

Court

January 23, 1980

ABA Meeting - Honolulu

MEMORANDUM TO THE CONFERENCE:

President Janosfky has requested that I ascertain which, if any, of you would be willing to take some part in the program of the ABA at Honolulu July 31-August 6.

A number of the Sections and Divisions are now in process of preparing their programs, and several of them would particularly welcome a Justice of the Court either as a luncheon speaker or participant in one of the substantive programs itself.

President Janofsky asked me to emphasize that you should consider this as a warm invitation from the ABA, and - in accord with longstanding tradition - the ABA reimburses for expenses of travel, board and lodging.

Perhaps I should add that it is my understanding (and was the practice when I was active in the ABA) that the Association pays the expenses of all guests who are invited to participated in the program.

L.F.P., Jr.

SS

cc: Hon. Leonard S. Janofsky
Bert H. Early, Esquire

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 25, 1980

Dear Lewis:

I shall not accept President Janofsky's
kind invitation to participate in the ABA meeting
in Honolulu this summer.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

(no)

*Sally -
accumulate
replies on
this subject
& bring to me.*

January 25, 1980

LHP

Dear Lewis:

After Salzburg last year, and a Ninth Circuit conference in Monterey in July this year, I think I will hole up in Vermont for the remainder of the summer and decline the generous invitation of Leonard Janofsky to participate in the ABA meeting in Honolulu during the first week of August.

Sincerely,

Bor

Mr. Justice Powell

Copies to the Conference

Gard

January 29, 1980

Dear John:

Thank you for your extremely nice letter of January 27.

Although I was glad to write to Col. Slane of the Virginia State Police, I can assure you that you "made it" quite on your own.

I wrote merely to make certain that you were not overlooked. In this age of computer screening of applicants, one can never tell about this.

I think you will have a fine experience as a Virginia State Trooper.

Best wishes.

Sincerely,

Mr. John Marshall
6233 Lakeview Drive
Falls Church, Virginia 22041

lfp/ss

February 1, 1980

MEMORANDUM TO THE CONFERENCE

Re: October Term 1980 Calendar

I might add one comment to those of Mr. Rodak.

The calendar for the present Term had a four-week recess between the December and January sessions and also between the January and February sessions. As Mike points out, the proposed calendar for 1980 shortens the earlier recess to three weeks. I would hope that this would not become a permanent routine and that we recognize that the change for 1980, if it is adopted, is temporary and due to the accident of the late date at the beginning of the Term.

One alternative would be to take a four-week recess and place all the argument weeks in 1981 one week later. This would mean we would hear arguments through April 29. We almost did this in the 1975 Term (to the 28th).

I doubt that it makes any difference whatsoever if we preserve the long recess at Christmas. No one is up-to-date at that time. The extra week enables us to get out some opinions that will otherwise be deferred. I see little point in getting everything into the pipeline if we cannot get it out at the other end. I, for one, would prefer to retain the four-week Christmas break, but I doubt if others would. At least it would have the advantage of eliminating the conference on Saturday, January 3.

Harry

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

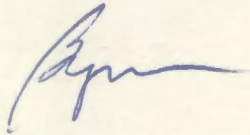
CHAMBERS OF
JUSTICE BYRON R. WHITE

February 1, 1980

Dear Lewis,

Thank you for relaying the Bar Association's invitation to participate in the annual convention in Honolulu this year. I should go more often than I do, but I shall have to forego it again this year. But with you there, I'm sure the meeting will be a great success.

Sincerely yours,



Mr. Justice Powell

cc: Hon. Leonard S. Janofsky
Bert H. Early, Esquire

cmc

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

February 1, 1980

MEMORANDUM TO THE COURT

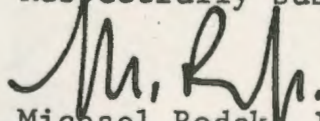
Attached is the proposed calendar for the 1980 Term of Court which basically follows the calendar for the current term.

The current term (1979) commenced on the earliest possible date since the first Monday of October fell on October 1, 1979. You will note that the first Monday of the next term (1980) falls on October 6, 1980.

The proposed calendar has a three-week recess between arguments in December and January instead of the four-week recess for the current term. Also, the proposed calendar has the first conference in January on Saturday, January 3, 1981.

Your attention is also called to the fact that following recent practice the conference date during Thanksgiving week is scheduled for Wednesday, November 26, 1980.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "M. Rodak Jr.", written in a cursive style.

Michael Rodak Jr.
Clerk

SUPREME COURT OF THE UNITED STATES

SCHEDULE FOR OCTOBER TERM 1980

<u>1980</u>	<u>M</u>	<u>T</u>	<u>W</u>		
October	6,	7,	8	(Argument)	
	H,	14,	15	(Argument)	
	20			(No argument)	
	<u>RECESS - OCTOBER 21 through NOVEMBER 2</u>				(2 weeks)
November	3,	4,	5	(Argument)	
	10,	H,	12	(Argument)	
	17			(No argument)	
	<u>RECESS - NOVEMBER 18 through NOVEMBER 30</u>				(2 weeks)
December	1,	2,	3	(Argument)	
	8,	9,	10	(Argument)	
	15			(No argument)	
	<u>RECESS - DECEMBER 16 through JANUARY 4</u>				(3 weeks)
<u>1981</u>	<u>M</u>	<u>T</u>	<u>W</u>		
January	5,	6,	7	(Argument)	
	12,	13,	14	(Argument)	
	19			(No argument)	
	<u>RECESS - JANUARY 20 through FEBRUARY 16</u>				(4 weeks)
February	H,	17,	18	(Argument)	
	23,	24,	25	(Argument)	
March	2			(No argument)	
	<u>RECESS - MARCH 3 through MARCH 15</u>				(2 weeks)
March	16,	17,	18	(Argument)	
	23,	24,	25	(Argument)	
	30			(No argument)	
	<u>RECESS - MARCH 31 through APRIL 12</u>				(2 weeks)
April	13,	14,	15	(Argument)	
	20,	21,	22	(Argument)	
	27			(No argument)	
	<u>RECESS - APRIL 28 through MAY 10</u>				(2 weeks)
May	11			(No argument)	
	18			(No argument)	
	H,	26		(No argument)	
June	1			(No argument)	
	8			(No argument)	
	15			(No argument)	
	22			(No argument)	

Opening conf. Sept. 29

OCTOBER						
S	M	T	W	T	F	S
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER						
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

DECEMBER						
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

(1981)

JANUARY						
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FEBRUARY						
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22	23	24	25	26	27	28

MARCH						
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29	30	31				

APRIL						
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MAY						
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24	25	26	27	28	29	30
31						

JUNE						
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28	29	30				

NOTE:

Argument days
marked in

RED

Non-argument sessions
marked in

BLUE

Conference days
marked in

GREEN

Holidays
circled in

BLACK

JULY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

AUGUST						
S	M	T	W	T	F	S
						1
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SEPTEMBER						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Cont

February 4, 1980

1980 Term Calendar

MEMORANDUM TO THE CONFERENCE:

I strongly agree with Harry that it is preferable to retain the four-week Christmas break.

Having the final arguments during the last week of April is not without precedent.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 6, 1980

Re: Schedule for 1980 Term

Dear Chief,

I am inclined to be in favor of a four-week interval at Christmastime, to be paid for by an argument week the last week in April.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Curt

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

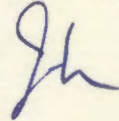
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 12, 1980

Dear Lewis:

The last paragraph on the first page and the two paragraphs on the second page of this letter make a serious suggestion about our procedure in handing down decisions when there is no opinion for the Court. The author of the letter is Nat Nathanson, who was my constitutional law professor at Northwestern, and who previously served as law clerk to Justice Brandeis. He is one of my special heroes in the legal profession. I share the letter with you because I would be most interested in your reaction to his suggestion and to whether it is worth pursuing the point with the Court.

Respectfully,



Mr. Justice Powell

Enclosure



SCHOOL OF LAW

February 4, 1980

Hon. John Paul Stevens
 The Supreme Court of the United States
 Washington, D.C.

Dear John:

Knowing how busy you are at this time of the year, I hesitate to write at all, but I have had a couple of things on my mind for some time, and I have finally decided to try them out on you.

For the third consecutive year at San Diego, I am giving a seminar which I have taught several times before at both Northwestern and Arizona State. I call it Current Supreme Court Litigation or Current Constitutional Litigation. Irrespective of the title, we do the same thing: we take up pending Supreme Court cases on the basis of the lower court opinions and the briefs of counsel. We argue the cases, decide them, and write the opinions, trying to keep a little ahead of the Court, and then comparing our work with the Court's. ~~This year I hope to do among others, Pullilove v. Kieps No. 78-1007, but so far I have been unable to obtain the petitioners' brief, despite several requests of counsel. I wonder if you could ask one of your law clerks to try to obtain one for me from the clerk's office.~~ It seems a shame to miss this case in particular, since it is likely to be the next chapter in Bakke, Weber, etc. (1)

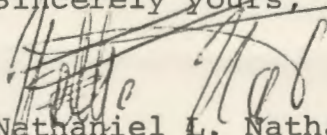
But this is not the main burden of my song. In the course of a general class discussion, I found myself in a debate with one of our best students with respect to the importance of having the Court reach agreement on an opinion "for the Court" rather than a series of concurring opinions. I shocked this student by saying I did not attach great importance to achieving such an agreed opinion for the Court, especially when it required a good deal of pulling and hauling, or compromising, because the result was likely to be an opaque opinion which would be even more confusing than a series of concurring opinions. I thought the better approach was to be thankful if a single opinion satisfied a majority of the Court, but not to agonize very much if it did not, unless there were exceptional considerations comparable to those in Brown v. Board of Education or Little Rock.

~~But this is still leading up to my final and principal point, which is to suggest a change in the procedure of the Court in announcing the opinions when there is no opinion for the Court. Instead of having some member of the majority, chosen for reasons not readily apparent to an outsider, announce the judgment of the Court, followed by his own opinion, which may or may not command plurality support, my suggestion is that the Chief Justice announce the judgment of the Court, accompanied by the explanation that there is no opinion for the Court and that the opinions to follow are those of the individual justices. Then the majority justices would announce their opinions, in order of seniority, followed by the dissenting justices, in similar order. Of course, this would not prevent either group from joining in one or more than one opinion.~~

The purpose of this suggestion is to remove the kind of confusion which prevailed in many quarters after the Bakke decision when so many newspaper commentators referred to Justice Powell's opinion as though it were the opinion for the Court. Of course, sophisticated commentators, like Paul Freund, tried to clear up the confusion, but I doubt that the clarifications ever completely caught up with the original misunderstanding. Even second year law students frequently have difficulty distinguishing between an opinion and a judgment, despite my insistence on it during the first year. I tried this suggestion out on Paul Freund last year and received a sympathetic reaction, but I have not figured out the proper way to present it to the Court. Before going further, I would appreciate your reactions, whenever the spirit so moves you.

All good wishes, and please forgive this imposition.

Sincerely yours,


Nathaniel L. Nathanson
Professor of Law

NLN/mbk

Cord

February 14, 1980

Dear John:

Thank you for sharing Professor Nathanson's letter with me.

I would not object to adopting his suggested procedure where there is no Court opinion. I am not sure, however, that if this procedure had been in effect when Bakke was announced, the confusion would have been any less. I suppose the Chief would have said about what I said in the three page summary that we all approved. Then, in order of seniority, WJB would have spoken - just as he did; he would have been followed by Byron then Thurgood, Harry, LFP and JPS. If I am right in applying Professor Nathanson's suggestion, I doubt that the confusion would have been any less.

Of course, Bakke was unique. In the ordinary plurality situation, his suggestion probably would work satisfactorily. But change here comes rarely, if at all. During my early months on the Court, I thought a good many things were done inefficiently if not curiously. I agree with you that the more important work of the Court is probably handicapped by the time devoted in each Chambers to petitions for certiorari. The Court is tradition bound. After arguing unsuccessfully for staff clerks to write brief cert memos for the entire Court (subject, of course, to review in the individual Chambers), I simply have given up.

Perhaps I also have succumbed to the inertia, but I don't think Professor Nathanson's suggestion would be a significant improvement. I certainly would not oppose it.

Sincerely,

Mr. Justice Stevens

lfp/ss

March 12, 1980

with Justice

MAR 14 1980

Dear Lewis,

How very thoughtful (as always)
of you to forward a copy of your
addressed delivered at Virginia
Union University on March 7th.

Your review of the lead
taken by the Judiciary Branch
of our Government - especially
by the Supreme Court in
seeking solutions towards
attaining true racial
equality was excellent.
Needless to say, your gracious
references to Thurgood did
not go unheeded, nor did
they go unappreciated!

-2-

Not only is our country fortunate to have you as a member of its highest court, but we — Thurgood, Goody, John and 2- are doubly fortunate and blessed to have you and Jo among our friends!

With deep appreciation and warmest regards to you and Jo.

Fondly,
Cissy

RENATO BEGHE
WILLIAM A. CAMERON
BERNARD CEDARBAUM
CARL B. CORDES
RICHARD B. COVEY
FRANCIS M. ELLIS
ROBERT S. ERSKINE, JR.
PETER P. MCN. GATES
ROBERT R. GREW
JACK KAPLAN
ROBERT A. MCTAMANEY
DEVEREUX MILBURN
VINCENT MONTE-SANO
PANDIA C. RALLI
JAMES W. RAYHILL
STANLEY F. REED, JR.
ROBERT M. RIGGS
HEYWOOD SHELLEY
LOUIS LEE STANTON, JR.
THEODORE R. WAGNER
JOHN M. WALKER, JR.
JOHN H. YOUNG

CARTER, LEDYARD & MILBURN
COUNSELLORS AT LAW
2 WALL STREET
NEW YORK, N.Y. 10005

ROLAND L. REDMOND
E. SHELDON STEWART
EDWARD F. CLARK, JR.
RICHARD G. MCCLUNG
SPENCER BYARD
JOHN K. SCHEMMER
COUNSEL

TELEPHONE (212) 732-3200
TELEX DOM. 12-7750
TELEX INTERN'L 66118
TELECOPIER 732-3232
DEX 233-5040

CABLE ADDRESS
"LEDYARD" NEWYORK

APR 22 1980

April 18, 1980

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

Dear Justice Powell:

Thank you for your letter of sympathy. Father had a long and interesting life and he and mother enjoyed their years on the Court and their association with its members. I remember that both were very pleased when you joined the Court.

On behalf of my mother and all the Reed family,
I wish to express our appreciation for your sympathy.

Sincerely,

Stanley F. Reed, Jr.

SFR, Jr.:lo

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

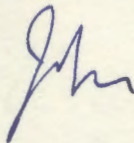
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 21, 1980

Dear Lewis:

Although your letter to the ABA is much too kind to me, I surely have no objection to it.

Sincerely,



Mr. Justice Powell

Cont

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

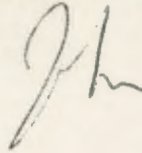
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 22, 1980

Dear Chief:

As you know, I plan to be attending the Seventh Circuit Judicial Conference on Monday, May 12, and therefore will not be present for the Court session. I trust this will not create any quorum problem.

Respectfully,



The Chief Justice

Copies to the Conference

April 24, 1980

Dear Byron:

You mentioned to me that you have been immersed in the history of my real Court - the Supreme Court of Virginia - in connection with the opinion you are writing.

The enclosed brochure includes some history on the Court - including a copy of my speech - that Lewis, III delivered on the 200th anniversary. I doubt that it will contribute anything to a judicial decision. It may possibly be of interest.

Sincerely,

Mr. Justice White

lfp/ss

P.S. In due time - no hurry whatever - I would like to have the brochure returned.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 25, 1980

Dear Chief:

Thurgood has agreed to undertake the Court opinion
in No. 79-1082 N.L.R.B. v. International Longshoremen's
Association and I'll try my hand at No. 79-838 Maine v.
Thiboutot.

Sincerely,

Bill

The Chief Justice

cc: The Conference

Mem. of Court

April 29, 1980

Court Conference - April 25

Dear Potter:

The cases discussed in your absence on Friday, and the tentative votes, were as follows:

79-1268 Harris v. McRae - reversed 5 to 4.

79-4-5-491 Zbaraz - reversed 5 to 4.

79-669 Dawson Chemical Co. - affirmed 5 to 4.

79-1082 Int'l Longshoremen's Assoc. - affirmed 5 to 4.

79-838 Maine v. Thiboutot - affirmed 6 to 3.

When we get to the writing stage, if you wish to have the benefit of my notes I will be happy to make them available such as they are.

Sincerely,

Mr. Justice Stewart

lfp/ss

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

Cart
✓

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1980

Dear "Brethren":

Thanks so much for coming over to Baltimore
with us last Friday. I shall never forget it.

Sincerely,

Thurgood Marshall
T.M.

Mr. Justice Brennan
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

June 4, 1980

Dear Bill and Harry:

We look forward to having you, with Marjorie and Dottie, for dinner this evening: 8:00 p.m., informal.

Our house guests are Mr. and Mrs. Timothy Burrows. Although we have never met either of them, Mr. Burrows is the son of Sir John and Lady Burrows whom Jo and I came to know when I was doing my stint with the ABA. In 1965, when we were in London at the invitation of the British for the Magna Carta celebration, Sir John was President of The Law Society. He and Lady Burrows gave a dinner for us.

Later, they were nice to our daughter Penny and her husband when they were in London for a year or so.

The son, Timothy Burrows, is a solicitor with the London firm of Currie & Co., 21 Buckingham Gate. A book here at the Court indicates that we was admitted to practice in 1953. It does not state where he went to college, or provide any other information.

They come to us from a visit in Virginia, where they spent a day or two each in Richmond, in Williamsburg (where we arranged for them to stay with my sister), and the last couple of days they were visiting Mrs. Fisher at Westover - one of the greatest of the Virginia river plantation homes.

When you reach the gatehouse at Harbour Square, ask one of the attendants there to direct you to a parking place. If one is not immediately available in the driveway, there are parking places reserved for visitors on the ground floor level of the garage. Do not pay any parking tickets. These are on the house.

Sincerely,

Mr. Justice Brennan
Mr. Justice Blackmun

lfp/ss

Court

June 9, 1980

Dear Harry,

Congratulations on the 10th anniversary of your membership on the Court.

In many ways, it is difficult to believe you have been here for a decade. In other ways, I am sure that for you it often seems like a lifetime.

It is this way with me. Yet, I have another year and seven months before I reach double digit service.

It has been a privilege to serve with you.

As ever,

Mr. Justice Blackmun

lfp/ss

Grant

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

July 22, 1980

MEMORANDUM TO THE CONFERENCE

After the circulation before the recess of the Term in July, I sent out a letter or memorandum to the conference saying that I thought some of the usage in the previously circulated memos was somewhat vague and needed clarification. My recollection is that we discussed it at either our last conference or the one immediately before that and decided that there was some ambiguity in the circulation memos, but that a particular procedure embodied in those memos would be employed. I am now somewhat at a loss as to whether it is to be employed in re-applications in connection with capital cases, or whether it is to be employed with re-applications in all cases made after the July recess. I had the impression at the conference where we took the matter up that there would be some further circulation from the Legal Officer, but I am presently in Vermont without any notes as to that conference.

I would appreciate being advised as to the proper procedure for dealing with these re-applications over the summer when they do not involve capital cases. I realize that at any given time a majority of us may be out of Washington, but feel some need for advice from any colleague who knows more about the matter than I do.

Sincerely,

W.H.R.

By
Janet

Mr. Justice Powell

Count 7

July 28, 1980

Dear Potter,

Jo and I spent a day and a half in Washington last week. I went up primarily to brief my incoming clerks, all of whom are now "aboard".

I had lunch with Byron, who was the only Justice in the building. He is leaving for Colorado this week. There was no special news.

I talked with The Chief at some length, mostly listening, on the telephone this morning. He called me about the Agee case, the issue before us being whether The Chief's temporary stay should be continued until we act on the petition for cert. The papers (through some foul up) have not reached me yet. Based, however, on what I presently understand the situation to be, I am inclined to grant cert and therefore would continue The Chief's stay. It is conceded that Agee's conduct is detrimental to the security of the United States. I would think that even if the statute and regulations are ambiguous, the Executive Branch should have inherent or implied power to terminate the passport of one who is abusing it to the detriment of our country.

Jo and I have given up tentative plans to visit the Stewart McClintics in Bermuda. The summer has rushed by so quickly, we think we will now remain in Richmond except for a weekend or two.

Mr. Justice Stewart

- 2 -

We dined with the Bemisses Sunday evening, and there was lots of talk about George Bush's campaign. As the Reagan staff apparently will provide the "issues information", and George's staff will largely be concerned with logistics, Gerry sees no place for himself except here in Virginia.

Our best to you and Andy.

Sincerely,

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

P.S. The enclosed story from The Post about the unhappy school system in Cleveland may be of interest. It is another example of what we addressed in the Dallas case.

lfp/djb

Curt

August 6, 1980

Dear Potter,

The enclosed article by Jay Wilkinson on Fullilove will interest and please you.

Jay occasionally writes a column that appears in several newspapers.

The Des Moines Register's "Investigative Editor" is still pursuing his vendetta against the ownership of securities by Justices. A former partner of mine recently received a call from a staff member of the Senate Judiciary Committee stating that a newsman wished to see any list of securities that I filed with that Committee. The staffer said he could find no such list without exhuming ancient records. I did file a list that, as you may remember, was published widely in the press.

Jo could hardly believe it when I reminded her that already the "summer" for us is half over. It does pass swiftly!

As ever,

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

lfp/djb

7/18/80
cf

August 26, 1980

Dear Potter,

The enclosed editorial in the Post - sound as it is - may surprise you as much as it does me.

My recollection is that the Post was moderate in its editorial comment on your Mobile opinion. Yet, I recall its editorial criticizing us for not employing "minorities" as law clerks, and recommending that clerks be assigned to Justices from a "pool" of applicants not selected by the Justices. One wonders what the Post will write when vacancies on the Court occur. Nor have I observed any criticism by the Post of the President's campaign pledge with respect to the appointment of Supreme Court and other federal judges.

But at least it is refreshing to have this major newspaper recognize that appointments to the Court should not be influenced by race, religion or sex.

We look forward to seeing you and Andy in September.

As ever,

Enclosure:
Post Editorial

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

lfp/djb

CHAMBERS OF
JUSTICE POTTER STEWART

September 18, 1980

Dear Chief,

This note is prompted by John's letter to you of September 16, concerning the procedure followed in dealing with argued cases at our Conference. So far as I know, the procedure described by Kluger in the passage quoted in John's letter has never been deliberately "changed." Rather, the practice that we presently follow has simply evolved over the years.

When I first came here twenty-two years ago, each argued case was discussed at the Conference by each member of the Court in order of seniority, with the Chief Justice speaking first. In the vast majority of cases, it was clear at the end of the discussion how the case was to be decided. Accordingly a formal vote would have been pointless, and no formal vote was taken. Very occasionally, however, when the situation was not entirely clear at the end of the Conference discussion, the Chief Justice would call for a formal vote either on his own motion or on the motion of any Justice.

The practice that we now follow is not dramatically different. The only change that has occurred -- and it has been a change of accretion rather than an avulsion -- is that now the word "never" should be substituted for the phrase "very occasionally."

I would be entirely amenable to the suggestion that a vote be taken at the end of our discussion of any case, when either you or any other Justice requests it. Indeed, I think the taking of a vote would be a good idea in at least some cases in the interest of definiteness and clarity. But, based upon a good many years of experience and observation here, I think that in most cases such a vote would be a needless formality.

Sincerely yours,

The Chief Justice

Copies to the Conference

P.S.
✓

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 23, 1980

*File on
correspondence
amusing
justices*

Dear Chief:

I have read with interest John's and Potter's letters concerning voting procedure for argued cases.

When I first came here, the docket sheets listed the Members of the Court in order of juniority. This would indicate voting in that order. Indeed, nearly all of the text books I have seen state that was and is the procedure. It has never been the procedure, however, since I have been here, that is, for at least ten years, and it prompted me to suggest some time ago to reverse the docket sheet listing to provide an order of voting downward instead of upward.

I once asked Bill Douglas about this procedure and did so during a conference. He stated flatly that voting had always been in order of seniority since he had come on the Court. No one challenged that statement, and I certainly was in no position to do so. I cannot tell from Potter's letter whether the procedure was the other way when he first arrived.

I am amused by Kluger's statement that each "said his piece without interruption until they had all spoken." Of course, he never attended a conference, or at least a recent one.

Sincerely

H.A.B.
—

cc: The Conference

Court

September 23, 1980

Dear Chief, Potter and Bill:

As you were with me in the Dallas case, I enclose the article from Sunday's Star on the chaotic situation in Los Angeles. It closely parallels the experience in Dallas and other cities.

One would think we had learned something after a quarter of a century. There must be better ways to afford the opportunity for diversified racial and ethnic student bodies (wholly without purposeful discrimination) than to destroy by busing the opportunity for any genuine integration, and at the same time severely weaken public education in general.

I do not think the history of education in our country will look kindly on the role of the federal courts in recent years.

Sincerely,

The Chief Justice
Mr. Justice Stewart
Mr. Justice Rehnquist

lfp/ss

low
October 17, 1980

Dear Chief, Potter and Bill:

I attach another story - by a liberal columnist -
on the school disaster in the Los Angeles area resulting
primarily from busing.

Sincerely,

The Chief Justice
Mr. Justice Stewart
Mr. Justice Rehnquist

lfp/ss

November 3, 1980

Dear Cissy and Thurgood,

Two faculty members from Virginia, Dean Richard Merrill and Professor John Jeffries, visited me on Saturday.

I do wish you could have heard their praise of Goody. As no doubt you know, Goody - and his teammate - won the quarter final moot court argument at the Law School, and did so quite impressively. Also, Dean Merrill and Professor Jeffries said that Goody is doing quite well in his class work, is a serious student of the law, and also is extremely well liked by his classmates.

You have every reason to be very proud of your sons.

Sincerely,

Mr. Justice Marshall and Mrs. Marshall

lfp/ss

Carter

December 17, 1980

Dear Bill:

The enclosed letter from my former partner, Joe Carter, confirms what I have heard from several Richmond friends: that the Bar Association there is most anxious to have you speak. They are planning rather far in advance (1982). But they are flexible as to the exact date and time. There are both luncheon and evening meetings. When John went down last January, there was a reception in his honor at the John Marshall House (a residence you and Nan would enjoy) followed by a luncheon attended by about 600 lawyers. The automobile trip, portal to portal, is about two hours.

If you would be willing to include Richmond in your 1982 schedule, I am sure you could leave the exact date flexible - though perhaps indicating a month.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: Joseph C. Carter, Jr., Esquire