

GIBSON, DUNN & CRUTCHER
LAWYERS

ONE MONTGOMERY STREET
TELESIS TOWER

SAN FRANCISCO, CALIFORNIA 94104-4505

(415) 393-8200

TELECOPIER: (415) 986-5309

January 11, 1988

JAN 17 1989

Sally -
Hold &
remind me
to send to
LLI

JAS. A. GIBSON, 1852-1922
W. E. DUNN, 1861-1925
ALBERT CRUTCHER, 1860-1931

NEW YORK

200 PARK AVENUE
NEW YORK, NEW YORK 10166-0193

WASHINGTON

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WASHINGTON, D.C. 20036-5303

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LONDON

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LONDON SW1Y 5LP

HONG KONG

1 DUDDELL STREET
HONG KONG

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11-3 MARUNOUCHI CHYODA-KU
TOKYO 100 JAPAN

AFFILIATED SAUDI ARABIA OFFICE
CHAMBER OF COMMERCE BUILDING
P.O. BOX 15870
RIYADH 11454, SAUDI ARABIA

OUR FILE NUMBER

31009-04589

LOS ANGELES
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LOS ANGELES, CALIFORNIA 90071-3197
CENTURY CITY
2029 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-3026
NEWPORT CENTER
800 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660-6395
SACRAMENTO
1010 F STREET
SACRAMENTO, CALIFORNIA 95814-0826
SAN DIEGO
600 B STREET
SAN DIEGO, CALIFORNIA 92101-4520
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ONE ALMADEN BOULEVARD
SAN JOSE, CALIFORNIA 95113-2267
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1700 PACIFIC AVENUE
DALLAS, TEXAS 75201-4618
DENVER
1801 CALIFORNIA STREET
DENVER, COLORADO 80202-2694
SEATTLE
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7089

WRITER'S DIRECT DIAL NUMBER

415-393-8221

Justice Lewis F. Powell, Jr.
Supreme Court of the United States
Washington, D.C. 20543

Re: Letter of Recommendation to Virginia

Dear Justice Powell:

Tomorrow I am mailing my application to the University of Virginia School of Law. This would be a good time to send a letter of recommendation. I have enclosed several documents to familiarize you with my record.

I have enclosed my transcript. My G.P.A. is 3.3 and my LSAT score is 42. Running the numbers through the index provided in UVA's application packet is not encouraging. Considered as a non-resident the odds of my acceptance are as low as 10%. I have highlighted, however, an upward trend on my transcript, and, at 3.7, my in-major grades are strong. I also hope the admissions committee will recognize that I took challenging courses at a competitive school. My work experience and extracurriculars are many and varied, which should be helpful as well.

It is very kind of you to write for me, Justice Powell. The University of Virginia strikes me as a most pleasant setting where one can earn one of the countries finest law degrees; I would love to have the opportunity to study there. My brother and I are coming to Washington for the Inauguration. I hope to get a chance to see you then, so that I can thank you for this recommendation in person.

Respectfully Yours,

Gregory D. Kennedy
Intern

Exhibit B: Extracurricular Activities

ATHLETICS:

Stanford Crew, 2 years. Freshman year: earned first year letter and "Most Improved Oarsman" award; "six-man" in first novice boat. Junior year: rowed in St. Edmund Hall College's first VIII which placed fifth in a field of 38 at Oxford's annual winter regatta; was voted "Most Valuable Oarsman" by my British boatmates. Returned to Stanford to stroke a Junior Varsity IV in the Pacific Coast Rowing Championships.

Voted "Most Valuable Intramural Athlete" by Fraternity, having competed on final four softball and football teams and championship swim team.

Am competing individually in "sprint triathlons" (1 mile swim, 25 mile bike, 5 mile run).

COMMUNITY SERVICE:

Helped to conceptualize, enact, and operate Stanford's "Safe Transportation Program" (STOP). This service provided students with safe, free, and sober rides from bars and off-campus parties to their homes.

During the summer of 1986, which I spent on campus, I guided a blind Professor on morning 5 mile runs, by means of a hip to hip fetter which he designed.

Twice organized Sigma Chi's annual "Casa Olga Thanksgiving Dinner". Casa Olga is a retirement home in Palo Alto. The Tuesday before Thanksgiving we served the residents a traditional Thanksgiving meal and entertained them with conversation, singing, and skits.

SIGMA CHI FRATERNITY:

I held several offices including Rush Coordinator, Secretary, Parents' Weekend Chairman, and Publicity Chairman; Sigma Chi is Stanford's only fraternity house that is owned and operated by its members.

STANFORD COMMUNITY ACTIVITIES:

As an active member of the Stanford Newman Society, the campus Catholic community, I helped to plan liturgies and the first, and now annual, Jesuit High School Alumni Dinner.

I spent several evenings taking advantage of the rich and various campus events which are a hallmark of Stanford University. These included: readings and lecture series; film, theatrical, and musical productions; forums discussing campus concerns, e.g., the Western Culture Program changes and the Reagan Library.

Exhibit C: Description of Current Employment

I am a member of Gibson Dunn & Crutcher's first class of "Interns". Fifteen of us were recruited from Stanford's class of 1988. The program was conceived by a partner in the firm who, before going to law school, acquired extensive legal research skills, while working for two years in a law library. He felt these fundamental skills accounted for a good part of his success both in law school and in litigation. The program is designed to provide the interns with a solid foundation in legal research, while exposing them to the many aspects of preparing a case for trial. Our access to the lawyers and their time is virtually unlimited. Each intern has a "mentor" who is a partner or senior associate in the firm. The mentor assigns the majority of the intern's work, monitors his or her progress, and hears complaints. Each of these lawyers volunteered to participate in the Internship Program, and their crucial roles are well played.

We are expected to bill forty hours per week and to spend ten hours per week on "education time". Education time can be spent in a variety of ways, from reading texts on legal research or civil procedure to sitting in on an important argument at the Circuit Court.

Some of the billable work I have done includes drafting discovery requests, preparing witnesses for depositions and conducting witness interviews, searching for qualified experts to testify at trial, and joining the attorneys for on site document searches. I have written several memoranda on both factual elements of cases, and on researched points of law. Most of my time is spent on an intriguing and complex securities fraud matter. I have my own area of the case, for which I have the responsibility to develop the evidence and formulate possible litigation strategies. (Soon we will be filing for summary judgment in this area; I am excited to see if any of my ideas will persuade the court.)

I believe I already have gained a lot from this experience. Most important to me, I have made several personal friendships with the lawyers here. I have also gained an understanding of the practice of law which, I hope, will make the legal theory taught in law school more comprehensible and meaningful. This experience has made me anxious to get to law school to see the more scholarly side of the legal profession.

DEAR VIRGINIA

To its discredit mine is not a generation of letter writers. Having grown up with the simplicity and convenience of the telephone, many of my age group consider stationery, addresses, stamps, and mailboxes cumbersome and, therefore, unnecessary elements of communication. When young I toed the party line, forswore letter writing, and produced -- under the duress of my mother's insistence -- only thank-you notes. However, a few years ago, I developed an aversion to the telephone and sought to limit phone conversations to the business at hand. Firm in this dislike, I became an avid and unrelenting letter writer and, in pondering the occupation since, have become convinced of its many virtues.

My purpose is not to make any great historical arguments, such as what would have happened to the Early Church without St. Paul's letters. My purpose is not to make a political observation about how President Elect George Bush constructed a nationwide framework of supporters by maintaining, through the means of personal letters, thousands of close and loyal friendships. My point is that letters are a superior means of conveying one's feelings. The protection the form affords -- the writer is almost never present to be immediately held accountable for what has been said -- is liberating and conducive to candid and otherwise difficult expression. In placing a sentiment on paper, one refines and frames it. Both the writer and the reader are better able to understand and appreciate the expression. And the communication, being uninterrupted, is more thorough and complete.

To alone argue the attributes of letter writing would not serve the aims of this essay. I have created a writing sample, but, thus far, I have not given the Committee much insight about me. To do so, I have attached one of my letters. It is to my sister, a junior at Stanford currently studying in Paris. Please read this letter, which I hope will convey a slice of both my character and my personality -- for these are my strongest suits.

January 17, 1989

Dear Al:

This is a letter that I write enthusiastically to recommend Gregory D. Kennedy who has applied for admission to the Law School. He is the son of Justice Kennedy who is now a legal resident of Virginia. Greg graduated from Stanford (A.B.) in 1988, is spending a year with Gibson, Dunn & Crutcher in San Francisco, and remains a resident of California. His application to Virginia was filed only recently. I think I can say with confidence that if he is accepted, he will attend "our" law school.

Greg's college grades are not the strongest, though the subjects in which he did well provide the type of college education that I like and wish I had had. My guess is that Greg's grades would have been higher if he had not been a first-rate athlete and active on the campus as well as in the community.

I have read the summary of his work as an "intern" at Gibson, Dunn. I am impressed by the fact that he recorded "billable" hours on the type of work that summer clerks do after they have had a year or two in law school. U.Va. has done well with the sons and daughters of Supreme Court Justices: Potter Stewart, Jr., "Goody" Marshall, Janet Rehnquist, Susan Stevens and - I am proud to say - Molly Powell Sumner and Lewis III. Perhaps we can add Greg's name to this list.

I send best wishes.

Sincerely,

bc: Mr. Gregory D. Kennedy
Justice Kennedy

bbc: Professor John C. Jeffries, Jr.

Dean Albert R. Turnbull
Committee on Admissions
School of Law
University of Virginia
Charlottesville, Virginia 22901

lfp/ss

January 23, 1989

Gridiron Dinner

Dear Nino:

I do not plan to attend the dinner this year.

Sincerely,

Justice Scalia

lfp/ss

cc: The Conference

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF
JAMES L. OAKES

CIRCUIT JUDGE

BRATTLEBORO, VERMONT 05301-0696

FEB 2 1989

January 30, 1989

Hon. Lewis F. Powell, Jr.
Supreme Court of the United States
Washington, DC 20543

Dear ~~Justice~~ ^{Lewis} Powell:

Many thanks for your nice note. It was indeed a great pleasure -- and honor -- for me to have our first real visit at the New York State Bar Association dinner. I consider that my main job as Chief Judge of the Second Circuit is to maintain its high standards.

On the Vermont judgeship, I gather that the Republican Senator (Jim Jeffords) has left it to a Bar Association committee to recommend to him three names from which he will make a selection. It will be of the highest importance for anyone who wants the job to clear that initial Bar Association hurdle. Personally, I do not think that that is the best way of conducting the process, but that is neither here nor there.

That was a lovely issue of the Washington & Lee Law Review that I just saw was dedicated to you. No one could be more deserving!

All the best.

Sincerely yours,

James L. Oakes
Chief Judge

February 2, 1989

Dear Andy:

I mentioned to you my conversation recently with Judge James L. Oakes, Chief Judge of CA2, and a resident of Brattleboro. He then thought that your son Potter was clearly in contention for the Vermont judgeship, but did say the competition was substantial.

I enclose now a copy of Judge Oakes' letter to me of January 30. Apparently Senator Jeffords has requested the Bar Association to recommend three names. I do not know the Senator. Since Potter has been active in the State Bar, this may work out well for him.

With love,

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

lfp/ss
Enc.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 9, 1989

George C. Freeman, Jr., Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Dear George:

I am very grateful to you for the reprint of your fine article on Justice Powell's constitutional opinions. You are so very right that his opinions have had "special significance in determining the constitutional law of his day." But I would speak more broadly. His opinions will continue to have special significance for many decades to come. He is much too modest to acknowledge this and I'm delighted that you have reminded all of us of the very obvious.

I do hope we cross paths again very soon.

With warmest personal regards, I am

Sincerely,

W. J. Brennan, Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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With warmest personal regards, I am

Sincerely,

W. J. Brennan

other
Jules

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 9, 1989

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Hunton & Williams
707 East Main Street
P.O. Box 1535
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I do hope we cross paths again very soon.

With warmest personal regards, I am

Sincerely,

W. J. Brennan



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

^{file}
file - letters
to & from other
justices

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

Friday (2/10/89)

Dear Lewis,

Marion and I were sorry to hear about
your illness — no doubt due to Florida
weather. Please take care of yourself. I saw
many of your friends at the ABA meeting
in Denver.

cheers
Byron

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

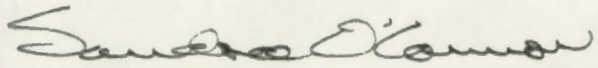
February 17, 1989

Mr. George C. Freeman, Jr.
Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

Dear Mr. Freeman,

Thank you for the copy of your excellent
article about Justice Powell's work here at the Court.
I miss him greatly on the bench.

Sincerely,


Sandra Day O'Connor

SO'C/chs

February 24, 1989

MEMORANDUM TO THE CONFERENCE:

I thought the attached article might be of interest.

L.F.P., Jr.

ss

cc: Chief Justice Burger

In Critical Legal Studies, the West Is the Adversary

Wall Street Journal 2/23/89

Excerpts from comments on the Critical Legal Studies movement by Robert Clark, whose appointment as Harvard Law School's new dean is discussed in a nearby editorial, at a Federalist Society program in New York City in 1985:

But what is CLS? How define it? I distinguish two approaches to that question, one based on the ideology of CLS and one based on its output—that is, the political attitudes that it consistently engenders.

The second or "attitudinal output" approach is easiest to grasp, so let's start with it. Consider the following seven major institutions of the modern Western world:

1. Science (especially as applied to human affairs).
2. Technology.
3. Business and commerce.
4. Large, formal organizations (e.g., large corporations, government agencies, and non-profit institutions like universities and hospitals, all otherwise known as "illegitimate hierarchies" in CLS jargon).
5. Capitalism.
6. Conventional law practice and the legal profession.
7. Traditional legal scholarship.

Let me restate the point in general form: The most fundamental attribute of the CLS movement is a generalized antipathy toward many major institutions and practices of the modern "Western" world. It is, as its name implies, a critical movement; its essence can be described as "criticalism."

What do CLS members want instead of the modern Western world? Answer: some sort of nonhierarchical, strongly "com-

munitarian" society in which there is lots of participation by everyone in decision-making of all sorts, and in which the distinction between "public" spheres of activity, which society can properly regulate, and "private" aspects of people's lives, which government should leave alone, is acknowledged to be meaningless. The criticalists have yet to work out the details of their brave new world. CLS scholars themselves are more likely to define themselves in terms of their characteristic ideological claims. This is the other approach to definition I mentioned.

Here are five typical and important claims of the criticalists:

1. *Wrongful legitimization.* Legal doctrine is often aimed at legitimating structures of power and distributions of wealth that are unjust and illegitimate.

Thoughtful legal scholars in other schools of thought are likely to agree that a major function of legal discourse is to legitimate the legal system's norms. It would be a sorry and badly functioning social system that did not try to legitimate a dominant set of norms; and it is probably impossible to do this in any society without a fair amount of myth-making and mumbo-jumbo. But this is different from contending, or assuming, that our system's rules are fundamentally unjust—as tested by some supposedly transcendent set of values or ideals—and that its mythologizing and legitimating efforts are fundamentally evil.

2. *Incoherence and contradiction.* When the texts of legal writers are examined closely and critically, they can be exposed as being full of contradictions and

deep-level incoherencies. These exposes help support the wrongful legitimization claim.

By contrast, many of us outsiders who have read a large amount of CLS literature get the recurrent feeling that most of the asserted "contradictions" it finds are more in the minds of the CLS authors than in the texts they analyze, and are frequently of little practical consequence.

3. *Indeterminacy.* Legal arguments are generally indeterminate. For each conclusion you can develop an equally plausible argument for the opposite conclusion, often by appealing to the same values or ideals as the first argument.

Traditional law professors are likely to concede that opposing arguments can usually be conjured up for any legal conclusion, but to deny vigorously that one can't often tell which is the better or more persuasive argument. The entire practice of counseling clients apart from litigation, they will say, depends on the ability of lawyers to make such distinctions.

4. *Illusions of necessity.* Explanations of legal rules and practices, especially those that purport to use general scientific methods and theories (like those of economics), are often mere attempts to create an illusion of necessity, in order to lull people into accepting the status quo and adopting a defeatist attitude toward the possibility of radical change.

This is the aspect of CLS—its denigration of "science," statistics, systematic empirical research, and the like—that I personally find most objectionable and most dangerous to the long-run health of our efforts as human beings to understand

ourselves and the world we live in.

5. *Criticism and liberation.* If you work to uncover and identify the deep structure and the most basic underlying assumptions behind the legal reasoning of others and eventually of yourself, and if you succeed in achieving this level of critical insight, you will be set free—to choose new and better assumptions and thought patterns.

If only it were so! I once looked into my basic assumptions and found the experience to be sobering, not liberating. More seriously, those who are not criticalists often wonder if it is really possible to achieve significant insight by obsessive meditation on a few texts and on what happens to be in one's mind. Might not true insight come more readily from experience in the world, or from an active, systematic probing of realities lying outside the web of words?

What has been the impact of criticalism on the Harvard Law School? The main impact has been prolonged, intense, bitter conflict among different groups of faculty members. Why? There are at least two reasons. A minor one is that some members of the CLS movement have, over a long period of time, denigrated the work of older members of the faculty. They have engaged in something that often occurs in the adolescent stage of new academic movements: a ritual slaying of the elders. This denigration has produced resentment.

A second reason is that the criticalists have acquired power. They always vote in a bloc on appointments matters. It is thought by some other members of the faculty that they often seem to vote on the basis of solidarity with candidates (or lack of solidarity) rather than on the merits. Criticalists, in turn, often question whether there is any such thing as "the merits."

March 1, 1989

Dear Sandra:

As you and I share a common interest in federalism, you may be interested in the enclosed copy of my letter to Professor Dick Fallon at the Harvard Law School. You may have seen his article in the October 1988 issue of the Virginia Law Review.

Dick is a Rhodes Scholar, and was an exceptionally able law clerk. I should have refreshed my recollection of your excellent address on federalism that you made at Washington and Lee University last fall before I wrote Dick.

It is a pity that so few professors in the great law schools have ever had any experience in state or local governments.

Sincerely,

Justice O'Connor

lfp/ss
Enc.

MAR 03 1989

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Dear Lewis

I cherish your note more
than I can say. We have
indeed been close friends for
a long time, Lewis, and its a
friendship I treasure beyond
measure. I'm particularly
indebted for your appraisal

of the magazine photograph as
proving him "photogenic." Am
going to quote you over & over
again

It was wonderful to see
you at luncheon looking so fit.
We must take advantage of
every chance to get to-gether.

Love to Jo and yourself

Bill



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 7, 1989

Dear Lewis,

Thanks for telling me about Professor Fallon's article. I shall read it as soon as time permits.

I am so happy you are back in your Chambers.

Sincerely,

Sandra

Justice Powell

The New York Times

Founded in 1851

ADOLPH S. OCHS, Publisher 1896-1935
ARTHUR HAYS SULZBERGER, Publisher 1935-1961
ORVIL E. DRYFOOS, Publisher 1961-1963

ARTHUR OCHS SULZBERGER, Publisher

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Toward a Rehnquist Court

With two unambiguous Supreme Court nominations, President Reagan has done what he said he'd do, what his warmest supporters hoped and strongest foes feared he'd do. Permitted to name a new Chief Justice, he chose William Rehnquist, once a lonely dissenter on the Court's extreme right wing. And to fill the vacancy he picked Antonin Scalia of the Federal Court of Appeals in Washington, who most closely promises the judicial philosophy of the President. The nominees are not only of like ideology; both are skilled and energetic.

These able lawyers would not be our choices for the Court, but it was Ronald Reagan's landslide. The Senate must carefully weigh their appointments, but given the nominees' qualifications, we assume confirmation.

Given that assumption, the Court will have a noticeably different look, with a sharper and younger profile for its conservative wing. Whether the Court immediately speaks with a different voice is another question. Over the 17 years of his leadership, Chief Justice Burger had already nudged the Court away from its decidedly liberal bent under his predecessor, Earl Warren.

So on the major issues that currently divide the justices and ignite politicians, the Court is unlikely to rush to abandon some recent hard-fought settlements. The 20-year-old *Miranda v. Arizona* ruling against illegally obtained confessions has been toned down in some of its restrictions on the police and prosecutors but it has been affirmed as law by the Burger Court, notably also by another Reagan appointee, Justice Sandra Day O'Connor.

Just the other day the Court refused, with Chief Justice Burger among the dissenters, to reconsider basic holdings on a woman's right to choose abortion. The Court has so far refused to retreat on core

principles of civil rights. Judge Scalia may be more hostile to abortion and affirmative action than the retiring Chief Justice, but his ascendancy would not alter the balance in these areas.

Of legal as well as anecdotal significance now will be how a Chief Justice Rehnquist applies his genial nature and collegial spirit. He has dissented from rulings that extend the rights of minorities, women, the disadvantaged and the poor. Yet he seems not to have angered his more liberal colleagues in doing so. His service may yet test the assurances he gave, in an off-the-bench speech during the 1984 campaign, that Presidents trying to reshape the high court in their own image usually fail.

Chief Justice Burger's desire to give fuller attention to next year's bicentennial of the Constitution may fully explain the timing of his retirement. But surely he and the President were aware that Republican control of the Senate is assured only until November and that other Presidents have found it difficult to win confirmation for Court appointees in their last years.

Warren Burger, ever the white-haired central casting ideal of a Chief Justice, would now yield to a leader 17 years younger, the very model of an aggressive advocate bent on change. At 61, Justice Rehnquist would look to the support of a 50-year-old Justice Scalia and, often, to Justice O'Connor, Justice Rehnquist's 56-year-old law school classmate. Chronologically, the future is theirs. Of the pre-Reagan liberals and moderates, William Brennan is 80, Thurgood Marshall 77, Lewis Powell 78, Harry Blackmun 77, Byron White 69 and John Paul Stevens 66.

Still, the ultimate glory of this unique institution is that each member is master only of himself, for life.

March 21, 1989

Dear John:

Perhaps I told you that I will be teaching at the Law School at Washington and Lee University for a few weeks beginning next Monday. One of the subjects is "Federalism".

In preparation for this class, I have been reading some of the Court's mistaken decisions. In addition to Garcia, I have just read EEOC v. Wyoming in which the Court upheld the ADEA's applicability to state and local governments. I have enjoyed rereading the Stevens/Powell debate as to whether the Commerce Clause was the "central problem" that gave rise to the Constitution.

When we have disagreed (on balance not frequently), we really took out after each other. I recall your claim that my opinion in Pennhurst overruled 25 or 30 earlier cases. Even when I disagreed, I thought you were a superb lawyer and a formidable opponent. I have often said that if I had needed a litigation lawyer when we were in the private practice, you would have been my first choice. Our differences here on the Court have never impaired our friendship.

I will be at Washington and Lee for three weeks. I will be thinking about you and Maryan down where the sun is shining and the weather is perfect.

Sincerely,

Justice Stevens

lfp/ss



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

File - Justice
MAY 09 1989

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1989

Dear Lewis:

I was in New Haven on Friday evening and learned something that I was not supposed to learn. It is that you will receive an honorary degree from Yale at commencement. My congratulations come to you for this well-deserved recognition. May it be a happy day for you.

Sincerely,

Harry

Justice Powell

May 19, 1989

Dear Thurgood:

In the event you may not have seen it, I enclose a copy of the Wall Street Journal editorial of this date.

Entitled "Second Thoughts on RICO", the editorial cites your dissent in Sedima that WJB, HAB and I joined. I also wrote a separate dissent. We were right.

Chief Justice Rehnquist, in a talk he gave recently at the Brookings Institution, is now wisely calling for legislative limitations on civil RICO.

As ever,

Justice Marshall

lfp/ss
Enc.

cc: Justice Brennan
Justice Blackmun

Wall Street Journal 5/19/89

Second Thoughts on RICO

It's not every day that the Chief Justice of the U.S. Supreme Court lets loose a primal scream against a piece of legislation, but then RICO is not just any law. William Rehnquist's recent attack on RICO, printed nearby, is an important new voice pleading that Congress finally find time in its oh-so-busy schedule to drive a stake through the Racketeer Influenced and Corrupt Organizations law. This is very possibly the single worst piece of legislation on the books.

Passed in 1970 to strengthen the hands of prosecutors against organized crime, RICO is rarely used against mobsters. It has become a rubber hose for ambitious prosecutors to coerce legitimate businesses into pleas and for plaintiff lawyers to cull treble damages and lawyers fees from banks, Big Eight accounting firms and anti-abortion protestors. More than 90% of the civil cases are now against legitimate businesses and non-Mafia individuals, costing the economy billions of dollars in wasted litigation costs and creating civil rights violations against people falsely tarred as racketeers.

The Chief Justice's attack on RICO is noteworthy because in 1985, the Supreme Court gave the green light to abusive lawsuits under RICO in its *Sedima v. Imrex* case. Lower-court judges had noted that RICO is part of a law titled the Organized Crime Control Act and ruled that therefore RICO cases must have something to do with organized crime. Some courts held that there had to be a prior criminal conviction of the defendant on a racketeering offense such as murder or extortion before a private party could use RICO to get damages. But the justices ruled five to four that although "RICO is evolving into something quite different from the original conception," only Congress could correct the problem.

Chief Justice Rehnquist was in the majority, and may now wish he could switch his vote to sign on to Justice Marshall's dissent in *Sedima*, which

warned that "civil RICO has been used for extortion purposes, giving rise to the very evils that it was designed to combat." The conservative majority forgot that it is no act of judicial restraint to admit that a law is being abused, and yet continue to wave plaintiffs into federal court.

By now, the law's main "predicate acts" are the notoriously generalized mail fraud, wire fraud and securities fraud. Indeed, RICO isn't working even where real gangster activities are alleged. A federal judge just threw out the most serious racketeering charge against Gene Gotti in New York because his alleged role in a heroin ring wasn't enough to establish operating a continuing criminal enterprise. So RICO catches Drexel Burnham Lambert but not reputed Mafia drug dons. It's little wonder many federal judges have had it with criminal RICO.

New York Federal Judge Robert Carter knocked out a big part of the RICO case Rudy Giuliani brought against Princeton/Newport officials. He dismissed mail and wire fraud charges relating to alleged stock parking on the ground that no one was harmed. For several defendants this leaves only tax charges, which are not supposed to be elevated to allegations of RICO, according to Department of Justice RICO guidelines. Princeton/Newport lawyers will find out in a meeting at Justice next week if the entire case will be dropped.

Unfortunately, the best hope for civil and criminal RICO reform or repeal is with Congress. This is a long shot. Liberal anti-business groups led by Ralph Nader have kept previous RICO reform proposals from even being considered, just as they've supported the abuse of tort claims, which grew into the liability crisis now engulfing the United States. RICO is now spreading this same litigious swamp further across the country. Congress exists in part to protect people from this sort of abuse. It's time it started doing so.

May 25, 1989

Dear Sandra:

In a recent report letter from Dean Randy Bezanson to the Law Council of the W&L Law School, he mentioned specifically your visit.

I enclose a copy of the relevant page of Randy's letter. On the basis of what Jo and I frequently heard when we were there earlier this spring, I can confirm the accuracy of Randy's comments.

As ever,

Justice O'Connor

lfp/ss

July 10, 1989

Personal

Dear Sandra,

As I did not have an opportunity to see you before we both left Washington, I write this note.

The Term must have been an unpleasant one. I cannot recall a previous Term in which there were as many concurring and dissenting opinions. Some of the intemperate language in dissents reached the level of personal criticism. This, if this trend continues, could lessen public respect for the Court as an institution.

You must know that I am fond of you personally and have a high opinion of you as a thoughtful and conscientious Justice. I have said publicly that the President could not have found a better qualified woman to be the first to serve on this Court.

I also admire John. He has made a place for himself in this critical city, and is widely liked. My affectionate best to both of you.

As ever,

Honorable Sandra Day O'Connor
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

LFP/djb

July 20, 1989

Dear Bill,

My law clerk who recently reported for duty is Michael Levy, an Honor Graduate of the Harvard Law School who clerked the past year for Judge Oberdorfer here in Washington.

As you will recall, I like for my clerk - now that I am retired - to work with a sitting Justice on a case to be selected by the Justice. Mike is an admirer of yours, and he and I both would be happy if you could find an opportunity for him to work with you on a case.

I will continue to sit on courts of appeals, and also make some lectures at the Law School of the University of Virginia. I will keep Mike fairly busy, but there will be ample time for him to assist you with a case.

As ever,

Honorable William J. Brennan, Jr.
Associate Justice
United States Supreme Court
Washington, D.C. 20543

LFP/djb

cc: Michael Levy

July 31, 1989

Dear Sirs,

The enclosed check for \$59.26 is to cover my share of the cost of the silver tray the Justices of the Court gave to John Scalia as a wedding gift.

Yours very truly,

Enclosure:
Check No. 5632

The Kirk Stieff Company
P. O. Box 64184
Baltimore, Maryland 21264

LFP/djb

bc: Gail Galloway

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

OFFICE OF
THE CURATOR

July 24, 1989

MEMORANDUM TO: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Kennedy
Chief Justice Burger, Retired
Justice Powell, Retired✓

FROM: Gail Galloway

SUBJECT: Silver Wedding Tray -- Bill for Tray

The engraved silver tray for John Scalia's wedding gift has been given to Justice Scalia to carry to California for the wedding.

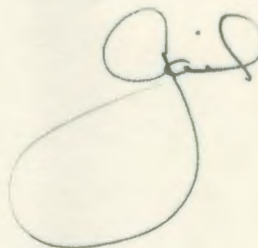
The bill for the tray totals \$592.56. This breaks down to \$59.26 per Justice. The cost is divided among all sitting and retired Justices, excluding the parents of the groom.

If you will make your check payable to:

The Kirk Stieff Company

and send it to me, I will send all the checks to Kirk Stieff.

Thank you,



Attachment

(202) 479-3298

SUPREME COURT OF THE U.S.
OFFICE OF THE CURATOR
ATTN: GAIL GALLOWAY
WASHINGTON DC 20543

SUPREME COURT OF THE U.S.
OFFICE OF THE CURATOR
ATTN: GAIL GALLOWAY
WASHINGTON DC 20543

INVOICE
 **KIRK STIEFF**
800 WYMAN PARK DRIVE BALTIMORE, MARYLAND 21211-0821
THE KIRK STIEFF COMPANY
(301) 338-6000
D-U-N-S 308-2765
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P. O. BOX 64184 BALTIMORE, MD 21264

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August 11, 1989

Dear Tony,

My understanding is that Hew Pate reports for duty next week. I am afraid he did not had much vacation, as he spent about half of it preparing for and taking the Virginia State Bar.

You may know that The Chief Justice created the "Ad Hoc Committee on Federal Habeas", and named me Chairman. Our assignment was to draft major changes in federal habeas corpus review of capital cases, and it has not been an easy one. As you would expect, Hew has attended all meetings of the Committee and has worked closely with me.

I hope it will be convenient for you if Hew continues to to do some work on this project. We are nearing the end of our assignment, and have a draft of proposed new legislation and a report.

I hope you and Mary are having a pleasant summer.

Sincerely,

Honorable Anthony M. Kennedy
Supreme Court of the United States
Washington, D.C. 20543

LFP/djb

bc: Hew Pate



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

File -
Correspondence
with Justice

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dear Lewis,

Thanks for letting me see
your speech in New York on
stare decisis. It is exceedingly
interesting — some valuable
information is contained
in it. As always, your
views are so well
balanced and considered.

Congratulations also
on the capital habeas
report. Only you could
have so successfully
chained the committee.

Oct 19, 1989

Fondly,
Sandra

October 6, 1989

Dear Bill:

Warmest congratulations on your being a recipient of the Franklin Delano Roosevelt Freedom Medal.

Having served with you for 15-1/2 years, I can think of no one who exemplifies to a greater extent than you the ideals of freedom for which the medal stands.

With affectionate best to you and Mary.

As ever,

Justice Brennan

lfp/ss

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 1, 1989

0 2 NOV 1989

Dear Jo and Lewis:

You will remember the musicians who performed at the Court's Christmas party last year and helped make it so enjoyable. (They have been asked to play again this year.)

You may also remember Robert McDuffie, who was the violin soloist at the piano dedication program in May 1988. Bobby recently performed at the Kennedy Center with the Warsaw Sinfonia under the baton of Yehudi Menuhin. This concert was repeated at Carnegie Hall and elsewhere on a 16-concert tour. Bobby will be in Washington again in recital at the Kennedy Center on November 21. Perhaps some of you saw the excerpt last Sunday on CBS's "Sunday Morning" program.

Wanda and Ron Martinson are opening their home for a musical evening on Sunday, November 19. Robert McDuffie will join us as he has before and will be part of a smorgasbord of stylings ranging from classical to country-western and from jazz to opera. There will be something to appeal to every musical taste.

Dottie and I join with Wanda and Ron in extending a warm invitation to you for a casual evening of dinner and entertainment that Sunday beginning about 6:30 p.m. If your schedule allows you to join us, please RSVP to Wanda. She will see that you receive a map to their home in the Lake Barcroft area of Falls Church. It will be a pleasant evening, I know.

Sincerely,

Harry

Justice and Mrs. Powell

Fair Hope Farm

Fair Hope Farm

Dear Lewis

Sept. 19, 1989

Best wishes for
a Happy Birthday
today! It was
good of you to
attend the dinner last
night. Sandra

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

NOV 1989

CHAMBERS OF
JUSTICE ANTHONY M. KENNEDY

9 Nov 1989

Dear Lewis,

Welcome back to this belly
where principle and logic prevail over
posturing, at least most of the
time.

You have some reviews on today's
appearance before Senate Judiciary

Yours, Tony

Nov 16
November 10, 1989

Dear Harry:

Thank you for your letter and the invitation to attend a musical evening on Sunday, November 19, with Wanda and Ron Martinson.

It is with genuine regret that I write to say we probably will not be able to attend. We have agreed to spend a long weekend on the eastern shore of Maryland, Friday-Sunday, November 17-19.

We have always enjoyed the Martinsons at the Court's Christmas party, and we also well remember when Robert McDuffie was here in May 1988. It was a memorable afternoon.

I am sending a copy of this letter to Wanda with very best wishes to all of you.

As ever,

Justice Blackmun

lfp/ss

cc: Mrs. Wanda Martinson

December 5, 1989

Dear John:

I think Jo has called Maryan. I want to add that we have never been to a happier anniversary party than yours last Friday evening.

The entire Court was present. I liked the other guests whom I met, and one rarely goes to a large dinner where the spirit was as high. The evening also ended on a high note. I think Maryan could get a fine job as a "song and dance" star.

Affectionate best to you both.

As ever,

Justice Stevens

lfp/ss

December 27, 1989

Dear Cissy and Thurgood,

Jo and I appreciate a great deal your Christmas greetings. It was a most attractive card. The years now seem to rush by, and we see too little of dear friends.

Jo and I were in our Richmond home for the Christmas holidays. I had a nice visit with Oliver Hill who has been a friend for many years.

With affectionate best to you both.

As ever,

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

lfp/ss