

*Misc
mem*

January 9, 1973

Dear Chief:

I would like to have the following cases put on the discuss
list for the Conference on Friday, January 12:

No. 72-5311 Brown v. Wymand - p. 5

No. 72-5381 Horsley v. Maryland - p. 6.

Sincerely,

The Chief Justice

lfp/ss

January 11, 1973

Chief Justice Marshall's Watch

Dear Mr. Chief Justice:

In accordance with the prior correspondence, I deliver to you herewith the watch of Chief Justice John Marshall.

This was owned, as you will recall, by a distinguished Virginia citizen, Mr. Jay Johns, who gave the watch to the College of William and Mary expressing, at the time, the hope that the College would lend the watch to the Court to be exhibited here.

As the previous correspondence shows, the College has agreed to this.

Sincerely,

The Chief Justice

misc
mem }

January 21, 1973

Absence Memorandum

Dear Chief:

This will confirm that I plan to be away from the Court from the middle of the day on January 22 until the morning of February 2.

Jo and I will be at Delray Beach at the following address:

1375 South Ocean Boulevard
Delray Beach, Florida 33444

I will give my telephone number to my chambers and always can be reached and will be happy to talk to you at any time if this becomes necessary.

Arrangements have been made with the Marshal for the installation of the ceiling lights in my chambers during my absence, with work commencing on the afternoon of the 22nd. I believe Mr. Pilkins also plans to make another attempt to find the solution to the radiator "popping" problem in my office. Mr. Pilkins has been very diligent and concerned, but the source of the problem has not yet been identified.

My No. 1 secretary, Sally Smith, will be away for a week, as she had only a most limited vacation last year. Miss Shelton will be here, but will be stationed in one of the upstairs offices while the ceiling lights are being installed.

If you wish to reach me, I suggest that you go through Miss Shelton, or my senior clerk, Larry Hammond.

Sincerely,

The Chief Justice

lfp/ss

Teelu - Feb 16 Cf.

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

CHAMBERS OF
THE CHIEF JUSTICE

January 24, 1973

PERSONAL AND PRIVATE

MEMORANDUM TO THE CONFERENCE:

The attached story from Time is a gross breach of security of the processes of the Court and goes to the very heart of the integrity of our processes.

It appears that the admonitions of Justices to law clerks have fallen on deaf ears, at least as to some. Had one of my clerks even talked with this reporter, or any other reporter, in these circumstances -- as some law clerks have done -- I would dismiss him or them forthwith.

It is plain to me that the article could not have been written without access to a draft of the opinion. We have an obligation to find the source.

If we sit placidly by, the impression may get around that we are tolerant of this kind of professional misconduct and I have no intention being tolerant any longer about repeated breaches of the confidential matters of the Court.

As soon as all are available, I will call a special conference.

Regards

WFB

Abortion on Demand

Over the past half-dozen years, Americans have taken an increasingly liberal attitude toward abortion. Four states* already permit abortion on demand; in the other 46, pressure is building for the easing of restrictive statutes. But the opposition is rallying its forces, too, and in recent months the controversy has become more heated than ever. The legal battles may be nearing an end, however. Last week *TIME* learned that the Supreme Court has decided to strike down nearly every anti-abortion law in the land. Such laws, a majority of the Justices believe, represent an unconstitutional invasion of privacy that interferes with a woman's right to control her own body.

The historic ruling, upholding a challenge to Georgia's restrictive abortion statute, will permit states to impose only minimal curbs on the right to abortion at will. These might include consent of a physician, licensing of abortion facilities and a ban on late termination of pregnancy. Beyond that, a woman's freedom to end her pregnancy will not be significantly abridged. No decision in the court's history, not even those outlawing public school segregation and capital punishment, has evoked the intensity of emotion that will surely follow this ruling. The pronouncement, ending 13 months of wrangling among the Justices, is certain to be met with passionate resistance by abortion opponents and to stir new controversy across the nation.

The basis for the court's ruling is a 1965 Supreme Court decision that struck down Connecticut's anti-contraception law and recognized for the first time a constitutional right to privacy in family, sexual and other matters. The Justices were also influenced by the 1972 opinion of U.S. District Judge Jon O. Newman that overturned Connecticut's anti-abortion statute. Newman concluded that a fetus is not a person until it is born, and that it has no constitutional rights. Though acknowledging that there are wide differences of opinion about the moment when human existence begins, Newman ruled that the moral certainty of some people "must remain a personal judgment, one that they may follow in their personal lives and seek to persuade others to follow, but a judgment they may not impose upon others by force of law."

No court ruling can settle the ethical questions about abortion. In fact, as legal restraints are removed, the ethical issues become more urgent; every woman must then rely entirely on herself in deciding whether or not to end an unwelcome pregnancy. She may be influenced in her choice by religious and philosophical considerations, by her

*New York, Washington, Hawaii and Alaska.

views on the right of self-determination, or perhaps by her awareness of the social and psychological consequences of abortion.

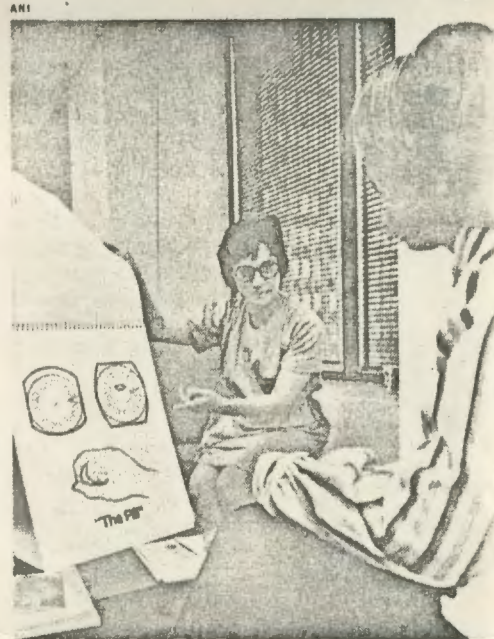
► **WHEN DOES LIFE BEGIN?** Most theologians and philosophers believe that she should base her decision on the question that Newman found to be a matter of individual judgment: when does a human being begin to exist? Is a fetus only "a bit of vegetating unborn matter" that counts for nothing, as Physician H.B. Munson asserts? Or is it a real person whose destruction Terence Cardinal Cooke describes as "slaughter of the innocent unborn"? The view of the fetus as a person has spawned a nationwide, Catholic-dominated, Right to Life movement whose partisans insist that abortion deprives the fetus of due process under the Constitution. Asserts Fordham Law Professor Robert Byrn, a leader of the movement in Manhattan, "I believe that each of us has the right to privacy. But there is a superior interest—the right to life."

Some biologists believe that humanity begins at conception because the fertilized egg cell contains human DNA (deoxyribonucleic acid). Manhattan Lawyer Cyril Means Jr., among others, finds this line of reasoning unconvincing: each sperm and egg also contain DNA, yet hardly anyone would argue, even metaphysically, that spermatozoa and ova possess the value of human beings.

A more persuasive argument makes a distinction between an embryo and a viable fetus—one sufficiently developed to survive outside the uterus. Because of incubators and sophisticated medical techniques, such survival is now possible after 28 weeks. "In this modern day," asserts R. Paul Ramsey, a Methodist and a professor of religion at Princeton University, "viability must be regarded as the equivalent of birth."

Most behavioral scientists, however, do not believe that viability marks the beginning of humanity. In their view, a fetus is not a person but a coherent system of unrealized capacities, and humanity is "an achievement, not an endowment." Anthropologist Ashley Montagu concurs, arguing that the embryo, fetus and newborn do not become truly human until molded by social and cultural influences after birth.

► **WHOSE RIGHT TO LIFE?** Some ethicists are not especially concerned about pinpointing the moment when human life begins. Philosopher Hans Jonas, who teaches at Manhattan's New School for Social Research, emphasizes rather that "a mother-to-be is more than her individual self. She carries a human trust, and we should not make abortion merely a matter of her own private wish." A secular ethicist, Jonas believes that society has a "social responsibility" toward pregnant women: it must protect the "mission of motherhood against



COUNSELOR EXPLAINING THE PILL

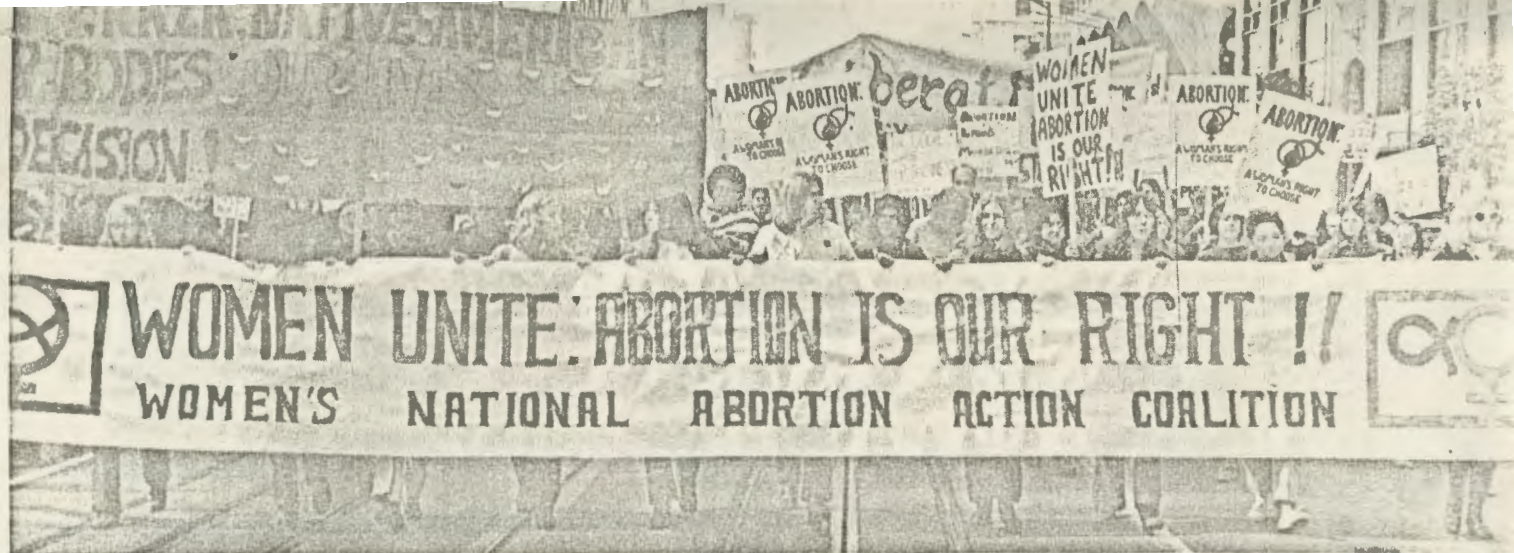
the clamors of individuals or of social movements. To give this mission over completely to individual choice oversteps the order of nature." Others disagree. According to Reform Rabbi Israel Margolies, a fetus "is literally part of its mother's body, and belongs only to her and her mate."

In fact, feminists—and male sympathizers—insist that the fetus belongs to the woman alone, and that her sovereignty over her body is absolute. Feminist Emily Moore notes that open abortion recognizes "the needs and desires of half the population—women." She complains, too, that "we have a celibate male religious hierarchy which is in the forefront of opposition to the full recognition of women as persons, and we have male-dominated legislatures and a male-dominated medical profession who are loath to relinquish their role as decision makers in this arena."

That male reluctance, Psychoanalyst Robert B. White suggests, stems from powerful unconscious and irrational motives: "Pregnancy symbolizes proof of male potency. If men grant women the right to dispose of that proof, we men feel terribly threatened lest women rob us of our masculinity."

► **SOCIAL EFFECTS.** Proponents of abortion argue that anti-abortion laws not only abridge women's rights but abridge them unequally. They cite Anatole France, who in 1894 wrote sardonically that "the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges." What his words meant then was that the rich could find beds; what they suggest now is that despite anti-abortion laws, rich women can always find doctors who, for a price, will end their unwanted pregnancies.

Anti-abortion laws are also socially harmful, say those who favor abortion, because they require the birth of unwanted offspring—"foredoomed children," Manhattan Psychoanalyst Nat-



WOMEN'S NATIONAL ABORTION ACTION COALITION DEMONSTRATING IN DOWNTOWN SAN FRANCISCO (1971)

ROGER LUBIN



ABORTION FOE DISPLAYING FETUS

Shainess calls them. Indeed, a Swedish study of 120 wanted children and 120 others born to mothers who had been refused abortion suggests that Shainess could be right. By age 21, some 28% of the unwanted offspring had required psychiatric treatment as against 15% of the wanted children. Similar differences in delinquency rates, school failures and need for welfare aid led the researchers to conclude that "the unwanted children were worse off in every respect." Still, unwelcome pregnancies do not necessarily result in unwelcome infants: pregnant women often change their minds when their children are born, and "unwanted" babies are very much wanted by adoptive parents.

Some abortion opponents fear that liberal laws encourage an "abortion habit." Indeed, studies in Japan and the Soviet Union, where abortions are readily obtainable, suggest that some women do seek repeated operations. In the U.S., one preventive measure is already being tried on an experimental scale. At San Francisco General Hospital, a new

kind of mental health professional called the "abortion counselor" meets with patients before, during and after their operations, in part to help women understand what emotional factors may have kept them from using adequate contraception.

► **PSYCHOLOGICAL EFFECTS.** As for the psychological effect of abortion on women, not much is known. "While the literature is immense," says Psychologist Henry David of the Transnational Family Research Institute in Washington, D.C., there is "undue reliance on impressionistic case reports." The one certainty, he says, is that "there is no psychologically painless way to cope with an unwanted pregnancy."

Psychiatrist Theodore Lidz feels that abortion is always "a potential major trauma," and Washington, D.C., Psychiatrist Julius Fogel believes that "a psychological price is paid. It may be alienation, it may be a pushing away from human warmth." In the experience of Los Angeles Psychoanalyst Ralph Greenson, abortion is often followed by a delayed reaction of depression. Oddly enough, the father is more likely to feel guilty than the mother.

Many experts find that the emotional aftermath of abortion depends somewhat on circumstances (abortion is harder on single women for example, than on married ones) and greatly on emotional health. A study by Psychiatrist Norman Simon found that reactions were mild and transient in women who were relatively stable before their pregnancy was terminated.

In the experience of Psychiatrist Carol Nadelson of the Pregnancy Counseling Service in Boston, giving up a child for adoption "is a much more major trauma than abortion." Psychologist David points out that while psychosis after childbirth develops in 4,000 U.S. mothers each year, there are few cases of post-abortion psychosis. Nor is there much evidence even of less serious emotional trouble.

According to a team of Harvard psychiatrists who have studied 100 cases, "the vast majority of women do

not experience mental anguish." Quite the contrary: they feel great relief when the abortion is over, and their mental health becomes and remains better. In fact, after surveying 75 of his colleagues in the U.S. and abroad, Psychiatrist Jerome Kummer concluded that the notion of post-abortion mental illness is probably myth: "Abortion, far from being a precipitator of psychiatric illness, is actually a *defense* against it in women susceptible to mental illness."

Kummer is not alone in his positive view. For many women, according to Psychiatrist Nadelson, the experience "can produce psychological growth." Feminist Moore concurs: "For the woman who has let her life wash over her, who has let her life be directed by forces outside of herself, to make a decision to take charge of her life can be an extremely liberating, positive experience. For the first time in her life, she is the master of her destiny."

Catholic author Sidney Cornelia Callahan disagrees: "That was Raskolnikov's argument in *Crime and Punishment*: that to kill somehow gave him a sense of growth. I would say everything you have said for contraception, but not for abortion." Nevertheless Moore is convinced that she is right—and from her own experience even concludes that it can sometimes be wrong *not* to end a pregnancy: "It would have been extremely immoral for me not to have an abortion when I did. There were circumstances having to do with my family, my studies, my future, my health. Taking these factors into account, it would have been grossly unfair to me, to the child and to my family to have carried a pregnancy to full term."

Joseph Fletcher, an Episcopalian and a professor of medical ethics at the University of Virginia, is typical of those who favor abortion. In his opinion, the freedom to get an abortion—and the exercise of that freedom—represents an advance in social ethics. In fact, he says, the nation's increasingly liberal outlook is "a welcome trend away from the sanctity-of-life attitude toward a quality-of-life ethic."

Sally - Give to me for Feb 16. Confirmed

Re: Time Magazine article in Monday, January 22 issue

David Beckwith, a Washington Bureau reporter for Time Magazine, was a law school acquaintance of mine at Texas. We have had lunch together several times this year (and on one occasion my wife and I have had supper at his apartment).

On Wednesday of last week, January 17, 1973, I had lunch with Dave here in the Supreme Court cafeteria. Dan Coquillette, who happened to be going through the cafeteria line at the same time, joined us for lunch. Nothing was said concerning the Court during lunch. Afterward, I walked with Dave to the northwest door. During the short walk from the cafeteria to the door, Dave indicated, in casual conversational terms, that he was presently doing background work on a major article for Time on abortion. He stated enthusiastically that ~~the~~ the story probably would be run as a cover story when, and if, the cases were handed down, and that for him it would be a major accomplishment. He then recounted several bits of information which he said he knew about the cases then under submission. I recall that he referred to the opinions as "Blackmun's opinions," that the vote in the cases was 6-3, that it was a "Griswold case," and that it would be coming down very soon, although he was not certain exactly when. I was surprised by the apparent depth of his knowledge, but did not corroborate or contradict his statements.

His final remark was to the effect that he would like to know more about the legal theory. He asked me if I could suggest any good source material on the application of the Griswold theory in the abortion area for his use in preparing to write the story. I told him that Judge Newman's opinion in the Connecticut abortion case was the best thing I had seen. I did not tell him, as the article suggests, that "Justices were

influenced" by Judge Newman's opinion, although I believe I indicated that the case was being held.

That was the end of our conversation. The next afternoon Dave called me and said that the Covington & Burling library (to which his Magazine has access) did not have a copy of the Newman opinion. He asked me whether I could get him a copy, and I said I would. Later that evening, while I was working late, Dave and his girlfriend came by and picked up a copy of the Newman opinion at the police table at the northwest door. These are the only contacts I have had with Dave about this matter before the article appeared in this week's magazine.

When the article came out I talked to him on the phone and told him that I was terribly upset about the article. I asked him about his prior statements that he was doing background research on an article to be published after the decisions were rendered. He explained that Time staff members in New York had changed their minds and had decided instead to run the abortion piece in an abbreviated form in its new "Sexes" section. The article was authored by another reporter in New York and people working on the story there pressed Dave about his information with respect to the cases. I asked him specifically about the statement implying that the Justices "were influenced" by Judge Newman's opinion. He could not recall whether he had written his rider that way or whether it was a last minute editorial change in New York. In any event it was not a statement based on peculiar inside knowledge.

I told him that I felt personally partially responsible for the apparent security leak and that I felt an obligation to make my involvement known. He said that he was surprised that I would feel that I was

responsible since he had gotten all of his important information from other sources. Looking back on our conversation of last week, it now appears to me that he may well have been "baiting" me. Each of the things he told me could have been based on either an educated guess or on the Washington Post article of last summer. I do not know.

Larry A. Hammond
Law clerk to Mr. Justice Powell

Feb 16 Conference

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

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CHAMBERS OF
THE CHIEF JUSTICE

February 14, 1973

MEMORANDUM FOR THE CONFERENCE

Subject: Payment of Fees and/or Expenses to Appointed Counsel --
the applicability of the Criminal Justice Act of 1964 (as
amended) to "collateral attack" cases

Situation Presented: The Clerk has received several requests
for payment of fees and expenses, in accordance with the Criminal
Justice Act (18 U.S.C. 3006A), from attorneys who were appointed
by this Court to represent litigants in cases arising under 18 U.S.C.
2241, 2254, 2255, or 18 U.S.C. 4245. He requests directions on
whether he should authorize payment.

Background: As noted in my memorandum for the Conference
of January 5, ^{1/} the Criminal Justice Act of 1964 (as amended), 18
U.S.C. 3006A, now provides that representation may be furnished,
according to the provisions of the Act, in cases based on 18 U.S.C.
2241, 2254, 2255 or 18 U.S.C. 4245. More precisely, the new sub-
section provides:

(g) Discretionary appointments.-- Any person subject
to revocation of parole, in custody as a material witness,
or seeking relief under section 2241, 2254, or 2255 of title
28 or section 4245 of title 18 may be furnished representa-
tion pursuant to the plan whenever the United States

^{1/} Linda R.S., et al. v. Richard D. and Texas, et al. (Motion
for the Appointment of Counsel).

magistrate or the court determines that the interests of justice so require and such person is financially unable to obtain representation. Payment for such representation may be as provided in subsections (d) and (e).

Issue Presented: When the Court appoints counsel in a case based on one of the above "collateral attack" statutes, should the Clerk assume that payment under the provisions of the Criminal Justice Act is authorized or is further authorization from the Chief Justice or the Court necessary?

Discussion: The question seems prompted by two ambiguities:

(a) Statutory construction: The pertinent subsection of the revised statute notes that, in collateral attack cases, the party "may be furnished representation" (emphasis supplied). The next sentence provides that "[p]ayment for such representation may be as provided in subsections (d) and (e)" (emphasis supplied). It has been suggested that this subsection can be read as permitting a court to appoint counsel in a collateral attack case but, at the same time, to refuse payment of fees and expenses in accordance with the Act.

(b) Rule 53(7)(8): One could argue that these two subsections, in their present form, could be construed to permit fees and expenses under the Criminal Justice Act only in the case of direct federal appeals, while limiting counsel in all other cases (including collateral attacks) to the recovery of travel expenses.

Both of these interpretations seem strained -- especially in light of the legislative history of the 1970 Amendments to the Criminal Justice Act. In discussing the expansion of the Act's scope, the House Report made it clear that it was the intent of Congress to provide reimbursement under the Act whenever the Court felt the case merited appointing counsel. In its analysis of section 1(a)(3) of the amendments, the House Report stated:

Counsel has often been appointed to represent persons in such proceedings [collateral attacks], but compensation has not been available under the 1964 act. The committee believes that compensation should be available under the act whenever a judge determines that counsel must be appointed to safeguard the interests of justice. 2/

Later, in discussing section 1(g) of the amendments, the Report, while focusing on the trial rather than the appellate forum, notes:

In circumstances where the court deems it essential to appoint counsel, the attorney should be entitled to compensation and the benefit of other resources provided by the Criminal Justice Act. 3/

The same language appears in Senate Report 91-790, 91st Congress, 2d Session.

It seems reasonable to read the Act as meaning that, in cases where the Court deems it necessary to appoint counsel, the Congress intended to compensate counsel under the Act.

2/ House Report No. 91-1546, 1970 U.S. Code, Congressional and Administrative News p. 3988.

3/ House Report No. 91-1546, 1970 U.S. Code, Congressional and Administrative News p. 3993.

The failure of our Rules to deal with the question of payment in "collateral" cases apparently stems from the fact that our Rules were promulgated several months before the enactment of the pertinent amendments. In accord with the consensus of the Conference, Mr. Ripple is working on a draft of an amendment to our Rule 53 to remedy this situation.

I recommend that the Clerk should now be advised that he may approve the payment of fees and expenses under the Criminal Justice Act for all counsel appointed in cases based on 18 U.S.C. 2241, 2254, 2255 or 18 U.S.C. 4245. Payment, of course, is actually made by the Administrative Office of the United States Courts upon receipt of an approved voucher from the Court.

Regards,

WZB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1973

FILE COPY

PLEASE RETURN
TO FILE

Re: Payment of Fees and/or Expenses
to Appointed Counsel

Dear Chief:

I agree with your recommendations set forth in your
circulation of February 14.

Sincerely,

Lewis

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 14, 1973

Re: Payment of Fees and/or Expenses
to Appointed Counsel

Dear Chief:

I agree with your recommendations set forth
in your circulation of February 14.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

February 14, 1973

Re: Payment of Fees and/or Expenses
to Appointed Counsel

Dear Chief:

I agree with your recommendations set forth in your
circulation of February 14.

Sincerely,

The Chief Justice

cc: The Conference

Spencer - Put in Back of Book

Supreme Court of the United States

Washington, D. C. 20543

February 14, 1973

MEMORANDUM TO THE CONFERENCE

Subject: Report on Chambers Actions of the Chief Justice on
Miscellaneous Motions and herewith submitted to the
Conference for consideration along with other "non-
discuss" matters

1. D-10 - In the Matter of Joseph E. Ruggiero

Issue Rule to Show Cause

2. D-9 - In the Matter of Seymour R. Thayler

Issue Rule to Show Cause

3. No. 72-212 - Cupp v. Murphy

Motion of Americans for Effective Law Enforcement, Inc.,
et al. for leave to file a brief as amici curiae.

GRANT

4. No. 72-535 - United States & I. C. C. v. S. C. R. A. P.
No. 72-562 - Aberdeen & Rockfish v. S. C. R. A. P.

(1) Motion of appellants for additional time for Oral
Argument.

GRANT

(2) Motion of S. C. R. A. P. for admission pro hac vice of
Peter H. Meyers, Esq.

GRANT

(3) Motion of Environmental Defense Fund, National Parks
and Conservation Association and Isaak Walton League of
America for admission pro hac vice of John F. Dienelt, Esq.

GRANT

5. No. 71-1442 - Colgrove v. Battin

Motion of California Trial Lawyers Association for leave to file a brief amicus curiae in support of Petitioner.

GRANT

6. No. 59 Orig. - United States v. Nevada and California

Motion of Amicus Curiae, Pyramid Lake Pointe Tribe to argue orally.

DENY

7. No. 71-1623 - Bullock v. Weiser

Motion of Appellees to divide oral argument.

DENY

February 21, 1973

mem
memo

Dear Chief:

Please have the following case put on the discuss list for the Conference on Friday, February 23:

No. 72-885 United States v. Richardson

Sincerely,

The Chief Justice

February 21, 1973

Re: No. 72-865 - City of Petersburg, Va.
v. U. S.

Dear Chief:

At the last Conference, the above case was relisted at my request after there were fewer than four votes to grant cert. I indicated, subject to checking on the status of the Richmond annexation case, that I would probably write.

I have now learned that, after losing its argument with the Attorney General (in which I participated), the City of Richmond has followed the procedure prescribed by the Act and has instituted suit in the Court of Appeals for the District of Columbia. The case is now pending there, and it involves precisely the same issue as the Petersburg case: namely, whether the Voting Rights Act of 1965 applies to an annexation by a city of territory in an adjacent county, where there is no evidence that the annexation was racially motivated in any sense. Annexation, authorized by Virginia law for nearly a century, is the only feasible way for a city to expand its boundaries - action almost indispensable to avoid ending up with the type of urban rot so frequently found in core cities in our country.

There is not one word in the history of the Act of 1965 (at least I could find none) which suggests that it was intended to proscribe the expansion of city boundaries in the normal way authorized by state law. I realize that Perkins reads the other way as to interpretation of the Act, but in this respect that case is egregiously wrong.

Unfortunately for me, I cannot in good conscience take part in the Petersburg case which involves precisely the same issue now pending in the Richmond case in the Court of Appeals for the District. Accordingly, I ask to be marked out on the public record - although I must say that I wish the Court would take a second look at this erroneous decision.

Sincerely,

Mr. Chief Justice

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

CHAMBERS OF
THE CHIEF JUSTICE

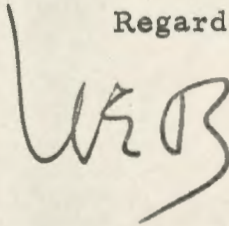
March 1, 1973

MEMORANDUM TO ALL ASSOCIATE AND RETIRED JUSTICES:

Vera and I would like to have the Court out to the house for a party near the end of the Term. Will you hold Saturday, June 23, subject to a possible change "for want of a quorum".

Please advise the office of your availability for this date and Vera will then send the "official" invitation.

Regards,



cc: Mrs. Black

Have posted on his
desk Calendar

B

March 1, 1973

Dear Chief:

Saturday, June 23 - if we are not totally
exhausted by then - looks like a grand time for your
party.

Sincerely,

Mr. Chief Justice

March 12, 1973

Dear Chief:

I enclose a copy of a letter inviting me to spend two or three days at Yale during 1973 or 1974 as a Visiting Chubb Fellow. I would, of course, not think of going in late September, and am not sure that I will go at any time - although the invitation is an interesting one.

I bother you with this to inquire as to the policy with respect to accepting honoraria. Since coming on the Court, I have received a number of requests to speak or participate in various programs for which an honorarium is offered. To date, I have not accepted an honorarium from anyone.

The new Standards of Judicial Conduct allow the acceptance of honoraria, but I am interested in whether members of the Court have a policy or a feeling about this. Obviously, I would not accept a speaking commitment before a commercial, labor or other private group or association. In any event, I would certainly wish to conform to established traditions of the Court.

Sincerely,

Mr. Chief Justice

Attachment

March 22, 1973

Handwritten:
Mun
coming

Dear Chief:

I have read with great interest Judge Burke's letter of February 26, to Judge Johnson of the Supreme Court of Texas, outlining the system employed in the California Supreme Court.

It would be interesting to see a copy of the budget of that Court, including the exact numbers of persons on the Central Research Staff, their salaries, and the same information with respect to law clerks and all other staff assistance.

Although there are only seven Justices on the California Court, as I recall, if we had a sufficiently detailed copy of its budget, we might be able to compare it with our own - perhaps to our advantage with the House Appropriations Committee. Of course, we have a much larger staff of people who take care of the public, policemen, etc. But if we had a detailed analysis of personnel employed, their job or staff functions, together with salaries and budget, it might be very helpful.

It may be that other courts (e. g., Court of Appeals of New York) might be worth checking.

Sincerely,

The Chief Justice

lfp/ss

March 26, 1973

Dear Chief:

It occurred to me during the Solicitor General's argument today that it might be appropriate for members of the Court to host a dinner for the Griswolds after he has argued his last case.

If any of his cases remain undecided at that time, perhaps there is some question as to the propriety of entertaining the government's principal advocate. Yet, if he has resigned and is no longer in office, I myself do not see how there could be a legitimate basis for criticism.

Perhaps there is some precedent that would be controlling, and with which I am not familiar.

Sincerely,

Mr. Chief Justice



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

CHAMBERS OF
THE CHIEF JUSTICE

March 26, 1973

Dear Lewis:

Regarding your note of today, several months ago I brought up at Conference the fact that Vera and I contemplated having a reception for the Griswolds at the end of the Term, and we have recently fixed the date for Friday, June 15.

Potter Stewart was the only one who commented at the time and said he was inclined to think it ought to be done as an official court matter. This is entirely acceptable to us and I have been waiting for someone to raise the matter as you have now done; the way to bring it to a head is to suggest that the reception be given by the Court.

I prefer a reception to a dinner because we could invite the Solicitor General's staff and other personal friends of his and Mrs. Griswold.

Regards,

Mr. Justice Powell

March 27, 1973

Dear Vera,

Jo prefers the color picture taken last spring, but would defer to whichever picture a majority of the other ladies want.

Sincerely,

Mrs. Warren E. Burger

Mrs. Warren E. Burger

miss
memo

March 30, 1973

Dear Chief:

This refers to my letter with respect to the two Federal Power Commission cases (72-486 and 72-488).

As stated to the Conference, my former law firm represents utilities, including Vepco which is regulated by the FPC and Commonwealth Natural Gas Corp. Although the latter is not regulated by the FPC, it purchases gas from regulated companies and I had thought it might possibly have some interest in the outcome of this litigation. In addition I served on the board of Commonwealth and owned some of its stock.

Although my former partners have checked carefully and advised that there is no conflict of interest, I would prefer not to write the opinion in these cases.

As previously stated, I am anxious to carry my full load on the Court and therefore again request that you assign me three cases from those argued during the past two weeks. I attach a list of cases which interest me particularly and which would fit in well with my workload arrangement with my clerks. If you are looking for candidates to write in these cases, you may put my name in the "pot". But you have the overall picture, and I will, of course, fit in wherever you think best.

Sincerely,

The Chief Justice

lfp/ss

72-634 U. S. Civil Service Comm. v. Letter Carriers

72-493 - Vlandis v. Kline

72-624 - U. S. v. Pa. Ind. Chem. Corp.

71-1647 Federal Maritime Com. v. Seatrain

72-419 Pittsburgh Press

72-586 - Cady v. Dombrowski

72-212 Cupp v. Murphy

* * * *

If you decide to have a signed opinion in Gilligan (rather than have Ken Ripple do a PC for the Court), I would be happy to tackle it.

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

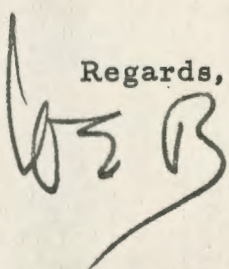
CHAMBERS OF
THE CHIEF JUSTICE

April 12, 1973

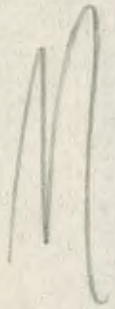
MEMORANDUM TO THE CONFERENCE:

The funeral services for John Lord O'Brian will be held at 2:30 Friday, and I believe I will attend as briefly as possible. In light of his remarkable life it might be appropriate for us to attend in a body, with Retired Justices joining us.

We could run the Conference to 2:15 and recess (if we have not concluded) for one hour.

Regards,


Copies to Retired Justices

 P. S. -- Please let me have your reaction as our attending in a group so that special seating can be arranged. -WEB

*Min
inver*

April 12, 1973

Dear Chief:

As I knew and greatly admired John Lord
O'Brian, I will be glad to attend the funeral.

Sincerely,

Mr. Chief Justice

*Miss
memo*

April 16, 1973

Dear Mary:

I am writing to inquire whether it would be possible for Alma Farabaugh to work in my Chambers for the week April 30 through May 4.

Peggy Fore will be leaving on April 27 to be with her husband who is having surgery in Richmond. Her replacement will not be available until May 7. Though Sally will, of course, be in the Chambers, this will be a busy week for us and it would be most helpful to have Alma who is already familiar with our work habits. I'm sure you understand that I do not wish to inconvenience the Chief, his clerks or the secretarial pool.

Sincerely,

Miss Mary Burns

cc: Mrs. Dorothy Kephart

Misc
memo

April 17, 1973

1973 Term Schedule

Dear Chief:

This refers to your memorandum of April 16.

The schedule for next Term looks fine to me. I particularly welcome the limiting of arguments, where feasible, to three days a week. This enables me, and perhaps others, to prepare more adequately for the Friday Conferences.

As you note, if there is a need for additional hours of argument, we can always make adjustments.

Sincerely,

Mr. Chief Justice

cc: The Conference

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

Mem
mm
✓

CHAMBERS OF
JUSTICE POTTER STEWART

April 17, 1973

Re: Proposed Schedule for October, 1973 Term

Dear Chief,

The proposed schedule circulated yesterday is satisfactory to me, although it is not the one I would have chosen. I suggest we might discuss the matter briefly at our next Conference.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

May 10, 1973

Court Brochure

Dear Chief:

Although I have not read the draft with meticulous care, you have competent people working on it and it looks fine to me.

I quite agree that the present brochure is both inadequate and out of date.

Sincerely,

The Chief Justice

lfp/ss

man
enon

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1973

Dear Chief:

I find that I, too, have been mailed a copy of the complaint in Sloan v. Nixon, et al., pending in the District Court for the Southern District of New York. I am quite agreeable to the suggestion made in Conference this morning that the matter be referred to the Solicitor General in order that he may handle the defense. If the rest of you received copies of the summons and complaint in the same manner as I did, I would think one point that should be mentioned to the Solicitor General is the possibility of a motion to dismiss for insufficient process. I do not think an individual who does not reside in the Southern District of New York or have a place of business there may be reached by substituted service, such as the mailing in this case.

Sincerely,

WHR

The Chief Justice

Copy to: Mr. Justice Blackmun
Mr. Justice Powell

Miss Mary

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 25, 1973

Miss Mary Burns
Chambers of the Chief Justice

Dear Miss Burns:

At the suggestion of the Conference, I send you herewith the papers in Sloan v. Nixon, et al. which came to me by certified mail on May 23.

It is my understanding that these papers, together with those served on the Chief Justice and Justices Powell and Rehnquist, will all be transmitted without delay to the Solicitor General.

Sincerely,

/s/ H. A. B.

cc: Mr. Justice Powell ✓
Mr. Justice Rehnquist

May 25, 1973

Dear Mary:

Here are my papers in Sloan v. Nixon.

I understand you will send them to the Solicitor General.

Sincerely,

Miss Mary Burns

lfp/ss

May 29, 1973

Law Clerks

Dear Chief:

At the last Conference you referred to your own staffing plans for the next Term, and I am pleased that you have made the decision you mentioned.

I write this note to inquire whether, if our budget request is approved by the Congress, I will be authorized to engage a fourth clerk for the 1973 Term? If so, obviously I have a problem of timing. It may already be a bit late to locate a suitable one.

My recollection is that most of the Justices expressed no interest in additional legal assistance but there were one or two others who shared my views as to the need. I will, of course, defer to any other Justice until there is sufficient funding to take care of all of us.

Sincerely,

The Chief Justice

lfp/ss

mess
memos

May 30, 1973

Dear Chief:

I agree warmly with Bill Brennan's suggestion as to circulation of certs.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference



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

CHAMBERS OF
THE CHIEF JUSTICE

May 10, 1973

Re: Law Clerks

Dear Lewis:

I have your note of May 29 regarding Law Clerks.

Under our proposed budget I do think that, even when and if the funds are available, a clerk will be feasible. I enclose a copy of the minutes on this subject at the hearing. Undoubtedly that is the position exchange I had with the Chairman when, without comment, he indicated he would not oppose the "experiment" of a senior law clerk for each of three Justices. He would not have approved a fourth law clerk and also stated firmly that he would expect that we would have reasonably uniform "regulations" or guidelines to make sure that the budget allowance did not automatically pay higher pay to a traditional law clerk. He made it clear that the allowable salary would be geared to the experience and age of the senior legal assistant.

Against this background, which I have now fill out more fully when we discuss it, we would select at least the spirit and very likely the letter of the budget if the allowance is used for a fourth clerk.

Regards,

WJB

Mrs. Justice Powell

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1973

*Sally - I've talked
to Chief*

Law Clerks

Dear Chief:

Thank you for yours of May 30 and the enclosed excerpt from the budget hearing testimony. I agree that this forecloses the possibility of a fourth clerk for next Term.

Yet, I must say that it is not in accord with my understanding of what the Conference decided informally with respect to our budget request. I enclose a copy of my letter to you of November 8, and refer to the last three paragraphs thereof. Following that letter, at the Conference discussion it was agreed - as I understood it - that for any Justice who so desired we would request sufficient funds for a mature, permanent staff assistant or to enable the Justice to increase his clerks to four. The theory was that the amount of money involved would be about the same, as the combined salary of two law clerks would be about what we will have to pay a permanent staff assistant with the requisite experience and competency. As someone said at the Conference, each Justice should have the option to decide how he could best strengthen his own staff within the same approximate amount of dollars.

I do observe that the budget request for the legal assistants indicates a salary of only \$19,000 per year for each one. My recollection was that we had talked in terms of about \$30,000 on the assumption that this level would be necessary to recruit and retain an assistant of the requisite qualifications.

I hesitate even to write further at this time, as I know how overwhelmed you are. My sole purpose is to assure that both of us "flag" this for next year's budget consideration. As our friends from Congress advised, the Court should ask what we think is necessary to meet our needs. If Congress turns it down - that is its responsibility and not ours.

With my thanks.

Sincerely,

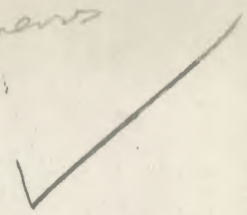
The Chief Justice
lfp/ss

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

Misc
memo

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1973



Re: Reporter

MEMORANDUM TO THE CONFERENCE:

Our personnel changes in the Reporter's Office in the past year focus on the need to keep that office well staffed and to prepare for the future. This was particularly impressed on me when Henry Putzel pointed out the fact that he is only three years from retirement.

The work of the Reporter is, of course, increasing and we know that a competent professional cannot be developed in a short time.

There is a possibility that a senior editor of a publishing house which deals with court reports and headnotes may be available, albeit at a rather high figure, \$28,500.00. At age 50 this man would presumably be able to take over when Henry retires and I will therefore arrange to have our "Personnel Committee" look this man over with a view to reporting to the Conference before July 1.

Regards,

cc: Mr. Cannon

*Misc
memo*

June 7, 1973

Cert Pool for Summer Months

Dear Chief:

You have no doubt given some thought to whether the Cert Pool should continue during the summer months and for the next Term. As this decision should be made before the new clerks commence to arrive in July, I am prompted to write this letter and send copies to the participating Chambers.

My assessment of the merits of the Pool during this Term is quite affirmative. Although it has not lessened the time I personally devote to certs (and possibly has added a bit to it), the advantages have been significant: (i) the Pool has reduced by at least 50% the time devoted by my clerks to certs, freeing them for other important work; (ii) as each Cert Memo written in another Chambers is nevertheless reviewed by one of my clerks before I see it, I have the benefit - in effect - of a double review with the additional assurance that anything important will be surfaced; (iii) my clerks are enthusiastic about the Pool and think the resulting allocation of their time is more productive in the areas that count the most.

From what I have heard in the "corridors", the clerks in other participating Chambers have substantially the same view as to the continuation of the Pool next Term.

Although there may be less unanimity as to activating it during the summer, I strongly favor this also - as do my clerks. This will afford a greater - and needed - opportunity for the incoming clerks to devote most of their time to the cases set for argument next fall, and especially to those identified as requiring special study. Even with the

Pool in effect, the new clerks will write enough cert memos during July, August and September for them to be fully indoctrinated in this relatively straightforward type of work.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Rehnquist

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1973

Re: Cert Pool

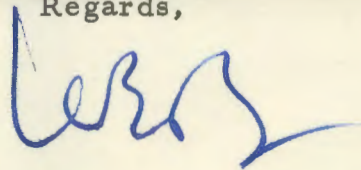
Dear Lewis:

1. I hope the Cert Pool continues for the future. I believe it has been a great success; memos prepared for five or more Justices tend to get a more careful treatment. The author knows he must clear five "hurdles."

2. When the Pool should begin seems to be open to reasonable differences of view. Some feel that the new clerks should "cut their eye teeth" for a couple of months on an individual basis and then begin the Pool operations perhaps September 1. I have no final view but I see definite advantages in that approach. It accommodates itself to the varying arrival dates of new clerks.

Perhaps the "Pool Justices" could have a cup of tea some day next week and resolve this. I hear some rumors that others may want to join the Pool.

Regards,



Mr. Justice Powell

cc: Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Rehnquist

15
June 8, 1973

Dear Chief:

The enclosed editorial from the Richmond Times-Dispatch was sent to me by the publisher of the newspaper, Tennant Bryan.

In view of the possibility that some of these cases will eventually reach this Court, I suppose there is nothing any of us can do or say. But having worked, as you and I did, on the ABA Criminal Justice Standards - one of which dealt with Fair Trial and Free Press - it is distressing to see this situation without any visible response from the organized Bar.

Sincerely,

The Chief Justice

Enclosure

LFP/gg

HUGO BLACK MEMORIAL LIBRARY FUND, INC.

AN ALABAMA NON-PROFIT CORPORATION

ASHLAND, ALABAMA 36251

June 15, 1973

JUN 20 1973

Officers:

MORLAND L. FLEGEL, PRES.
ASHLAND, ALA. 36251

JOHN W. SMITH, V-PRES.
LINEVILLE, ALA. 36266

WILLIAM E. WILSON
ASHLAND, ALA. 36251

NINA FAYE BONNER, TRES.
LINEVILLE, ALA. 36266

Directors:

NINA FAYE BONNER
LINEVILLE, ALA. 36266

SUE BURDETTE CAMPBELL
ASHLAND, ALA. 36251

AGNES T. CATCHINGS
MILLERVILLE, ALA. 36267

MORLAND L. FLEGEL
ASHLAND, ALA. 36251

JUDGE KENNETH F. INGRAM
ASHLAND, ALA. 36251

CECIL W. PARKE
LINEVILLE, ALA. 36266

ROBERT R. RILEY
ASHLAND, ALA. 36251

ZOLA T. RILEY
ASHLAND, ALA. 36251

J. LEWELL SELLERS
MILLERVILLE, ALA. 36267

JOHN W. SMITH
LINEVILLE, ALA. 36266

JUDGE J.B. TOLAND
ASHLAND, ALA. 36251

ELTON E. WHATLEY
ASHLAND, ALA. 36251

WILLIAM E. WILSON
ASHLAND, ALA. 36251

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

Mr. Justice:

We are moving forward with plans to restore the boyhood home of the late Mr. Justice Hugo L. Black in Ashland, Clay County, Alabama, and build a memorial library and museum adjacent to it. We are incorporated as a non-profit corporation under the laws of the State of Alabama, with the immediate objectives as stated above.

A committee from our Board of Directors recently visited in Washington as guests of Mrs. Elizabeth Black. The purpose of this visit was two-fold. First, we wanted to bring our proposal to the attention of members of the Supreme Court and the Congress and gain their support; and second to get a better idea of what papers, books, furniture and memorabilia we could expect to obtain from the Black family and from his Washington offices. We were able to have conferences with Mr. Chief Justice Burger, Mr. Justice Douglas, Mr. Justice Brennan, Senators Sparkman and Allen and Congressman Nichols, all of Alabama, former Senator Claude Pepper of Florida and members of Justice Black's family. Without reservation, the proposal received enthusiastic endorsement.

We are still formulating plans, but current plans call for: (1) restoring to its original state the Black home into which Justice Black moved with his family in 1892 as a six year old and where he continued to call home after his parents death for so long as the house was owned and occupied by his older brother's family; (2) furnish it with original Black family furnishings (numerous items are available to us); and (3) construct a memorial library to house a public library, a Hugo Black reference library and a museum depicting his life as a boy, young man and practicing attorney in Ashland, and his Birmingham, U. S. Senate and Justice careers. Our tentative budget is \$600,000, most of which must come from public subscription on a national basis.

Honorable Lewis F. Powell
Page 2
June 15, 1973

We are in the process of selecting Honorary Board of Directors for which we would be highly honored to have you as a member. As an honorary member, we would expect to consult with you from time to time as we develop and carry out plans. Also, we would want to use your name on our letterhead and in promotional literature. We are asking each Supreme Court Justice to serve in this capacity. We are also asking our two U. S. Senators and Congressman, Mrs. Elizabeth Black, Hugo Black, Jr. and others who may be suggested by the Honorary Board. An invitation will be extended President Nixon.

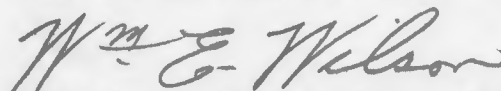
We are forming an advisory committee to assist with financial and technical matters. If you should have suggestions for membership on either group, we would appreciate having them.

If you desire further background information, we will be happy to supply it. And, of course, we will provide you with progress reports from time to time.

Yours truly,



Morland L. Fliegel, President



William E. Wilson, Secretary

WEW/MLF/cfm

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

CHAMBERS OF
THE CHIEF JUSTICE

6/21/73

Dear Lewis

I well know that barbs
from "hostiles" do not trouble
a combat veteran of your long
experience but perhaps the
sharp arrows of a colleague
might be more disconcerting.

I hope I succeeded in
expressing my dissent in
Pittsburgh in appropriate
terms. I also trust you
will not allow Potter's
"overkill" dissent to trouble

you. It is lately more &
more given to excessive
rhetoric but there is nothing
personal in it. Potter
loves "singing phrases" a
bit more than some &
of course we are all
addicts to some
extent.

Regards
Wanen

misc
mems

June 21, 1973

PERSONAL

Dear Warren,

How very thoughtful of you to write the note about the "rhetoric" in some of our cases.

As you suggest, having spent more than half of my life in this profession - and much of it "in the pit" - I am fairly hardshelled about this.

But I do indeed appreciate your writing, and continue to marvel at how thoughtful you are about all of your "flock" and - indeed - everything else here at the Court.

As ever,

The Chief Justice

lfp/ss

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1973

Re: Hugo Black Memorial Library Fund, Inc.

MEMORANDUM TO THE CONFERENCE:

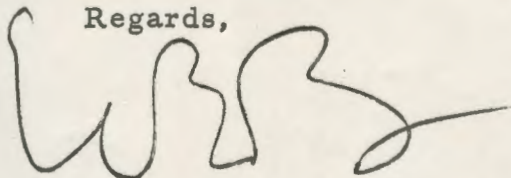
I have now read the letter from the "Hugo Black Memorial Library Fund" group.

I have difficulty reading the ABA standards to include a library of a Justice as outside the "judicial" area to which a Judge may endorse fund seeking. I do have some reservations about the use of our names on "other promotional materials", chiefly because no one can predict what that will embrace.

Since we have encouraged Judges to use the "Tuttle" Advisory Committee, perhaps one of us should volunteer to seek their advice. I would be prepared to follow whatever they tell us.

Any volunteers? Since I appointed the Committee, it might appear to the ill-informed that I would get "special treatment."

Regards,

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

June 25, 1973

July - if hear nothing
from Chief - call Mary.
July 30

Hugo Black Memorial Library Fund, Inc.

Dear Chief:

This refers to your memorandum of June 22. I will await further word as to what other members of the Court do before responding to the invitation of June 15.

I certainly agree that I do not want my name on any "promotional" or fund raising literature. I would have no doubt as to being an honorary director of a Hugo Black Memorial Library Corporation. The difficulty with the present structure is that the Corporation is called "Hugo Black Memorial Library Fund, Inc." and the letter indicates that "public subscription on a national basis" will be sought.

Perhaps someone could suggest to the proper person that the Alabama group could restructure itself into an advisory committee as to the restoration of the Black home and the construction and operation of the Memorial Library, but leave it to a separate group to do the fund raising.

Sincerely,

The Chief Justice

cc: The Conference

LFP/gg

13
July 16, 1973

Dear Chief:

As the Court occasionally employs a former Judge Advocate officer, the enclosed resume on Col. John Jay Douglass may be of interest if and when some suitable vacancy occurs. He is a former Commandant of the Judge Advocate General School at the University of Virginia.

Sincerely,

The Chief Justice

lfp/ss
Enc.

bc: James M. Spiro, Esquire

Best wishes.

L.F.P., Jr.

August 14, 1973

Dear Warren:

I was sorry not to have an opportunity to see you before Jo and I returned to Richmond. She became ill - apparently from food poisoning - just at the end of the party at the City Tavern Club, and remained in bed until just before we returned to Richmond on Thursday. See seems to be fairly well recovered by now.

I particularly wanted to commend you on the two addresses which I heard. Your annual report was informative and constructive, and you said a number of things which were important for the ABA leadership and the press to hear. You also delivered the address very well indeed. Your change of pace on Monday night was delightful, as I am sure you could tell from audience reaction.

Coming now to an item of business: Jo and I accepted some months ago an invitation to visit friends who have a house in Portugal. We plan to leave Washington on September 2 and to return on September 16, to be back at the Court on the 17th. I assume there is little likelihood of the Watergate/Tapes controversy reaching the Court before our new Term commences. In talking briefly with Byron during the bar meeting, we both agreed that there is no reason apparent to us why we should convene a special Term of Court even for Watergate. Senator Ervin's Committee had hardly expedited its hearings, and one has the impression that Prosecutor Cox is proceeding with "deliberate speed" rather than with any view to accelerate resolution of the issue.

In any event, I can always be reached through my office and will return (however reluctantly) if you think it necessary.

I do hope you and Vera will get off somewhere entirely away from the telephone and the duties which you undertake so generously. Although you appear to be feeling fine and looking fit, not even your rugged constitution can stand indefinitely the sort of pace which you maintain without interludes of total change and relaxation. Please say to Vera that I will count on her to see that you do get away.

Our Brother Douglas seems to be a bit out of step - as well as out of convenient communication. I regret that he thought it necessary to chastize Thurgood, perhaps in ignorance as to how carefully Thurgood had acted. Incidentally, Bill has again overruled me with respect to the "Irish Army Five" and, contrary to rulings by the DC and CA 5, has released these alleged gun runners (who refused to testify before a grand jury) from jail. I assume the government will bring this before the full Court when the new Term opens.

Warm best wishes.

Sincerely,

Hon. Warren E. Burger
Chief Justice
Supreme Court of the United States
Washington, D. C. 20543

lfp/ss

August 28, 1973

No. 78-123 California v. Jones

Dear Chief:

The above case comes to us on a cert petition from the Intermediate California Court of Appeals. The question is whether Title III of the Omnibus Crime Control Act of 1968 preempts state statutes establishing more stringent standards for the admissibility of wiretaps in state criminal trials. The California wiretap statute is much more restrictive than Title III, as it requires the advance consent of the telephone subscriber whose 'phone is tapped. I would think that such a requirement would almost nullify any utility the wiretap law might have.

In this case the wiretap evidence was obtained pursuant to federal court order in accord with the provisions of Title III, but was excluded by a state court in a state trial despite the provision in the federal act that such evidence may be "disclosed . . . in any criminal proceeding in any court . . . of any state" It is true, however, that the report of the Senate Judiciary Committee on the then proposed federal act stated that "states would be free to adopt more restrictive legislation or no legislation at all, but not less restrictive legislation."

My purpose in writing you is to inquire whether you think this an appropriate case to request the SG to file a brief amicus. It may well be that the SG would be in entire accord with the California court. But the Attorney General of California is not, and the issue is not unimportant.

Sincerely,

The Chief Justice

lfp/ss

October 5, 1973

Dear Chief:

My telephone numbers during the summer, in addition to those at the Court, were as follows:

Office at the federal court in Richmond - 648-6974

Residence in Richmond, 1238 Rothesay Road - 358-4647

Washington apartment - 484-5055

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
THE CHIEF JUSTICE

October 15, 1973

MEMORANDUM TO THE CONFERENCE

I have asked Ken Ripple to work out a tentative schedule for making Stanley Reed's law clerk, Jerry Siegel, available to those who want him.

Please advise if you desire to be included and we will then firm up the assignment for a definite period.

Regards,

WRB

[Handwritten mark]

October 18, 1973

Dear Chief:

I will be happy to participate in the rotation plan for Jerry Slegal.

As the work is heavier in the spring, I suppose those of us who would like four clerks would prefer having him then. But I will welcome his assistance whenever he is available.

I also hope that you and the Conference will think it appropriate to make an affirmative request of Congress for four clerks for the Justices who want them.

Sincerely,

The Chief Justice

lfp/ss

B

October 29, 1973

Dear Chief:

This refers to our conversation as to appointments to the Appellate Procedure Committee of the Judicial Conference, and your request for recommendations - especially from the Fourth Circuit and for any suggestion I may have as to the Seventh.

This will confirm my view (as to the Judicial member) that Judge Butzner would be my first choice, although Judges Field and Craven - whom you mentioned also would be excellent.

You inquired particularly about a Richmond lawyer with substantially federal appellate experience. In giving this some further thought, I know of no one who better meets these specifications than my former partner, E. Milton Farley, III. He is the head of the Litigation Section at Hunton, Williams (composed of about a dozen trial lawyers), and spends his full time in trial and appellate litigation - for the most part in the federal courts in the Eastern District of Virginia. He is more scholarly inclined than many trial lawyers, and a prodigious worker. He graduated from the Notre Dame Law School, where he served on the Law Review, and has been at the bar some 20-odd years. Mr. Farley is a member of the American College of Trial Lawyers.

I would not wish, however, to advocate a former partner of mine or to put you in the position of showing favoritism toward such a partner. I mention Milton Farley primarily because I know him so well and have great confidence in his being a useful and intelligent member of the Committee. Other members of the Richmond bar who have had extensive federal court experience include John S. Davenport, III,

considerably senior to Milton Farley (67) but a great leader of our bar, and John B. Browder. Both Davenport and Browder are members of the College.

If you wish to look beyond Virginia within the Fourth Circuit, David W. Robinson of Columbia, South Carolina, would make an excellent member of the Committee. You have met Dave, as he also is a member of the American College (has served on its Board of Governors) and a regular attendant at College and ABA meetings.

As to the Seventh Circuit, you may wish to call Dean Phil Neal at the University of Chicago. Phil knows the Chicago bar quite well, and could be counted upon to give you good advice. I have the highest respect for his judgment.

Sincerely,

The Chief Justice

lfp/ss

bc: E. Milton Farley, III, Esquire

October 31, 1973

Dear Chief:

I would like to have the following case put on the discuss list
for the Conference on Friday, November 2:

No. 73-325 Brown v. United States - p. 13.

Sincerely,

The Chief Justice

lfp/ss

June 25, 1973

*Miss
memo*

Cert Pool

Dear Chief:

This is to confirm my understanding that the Cert Pool, with the same five chambers, will commence operating with the list distributed by the Clerk for the first week in September.

Although we did not specifically discuss it (as I recall) I will assume that Ken Ripple - or someone else whom you designate in your chambers - will organize and administer the pool as was done during the past Term.

Unless advised to the contrary, I will so inform my incoming clerks.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Rehnquist

June 25, 1973

memo

**Ken Ripple's Duties with Respect to
Applications from the Various Circuits**

Dear Chief:

One of the most helpful innovations which you initiated during the past Term was having Ken Ripple serve all interested chambers with respect to applications filed with Circuit Justices.

Ken's taking over of this task, and his excellent memoranda, were enormously helpful to me both in terms of better preparing me to act on applications and in the saving of time.

I trust that Ken, or his replacement, will be available to continue this work during the summer months.

Sincerely,

The Chief Justice

lfp/ss

cc: Gail and Larry

Miss
yners

November 1, 1973

Dear Chief:

This refers to your note to the Conference, enclosing a summary of the proposed budget increases.

I am in agreement with Byron that additional staff personnel is needed. As I have indicated previously, I am not able - with the limited staff presently available - to discharge my responsibilities with the same care and thoroughness which major law firms (with infinitely greater resources) customarily devote to major problems. I recognize, of course, that Justices who have been here for many years - and whose work procedures have developed differently from mine - feel no need for an increased staff either in their own chambers or for the Courtaas an institution. While I respect these views, I consider the problem to be an institutional one, that it is our responsibility to request of the Congress adequate staff to accomplish the work of the entire Court in accord with highest standards of quality, and that each Justice may then utilize the available staff (as little or as much of it as he desires) in accordance with his own judgment of need.

Accordingly, I would gladly accept Byron's suggestion of building a competent Court staff with defined responsibilities which would lighten the loads in the offices of the individual Justices. This is the practice, to my personal knowledge, in the Fourth and Fifth Circuits - and I understand in other Circuits and in several of the major State Supreme Courts. If this idea is pursued, I would suggest that we request five additional legal officers, recognizing - based on past experience - that the Congress will give us fewer than the number requested.

If a section of staff lawyers is not to be organized, I renew my request for a fourth clerk. My plan would be to seek clerks willing to serve two years, with terms staggered to assure experienced clerks available at the commencement of each Term of Court.

Sincerely,

The Chief Justice
lfp/ss
ccThe Conference

miss
minor

November 13, 1973

Dear Chief:

Thank you for the opportunity of reviewing your proposed Sonnett lecture draft.

For the most part, I agree with what you say and am delighted that the Chief Justice will be talking on this subject. Nor do I see the slightest reason to characterize your writing style as "flawed". The draft is lucid and attractively written. It may be a little long for verbal delivery (about 4500 words, I estimate), but certainly not too long for printing.

My difficulty is one that has frustrated several attempts by the ABA (and the American College) to come up with some satisfactory answer to the question how to train, identify and certify legal specialists and especially litigation specialists. Your ideas as to their education are more likely to meet a favorable response than any specifics that might be suggested with respect to the more basic problem of certification.

The difficulty arises primarily (but not exclusively) from the diversity of our legal system and of the geographic characteristics of our country. It would not be easy to apply your summary of tentative proposals (p. 18) to the smaller towns and communities to be found in every state. A town of 5,000 to 10,000 is not likely to have a specialist of any kind. Most (if not all) of the lawyers in such communities try cases in courts of record as well as in small claims or petty offense courts; they do real estate law; represent small businesses in all sorts of problems; wills and estates; and almost anything that a client chooses to bring in. Also, some of these "small town lawyers" are fairly fresh out of law school, and there may not be any firm in the community large enough (or willing) to afford apprentice training.

It may well be, also, that certifying litigation specialists would be more difficult than a certification program with respect to taxation, labor law, government contracts, admiralty law and other areas of specialty which could be made the subject of special "bar exams" or "boards". Lawyers who intend to specialize in these areas could, quite readily, be subjected to written examinations that would test objectively the extent of their comprehension of the subject. But testing the skill of a trial lawyer involves largely subjective judgments. We have specified standards in the American College, but the final decision as to admission is made by personal judgments.

It is not helpful to make negative comments without adding constructive suggestions. The truth is I have never thought of a satisfactory solution to the problem which you address. If I were making the lecture, I would retain almost all of your draft until you reach the point of recommending solutions. You are on sound ground with respect to greater emphasis in the law schools on advocacy, and certainly in urging far greater attention to ethics, civility and courtroom decorum. I would also emphasize the inadequacy of disciplinary and disbarment procedures.

Your suggestion of the desirability of apprenticeship is also sound, recognizing that it will not be feasible under all circumstances and in all places.

There is an unmistakable trend toward specialization within the profession. It has been very marked in the past decade. Not only is this true in the large, structured law firms, but there are many "specialist" firms in cities of moderate and large size. In negligence litigation, the plaintiffs' bar - as well as the defendants' bar which you mentioned - is highly specialized and both educated and incited by NACCA (now called by a new name). Taxation also has become so complex that relatively few unqualified lawyers undertake to give advice. Thus, the bar - in its own slow and uneven way - is moving in your direction. I am not sure that a more structured program could, as a practical matter, be imposed on it at this time. We could never sell one to the ABA House of Delegates.

These negative comments in no way lessen my enthusiasm for your speech. Do have your office send me a copy of its final form.

Sincerely,

lfp/ss

November 27, 1973

Dear Chief:

I would like to have the following case put on the discuss
list for November 30, 1973:

No. 73-5345 JULIAN v. UNITED STATES

The case appears on List 2, Sheet 1.

Sincerely,

Mr. Chief Justice

LFP/gg

Sent to me by the C.J. during
oral argument of 72-1264

Supreme Court of the United States

Memorandum

12/11/73

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Lewis

Shades of
Geo Orwell. In
CA3 1984 is
nearer than I
thought!
WBL