  
was put together in the closing  
weeks of the 1968-9 Term - Peerce  
is very bad jurisprudence and  
I will never refrain from  
saying so.

I repeat, there is nothing  
personal in this - even  
John Paul II - a modern  
saint has some damned  
fool ideas!

Respectfully  
Alan



June 28, 1984

Recess for the Summer

Dear Chief:

Jo and I have had long-term plans to return to Richmond no later than July 3. Unless I am needed for a quorum - or some other reason - I will leave the Court following our Conference on Tuesday, July 3.

My assigned cases all have been handed down, and I do not believe any changes are likely to be made in the few dissents and concurrences in which I have written. I have joined - one way or the other - all pending cases.

I will leave my votes with another Justice for Thursday's Conference. I would hope, however, that the Discuss List for Thursday will be circulated earlier on Tuesday than was the List for today's Conference.

L.F.P., JR.

Copies to the Conference

LFP/vde

Blind cc - Law Clerks



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

CHAMBERS OF  
THE CHIEF JUSTICE

July 9, 1984

Dear Lewis:

Thank you for sending me a copy of your letter to Professor Arthur R. Miller.

Early this spring, Professor Miller came in to see me about going on a program that would include several other Justices. I expressed my reservations about the value and feasibility of such a program and my own reluctance to get into the kinds of matters he had in mind. I finally agreed to listen to his proposal but have not heard more.

Since then, I have been a little concerned that, whether indirectly or otherwise, others have received the impression that I had agreed to go on the program, which was not the case.

I have now informed him definitely that I will not participate in any program on the subject of law or how the courts work.

My one venture with Mr. Koppel of ABC was on a different and narrow subject, having nothing to do with the judicial functions, and I will leave it there.

Regards,

WJP

Justice Powell



July 26, 1984

Dear Chief:

I agree with your suggested action on Summer Miscellaneous Motions.

Sincerely,

The Chief Justice

Copies to the Conference

LFP/vde



August 14, 1984

Subject: Pulliam v. Allen (\$1983 Injunction Suit Against a Judge)

Memo to The Chief Justice:

Your favorite organization, The Federal Judges Association, in a memorandum of July 30 to all Article III judges, mentioned Pulliam v. Allen.

You may recall that this is the case you assigned to me to write. After I had circulated an opinion for the Court, one of Brothers defected without notice and Harry wrote the Court opinion. You, WHR & SO'C joined me in dissent.

As page 6 of the Association's memo indicates (attached hereto), judges are concerned and are commencing to take out insurance. Several judges spoke to me about this at the Chicago meeting.

L.F.P.

Enclosure

cc: Justice Rehnquist  
Justice O'Connor

LFP/djb



5. Pulliam v. Allen, 52 Law Week 4525: Is there a Federal Judge who has not read Pulliam, and shuddered?? Is there a Federal Judge who has not checked with his insurance agent on the question of coverage? Well, it's a good idea to do so . . . but we have another idea: Since the majority opinion turns on the issue of congressional intent, contact has already been made with Senator Thurmond . . . and others . . . for the purpose of sponsoring legislation to provide a clear expression that judicial immunity includes immunity from attorneys fees.

As Justice Powell said in his dissent (Burger, Rehnquist and O'Connor joining):

Such a judgment poses the same threat to independent judicial decisionmaking whether it be labeled "damages" of \$7,691 or "attorney's fees" in that amount. Moreover, as was held a century and a half ago, an "action before one judge for what is done by another . . . [is a] case . . . against the independence of the judges." Taaffe v. Downes, 13 Eng. Rep. 15, 18 (1813). The burdens of having to defend such a suit are identical in character and degree, whether the suit be for damages or prospective relief. The holding of the Court today subordinates realities to labels. The rationale of the common-law immunity cases refutes the distinction drawn by the Court.

TO THOSE WHO HAVE NOT YET JOINED FJA: SUCCESS IN THIS AREA ALONE WILL SAVE YOU ENOUGH IN INSURANCE PREMIUMS TO PAY FJA DUES. (A card is enclosed for your convenience in case you have not signed up yet.)

6. Annual Meeting of the Board of Directors: The Board of Directors held its annual meeting in Washington on May 17. All members but one were in attendance, and two special guests were also present. The Treasurer's report indicated that we are solvent\*. Our major expenditure is for our Washington Coordinator, the second major expense the Annual Meeting and Congressional Reception. The third is the preparation and mailing of our newsletters. MEMBERSHIP is now over 350, and still growing.

A detailed report on Congressional activity was given by our Coordinator Chuck Wiggins. Since then most of our objectives have been achieved. (Bankruptcy, Rule of 80, 4% COLA, exemption of Senior Judges from Social Security.) Those still in process are: 1) improvement of Survivor's Benefits, 2) giving Article III judges who were sitting as of the date they were included in Social Security the right to opt out; 3) Pulliam, and 4) the Quadrennial Commission. The Bylaws were amended to increase the size of the Board of Directors, and to provide for two additional Vice-presidents, USDJ, Diana Murphy (Minn.) and Bob Hall (Atlanta) were elected. Plans were discussed for increasing membership and reorganizing our committee structure.

-----  
\*Copies will be supplied members upon request.



August 22, 1984

Dear Chief:

Like most Americans, I was shocked by the jury verdict in the DeLorean case.

Of course we did not hear the evidence, though I did see a portion of the video-tape that was shown on national television. But I do not write to talk about the merits.

I read a brief account of the extent to which professional consultants assisted defense counsel in preparation for the voir dire examination and selection of jurors. The article stated that now there are a number of consulting firms that specialize in assisting criminal defense lawyers in this respect. A new "profession" appears to exist, and is claiming that we are entering a "new era" in the trial of criminal cases. I understand that these firms employ psychiatrists, psychologists and other "experts" who apparently investigate persons on the panel from which the jury will be selected.

My concern is whether the substance of what is taking place constitutes jury tampering. The article did not say that members of the panel were interviewed personally. I gained the impression, however, that this was a possibility, and that persons who knew the panel members were interviewed.

Even if the activities have not yet risen to the level of provable jury tampering, is this a proper way to select a jury that is a legitimate cross-section of the community? Of course, even when you and I were trying civil cases, we endeavored through public means to know as much as we could about prospective jurors - e.g. occupation, residence, age, etc. Most of this information was developed on voir dire in the presence of the court. But if defense counsel, when representing well-heeled defendants (typically the case in drug prosecutions), can skew jury selection in favor of defendants, as this jury was skewed, the federal government and states will have to employ the same tactics. All of this will be done beyond the control and supervision of the court. This may be ex parte conduct that is susceptible to serious abuse that will be difficult to identify.



The Chief Justice  
August 22, 1984  
Page Two

Moreover, as you have several times observed, many courts are far too lax in permitting unlimited voir dire examination.

Would this be an appropriate subject for investigation by a committee of the Judicial Conference? Perhaps Bill Webster - on the basis of the DeLorean case experience - will take a close look at whether there has been anything akin to jury tampering.

Jo and I return to Court Labor Day Weekend. We hope the Burgers have had a restful summer.

Sincerely,

The Chief Justice

LFP/djb



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

CHAMBERS OF  
THE CHIEF JUSTICE

September 17, 1984

MEMORANDUM TO THE CONFERENCE:

Since Lewis will celebrate his birthday on  
Wednesday, September 19th, we will follow our usual procedure  
at lunch on Monday, September 24th, in the Justices' Dining  
Room.

Regards,

WJ 13



September 28, 1984

PERSONAL

Dear Chief:

From time to time in past years, I have given you the names of several clerk applicants whom I thought were fully as well qualified as the four whom I engaged. The list is enclosed.

I interviewed some 15 applicants early in September, spending up to an hour with each of them. On paper, each was brilliantly well qualified and their applications were supported by strong faculty members - most of whom I know personally.

I know, of course, that your interviewing is done initially by a committee of former clerks.

Sincerely,

The Chief Justice

lfps/s  
Enc.



lfp/ss 09/28/84

The following applicants particularly appealed to me:

Laurie L. Kratky. SMU Law School, first in class, Managing Editor of Law Review; B.A. degree from Creighton University (4.0 average), summa cum laude. Clerking for Judge Higginbotham (CA5).

Marjorie N. Neufeld. Tulane Law School, 4th in class of 220, summa cum laude, Editor-in-Chief of the Law Review. A.B. degree, Colorado State University, Phi Beta Kappa. Clerking for Judge Wisdom.

William H. Holmes. Michigan Law School, Editor-in-Chief; B.S., University of Texas (GPA 3.89), summa cum laude, Phi Beta Kappa. Clerking for Judge Oberdorfer. Highly recommended by Michigan faculty.

I will be glad to provide you with copies of the resumes of each of the foregoing if you wish to see them.

L.F.P., Jr.

ss



October 2, 1984

Cert Pool

Dear Chief:

It seems to me that the cert memos are being circulated more slowly than in the past. I have understood that the "target date" for circulating them is no later than one week prior to the Conference, i.e. on or before the Friday a week before the Friday Conference. This affords us (and here I certainly speak for myself) the opportunity to review the cert memos before moving into a week of arguments.

I appreciate that we have a new "crop" of law clerks, and also that Jan was in the process of concluding his work here. Knowing Mike Luttig, I am confident that he will do his best to see that a reasonable schedule is met.

Occasionally, the legal office is also quite late in circulating its memos. Again, I know there are extenuating circumstances but hope that office will be alert to minimize them.

Sincerely,

The Chief Justice

lfp/ss



October 11, 1984

PERSONAL

Assignments

Dear Chief:

This refers to our discussion of your assignment last week of 83-1065, the Oneida Indian case, to me to write.

Apart from having no interest in that case, I was afraid that I would end up writing an opinion that did not reflect the majority view. I had not considered the laches issue, and this may be critical with me. My understanding is that you are not firmly committed to a particular result, and you think I may be the deciding vote. Although, I am still not at rest as to how I will come out, I will keep the case and do the best I can.

I would hope, however, that you will give me a better case in the assignments you probably will make on Saturday. The two cases that interest me the most are 83-1378 Kavanaugh v. Lucey (right to effective assistance of counsel on appeal), or 83-997 TWA v. Thurston (application of Age Discrimination in Employment Act to airline pilots). Of course, I do not know at this time whether I will be in the majority in either of these cases.

I appreciate the difficulties you have in making assignments that please all of us.

Sincerely,

The Chief Justice

lfp/ss



November 8, 1984

Dear Chief:

As you know both Thurgood and I have had cataract surgery, with implants, at the Wilmer Institute of Johns Hopkins University. My ophthalmologist there is Dr. Walter Stark who is now the chief of the group who do cataract surgery.

Dr. Stark called to ask if I would serve on the Advisory Council of the Wilmer Institute. It is a group of "leading citizens" who have been patients, who meet once a year at the Institute for a general briefing on its activities. He stated that there would be no responsibility for or participation in fund raising. I must say that the utility of the Council is not clear to me. Yet, as I will have another cataract operation either in December or next summer, and no doubt will continue to have eye problems, I am inclined to accept.

I write to see whether you have any negative feeling, apart from the fact that we have very few days (or even half of days) for activities of this kind.

Sincerely,

The Chief Justice

lfp/ss



November 13, 1984

PERSONAL

Dear Chief:

This refers to your memorandum reassigning 83-240 Lawrence Co. to Byron. I will again be left with only two opinions. While I understand that this results from a mistake, I hope I can count on you to give me at least three cases from the next argument session. Almost every other Justice now has been assigned five Court opinions. I do not want to go into the four weeks of the Christmas break without the normal load of assignments from the fall Term. I do appreciate your giving me Wayte.

I have not yet circulated a Court opinion. This is due primarily to the fact that I have been assigned two dissenting opinions to write in major cases: Dun & Bradstreet and Garcia. The latter case is particularly important. I have drafts of both of these dissents but am still having some special research done for me by the library.

Sincerely,

The Chief Justice

lfp/ss

P.S. Byron's note recording his vote to reverse in Chemical Manufacturers has just been handed me. You will remember that my firm was in this case at the trial level. I will say that 83-240 Lawrence Co. is a dull case. If I had to lose a case, this is one I will not miss too much!



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

CHAMBERS OF  
THE CHIEF JUSTICE

November 13, 1984

✓

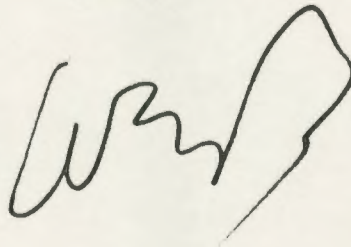
MEMORANDUM TO THE CONFERENCE:

In my hurry to get assignments out before catching a plane for the Robert Ainsworth Memorial, I missed some key points.

In No. 83-240 - Lawrence County v. Lead-Deadwood School District, Byron did a dissent from denial of cert. The Conference vote was 7-2 to reverse with Byron in the majority. I mistakenly assigned the opinion to Lewis. The case is reassigned to Byron.

Similarly, Bill Rehnquist did a dissent from denial of certiorari in No. 83-1307, United States v. Powell. The Conference vote was 9-0 to reverse. Justice Rehnquist is in the majority. I mistakenly took this case for myself and I now yield it to Bill.

Regards,





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

CHAMBERS OF  
THE CHIEF JUSTICE

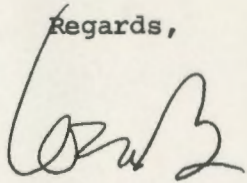
December 3, 1984

MEMORANDUM TO THE CONFERENCE:

I enclose a copy of a memo from the Librarian to keep you informed.

This will be placed on the agenda for discussion if anyone wishes it to be discussed.

Regards,

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



'84 NOV 15 P12:06

OFFICE OF  
THE LIBRARIAN

November 13, 1984

Memorandum

To: The Chief Justice

From: The Librarian

Subject: Papers of the Justices

It has traditionally been the practice of the library to "build and maintain as complete a collection as possible of books and other materials pertaining to the Court and the Justices." This practice has led to the development of a comprehensive collection of books and articles written about the Justices, or the Court as an institution.

Collecting the public or private papers of the Justices, however, has never been contemplated or pursued by library staff. This lack of interest may be attributed to the following reasons:

1. The widely held view that the papers of Justices are personal property and may be devised, deposited or even destroyed as the owner determines. Many Justices have consequently given their papers to institutions for which they have had a personal affinity.
2. Prior to 1935 when the Court had no facility of its own, a Justice who wished to leave his papers to a federal depository could entrust them to the Executive Branch by placing them in the National Archives, or he could entrust them to the Legislative Branch by placing them in the Library of Congress. By the time the Court's building was erected and a library established, the Library of Congress had long been the government depository of choice for many Justices.



3. Collecting papers of the Justices was a low priority for a small library staff. The earlier library staff was charged with the task of creating and managing a library to support the Court's judicial research, it had neither the personnel nor the expertise to become curator and archivist, as well as Librarian.

The more recent evolution of the Court's staff -- its talent and its interest -- suggests that a reevaluation of the Court's policy with regard to the acquisition of judicial papers may be in order. The following events underlie this suggestion:

1. The creation of the curator's office as repository of official files of papers and Court-wide archival materials.
2. The experience of the difficulties associated with collecting widely dispersed judicial and Court papers exemplified by the pre-1800 documentary history project.
3. The announcement of the sale of microform editions of the papers of former Justices (see attached).

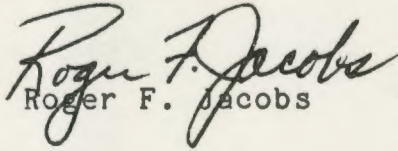
I submit that the traditional stance with regard to collecting the papers of the Court and its Justices should be modified; that over time, the Court should collect and maintain as comprehensive a collection of these materials as is available, either as a primary depository or as a purchaser of reproduced editions. I believe the talent and the interest now exist in the Court staff to perform both the library and the archival function. I would, therefore, suggest the adoption by the Court of the following mission statement:

1. As an institution the Supreme Court will attempt to retain a comprehensive archival collection of the papers of the Justices and the records of the Court.
2. The Office of the Curator will assume the archival function, collecting, organizing and making available for use institutional archives or the original papers of the Justices. These materials will be made available for scholarly purposes under a Court developed general policy or, in the case of Justices papers, the order of the donor Justice. Funds should be made available to the Curator to carry out this assigned mission.
3. Papers of the Justices that are published in microform or hard bound editions will be acquired by the library, organized and serviced with the balance of the library's collection.



An affirmative response by the Court to these recommendations will result in a collection of papers and documents that would, over time, become the single major national repository of primary and secondary documents about this institution. The development of this repository will eventually and ultimately lead to the enhancement of scholarly research about the Court and its history. Moreover, with many lower courts now engaged in archival projects, the development of a leadership model would be of service to them and further recognition of your continuing concern for the development, management and preservation of our judicial institutions.

While the National Archives and the Library of Congress perform archival and research functions for the Executive and Legislative branches and have served the Court or individual justices, I believe the Court should acquire and maintain as much of its own institutional record as possible. I suggest here that the Court adopt such a mission and charge the Curator and Librarian with the task of carrying it out.

  
Roger F. Jacobs

cc: Gail Galloway  
Mark Cannon



lsville" (184 reels)

Louis Dembitz Brandeis, 1856-1941; Attorney, Associate Justice of the U.S. Supreme Court, educated at Harvard Law School, practiced in Boston. He was a legal pioneer in government regulation, labor law and social welfare causes, known as the "people's attorney." Author of the Brandeis Brief, he became the first Jewish member of the Supreme Court, his nomination in 1916 bitterly fought by the many he had opposed across the bar. While on the court, he was coupled with Holmes, Stone, and Cardozo to symbolize the liberal tradition. An ardent Zionist, he visited Palestine in 1919 and kept in close touch with Palestinian affairs.

The microfilm edition contains over 250,000 items including correspondence with Felix Frankfurter, Woodrow Wilson, Lincoln and Edward Filene, Amos and Gifford Pinchot; drafts of speeches, articles and bills for legislation; newly acquired legal files which reveal his role as an estate and trust attorney, sample law firm financial records, legal diaries, and substantial material on the Justice's personal finances, as well as his commitment to progressive causes.

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### The Guide to the Microfilm Edition of "The Papers of Louis D. Brandeis at the University of Louisville"

The Guide includes an introduction to the Papers, a chronology of Brandeis's life as reflected in the papers, a history of the papers at the University of Louisville, and general editorial comment. It is an essential tool for research in the papers, since their arrangement is basically topical. The series description for each of the ten series in the papers introduces the broad topical categories and describes their peculiarities. The narrative reel notes indicate major correspondents and the subject matter contained on the microfilm roll. A name index, compiled from the reel notes and not intended to be inclusive, is found at the end of the 108-page guide.

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TO ORDER, WRITE: DEBORAH SKAGGS, UNIVERSITY ARCHIVES, UNIVERSITY OF LOUISVILLE, LOUISVILLE, KENTUCKY 40292



December 10, 1984

INAUGURATION

Dear Chief:

When we are advised as to the number of tickets available to each Justice, I would appreciate your letting me know.

We have children and grandchildren who would like to attend. My recollection is that each of us received only three tickets four years ago.

Sincerely,

The Chief Justice

Copies to the Conference

LFP/vde



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

File

CHAMBERS OF  
THE CHIEF JUSTICE

December 28, 1984

CONFIDENTIAL UNTIL ANNOUNCED

MEMORANDUM TO THE CONFERENCE:

Bill Foley, who is now 72, wishes to retire at the end of this Term or shortly thereafter when his successor is designated.

We will be announcing this in The Third Branch and several other publications around the country to stimulate inquiries. It is likely that some of the Circuit Executives may be interested.

As you know, we also have the problem of getting a replacement for Roger Jacobs, and I am asking Lewis Powell and Byron White to sit with me as a "Search Committee."

Regards,

WRB

OK

✓

P.S. We will very likely also  
lose Jim Robbins to the  
private sector - soon.  
WRB



December 29, 1984

PERSONAL

Mayo Trip

Dear Chief:

This is a brief summary of the status of my work. You have assigned me seven opinions to write for the Court as follows:

83-1065 County of Oneida v. Oneida Indian Nation  
83-997 TWA v. Thurston  
83-1274 Metropolitan Life v. Ward  
83-1466 Supreme Court v. Piper  
83-1292 Wayte v. United States  
82-1832 Town of Hallie v. Eau Claire  
82-1922 Southern Motor Carriers v. U.S.

TWA v. Thurston: I believe all votes are in on this case, and would appreciate your announcing it on January 8.

Oneida: You will recall that you originally assigned this case to me, even though at conference I was uncertain as to how I would vote. After further study, I concluded that I would vote to affirm CA2. Bill Brennan subsequently reassigned the case to me. You indicated at the time that you were open to being persuaded to join an affirmation, and I hope you decide to do so.

As difficult as the case was to write, it is not fundamentally important because Congress will have to resolve the basic questions. Moreover, since the issue of laches was not presented, my opinion leaves open on remand consideration of laches and other equitable remedies. See the last couple of paragraphs of the opinion.

Metropolitan Life: This is another case, somewhat like Oneida, in which you asked me to write. See my separate letter to you on why I count on your vote.

Piper: Recently circulated. This case should present no problem as the vote at Conference was 8 to 1 in favor of affirming CA1.

Town of Hallie: I have circulated an opinion also in this case. It involves the application of the Brown state action exemption to the antitrust laws. Again, there



should be no problem as we had a comfortable majority in favor of affirming CA7.

Southern Motor Carriers: This is a second "state action exemption" case. It involves the Rate Bureau system of recommending intrastate motor carrier rates, a system followed by a large majority of the states. The rate bureaus recommend rate schedules to the state utility commissions that have authority to accept, modify or reject any or all of the recommended rates. In addition, any motor carrier is free to file its own proposed rates with the regulatory commission independently of the rate bureau. Thus there is competition.

The critical point, however, is that there is clear state action. This is express or clearly implicit from the procedure followed for decades. Also there must be ultimate approval (by acceptance or affirmative order) by the state Utility Commission - exercising state sovereignty. In these circumstances, it is immaterial that the rate bureaus themselves are private entities. This is the only case I have not circulated, and it may require another week or so to complete as five states are involved.

Wayte: This is the Selective Service case. My opinion should circulate on Monday.

\* \* \* \* \*

I do not expect to be out of communication. Apart from the telephone, I can have papers as well as briefs for the February argument sent to me at the Kahler Hotel in Rochester. As you know, this has been done by Federal Express when I have spent a short vacation in Florida with General and Mrs. Quesada. John Stevens has done a good deal of work away from the Court and finds Federal Express dependable. In short, if surgery is required I will do the best I can to keep abreast.

My clerks will be available, of course, to assist as may be needed.

Sincerely,

The Chief Justice  
lfp/ss



December 29, 1984

CONFIDENTIAL

Trip to Mayo

Dear Chief:

This is to summarize our telephone conversation of Friday. The preliminary check at Bethesda indicates that further testing is necessary. David Utz (you may recall having recommended him to me in 1974) has talked to me, and also to Dr. O'Connell, head of urology at Bethesda. They both agree that the additional tests should be made at Mayo.

Although there is no urgency in the sense of whether these commence next week or later, David tells me that if they can get started now - and if surgery is indicated - I should be back at the Court in time for the February arguments that commence on February 18. In other words, by moving promptly, and even assuming surgery, I should miss only the January arguments.

As I will have no opportunity to brief the other Justices, I would appreciate your doing so. I particularly regret imposing Call capital cases on other Justices. Yet, these almost invariably are referred to the Conference. My clerks will be available to help.

I will have drafts of opinions sent to me by Federal Express (or other means), if I am at Mayo for any length of time.

David says that he personally will brief the public information officer at Mayo, and say that I am there for follow-up testing as a part of my annual physical. If surgery should become necessary, of course, a further statement will be made if the press inquires. Perhaps you should advise Toni House.

Sincerely,

The Chief Justice

lfp/ss