

Court

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 29, 1979

Linda + Sally -

Perhaps we can go
together - with Charliel
drawing us.

MEMORANDUM:

You will all be aware of this, but we report, with sadness, the death of Shirley Bartlett on Sunday morning, January 28. Shirley will be at Gawler's on Wisconsin Avenue. Visitation hours are set from 2:00 to 4:00 p.m. and 7:00 to 9:00 p.m. on Tuesday. There will be a service at Gawler's at 10:30 a.m. on Wednesday morning, January 31.

If anyone is so inclined, the family would prefer, instead of flowers, a memorial directed to the Georgetown University Hospital Neurological Research Fund, or to a charity of one's choice.

Wanda Syverson

Harry A. Blackmun

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

January 29, 1979

SHIRLEY BARTLETT

Mrs. Shirley Juanita Bartlett who served as secretary for three members of the Supreme Court of the United States died of a cerebral hemorrhage at the Georgetown University Hospital yesterday morning. She was fifty years old.

Mrs. Bartlett had been the chief secretary of Mr. Justice Harry Blackmun since September 8, 1970, during the Justice's first year here on the Court. Before that Mrs. Bartlett had been a secretary of Mr. Justice John Marshall Harlan from January 28, 1965 until October 19, 1969, when she became a secretary of the new Chief Justice, Warren E. Burger. She served with the Chief Justice until her appointment to the chambers of Mr. Justice Blackmun.

Mrs. Bartlett was born May 24, 1928, in Washington D.C. Early schooling was in Lynchburg, Virginia. She entered government service in 1944, serving in secretarial and clerical positions in the General Accounting Office in Washington, D.C., from 1944 to 1962. She was employed by the GSA in Dallas from 1963 to 1964, the Department of the Army at Fort Totten, Long Island, New York from 1963 to 1964, the

2 Mrs. Bartlett

Federal Aviation Association at Kennedy Airport in New York City for part of 1964 and, finally, joined the staff of the Supreme Court of the United States on November 30, 1964, serving briefly as a member of the Court's typing pool.

Extensive travels in Europe and in Asia, and competitive ballroom dancing, were Mrs. Bartlett's avocations.

Surviving are two daughters, Mrs. Juanita Walker, of 10 Summitt Place, Croton-on-Hudson, N.Y., and Mrs. Janice Williams, of Gapland, Maryland, two grandsons, Dennis and Scott Walker, two brothers, Harry K. Johnson of Laurel, Maryland, and J. Douglas Dobyns of Jacksonville, Florida, and a sister, Mrs. Jeanette Albright, of Waldorf, Maryland.

Visiting hours at Gawler's Funeral Home, Wisconsin Avenue, will be tomorrow, Tuesday, from 2 to 4 p.m. and 7 to 9 p.m. There will be a service at Gawler's Wednesday at 10:30 a.m. In lieu of flowers the family prefers that contributions be made to the Georgetown University Hospital neurosurgical research fund, or to another charity of choice.

Caund

February 8, 1979

MEMORANDUM TO THE CONFERENCE:

A friend at the Richmond bar sent me recently the enclosed advertisement by a local lawyer.

All brankruptcies, wills and incorporations are fungible, and no one will be misled.

L.F.P., Jr.

SS

lfp/ss 3/10/79

Justice Powell's annual physical disclosed a polyp in the colon that the doctors think should be removed. The surgery will take place this week at Bethesda Naval Hospital. The annual physical otherwise indicated that Justice Powell is in excellent health.

3/11/79

Copies sent to:

All members of Court
Jody
Penny
Molly
Lewis III
Angus
Zoe
Eleanor
Dr. Rucker
George Gibson
Harvie Wilkinson
Carl Humeline

Nancy Rucker
Ed Hyde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 10, 1979

CONFIDENTIAL

Dear Chief:

As I reported to you, the last examination in my annual physical by Dr. Cary and his Bethesda team disclosed a "polyp" in my colon.

It was tentatively thought to be benign and that it could be excised without major surgery. At Bethesda Hospital on Thursday this proved to be unduly optimistic. Because of the location of the abnormality, and uncertainties that would have accompanied removal through a proctoscope, it was concluded that abdominal surgery is necessary.

Although the doctors did not insist that I proceed immediately, they thought it imprudent to defer the operation until our summer recess. It seems to me that the best time, in terms of the Court work, is to get this behind me promptly. Accordingly, and on the recommendation of Dr. Lee Smith (Chief of Proctology) - concurred in by Dr. Cary - I have arranged to go ahead with the operation without delay. I enter Bethesda on Sunday evening. For reasons I do not understand the "preparations" will require three days, with the operation to follow on Thursday, the 15th. I am told that as abdominal surgery goes, this operation is rarely complicated.

If all goes well I should be back on full-time duty by about the 1st of April. This will enable me to participate in the April arguments, and in the intensive work of the Court in May and June. I would have preferred to go to Mayo because of my satisfactory experience there in 1974. Several reasons, however, militate against this. Dr. Smith is now thoroughly familiar with my problem, he is highly recommended by Dr. Cary, and has impressed me favorably. A number of the preparatory tests and scans already have been accomplished. I therefore will save

several days time by going ahead here rather than moving the "performance" to Mayo. Finally, during the recuperative period I will be able to work with my law clerks and secretaries here and thus keep generally abreast of all Court work except the March arguments.

As for my Court work, I am up to date on all assigned Court opinions except, of course, those from the February argument. Perhaps I can take an extra case from the April arguments to make up in part for what I shall miss.

Now a personal word: knowing the generous spirit of friendship that has pervaded the relationship among the present members of the Court, I suspect you will wish to cheer me up while I am in the hospital. As much as I would appreciate your wishes in this respect, I make two observations: (i) The so-called "VIP" rooms at Bethesda are so bleak and barren, I don't think even my Brothers could provide much cheer for me there. (ii) I would much prefer, rather than visits or flowers, that we wait until June when we can have an elegant "dutch" evening together (with wives, of course) at one of the better restaurants.

The fact of my surgery will, of course, make the media, and the possible opportunity to select my successor will titillate the Court watchers. As I have no thought of being equivocal with the media, I will leave it to the doctors to describe my problem.

Sincerely,

Lewis

The Chief Justice

cc: The Confernce

lfp/ss

Court

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 13, 1979

Dear Lewis:

My journey to Florida and my two days with the American College of Trial Lawyers were most happy. You have many friends there. Their devotion to you and to Jo was most evident. They missed you. They accepted the fact of your absence with equanimity, and no one pressed for details.

It was, I think, a successful and impressive meeting. I enjoyed the "inner group" and even had a good visit with Chancellor Gumpert. The "presentation," I think, went off all right. Your introduction was read by Marcus Mattson and almost had me blubbering. You were far too generous, but, because I am human, I appreciate everything that you said.

I delivered to Sally something for you from Marcus. Evidently, he presented one to each of the past presidents in attendance and wanted you to have yours.

James E. S. Baker of Chicago was named president elect to succeed Samuel E. Gates. I am advised also that John C. Elam will be named president elect at the August meeting.

Be of good cheer.

Sincerely,

Larry
—

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

79 MAR 1979

Monday, March 19, 1979

Dear Lewis,

I am on the bench, & we ^{have} just begun to hear argument in City of Mobile v. Bolden. Needless to say, I wish you were here - I was delighted to have Tom relay to me last night Jo's telephone conversation that you were doing fine & expected to be home the latter part of this week.

Much as I wish we had a nine man bench for the March arguments, your health & speedy recovery is much too important to jeopardize by trying to get back into action before you are fully recovered. I tried to brief David Weston & Keith Anderson as much as I could about the conference deliberations Friday. I assume that the Chief briefed you on the rather strange conference discussions we had as to what cases, if any, should go over because of your illness. He was a forceful advocate (as he sometimes is not) for the proposal that at least Waber should go over - but there was a faction

that was determined it should not, and the 2
uneasy compromise which was reached was doubt-
less relayed to you by CS - If it was not, let me
know if you want an account of what happened
when you feel better & I will describe it to you. It
was not an altogether edifying experience, at least
from my point of view.

I know from my own experience in the hospi-
tal 2 years ago that one's clerks simply aren't
going to conference discuss in the way a prota
is. If you ever want any such information, let
me know - but first concentrate on getting
well!

Affectionately
Bill

File
I've checked
WHR.

March 20, 1979

Dear Lewis,

Again I write from the bench - we have just finished hearing argument in the Charles Ton Daily Mail case (publication of names of juvenile defendants) & are now hearing argument on the issue of private right of action under the Investment Advisers Act - since you were the leader in getting cert granted on this issue (after two unsuccessful tries!) I regret your absence.

Incidentally, for heaven's sake, don't feel any obligation to answer my missives - I remember you mentioning that it leads to you on occasion, & if you run out of interesting fiction or non fiction you can fill in with my contributions.

The April argument calendar came out yesterday, and I was happy to see that White Columbus & Dayton are on - Dallas is not - I had heard some "side-bar" conversations in the robes room which led me to think that WRB was renewing his unsuccessful

ful suggestion at one of the February conferences ⁽²⁾
that Dallas be argued in April. We were surely
have enough tough cases in April w/o Dallas.

Frank Weyford of U Va called me yester-
day to ask if I would give commencement
address at U Va - Janel, who will be one of the
graduates, has told us for months that Jimmy
Carter was going to speak - but F.H. was very
candid in telling me that he had just received
word that the Pres. had just cancelled, & I
was second choice. Because Janel will be a
graduate, I think I will accept, ~~because~~
although that it is a time of year we are all
kind of "strung out" -

Bill

Lunt

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 26, 1979

RE: Opinion Assignments

Dear Chief:

Potter has agreed to try the opinion for the Court
in No. 78-5283 Jackson v. Virginia and I shall undertake
the opinion in No. 78-5066 Dunaway v. New York.

Sincerely,

Bul

The Chief Justice

cc: The Conference

Cant

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1979

Re: April Sitzings

Dear Chief:

I have no personal problems in changing the April sitting, but I do not want to put pressure on Lewis.

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

Court

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 4, 1979

Dear Chief:

I have read with interest the Librarian's memorandum of March 21 to you. You solicited comments. Mine are as follows:

1. I strongly protest the proposed discard of the second copy of the National Reporter System (item 8 of Mr. Jacobs' list). I fully appreciate that the cost is substantial. On the other hand, as a constant user of the Justices' Library where the second copy is maintained, I would be greatly inconvenienced by its absence. The recommendation, I think, ignores the fact that many States have gone over to the West system entirely. For them, there is no official reporter to serve as a back-up. Further, even at present, I have frequently found that the second copy is off the shelves, and I must call the library desk for one of the copies to be traced down. This indicates, for me, that there is use for the second copy. Finally, I regard the second copy as a basic tool of the Court and far more essential, in my view, than some of the miscellaneous items that appear on recent library acquisition lists.

2. Item 9 proposes the discard of the second copy of official state reports. I feel a little less strongly about this, but the second copy's presence in the Justices' Library has been most convenient for me. I have found (although others evidently have not) that the Justices' Library is a far more convenient place in which to work than the main library. The books are far more accessible.

3. Item 10 concerns State Legal Encyclopedias. I, personally, do not use these very much. My clerks submit, however, that the encyclopedias do help in the ascertainment of exactly what state law is. They also feel that the National encyclopedias are not an adequate substitute.

4. I would not object to the discontinuance of items 1, 2, 3, 5, 6, and 7. I suspect that some of these go back to Mr. Justice Frankfurter's time. You will recall that long ago I suggested to Mr. Jacobs' predecessors that items 1 and 2 be discontinued because of their expense.

5. I am ignorant, of course, of the proposed disposition of the Records of the War of the Rebellion. Perhaps the proposal is to turn them over to the Library of Congress or some other repository. If, however, the proposal is merely to throw them away, I, as a Civil War buff, would personally find them of great interest.

Sincerely,

H. C. D.
—

The Chief Justice

cc: The Conference
Mr. Roger F. Jacobs

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 4, 1979

Dear Lewis:

With the build-up of the pressure around here this time of year, I have reluctantly concluded not to try to get to Atlanta for the Fifth Circuit Conference in early May. I am advising John Brown of this. Needless to say, I am disappointed. Perhaps another time.

Sincerely,

Harry

Mr. Justice Powell

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

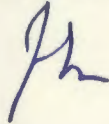
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 4, 1979

Dear Lewis:

It is wonderful that your recovery is proceeding so well. I am sure you understand that the reason I have not called is that I want to avoid disturbing you. I still hope you will give priority to your convalescing and not try to hasten your return. There will be plenty of work for us in the fall.

Sincerely,



Mr. Justice Powell

April 6, 1979

Dear Harry,

Although I am indeed disappointed that you think it best not to go to the CA5 Conference, I quite understand your reaction to the "build-up of pressure" from now on.

Indeed, in view of the time I have lost, I am not entirely sure that I can attend the Conference even if I have fully regained my strength.

As ever,

Mr. Justice Blackmun

lfp/ss

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

2
4/6 [1979]

CHAMBERS OF
JUSTICE BYRON R. WHITE

Dear Lewis

Wednesday

I was so sorry to hear the bad news when I returned last evening, and I do hope the prostration is good after today.

We shall miss you around the table while you are away, but don't let us have a chance to run riot for too long. At the same time, I do hope you will take plenty of time for recovery. Marion sends love and prayers.
Byron

Court

April 16, 1979

Dear Bill:

As this is my first day back at the Court, I want to thank you most warmly for taking over my Fifth Circuit Justice duties during my absence.

I feel particularly regretful that the capital case from Alabama (Evans) added to your burdens. I must say, however, that I thought your Chambers opinion was excellent in every respect. As perhaps you know, I advised the Chief that if my vote were needed to break a tie in that case, I would come to the Court for that purpose.

You and Nan were devoted friends, as we would have expected.

The surgery turned out to be more "major" than I had expected, and has left me a little uncertain whether I can resume my customary six-and-a-half-day work week. I have, however, been operating part time - and with some success - from our apartment with two deliveries of papers each day and visits from law clerks. This is a practice you followed, as I recall, when you were out a couple of weeks with your back problems.

In any event, I have missed all of you and the Court. I am happy to be back and hope I can make it for the remainder of the Term.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

4/16/79

Supreme Court of the United States

Memorandum

-----, 19-----

Lewis,

It is very nice to have you
back. I hope you will resist your
natural inclinations to overdo.
As you can see, very little has
changed around here

Cheers

Bryn

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Dear Chief:

I, of course, will go along (albeit somewhat reluctantly) with a 10:00 a.m. start for the May and June conferences.

I am, however, scheduled to take an early afternoon plane on May 17 and again on May 24. I therefore hope that the conference on each of these days will be concluded by noon. I see no reason why it should not be.

I should give you notice, also, that I may be absent entirely on June 7. This is my 50th college reunion and commencement day there. I would like to be present.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

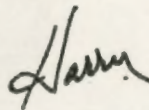
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Dear John:

I shall sit tight, now, in No. 77-926 - Cannon v. University of Chicago, and in Nos. 77-719 - Chapman v. Houston Welfare Rights, and 77-5324 - Gonzalez v. Young.

Sincerely,



Mr. Justice Stevens

cc: The Conference

Marshall Attacks Court On Libel, Jail Rulings

New York Times News Service

BUCK HILL FALLS, Pa. — In a rare public display of sarcasm, bitterness and pique at his Supreme Court colleagues, Justice Thurgood Marshall attacked the court yesterday for affording "insufficient protection to constitutional rights" in two recent cases.

In both cases, one dealing with libel laws and the other with jailed defendants, Marshall was among the dissenters, but in his comments here to a group of federal judges and lawyers, the justice's critique of the majority was stronger and more pointed than in his written opinion.

Earlier this month, the court held that the practice of placing more than one inmate in a cell in the new federal jail in Manhattan was permitted under the Constitution. Speaking from a prepared text at a judicial conference, Marshall accused his colleagues of showing no sensitivity to poor defendants who cannot afford bail, "preferring instead to provide us with such enduring legal homilies as,

There is no one-man, one-cell principle lurking in the due process clause."

Then, departing from his text, the justice said: "For a prisoner in jail, that ain't funny."

IT IS HIGHLY unusual for any justice to criticize his colleagues in public or even to speak out about decisions.

On occasion Marshall, who is among the most outspoken of the nine justices of the court, has publicly discussed decisions of the Court. But the tone of yesterday's speech took members of the audience, many of whom are long-time friends of the justice, by surprise. Several judges and lawyers who have followed his career said that the justice was feeling increasingly frustrated and isolated as the court's most liberal member.

The theme of the judicial conference, which ends today, is the free press, and Marshall criticized last month's Supreme Court holding in

See MARSHALL, A-8

Correct for members of the Court file

Star 5/28/79

MARSHALL

Continued From A-1

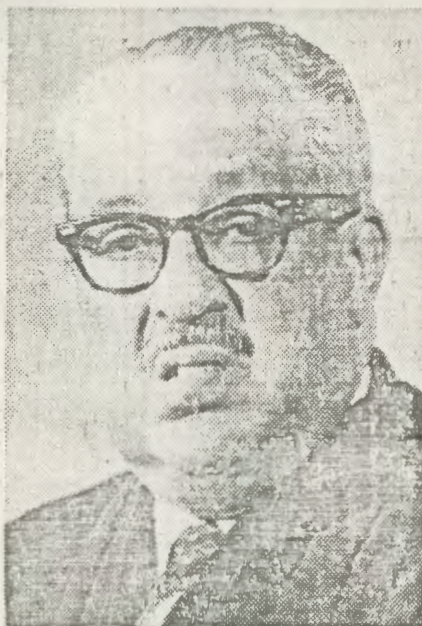
Herbert v. Lando that journalists do not have First Amendment protection in libel suits against inquiries into their thoughts and newsroom conversations with colleagues.

"Preserving a climate of free interchange among journalists is essential to sound editorial decision-making," Marshall said. "Such collegial discussion will likely be stifled unless confidentiality is guaranteed."

In his speech, the justice departed frequently from his prepared text and inserted caustic asides.

IN THE JAIL case, the court also upheld a rule subjecting inmates to body cavity searches after every visit with a relative or lawyer. Marshall said he "could think of no more degrading experience." In an aside, he said most prison wardens disliked conducting such searches, and "those who don't should visit a psychiatrist."

At another point in his speech, after saying that pretrial detainees are "clothed with a presumption of innocence," the justice ad-libbed, "That's before the Supreme Court de-



JUSTICE THURGOOD MARSHALL
Many in audience gasped

cided the presumption didn't exist at all."

- In the jail case, *Bell v. Wolfish*, Justice William H. Rehnquist, writing for

the majority, said that the presumption of innocence is an evidentiary rule dealing with the prosecution's burden of proof at trial and has "no application" to someone whose trial has not begun.

In another decision, announced last week, the court, with Marshall again dissenting, ruled that in some cases the trial judge need not tell the jury about the presumption of innocence, even if the defense lawyer requests such an instruction.

OF THE JAIL decision, Marshall said: "I can only hope that district and appellate judges will read the decision narrowly."

The Supreme Court decisions in the jail and libel cases were both reversals of opinions written by Irving R. Kaufman, chief judge of the Court of Appeals for the Second Circuit, and Marshall made his remarks here to judges and lawyers at the annual meeting of the Second Judicial Circuit, which is made up of New York, Connecticut and Vermont.

Many of the 500 people in the audience gasped as Marshall, a former judge on the Second Circuit, concluded his speech by saying, "Ill-conceived reversals should be considered

as no more than temporary interruptions."

Issues relating to the First Amendment were debated by lawyers and journalists who participated in panel discussions following Marshall's speech.

The editorial process, said A.M. Rosenthal, executive editor of The New York Times, is "under serious attack and not from our enemies or from enemies of freedom." Instead, he said, judges, who he said have "traditionally been philosophical allies of the press," have become "overseers of essential decision-making processes of the press: what to publish, when to publish, how to operate, what to think."

William A. Rusher, publisher of the National Review, said journalists have become "subliminally conscious of themselves as members of a new class," a self-appointed class that wishes to "amend the Constitution informally."

Floyd Abrams, a New York lawyer, suggested that the press has increasingly become the subject of judicial rulings in the past two decades because it "is doing a different job, a better job, in reporting non-official versions of public events."

Marshall Presses Court Dissents

BUCK HILL FALLS, Pa., May 27 (AP) — In an unusual display of criticism from within the Supreme Court, Justice Thurgood Marshall today assailed two recent rulings as dangerous to constitutional rights and personal liberties.

Marshall criticized rulings on which he had dissented: *Bell vs. Wolfish*, which dealt with the rights of jailed prisoners, and *Herbert vs. Lando*, which said journalists are not protected in libel suits from questions about what their thoughts were as they put an article together.

In a speech to the 2nd Circuit Judicial Conference, Marshall called freedom of the press a "dying liberty."

The ruling in the prisoners case said the presumption of innocence has "no application" to a jailed defendant before his trial. Marshall said such defendants are "clothed with a presumption of innocence," then added, "that's before the Supreme Court decided the presumption didn't exist at all."

27 MAY 1979

REMARKS OF THURGOOD MARSHALL
SECOND CIRCUIT JUDICIAL CONFERENCE

MAY 1979

Normally, I begin these talks each year with a report on how well the Second Circuit has done in the Supreme Court. As things now stand, the Second Circuit has been reversed in 6 cases and affirmed in 3. Since all the returns are not yet in and George Gallup has not volunteered his assistance in forecasting the results, I hesitate to predict the final tally. Of the cases that have been decided this term, however, the Second Circuit has provided two of the most important: Herbert v. Lando and Bell v. Wolfish. In my view, your performance was far better than that of my Brethren.

I reported to you last year that "Freedom of the Press" had not fared too well in our recent decisions. Unfortunately, but as expected this trend has continued. With the considerable media attention that Herbert v. Lando has received, both last year when the panel rendered its decision and this year, thanks to an industrious ABC reporter, even before the Supreme Court had spoken, I am sure that you are all familiar with the case.

My personal views on editorial autonomy can be succinctly stated: it must be afforded the utmost protection, to ensure that the public is exposed to the widest possible range of information and insights. Given that libel plaintiffs' pretrial maneuvers may be fashioned more with an eye to deterrence or retaliation than to unearthing germane material, I believe that special safeguards are needed to protect the press from abuse of the discovery process. Without such safeguards, the press may be forced to make editorial judgments that reflect less the risk of liability than the expense of vindication.

Even close supervision of pretrial procedures by trial courts, however, does not suffice to protect journalistic endeavor. Preserving a climate of free interchange among journalists is essential to sound editorial decision making. And as Jim Oakes recognized, such collegial discussion will likely be stifled unless confidentiality is guaranteed. Therefore, I believe that discovery in defamation cases should not be allowed as to the substance of editorial conversations. Particularly because there are so many other means of proving

deliberate or reckless disregard for the truth, this privilege, in my view, would be unlikely to preclude recovery by plaintiffs with valid defamation claims.

The second important case from this Circuit where my colleagues afforded insufficient protection to constitutional rights is Bell v. Wolfish. The Court ruled there that the Government could place almost any restriction on pretrial detainees, provided it did not proclaim a punitive intent or impose conditions that were arbitrary or purposeless. As if this standard afforded detainees any protection at all, the Court weakened it further by according virtually unlimited deference to detention officials' justifications for particular impositions. The factor that my Brethren essentially disregarded is the one which is truly relevant in this context—the impact of the restrictions on the detainees.

Of course, courts should not substitute their judgment for that of jail administrators. Nor should they rubber stamp their actions. As those of you with experience in complex civil rights litigation involving schools, prisons, or mental institutions appreciate, it is sometimes difficult for a

federal court to know the difference between administrative convenience and institutional necessity. But we have long since abandoned the notion that the king can do no wrong. Certainly, wardens should not be treated better than royalty.

Moreover, the posture of crippling judicial restraint which the Court assumed in Bell is particularly inappropriate in the context of jail administration. To begin with, pretrial detainees are confined for the limited purpose of securing their presence at trial. They have not been convicted of a crime, and indeed, are clothed with a presumption of innocence. Detainees' rights are therefore more extensive than those of convicted criminals, and thus more active judicial review of conditions of their confinement is warranted. Second, as we are all aware, few federal offenses are nonbailable. Most individuals in pretrial detention are incarcerated simply because they are too poor to afford a bond. I think that courts have a special obligation to scrutinize impositions that have a disproportionate impact on the poor. My colleagues, however, displayed no such sensitivity, preferring instead to provide

us with such enduring legal homilies as, "There is no one man, one cell principle lurking in the Due Process Clause." At least, the Court did not carry its rhetoric further, and proclaim that due process does not mandate a one man, one bed principle.

This insensitivity to the realities of pretrial detention, it seems to me, colored even the basic mode of analysis in Bell. The Court set out to determine whether the pretrial impositions at issue could be characterized as "punishment." Had my Brethren even considered the impact of the restrictions on the detainees, I think they would have realized that this exercise was entirely semantical. Pretrial incarceration, although frequently necessary to assure defendants' presence at trial, is essentially indistinguishable from other punishment. The detainee is involuntarily confined; he is placed in a locked cell, just as a convicted criminal. To argue over whether this form of confinement can be characterized as punishment skirts the critical constitutional inquiry: whether the state's interests in maintaining the restrictions outweigh the individual interests at stake.

It is the application of this approach, however, that most forcefully illustrates its deficiencies. In particular, the Court upheld a rule subjecting inmates to body cavity searches after every contact visit with someone from outside the jail, including defense attorneys. Although the visits were continuously monitored, the visitors were thoroughly searched, and the likelihood of smuggling was remote to say the least, the Court nonetheless, by a 5-4 vote, simply accepted the detention officials' security justifications without any meaningful inquiry. It did so, moreover, despite the conclusions of the judges of this circuit, that such searches, conducted in the absence of any suspicion of wrongdoing, were so offensive to common decency that they shocked the conscience. I can think of no more degrading experience than being subjected to one of these searches in the presence of guards and fellow inmates. It is simply an outrage that these unwarranted intrusions on personal privacy should be allowed to continue.

In sum, I find Bell v. Wolfish to be one of the most troubling opinions to come from the Supreme Court in quite

some time. I can only hope that district and appellate judges will read the decision narrowly. To read it otherwise would afford pretrial detainees virtually no constitutional protection. Since the Court has consistently disavowed a judicial hands-off attitude even with respect to convicted criminals, this cannot be what was intended in Bell.

On a more positive note, the Second Circuit had the best record this term when it disagreed with other circuits. By an 8 to 1 vote, the Court resolved a conflict between this Circuit and the Fifth, and affirmed Walter Mansfield's opinion in Parklane Hosiery v. Shore. We held there that in a private action for damages under the Securities Acts, the Seventh Amendment did not bar application of collateral estoppel to issues previously litigated in an SEC injunctive suit. This represents a victory for the SEC's enforcement effort, a result that has not been common over the past few terms. In addition, the Second Circuit's view regarding the tax-exempt status of franchisee associations prevailed over a contrary view by the Eighth Circuit. And in United California Bank v. United States, the Supreme Court reversed

the 9th Circuit and adopted Henry Friendly's approach to the treatment of capital gains earned by an estate and set aside for charitable purposes.

This Circuit has done well and must continue to do so. All conceived reversals should be considered as no more than temporary interruptions. We must stand fast for the fullest protection of individual rights.

13
May 17, 1979

Dear Bill,

Jo and I regretted missing your address Monday evening.

The dinner dragged on so long, I began to tire and concluded it was best for me to get to bed.

Several glowing reports on your speech have reached me, including a warm statement of admiration by Whit Seymour.

If you have a manuscript, I would like very much to read it.

As ever

Mr. Justice Brennan

lfp/ss

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1979

Dear Chief:

This is just a note of warning to the effect that I think it not possible to have everything down, as apparently you hope, by June 25. I think a few days beyond that might well do it, and, of course, I have in mind Bill Brennan's departure date. I don't know why this should prevent your and Lewis' appearance at the Fourth Circuit Conference.

Sincerely, .

H.A.B.

The Chief Justice

cc: The Conference

Court

July 18, 1979

Dear Potter,

I enclose a miscellaneous collection of clippings and editorials on the Gannett case; also a couple on judge-ships.

No doubt you already have seen some of these. I must say that the media reaction to Gannett astonishes me. I cannot recall a single comment that recognized that the Court decided this case on the Sixth Amendment and did not reach, as I thought you and I made clear, the First Amendment issue.

I did not view Gannett as changing the principles generally applicable to the various situations in which the fair trial/free press issue arises. The media attempted to establish the "public trial" language of the Sixth Amendment as a new basis for an asserted right to be present at criminal trial proceedings. Your opinion rejected this basis. Although Nebraska Press involved prior restraint, it reflected the classic view of the relationship between free press and fair trial rights.

Jo and I both had check-ups at Mayo last week, without the medics uncovering any new problems or any worsening of the infirmities of ancient age. We now will be here in Richmond, except for the ABA meeting in Dallas, until Labor Day week-end.

In looking back over memorable events of the past Term, none was quite so heart-warming as the surprise party you gave Andy. Quite apart from the success of your "cover plan", the party itself had a special quality that emphasized the importance of family and friends.

Mr. Justice Stewart

2.

I am sure Jo would join in sending affectionate
best to you both.

As ever,

Mr. Justice Stewart
Bowen Brook Farm
Franconia, New Hampshire 03580

lfp/djb

Court

July 23, 1979

Dear Bill,

Although others may have sent you the enclosed pages from Newsweek, I wanted to be sure that they reach you - isolated as you have been in Saltzburg.

The piece on "A Rudderless Court" is sophomoric. We are criticized for deciding each case on the basis of the applicable law to its facts, rather than according to some mythical "judicial philosophy". Newsmen and some law professors seem disturbed, but I would hardly expect justice if I were a litigant before a court that decided cases pursuant to a "philosophy".

I am prompted to write primarily by Newsweek's comment on "The Court's Mister Right". Although there may have been only a reluctant intention to praise you (except for your rhetoric), I think the article on balance is complimentary and deservedly so. This reading of the article will please all of your colleagues.

I am sending a copy of this, with enclosures, to Potter since, he, also, may be out of touch with the "real world". Indeed, in view of the "goings on" in Washington, we are lucky to be away: The Georgia Mafia might try to impeach us.

As ever,

Enclosures:
Articles.

Mr. Justice Rehnquist
General Delivery
Greensboro, Vermont 05841

cc: Mr. Justice Stewart
Bowen Brook Farm
Franconia, New Hampshire 03580

lfp/djb

Curt

August 3, 1979

Dear Bill,

Your letter of July 30, reporting on the Saltzburg Seminar, reached me here in Richmond on August 2nd. You were typically thoughtful to have "briefed" me so thoroughly.

I will certainly follow your precedent, and insist on first-class travel. And, agreeing with you that Heathrow Airport is a zoo, I will fly to Munich or Frankfurt.

Jo, in particular, will be glad to know about the "dress" situation. Jo will certainly talk to Nan.

As to the lectures and seminars, I will want further advice and guidance from you. Perhaps I may plagiarize some of your seminar material, if you have anything written.

This summer has not been particularly restful. I spent the better part of a week having a check-up at Mayo, which proved to be satisfactory in result. I have undertaken a couple of chores at the ABA meeting in Dallas, and these have taken some time in preparation. Jo and I will be in Dallas for nearly a week, and then visit Molly and Kit in Salt Lake City. Upon my return, I have the unwelcome duty of being the principal speaker on the 200th Anniversary of the Supreme Court of Virginia. Then, on September 7, I speak at a testimonial dinner in honor of Grif Bell in Atlanta. Unlike you, I cannot write a speech without considerable effort. Nor can a law clerk write one for me.

Mr. Justice Rehnquist

2.

In any event, we have had a change, and we look forward to seeing you and Nan in September.

As ever,

Mr. Justice Rehnquist
General Delivery
Greensboro, Vermont 05841

lfp/djb

Court

August 6, 1979

Dear "Brethren",

The enclosed advertisement for the Woodward/Armstrong book was sent to me by a bookshop in Houston, the owner of which is a friend of our daughter Jody.

The accompanying note did not identify the publication in which the ad appears, nor the publication date of the book. Apparently the Book-of-the Month Club will include it in its next January selection. I assume this means a fall, pre-Christmas publication.

Hold your hats!

Sincerely,

The Chief Justice
Mr. Justice White
Mr. Justice Stevens
Mr. Justice Blackmun
Mr. Justice Marshall
Supreme Court of the United States
1 First Street, N. E.
Washington, D. C. 20543

Mr. Justice Stewart
Bowen Brook Farm
Franconia, New Hampshire 03580

Mr. Justice Rehnquist
General Delivery
Greensboro, Vermont 05841

Mr. Justice Brennan
The Peru
Old North Wharf, Nantucket 02554

lfp/djb



The Brethren

THE SUPREME COURT UNDER CHIEF JUSTICE
WARREN E. BURGER

by Bob Woodward and Scott Armstrong

For the first time, here is a book that offers an inside look at the United States Supreme Court, the most closed and secretive of the three branches of the federal government. Bob Woodward, Assistant Managing Editor for Metropolitan News at the *Washington Post* and co-author of *All the President's Men* and *The Final Days*, and Scott Armstrong, a reporter for the *Washington Post*, have pierced that secrecy to give us an unprecedented view of the Chief and Associate Justices—maneuvering, arguing, politicking, compromising, and making the decisions that affect every major area of American life. Here is a spellbinding account of the Court's landmark decisions of the past two decades—on the death penalty, busing of schoolchildren, the release of Nixon's tapes, abortion, obscenity—and a remarkable portrait of the men who made the decisions.

The Brethren reveals as never before the implications of power and influence in the Supreme Court, beginning with the dramatic shift that occurred as leadership passed from Earl Warren to Warren Burger. These years, from the late 60's through the 70's, were years of great and dramatic tension. With the passing of John Harlan and the great jurist Hugo Black, who had been on the Court for 32 years, and with the forced resignation of Abe Fortas and the illness and resignation of the Court's great libertarian William O. Douglas, a realignment took place. With Nixon's appointments—Burger himself, Harry Blackmun, William Rehnquist, Lewis Powell—and the appointment of John Stevens by Gerald Ford, only William Brennan and Thurgood Marshall were left of the old liberal majority. Power passed to the center—to such men as Potter Stewart and Byron White, and the stage was set for dramatic confrontation.

The Brethren is a brilliant narrative about the nation's most powerful legal arena, the court in which the meaning of the laws of the land is finally decided.

A Main Selection of the Book-of-the-Month Club
January, 6 1/8 x 9 1/4, 480 pages:

#0-671-24110-9, \$12.95

The Brethren

THE SUPREME COURT
UNDER CHIEF JUSTICE
WARREN E. BURGER

Bob Woodward &
Scott Armstrong



20

Cant

August 8, 1979

Dear Bill,

In a recent letter from J. Wilkinson (now the editor of the Virginian-Pilot) he included the following paragraph:

"As to Rodriguez and Milliken, I would have voted as you did. But I am dismayed by the Court's violation-remedy rationale. Sooner or later, the term 'violation' will come to encompass housing violations, which will then be seen to authorize massive inter-district transportation. Also the violation-remedy rationale is nothing but an invitation to racial quotas, since violations are easy to find."

When we are together, I would like to discuss Jay's point. Of course, if the "violation-remedy rationale" is applied as irrationally as you and I think it was in Columbus/Dayton, Jay is surely right. But Jay offers no alternative, and I can think of none that would not be more open ended. Moreover, I have thought it was sound and principled for an equitable remedy to conform, as nearly as may be, to the nature and scope of an identified violation.

Mr. Justice Rehnquist

2.

Maybe you can generate a wiser solution,
stimulated by the cool breezes and green hills of
Vermont. With 97 degree temperature here (Richmond),
we have neither.

As ever,

Mr. Justice Rehnquist
General Delivery
Greensboro, Vermont 05841

lfp/djb

Gund

September 10, 1979

Dear Harry:

I so much appreciate your sending me the copy of the Mayo Alumnus of January 1979. The articles look fascinating, and I will read them with great interest.

Sincerely,

Mr. Justice Blackmun

lfp/ss

Court

September 12, 1979

Dear Bill,

I write merely to say again how distressed Jo and I are, as well as your colleagues here at the Court, by your present indisposition.

The reports do seem, however, to be most optimistic. Based on experience I have observed of other friends and family members, physical therapy will correct your problem without difficulty - although this usually takes somewhat longer than the medics tend to estimate. You certainly sounded fit when we talked on the phone.

If Jo and I or either of us can be helpful to you or Marjorie in any way, it would please us if you would let us know. And, as I mentioned, if you would like copies of my cert memos - or any segment of them, I will have my clerks arrange this through your Chambers. Although I do not have bench memos in all cases, at the beginning of the Term I usually have a fair number. I also will be glad to lend you any of these that you may wish.

As ever,

Mr. Justice Brennan

lfp/ss

Court

September 25, 1979

Dear Bill:

I send to you herewith the September issue of Commentary.

There are two articles that I commend. One, I know, will please you. It is entitled "Justice Debased: The Weber Decision". The other, "The Illusions of SALT", I hope you will read with equal interest. It expresses very well views that I strongly hold, and have urged from time to time - unsuccessfully - over the past decade.

As ever,

Mr. Justice Rehnquist

lfp/ss

P.S. The Commentary belongs to the Library.

Court

Ocotober 9, 1979

PERSONAL

Dear Byron and Bill:

This will advise, that following my talks with Byron (and an earlier talk with Bill), I confirmed the tentative date Byron had made for the Time interview as Monday, October 15, immediately after we come off the bench.

Mr. Douglas Brew, and his colleague from Time, Mr. Evan Thomas, will be in the press box and will go directly to the Marshal's office. We can have a messenger meet them there, and if Bill Rehnquist is willing, perhaps we could foregather in his commodious Chambers.

Subject to Bill Rehnquist's convenience, Byron and I think it desirable for the three of us to meet before Monday. Possibilities are lunch on Saturday, if Bill is coming to the Court. If not, we could have turkey sandwiches from the snack bar served in Byron's Chambers or mine on Thursday at noon.

Byron has some good ideas as to "ground rules". I did say to Mr. Brew that I do not wish to be taped.

Sincerely,

Mr. Justice White
Mr. Justice Rehnquist

lfp/ss

lfp/ss 10/10/79

Memo for Discussion

Possible "groundrules":

1. No taping.
2. No attribution.

(That is, our names should not be mentioned).

3. No objection to saying that reporters talked to several Justices if - and only if - the article also makes clear that the Justices were supportive - not critical of the Chief Justice. Of course, it should be made clear in any event that no Justice would discuss a specific case or how it had been decided.

Gannett

David Westin

can
10/10/78 [1979]

Brew

attach to case
with court

Interested in C.J. & its effect
on Court. Central inquiry.

Detailed info. on Conference Voting
on Weber & Gannett. (account to Gannett)

Has talked to 50 clerks
- C.J. is inept in assignment
& tries to bring conservative bloc
together - favors W.H.R.

Ground rules laid down by David

1. No attribution

David would { 2. Not criticize C.J. or any justice
3. Not discuss any case or how
decision had been reached

11/24
October 19, 1979

Dear Bill:

Your Rutgers University address is superb in substance and eloquent in style.

You have rendered a service both to the Court as an institution, and to the press - although it may be a while before the latter appreciates this.

I write to record my admiration and appreciation.

Sincerely,

Mr. Justice Brennan

LFP/lab

Court

October 19, 1979

Dear Thurgood,

I hardly need say that Jo and I are distressed by your accident. The news reaching us is that although you have been in considerable discomfort - even a good deal of pain - your injuries will not be disabling except for a limited period of time and to a limited degree. As I said to Cissy, one my former partners lost the capacity to write with his right hand after he was in his middle 60's. He learned, rather promptly, to write with his left - although his style is not exactly elegant. Fortunately, you will not be confronted with this problem.

If you have not tried a dictating machine, this might be a good time for you to experiment with it. I have found it helpful to have one both in my Chambers and in our apartment.

I look forward to having you back beside me on Monday week, coaching me as to how to vote. Until then, Jo and I send affectionate best wishes.

Sincerely,

Mr. Justice Marshall

lfp/ss

may ch

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

✓

October 22, 1979

Dear Brethren:

As you may know, my mother passed away last night in Chicago. It is not an entirely sad occasion because in another few days she would have reached her 98th birthday, and she had been quite ill for the past few years. Fortunately, and quite by coincidence, I was with her on Saturday afternoon. We are rather proud of the fact that she is not only survived by all four sons, but also by sixteen grandchildren, eight great-grandchildren, and two great-great-grandchildren.

Services will be held in Hinsdale, Illinois, on Wednesday. We are requesting that no flowers be sent.

Sincerely,

Jh

lfp/ss 11/26/79

Time Magazine Article on the Court -- Nov: 1979

The attached draft of 11/19/79 of a letter to the Chief Justice summarizes accurately what transpired with respect to the interview that Byron, Bill Rehnquist and I together had with Time reporters Thomas and Brew.

Byron and Bill say that if I wished to send the letter to the Chief, it has their full approval.

Our combined judgment, however, was that in light of the forthcoming Woodward/Armstrong book, the Chief's concern about the Time article will subside into memory quite quickly.

Accordingly, I have concluded to keep the draft in my file as a record of what actually happened. I will not, however, send it to the Chief.

Byron, Bill and I did agree that it might be helpful, by conversation, to let the other Justices know that the three of us interviewed the reporters together, and that we actually spoke well of the Chief Justice as well as of the Court as an institution.

L.F.P., Jr.

lfp/ss 11/19/79

Draft

*Not sent. See
memo attached.*

Dear Chief:

This refers to our conversation about the recent Time magazine article on the Court. You mentioned that you have received several letters from lawyers expressing surprise that the Justices named (and to whom certain specific comments were attributed) had spoken critically of you and other Justices. You inquired whether I would write Time, for publication, a letter disclaiming any such intention.

Although I doubt the wisdom of writing Time, it may be well to record among us the facts while they are fresh in our minds. We discussed at a Conference whether it might be helpful if some members of the Court did interview the Time reporters, as most of us had been requested to do. I stated that if none of us was interviewed, it fairly could be said

that we compelled the Time reporters to rely on secondary sources and that we therefore shared some responsibility for misinformation printed. In part for this reason, I thought some of us should talk to the reporters under prescribed conditions. I may add, generally, that I think the Court needs to be interpreted to the public, and this is left almost entirely to a hostile media. No one can do this better than you, as Chief Justice. Roger Mudd (whom I know slightly because he is an alumnus of my college) said to me some months ago that you are superb on television and that it would be helpful if you utilized it on appropriate occasions. I think your interviews with U.S. News & World Report have been constructive.

Returning to the case at hand, Byron - and possibly Bill Rehnquist - also spoke up at the Conference stating views similar to mine. Other Justices expressed their

unwillingness to meet the reporters, but it was left that each of us should exercise his own judgment.

Accordingly, Byron, Bill Rehnquist and I together interviewed the two reporters. It was agreed that nothing would be attributed to any of us without prior approval. The two or three statements attributed by quotation marks to Byron and me were accurate, although one was a bit garbled. Nothing was attributed to Bill.

Apparently the lawyers who have written you (I have not seen the letters) assumed that other statements in the article - those critical of individuals - also came from Byron and me. It hardly need be said that none of us spoke critically of you or any other Justice or said anything that could have been the basis of the critical statements.

Our purpose in giving the joint interview was to defend the Court as an institution. We made clear at the

outset that we would not discuss personalities, talk about individuals, or respond to questions about cases. The statements in the published article about you, and the oneliners about other members of the Court, apparently reflect unfounded gossip that has been fashionable to print for some time.

If the references to personalities be ignored, I must say that the article portrays the Court institutionally in a generally favorable light. I would like to think that this resulted, at least in part, from our having talked to the reporters about the Court as an institution. This was our purpose.

In light of the foregoing, I do not know what one could say in a letter to Time. The article certainly took "cheap shots", but I would doubt the wisdom of dignifying them by any response. You mentioned that you would reply to

the lawyers who have written you. I hope you will make clear the circumstances under which we interviewed the reporters and our purpose. Both Byron and Bill have read this, and agree that it accurately reflects what transpired.

We also think it advisable for other members of the Court to have this report, and accordingly - with your permission - I will send copies to the Brothers.

Sincerely,

The Chief Justice

October 23, 1979

PERSONAL

Dear Bill:

The story on the front page of the Post this morning, if accurate, was most unwelcome news.

I am sure that Marge's health is a major factor in your thinking. But please do not make any premature judgment. You are in full vigor mentally, and adequate health physically. Your leaving the Court would be an irreparable loss to the Court as an institution, and certainly to each of us as your friends.

As ever,

Mr. Justice Brennan

LFP/lab

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 6, 1979

Dear Chief:

Here are my votes for the argued cases
discussed at the November 2 Conference:

- ✓ 77-1844-City of Mobile, Ala. v. Bolden - Affirm
- ✓ 78-357 -Williams v. Brown - Affirm
- ✓ 78-5705-Trammel v. U. S. - Reverse
- ✓ 78-1076-Rhode Island v. Innis - Affirm
- ✓ 78-1143-Vance v. Terrazas - Affirm
- ✓ 78-1335-Village of Schaumburg v.
Citizens for a Better Environment - Affirm
- ✓ 78-1513-U. S. v. Clark - Affirm
- ✓ 78-1118-Forsham v. Harris - Affirm
- ✓ 78-1088-Kissinger v. Reporters Comm.
for Freedom of the Press - Out
- ✓ 78-1217-Reporters Comm. for Freedom of
the Press v. Kissinger - Out
- ✓ 78-777 -U. S. v. Crews - Out

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

*I have recorded
these votes
u*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 8, 1979

Dear Chief:

Here are my votes for the argued cases
discussed on November 7:

77-1183-Carbon Fuel Company v. United
Mine Workers - Affirm
78-1268-Martinez v. California - Affirm
78-1323-Norfolk & Western Railway v.
Liepelt - Affirm (tentative)
78-1202-Chiarella v. United States - Affirm

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

*votes recorded
m*

Caust

December 4, 1979

Rule 23 Class Action Suits

Dear Chief, Bill and Harry:

I have some material from Professor Maurie Rosenberg, who succeeded Dan Meador at the Justice Department, on studies and proposals as initiated by Dan with respect to Rule 23.

These were provided me by Maurie after the Justice Department apparently declined to make them available to our library - for reasons I do not know.

In any event, they are available upon request. I have just received them, and have them in my Chambers. I doubt that they have any relevance to our two pending cases, but they are available to you - or to others - if desired.

Sincerely,

The Chief Justice
Mr. Justice Brennan
Mr. Justice Blackmun

lfp/ss

number 769

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

✓

December 12, 1979

Dear "Brethren":

Since I will not be present at the Christmas Party--due to a prior commitment to confront the rigors of the Florida climate--I hereby prematurely but sincerely wish you all a Merry Christmas. Indeed, since some of us will not meet for another decade, may I also say "Happy New Year."

JL

number 76

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS



December 12, 1979

Dear "Brethren":

Since I will not be present at the Christmas Party--due to a prior commitment to confront the rigors of the Florida climate--I hereby prematurely but sincerely wish you all a Merry Christmas. Indeed, since some of us will not meet for another decade, may I also say "Happy New Year."

JL

Court

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 31, 1979

MEMORANDUM TO THE CONFERENCE:

At the special session of the Court on May 27, 1975, in memory of Chief Justice Earl Warren, the tribute of Chief Justice Burger included the following paragraph:

"The popular wisdom is that Justices are constantly locked in mortal combat with each other, within these walls. When that folklore was within reasonable bounds, Earl Warren could chuckle over it at lunch with his colleagues, and, drawing on his lifetime of combat in the political arena, he would remind them that there would be little to write about if the Court's work were faithfully depicted, and that news stories must color the reality to achieve readership. The truth, he would often remind his colleagues, is that, literally described, our activities are quite dull, even though not so to us."

It almost seems that the Chief had an advance copy of the "Woodstrong" fictional description of the "discord" here at the Court.

There always have been rumors of personal dissention within the Court.

I also recall the "Impeach Earl Warren" billboards on many of the highways of Virginia and - I am sure - throughout the South. I suppose all that is really new (apart from a change in the actors) is that some clerks - I believe only a few - betrayed extensively and imaginatively the confidentiality that has been honored here over the decades.

In any event, as the New Year dawns I pay tribute to our Chief who has borne the recent highly commercialized libel with urbanity, dignity, and wonderous good humor.

L.F.P.

L.F.P., Jr.