

c 2
January 4, 1978

Dear Chief:

Please put the following cases on the Discuss
List for the January 6, 1978, Conference:

77-5340 Casebeer v. United States, p. 4

77-5427 Bossinger v. Florida, p. 5

77-5648 Cruz v. Ward, p. 10

77-5708 Shelton v. Ohio, p. 10

Sincerely,

The Chief Justice

LFP/lab

C9

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

CHAMBERS OF
THE CHIEF JUSTICE

January 11, 1978

MEMORANDUM TO THE CONFERENCE

Re: Judicial Fellows Program

As you know, the Judicial Fellows Program, operated through the Federal Judicial Center, typically brings two or three talented young professionals to spend a year doing research on problems related to judicial administration. These are typically young associate professors in law schools, political science, public administration or business administration programs. They are always people with a genuine and sympathetic interest in the courts and their problems.

During this educational experience they will be observing administrative operations of the Court, the Federal Judicial Center and the Administrative Office. They would welcome the chance to meet with Justices who would be their guests at a breakfast, lunch or dinner. This could be done either with or without wives at the preference of the Justices. Would those Justices who are willing, anytime over the next year or so, to participate in such an informal exchange please let me know.

Regards,

WRB

cc: Mark Cannon

January 12, 1978

Judicial Fellows Program

Dear Chief:

I would be happy to meet, at some convenient time, with the Judicial Fellows.

I definitely would prefer lunch to either breakfast or dinner.

Sincerely,

The Chief Justice

lfp/ss

cc: Dr. Mark W. Cannon

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

CHAMBERS OF
THE CHIEF JUSTICE

Dear Lewis

I thank you for
your "join" in Ms Daniel.
You are the first!

The briefs for Ms Daniel
were mediocre at best +
I called on the Library of
Congress + some old
materials I have at
home on the Ratification
of the Constitution.

This is a fascinating
area but I felt that
too extensive use of the

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

CHAMBERS OF
THE CHIEF JUSTICE

abundant historical
material would sound
too much like a
jaw review!

Regards

WJG

1/17/78

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

CHAMBERS OF
THE CHIEF JUSTICE

Dear Lewis

I thank you for
your "join" in McDaniel.
You are the first!

The briefs for McDaniel
were mediocre at best &
Library of

c9
January 19, 1978

Dear Chief:

Please put the following case on the Discuss List
for the January 20, 1978 Conference:

77-314 Swonger v. United States, p. 1

Sincerely,

The Chief Justice

LFP/lab

c2

February 14, 1978

Dear Chief:

I would like to make an engagement for next October, and write to inquire whether it is safe to assume that we will commence arguments on the "first Monday" - October 2.

This would mean that we would commence our Conferences on September 25.

This schedule would be in accord with our practice for the 1976 and 1977 Terms. It is a helpful practice that I hope we continue, as it takes some of the pressure off for the remainder of the Term.

Perhaps we could discuss this on Friday.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

February 15, 1978

Dear Chief:

Please put the following cases on the Discuss
List for the February 17, 1978 Conference:

- 77-842 Davis v. Franchise Tax Board - p. 1
- ✓ 77-5921 Gaddis v. Georgia - p. 5
- 77-557) Consol. Coal Co. v. U. S.
- 77-606) Marks v. U. S. *(Stricken)*
- 77-622) Zitko v. U. S. - p. 7
- ✓ 77-5576 Phillips v. Wyrick - p. 11
- ✓ 77-5715 Freeman v. Texas - p. 12
- ✓ 77-5787 Weind v. Ohio - p. 12
- ✓ 77-5826 Osborne v. Ohio - p. 12
- 77-802 Northwest Airlines v. Laffey - p. 15
- 77-902 Volkswagenwerk, A. C. v. Heattransfer Corp. - p. 15
- 77-659 Western Union v. Marshall - p. 20
- ✓ 77-5590 Cumberbatch v. U. S. - p. 24

Sincerely,

The Chief Justice

LFP/lab

February 17, 1978

Chief Justice Warren - Ceremony

Dear Chief:

I have checked my calendar and I expect to be available from May 8 through May 17, except I do not expect to be here for the weekend of May 12-14.

Sincerely,

The Chief Justice

lfp/ss

March 2, 1978

Dear Chief:

Please place the following case on the Discuss
List for the March 3, 1978 Conference:

77-920 Thor Power Tool Co. v. Commissioner of
 Internal Revenue Service, p. 2.

Sincerely,

The Chief Justice

LFP/lab

C 9

March 15, 1978

Dear Chief:

Please put the following cases on the Discuss
List for the March 17, 1978 Conference:

77-5985	<u>Cane</u> v. <u>Kentucky</u> - p. 4
77-6057	<u>Bowden</u> v. <u>Georgia</u> - p. 5
77-6082	<u>Turner</u> v. <u>Texas</u> - p. 5
77-6107	<u>Mitchell</u> v. <u>Hopper</u> - p. 6

Sincerely,

The Chief Justice

LFP/lab

c9

March 16, 1978

Dear Chief:

At the Gridiron Club dinner Griffin Bell introduced me to the President's Counsel, an Atlanta lawyer named Lipshultz (?).

I was reminded that a year ago when we had that "rush, rush" dinner at the White House, the President said that he hoped his Counsel would have an opportunity to visit the Court. Possibly you have had him here. In any event, the thought occurs to me that you may wish to consider including him - with the Attorney General and the Solicitor General - for your dinner Friday in honor of the visiting Chief Justices.

Sincerely,

The Chief Justice

lfp/ss

CQ
April 12, 1978

Dear Chief:

Please put the following cases on the Discuss
List for the April 14, 1978 Conference:

77-477 Hopper v. Barnett, p 1

77-6444 Cody v. United States, p. 14

Sincerely,

The Chief Justice

LFP/lab

Dear Lewis,

How Kind of you to send me
a note with the schedules for Rich-
mond. I had asked Jo about it,
but I had not thought it might
involve your busy self.

I telephoned our Margaret Mary
last night and she was delighted
to hear the schedules. She has a demand-

Mrs. Warren Earl Burger

ing job as a Translator & her time
is limited so I help her with little things
when I can. You made everything
involving her trip much easier and
we both sincerely thank you for your
gracious help.

I'll be sitting in the family box
at the Court today with a niece of Warren
and her husband.

Thank you so very much.

April 25, 1978

affectionately,
Vera

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 1, 1978

Dear Chief:

This is in response to your memorandum of April 28 relating to outstanding votes in four specified cases. My comments are:

1. No. 77-747, Fleck v. Spannaus. I am "out" of this case, so I have no vote.

2. No. 76-6997, Lockett v. Ohio. I wrote you on April 17 setting forth my reaction to your memorandum of April 10.

3. No. 76-6513, Bell v. Ohio. This case depends in part on the outcome in Lockett. My vote is as it was at the time of the conference -- to affirm, except that the triggerman issue will depend on the disposition in Lockett.

4. No. 76-811, Regents v. Bakke. I, of course, have not had the benefit of the Conference discussions in this, but everyone has given me more than enough to read. Progress is being made. I shall have my vote to you no later than May 5, and perhaps even today or tomorrow.

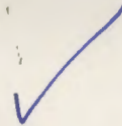
Sincerely,

HA B.

The Chief Justice

cc: The Conference

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



CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 1, 1978

Dear Chief:

Lewis has agreed to try the opinion for the Court in No. 77-453 Eastex, Inc. v. N.L.R.B. John has agreed to undertake No. 76-642 Parker v. Flook. I shall try an opinion for the Court in No. 77-152 Beth Israel Hospital v. N.L.R.B.

With respect to your Memorandum of April 28, you will recall that I am not participating in No. 76-6573 Bell v. Ohio and No. 76-6997 Lockett v. Ohio.

My vote in No. 77-747, Fleck v. Spannaus, as at conference, remains to Affirm. My vote in No. 76-811 Regents of the University of California v. Bakke remains to Reverse

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 1, 1978

Re: Argued cases in which all the votes are not yet in

Dear Chief,

I think my views with respect to these cases are clear. Lest, however, any doubt as to my position be the occasion for delay in assigning opinions, I briefly reiterate my views.

No. 76-811, Bakke. Title VI of the Civil Rights Act of 1964, as amended, provides that no person shall, on the ground of race, be excluded from participation in or denied the benefits of any program or activity receiving federal financial assistance. The Fourteenth Amendment provides that no State shall deny to any person within its jurisdiction the equal protection of the law. The University of California receives federal financial assistance; it is also an agency of the State. It denied Bakke admission to its medical school at Davis because of his race. Any admissions program that considers race as a factor will by hypothesis sometimes exclude an applicant because of his race. The judgment of the California Supreme Court must be affirmed on either the statutory or constitutional ground.

No. 76-6573, Bell, and No. 76-6997, Lockett. The Eighth Amendment prohibits the infliction of cruel and unusual punishments. This prohibition is incorporated in the Fourteenth Amendment. Under this constitutional provision, a death sentence cannot be imposed unless the agency that imposes it (a carefully instructed jury or a trial judge) has been permitted to consider all relevant evidence in mitigation of the

offender or the offense that the offender may wish to adduce. Such consideration was denied to these petitioners by Ohio law, and the death sentences in both cases must, therefore, be set aside.

No. 77-747, Fleck. Article I, Section 10, of the Constitution provides that no State shall pass any law impairing the obligation of contracts. The Minnesota statute here in question is such a law. The judgment before us must, therefore, be reversed.

Sincerely yours,

P.S.
1.51

The Chief Justice

Copies to the Conference

May 10, 1978

Dear Chief:

Please put the following case on the Discuss List
for the May 11, 1978 Conference:

77-6092 Hudson v. Georgia, p. 5.

Sincerely,

The Chief Justice

LFP/lab

67
May 16, 1978

Dear Chief:

Please put the following cases on the Discuss
List for the May 18, 1978 Conference:

77-1478 Pacific Gas & Elec. Co. v. Widener
 p. 3

77-6325 Blair v. United States - p. 5

Sincerely,

The Chief Justice

LFP/lab

cf
May 17, 1978

Dear Chief:

As you know, our apartment is quite near Ft. McNair. Jo occasionally goes down there for lunch, or simply to take a walk.

A policy recently initiated requires identification. The sentry will ask you for your government "ID card".

Jo inquires whether the Court could give identification credentials - in some simple form - to the wives of Justices. This seems to be a good idea. What would you think of it?

Sincerely,

Mr. Chief Justice

lfp/ss

P.S. I would like to have a copy of your ALI speech since I was not present when you delivered it.

May 18, 1978

Dear Chief:

From two separate sources, each highly qualified, I have heard admiring comments about your ALI address.

Both Clement Haynsworth and Whit Seymour - talking to me separately, and without being led (too much) - expressed warm approval of both the content and the delivery of your annual ALI report. Whit also expressed the view, that in any contest between you and the President with respect to the role and performance of the legal profession, our chief executive would come off a rather dreary second.

In these times of general "hard knocks", when one (especially the media) rarely says anything good about anyone in government, I thought it might be cheering to let you know that at least you have two enthusiastic admirers!

As ever,

The Chief Justice

lfp/ss

C9

June 1, 1978

Dear Chief:

Warmest congratulations on your selection for the Fordham-Stein Award.

I was delighted to receive the enclosed letter from Dean McLaughlin.

Of perhaps greater import to you at this particular time, is the state of your health. Jo and I have been distressed that you have been so uncomfortable. Vera reported last night, however, that you are now on the mend - and are working as usual.

You have been missed.

As ever,

The Chief Justice

LFP/lab

June 5, 1978

Dear Chief:

The proposal in your note of June 5 as to cert lists makes good sense to me. I approve.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

c9

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

CHAMBERS OF
THE CHIEF JUSTICE

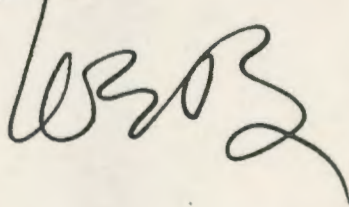
June 5, 1978

Dear Bill:

As an alternative to your suggestion of June 2, I propose that the cert lists continue to be circulated on the present schedule, but that none of the cases be discussed until our first Conference this fall. This will permit those Justices who desire or find time to review them this month to do so; but it will not push any of us. It seems this will have the same effect as your suggestion and the further advantage of preventing inordinately long lists later to make up the time lost. However, I will be guided by the wishes of the Conference.

A prompt response would be appreciated since the Clerk must begin printing before our Conference this Thursday.

Regards,



Mr. Justice Brennan

Copies to the Conference

*The proposal in your
note of June 5 as to cert
lists makes good sense
to me. I approve.*

cg
June 12, 1978

Dear Chief:

The Alibi Club's annual soft shell dinner is scheduled for tomorrow, June 13.

At the Friday luncheon, Admiral Wright and several of your other friends requested that I urge you to attend. They like to have you present at all of their special occasions, but seem particularly hopeful that you will come on Tuesday.

I will attend, and I also think Potter plans to be there. Perhaps we could all go together.

Sincerely,

The Chief Justice

lfp/ss

Early - write

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

10

CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1978

Dear ~~Chief~~ Chief

*OK with me to sit
at 9 A.M. LFP*

MEMORANDUM TO THE CONFERENCE:

One way to relieve the "pressures" of "B-Day" would be to have all our opinion sittings at 9:00 a.m. I would not favor doing it only on "B-Day".

Bill Brennan authorized me to say he favors this.

I await your votes.

Regards,

WJB

June 20, 1978

Dear Chief:

It is O.K. with me to sit at 9:00 a.m.

Sincerely,

The Chief Justice

LFP/lab

Copies to the Conference

"Smair" case
Dart v Hill
TVA v Hill
CHAMBERS OF
THE CHIEF JUSTICE

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

6/26/78

Dear Lewis

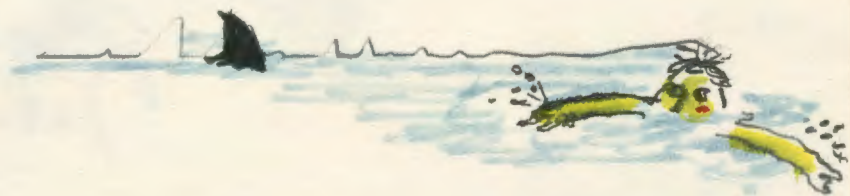
Your "willingness" ["]
exceeded mine in
this case and made
a result possible..

I think it is a
solid forward step.

Regards

Warren

P.S. If the enclosed "from"
piece offends you - burn it!
W.



Our Jan - 15, 1978, at 10:15 AM

The Constitution - and snail darters -

BOTH SAVED!

For Lewis with best wishes
Kearney & Burger
Along Pennsylvania

10th Street

Byron White

Jim Steward

John R. Steward

"The Law, Rogers, the Law..."



C.J.



-and Thomas More

cg
July 25, 1978

Dear Chief:

Thank you for having your chambers send me the "Lawpoll," the Hartford Courant article, and the Baird survey on the relevance of legal training.

Although I confess to not having read all of the Baird long article, I found the material quite interesting.

It was good that the Lawpoll made it clear that you were talking about qualifications for "trial advocacy." Much of the publicity has treated your New Orleans speech as addressing the competency of lawyers in general. My own view about the latter -- which I believe you share -- is that the law schools generally do a fine job in training lawyers for general office practice. I am inclined to think that trial advocacy best can be learned by experience; by participating in trials with experienced lawyers.

At the Virginia Bar Association meeting at the Homestead last week, there was a full program on "legal education." As you would expect, views differed widely. Professor Marshall J. Seidman, of Indiana University Law School, spoke out strongly in favor of increased clinical education. Professor John P. Heinz, of Northwestern, and Professor Kenneth Pye, of Duke, took the opposite view. You would have been interested in the panel discussion.

I hope you and Vera had a pleasant and restful stay in Utah. Jo and I look forward to seeing you both in New York, and to the trip to the Jay residence on August 5th.

Sincerely,

Mr. Chief Justice Warren Burger
United States Supreme Court
Supreme Court Building
Washington, D.C. 20543

cg
July 27, 1978

Dear Chief:

I was sorry to learn that "E.J." is leaving us early in August. When I was at the Court ten days ago, he did not know whether he would be replaced.

We will certainly miss E.J. I share your high opinion of him. It also seems to me that a qualified replacement is in the best interest of the Court. Although E.J. was not needed regularly by every member of the Court, several of us have problems that require the kind of medical attention that only a trained physical therapist can give. In addition to your serious back problem, my understanding is that Byron requires physical therapy fairly regularly. I am under the impression (although not certain) that Harry also has found E.J.'s presence quite helpful. And, of course, Bill Douglas has used him daily.

In June Dr. Cary put me on a regime of medicine and traction for arthritis in my neck and left shoulder -- resulting from a whiplash injury in an automobile accident some years ago. Before we came to Richmond, E.J. was treating me for twenty to thirty minutes a day. If we have no replacement for him, I will have to go over to the Capitol -- probably taking an hour.

I suppose it can be argued that the Court does not need both a therapist and a nurse. I share your view that if a therapist as well trained as E.J. can be found, I think he would be more useful -- both to the public and to Court personnel generally -- than a nurse (assuming that we have only one). In view of the crowds of tourists (quite apart

July 27, 1978

2.

from our own people), we certainly must have medical service in the building.

Perhaps I am prompted to write this morning as I had a rather painful night.

As ever,

Mr. Chief Justice Warren Burger
United States Supreme Court
Supreme Court Building
Washington, D.C. 20543

YOUNG LAWYERS DIVISION

1155 EAST 60TH ST., CHICAGO, ILLINOIS 60637

810 West Tenth
Fort Worth, Texas 76102

August 10, 1978

AUG 17 1978

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

Dear Justice Powell:

Thank you again for honoring the Young Lawyers Division
by accepting our Fellows Award.

You indicated on the night we visited that you might help us establish a meeting with the Chief Justice and other appropriate members of the Court. Unfortunately, the bureaucracy of the American Bar Association makes it difficult for communications from the Court to the Bar to reach the Young Lawyers. As you may recall, the Young Lawyers Division now constitutes 50.7 percent of the American Bar Association and we anticipate moving toward 60 percent within the next five years. It seems entirely appropriate that our organization should be a prime mover in implementing competency activities the Court would deem appropriate both for the Bar in general, and perhaps more importantly, for the use in the federal system.

As you know, the chief asset of our entity is the volunteer resource time the Young Lawyers so freely give. Only by visiting directly with you and the Court can we exchange ideas about the future of the profession and marshal our assets in a productive fashion.

Kindest regards,

David
DAVID F. CHAPPELL
President
YOUNG LAWYERS DIVISION/
AMERICAN BAR ASSOCIATION

DFC:jal
cc: Officers
Directors
ABA Staff

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WASHINGTON, D.C. STAFF
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Washington, DC 20036
Janee Novotny, Staff Liaison
(202) 331-2273

cg
August 15, 1978

Dear Chief:

I was sorry we had to return to Richmond on Thursday without seeing you.

It seemed to me that the ABA meeting was one of the best. It obviously was important for us to be there, and particularly for the Chief Justice of the United States to be present and to take an active part in the one hundredth anniversary. I wish that more of our Brothers could have attended.

Two of the most pleasant and impressive events were the trip you arranged to the Jay residence on Saturday. This was a most delightful occasion in every respect. Also, everyone present was impressed by the Sunday ceremony commemorating the first session of the Court.

I do hope that you and Vera did not exhaust yourselves by responding so generously to the many requests for your presence and participation. In any event, with only the last half of August left before we commence re-assembling, I strongly urge you both to get away to some totally restful and removed .

August 15, 1978

2.

spot. What about the lake country in Wisconsin or the seashore in Maine? I know that there are judicial conferences, but they will manage without the Chief Justice -- just as they have in the past. It is essential for you to have some real vacation.

As ever,

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

29
August 17, 1978

Re: Word Processing Equipment

Dear Chief:

Your memorandum of August 11th did not reach me in my Richmond office until today.

Your comments with respect to the Atex equipment concerned me a good deal. I have, however, talked at length with Kent Bloom and also my chambers. I understand from Kent that although you -- and probably Byron -- will defer using Atex equipment, it is still hoped that I will serve as the "guinea pig."

Kent Bloom advises that Atex has promised to install its equipment (six stations) in one chambers by September 15th, to be operational by September 22nd, but that Atex could not make similar installations that promptly in other chambers. I also understand from Kent that although Atex is a relatively small company, its electronic printing equipment has proved satisfactory to U.S. News, the Government Printing Office, and to the House of Representatives. It has had relatively little experience with word processing equipment in offices comparable to ours, and yet the committee you appointed to investigate this matter believes Atex can serve our needs even better than Wang.

In these circumstances, I am willing -- though somewhat less confident -- to conduct the experiment and have so advised Kent. My understanding is that if Atex lets me down

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

CHAMBERS OF
THE CHIEF JUSTICE

August 11, 1978

MEMORANDUM TO THE CONFERENCE:

Since we adjourned I have been attending a series of Judicial Conference committee meetings, largely in the West, followed immediately by the American Bar Association meeting in New York. I felt obliged to attend because of the 100th anniversary and the multitude of British guests. I have two more Judicial Conference meetings, and then we hope to get some vacation beginning about August 25. Meanwhile, I thought I should give you a progress report on a number of matters:

1. On the legislative front, the prospects look something better than 50 percent for the enactment of the Omnibus Judges Bill.
2. The Bill for limiting our mandatory jurisdiction has not encountered any significant opposition, and prospects are good that it will pass.
3. The Bill significantly limiting diversity jurisdiction is being opposed by the American Bar Association and other groups; its status is in doubt.
4. No action will be taken in this Congress on the new Criminal Code, and probably the Bankruptcy Bill will not be enacted.
5. The new proposed equipment for word processing has involved a great deal of time and study. After originally deciding to have the Atex equipment installed in my office, I have now abandoned that idea. Any Justice who wishes to experiment with it (as I understand Lewis Powell does) is, of course, welcome to do so, bearing in mind the assumption of risk doctrine!

The Atex equipment will do a number of things beyond that available under the Wang system. I have spent a large part of a day and a half reviewing the problems of the Atex system with experts, secretaries and with Mark Cannon. There is sufficient doubt in my mind about the capacity of the Atex Company, which is very small and new, to provide the equipment on time and to meet the post installation, operational problems as they arise after the Term starts. So I have decided to wait until the Atex "delivery" capacity is clear.

As of this writing, Lewis definitely wishes to try out the Atex system this year and Byron White had indicated a similar interest. However, I am going to try to reach Byron by telephone and indicate

Seamon

the strong feelings of my own young ladies, who have worked with the Wang system and have a great deal of experience, who believe that they should not try to experiment with a new system which cannot be installed much before September 30. In addition, the Atex people admit that even after installation is completed there will be many problems about adjusting their very sophisticated equipment to our needs. They have had little or no experience with the precise kind of problems we encounter in our work.

6. You may recall, sometime during the past Term, I mentioned to you that the Capitol Architect thought we should experiment with carpeting the restricted area halls of the Court as they are doing in the Capitol. A number of considerations enter into this: one is the saving on cost of maintenance; another is a safety factor; a third is acoustical. Perhaps from the point of view of the policemen and others who must walk in the corridors, there is a considerable advantage in having carpets underfoot. I have been somewhat skeptical about this but have agreed to an experimental installation, and the Capitol Architect suggested that it be the hall immediately back of the Courtroom.

Originally I had been informed that it would be wall to wall but the installation was completed during my absence and it leaves a margin of about 10 inches on either side. I had hoped to avoid this so that we might eliminate anything except vacuum cleaning. However, the Architect assures me it is a very simple matter for them, perhaps once a month, to roll the carpet and wax the exposed borders. Since this is an experiment, I am content to rely on the Capitol Architect's judgment in this matter and the results must await the unfolding. One of the problems is whether this will hinder the movement of messengers' carts, but we can evaluate that as the experiment proceeds.

7. Lewis and Jo attended the John Jay Homestead luncheon in honor of the Widgery's and I believe he will agree it was a great success.

Regards,

ESB

August 22, 1978

Dear Chief:

At the recent meeting of the American Bar Association I attended one of the dinners of the Young Lawyers Division. I had the opportunity to visit with David F. Chappell, who took office as president.

He expressed an interest in having the Young Lawyers Division play an important part in any programs that may implement your views with respect to improving the competency of litigation lawyers. I think Mr. Chappell understands that neither you nor the Court initiates or oversees such programs. But he, and his fellow officers, have been interested in your leadership in encouraging action toward this end.

I did agree to acquaint you with the desire of Young Lawyers Division to participate and be helpful. I think you would find it interesting to talk to Mr. Chappell. I am sure he would be conscious of the limits on your time.

I am suggesting that he write your office directly. I know from experience that the Young Lawyers Division has the resources and the enthusiasm to contribute affirmatively to any program which it supports.

Sincerely,

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

cc: David F. Chappell, Esquire
President, Young Lawyers Division
American Bar Association
810 West Tenth
Fort Worth, Texas 76102

August 22, 1978

Dear Dave:

The Court itself would not function in this area, and the Chief Justice has confined his role to defining goals and urging the appropriate segments of the bar to take action.

I believe he would be happy to meet with you, despite the constraints on his time. There is no reason why you should not ask him for an appointment at his convenience.

It was good to meet you. I send you best wishes for a most successful year.

Sincerely,

David F. Chappell, Esquire
President, Young Lawyers Division
American Bar Association
810 West Tenth
Fort Worth, Texas 76102

2

September 15, 1978

Dear Chief,

I was delighted to learn today that you will receive The Fordham-Stein Award.

This is a prestigious award primarily because of the manner in which the recipient is chosen. Nominations are invited from a broad cross section of the judiciary, and the practicing and teaching branches of the profession. The nominations are then considered by a strong selection committee.

I know that Jo will be as proud of you as I am.

Sincerely,

The Chief Justice

lfp/ss

SEP 22 1978

United States Court of Appeals
Fourth Judicial Circuit

17

CHAMBERS OF
CLEMENT F. HAYNSWORTH, JR.
CHIEF JUDGE
GREENVILLE, SOUTH CAROLINA 29603

September 18, 1978

The Honorable Lewis F. Powell, Jr.
The Supreme Court
Washington, D.C. 20543

Dear Lewis:

How nice and thoughtful it was of you to have written Judge Phillips as you did, and to have sent me a copy of it so that I might see your pleasant compliment to the Fourth Circuit.

I was very discouraged by the highly political functioning of President Carter's Fourth Circuit Nominating Commission which excluded from consideration everyone thought to have been opposed to ERA or the federal funding of abortions for indigent women, to have voted for President Ford, or to represent the "establishment." The final result, however, turns out to be a very happy one. Dick Phillips is a very pleasant, charming fellow, and he has approached his work with obvious intelligence, ability and conscientiousness. We had a panel session in Baltimore last week during which Harrison Winter, John Butzner and I sat with him repeatedly. Each of the three of us found it a happy experience, and we are delighted to have him with us.

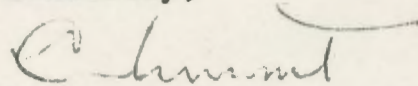
He is somewhat reserved in his manner and in his speech, but he has a nice sense of humor and

The Honorable Lewis F. Powell, Jr.
September 18, 1978
Page Two

I am confident that you, as well as all of the judges
of the Fourth Circuit, will find him congenial.

With warmest regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Barrett", with a long horizontal flourish extending to the right.

United States Court of Appeals
Fourth Judicial Circuit

September 29, 1978

CHAMBERS OF
CLEMENT F. HAYNSWORTH, JR.
CHIEF JUDGE
GREENVILLE, SOUTH CAROLINA 29603

OCT 3 1978

The Honorable Lewis F. Powell, Jr.
The Supreme Court
Washington, D. C. 20543

Dear Lewis:

I know of no reason you should not show my letter in which I referred to the functioning of the Fourth Circuit Nominating Commission to the Chief Justice. I think he probably should know.

Dan Meador is aware of what happened. We were both participants in a discussion of "Merit Selection" of federal judges held in Aspen in July under the auspices of the American Judicature Society. Another participant was Ms. Margaret McKenna, Special Counsel to the President, who had much to do with the staffing of these commissions. She was very frank and open in her statement that the White House looked upon memberships in the commissions as a means of recognition and reward for political activists in the campaigns in 1976. Dan says the Department of Justice did all it could to minimize the impact of the approach of the White House, but that it had only limited success and that its failure was particularly apparent in the case of the Fourth Circuit Commission.

As might be expected of a conference sponsored by the American Judicature Society, a majority of the

September 29, 1978

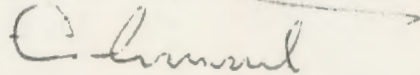
conferees endorsed the principle of merit selection for federal circuit and district judges but thought the composition and procedures of the commissions should be substantially improved.

I suppose that Griff knows from Dan Meador and others about the malfunctioning of these nominating commissions, but the Department's efforts to improve the composition of the commissions might be enhanced if Griff knew the Chief Justice knew of the situation and was concerned about it.

I do not expect to be in Washington again before early spring, but I will let you know when we plan to come, for Miss Dorothy and I would dearly love an evening with Jo and you.

With warmest regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. L. Marshall", with a long horizontal flourish extending to the right.

PERSONAL

October 9, 1978

Dear Chief:

I enclose two letters from Clement Haynsworth that relate to the functioning of the Fourth Circuit Nominating Commission.

As I was not sure whether his first letter (dated September 18) was intended to be personal, I inquired whether I could share it with you. Clement's letter of September 29 agrees with me that it is important for you to know - rather to have confirmation of what you already know - about the way at least one of these commissions has functioned.

I am confident that Griff Bell would not approve of politicizing the nominating function. With some 150 new federal judges to be appointed, this could be very serious indeed. In my view, the political affiliation of a judge is immaterial if he is a highly competent lawyer and possesses the requisite detachment and character. We do not need judges who are nominated because of commitments to particular causes or social objectives.

The ABA Committee (as well as the Attorney General) should afford some restraint although - as you know - that Committee neither nominates nor suggests: it only considers names submitted to it.

I should make clear that, in the end, the person chosen for the Fourth Circuit vacancy, Judge Phillips, is exceptionally well qualified.

Sincerely,

The Chief Justice

lfp/ss

c 2
October 12, 1978

Dear Chief:

Please put the following cases on the Discuss List
for the October 13, 1978 Conference:

78-67	<u>Trustees of Boston University v.</u> <u>NLRB, p. 2</u>
78-253)	<u>Estes v. Metro, Branches Dallas NAACP</u>
78-282)	<u>Curry v. Metro. Dallas NAACP</u>
78-283)	<u>Brinegar v. Metro. Dallas NAACP, p. 3</u>

Sincerely,

The Chief Justice

LFP/lab

c9
October 19, 1978

Observance of Veterans Day

Dear Chief:

My preference would be to adhere to our scheduled Conference date of November 10 - although I will have to leave by 3:30 p.m. for a meeting at Colonial Williamsburg.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

c9

November 21, 1978

Dear Chief:

I hope it will be possible to conclude our conference tomorrow by lunchtime, or certainly shortly thereafter.

We go to Richmond for Thanksgiving. One of my daughters and son-in-law are arriving in Washington by air shortly before 3:00 p.m. tomorrow, and I plan to meet them at the airport and drive directly to Richmond - to avoid the crush of traffic on the day before Thanksgiving.

Sincerely,

The Chief Justice

Copies to the Conference

LFP/lab

cl

November 21, 1978

Dear Chief:

Please put the following cases on the Discuss List
for the November 22, 1978 Conference:

78-453 ACF Industries, Inc. v. EEOC, List 1, Sheet 3,
 p. 3.

78-352 Williams Pipe Line Co. v. FERC, List 3, Sheet 2,
 p. 13.

78-560 Blyth, Eastman, Dillon & Co. v. Rolf, List 3,
 Sheet 3, p. 14.

Sincerely,

The Chief Justice

LFP/lab

cg
November 29, 1978

Dear Chief:

Please add the following case to the Discuss List
for the December 1, 1978 Conference:

78-5374 Smith v. Maryland, p. 7

Sincerely,

The Chief Justice

LFP/lab

c2

December 4, 1978

Clerks for 1979 Term

Dear Chief:

I almost have overlooked our conversation a couple of weeks ago in which I agreed to give you the names of several applicants for clerkships whom I interviewed, thought highly of, but - in the final "shakeout" - did not engage.

I enclose such a list, with a thumb nail biographic summary as to each. I spent perhaps an hour with each of these applicants, and was quite favorably impressed.

I do mention particularly one applicant whom I did not interview because of an inadvertence. His name is Neal Eggleston from Lafayette, Indiana. Although I do not know Neal personally, I do know his brother who has visited in our home and was in our son Lewis' wedding. His father is a lawyer. The family is just the sort of family you would admire, with the same values that most of us share.

Neal Eggleston graduated No. 1 in his law class at Northwestern Law School (Chicago), where he was Articles Editor on the Review. He also is a graduate of Duke University, with highest honors, and is now clerking for Judge Hunter (CA3). I am confident that Neal is superbly qualified for a clerkship here.

I received nearly 200 applications. I had my own clerks screen these, according to criteria I prescribed. They came up with about 50 files that I personally

examined, selecting 20-odd for interviews. Neal Eggleston's application did not come in until late, after my interview list had been completed. It was not brought to my attention. Indeed, I had not heard that he was applying for a clerkship.

Sincerely,

The Chief Justice

lfp/ss

December 4, 1978

Clerk Applicants for 1979 Term

The following applicants were among those interviewed by Justice Powell, and who made favorable impressions. So far as he knows, these applicants are still available:

Andrea Woolley - No. 2 in class at Boalt Hall (Berkeley); Articles Editor of Review; honor graduate of Stanford; clerking for Judge Renfrew, USDC.

Kenneth Ayers* - University of Virginia Law School, Articles Editor of Review and ranked very near top of class; honor graduate of Cornell; now clerking for Judge Campbell. (CA1).

Suzanne Stone - No. 2 in class at Columbia Law School; Research Editor of Law Review; summa cum laude at Princeton; clerking for Judge Wisdom.

Michael Wahoske - Notre Dame Law School; Executive Editor and near top of class; near top of academic class at Notre Dame; now clerking for Judge Swygert (CA7).

* * *

Neal Eggleston - No. 1 in class at Northwestern Law School; Articles Editor of Review; graduate of Duke with highest honors; now clerking for Judge Hunter (CA3). (For reasons stated in Justice Powell's letter of December 4 to the Chief Justice, he inadvertently did not interview Neal Eggleston.)

*Ken Ayers served on the Law Review at Virginia with Lewis III. I know him personally and most favorably. I gladly would have taken him had I not - virtually on a toss of a coin - chosen one of his fellow officers on the Virginia review. Letter from Jay Wilkinson attached.

c2
December •14, 1978

The Jay Exhibit

Dear Chief:

The Court has every right to be extremely pleased with the Jay Exhibit.

It is inherently interesting, but this interest is substantially enhanced by the extremely attractive and effective manner in which the exhibit is presented. I know that the project was your thought and that you have given it personal attention and guidance. I also am sure that Gail and her assistant Susanne deserve high marks for the quality and appeal of the exhibit itself. We have known for some time that Gail is a talented and dedicated young women. It is now evident that her usefulness has been augmented by adding Susanne to the staff. They both are real assets.

My enthusiasm about the exhibit was warmly supported by comments from many of our guests Monday evening.

Sincerely,

The Chief Justice

lfp/ss

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

c 9

CHAMBERS OF
THE CHIEF JUSTICE

Dear Chief -

I am planning to go to

Richmond

December 15, 1978

on ^{the afternoon of} Thursday, the 21st, ~~and~~ I

PERSONAL

~~office~~ ^{office staff} are releasing my

MEMORANDUM TO THE CONFERENCE:

~~for~~ ^{for} from Friday
through Monday,

Re: Christmas Weekend ^{inclusive.}

A ^{though} it is possible

With Christmas ^{that some of my} Day falling on Monday we have a variation of
the pattern of years when we gave the Court staff a
half or full extra day off. ^{leave may elect to}

^{be here on Friday, I}

With no dispensation ^{vote to close that} all will be off on Saturday, Sunday,
and Monday. In my view this is adequate, but if there is
^{day.} a strong view to close on Friday I will gladly yield.

Please let me have your view.

Regards,

WRB

29
December 15, 1978

Dear Chief:

As I plan to go to Richmond on the afternoon of Thursday, the 21st, I am releasing my office staff from Friday through Monday, inclusive.

Although it is possible that some of my clerks may elect to be here on Friday, I vote to close that day.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 19, 1978

Dear Chief:

I wholeheartedly approve of the appointment
of Henry Lind as Court Reporter.

Sincerely,

Paul

The Chief Justice

cc: The Conference

*If I am happy to
concur in the
appointment of
Henry Lind as Court
Reporter.*

CG
December 19, 1978

Dear Chief:

I am happy to concur in the appointment of
Henry Lind as Court Reporter.

Sincerely,

The Chief Justice

Copies to the Conference

LFP/lab