

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

CHAMBERS OF
THE CHIEF JUSTICE

Jan 7, 1979

Dear Lewis

The first seven
years are the easiest.

Fasten your seat
belt!

Congratulations on
survival and best wishes

Regards

WJB

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15 JAN 1979

HONORABLE LEWIS F POWELL JR
ASSOCIATE JUSTICE US SUPREME COURT
SUPREME COURT BLDG
WASHINGTON DC 20501

AS WE DISCUSSED IN OUR LAST MEETING THE UNIVERSITY IS PLANNING A MAJOR OBSERVANCE OF THE 100TH BIRTHDAY OF JIMMY BYRNES. WE ARE INVITING BY MAILGRAM THE CHIEF JUSTICE TO KICK OFF THE OBSERVANCE AT THE UNIVERSITY'S LAW DAY CELEBRATION IN MARCH. GERMAN CHANCELLOR SCHMIDT HAS AGREED TO CONCLUDE THE OBSERVANCE ON JUNE 6TH AND WE ARE EXTREMELY OPTIMISTIC THAT PRESIDENT CARTER WILL BE PRESENT ON MAY 12TH FOR CAROLINA'S COMMENCEMENT IN HONOR OF BYRNES. WE THINK IT WOULD BE MOST APPROPRIATE THAT MR BYRNES' JUDICIAL CAREER SHOULD BE NOTED BY THE PRESENCE OF THE CHIEF JUSTICE. I WOULD APPRECIATE YOUR AID IN HELPING US SECURE HIM. IF HE IS NOT AVAILABLE HOWEVER, CAROLYN AND I WOULD BE DELIGHTED IF YOU AND JO COULD COME. IN FACT WE'D LOVE IT IF THE BURGERS COULD COME IF YOU COULD COME ALSO.

THE SPRING PROMISES TO BE EXCITING IN CAROLINA WITH THE ANNOUNCED INTENTION OF PRESIDENT AND MRS SADAT TO VISIT US AND SADAT'S VERY KIND INVITATION FOR ME TO ACCOMPANY HIM WITH A SMALL DELEGATION FROM HERE TO BE PRESENT AT THE SIGNING OF THE TREATY OF PEACE AT MT SINAI.

I WILL APPRECIATE TREMENDOUSLY ANY HELP YOU CAN GIVE US AND WILL CALL SALLY IN THE NEXT DAY OR SO TO LEARN OF ANY PROGRESS. THANK YOU, BEST WISHES.

THE FOLLOWING IS A COPY OF OUR MESSAGE TO THE CHIEF JUSTICE:

"IN MARCH OF THIS YEAR THE UNIVERSITY OF SOUTH CAROLINA IS COMMENCING A THREE MONTH OBSERVANCE OF THE 100TH BIRTHDAY OF SOUTH CAROLINA'S OWN JAMES F BYRNES. BYRNES CONSIDERABLE CONTRIBUTIONS WILL BE RECOGNIZED BY THE CONFIRMED BUT AS YET UNANNOUNCED VISIT OF HELMUT SCHMIDT, CHANCELLOR OF THE FEDERAL REPUBLIC OF GERMANY, TO CAROLINA IN JUNE TO CONCLUDE THE OBSERVANCE AND THE VERY, VERY GOOD POSSIBILITY THAT PRESIDENT CARTER WILL COME TO THE UNIVERSITY ON MAY 12 FOR COMMENCEMENT, A CEREMONY ALSO TO BE DEDICATED TO THE MEMORY OF GOVERNOR BYRNES. A COMMITTEE OF DISTINGUISHED CITIZENS, CHAIRED BY JUDGE DONALD RUSSELL, IS HELPING TO PLAN THESE EVENTS.

THE UNIVERSITY OF SOUTH CAROLINA LAW SCHOOL HAS PLANNED ITS LAW DAY OBSERVANCE FOR EITHER MARCH 9TH OR 16TH WITH THE HOPE THAT YOU MIGHT ATTEND AS THE DISTINGUISHED SPEAKER. THE SUBJECT WILL COMBINE A DISCUSSION OF OUR CHANGING RIGHTS AND THE CONTRIBUTIONS OF MR BYRNES. WE ALSO PLAN TO ANNOUNCE THE ESTABLISHMENT OF A JAMES F BYRNES CHAIR IN

TO REPLY BY MAILGRAM, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

INTERNATIONAL LAW ON THAT DAY.

A BANQUET IS PLANNED IN MARCH TO INCLUDE APPROXIMATELY 1,000 PEOPLE INCLUDING LAW STUDENTS, FACULTY, DISTINGUISHED MEMBERS OF THE BAR AND BENCH AND SOUTH CAROLINA ELECTED OFFICIALS. WE SINCERELY HOPE YOU CAN BE PRESENT. WE ARE PREPARED TO OFFER AN HONORARIUM AND COVER ALL TRAVEL ARRANGEMENTS FOR YOU AND MRS BURGER. PLEASE ADVISE ME AT YOUR EARLIEST CONVENIENCE OF YOUR AVAILABILITY. THANK YOU FOR YOUR CONSIDERATION. BEST WISHES. (SIGNED) JIM HOLDERMAN, PRESIDENT, UNIVERSITY OF SOUTH CAROLINA, COLUMBIA SC 29208, PHONE: 803-777-3101"

JIM HOLDERMAN

15:10 EST

MGMCOMP MGM

c9

January 16, 1979

Dear Chief:

This refers to the mailgram you received on yesterday from Dr. James Holderman, President, University of South Carolina, inviting you to participate in the ceremonies honoring the 100th anniversary of Justice Byrnes' birth.

I write to say that Jim Holderman is a friend of mine, and a person whom I greatly admire. He is fairly new as President of the University of South Carolina, having formerly been with the Lilly Foundation. Incidentally, Jim is a close friend of Les Arends, former Republican Whip.

Although the dates suggested by President Holderman probably are not convenient in view of our argument schedule, if your schedule would permit your participation on some other date, it may be that this could be arranged. This is a speculation on my part, but a phone call to Jim Holderman could provide an answer.

It would mean a great deal to the citizens and especially the lawyers of South Carolina if you could do this.

Perhaps we can have an opportunity to discuss this.

Sincerely,

The Chief Justice

lfp/ss

c9

January 18, 1979

Dear Chief:

As I am no good at writing longhand, perhaps you will excuse me for dictating a personal letter.

You were thoughtful to remember my 7th anniversary on the Court, and I do not want the occasion to pass without expressing to you my genuine appreciation for all that you have done to make those years pleasant and memorable - despite the serious misgivings I had about undertaking this office at my ancient age.

You and Vera were extremely thoughtful and generous in making us feel at home in the early months, and at all times since. The International Club and the symphony project, both of which were made available to Jo by Vera, have meant a great deal to Jo. But quite apart from affording us these and other opportunities to participate in the social and cultural life of Washington, we particularly value your friendship.

As to the Court, I am sure my votes often disappoint you. This, I suppose, is inevitable in view of the nature of our responsibility. Anyone who thinks there are "blocs" among us, or that our views are predestined, simply does not understand the tradition of independence here at the Court or - indeed - the inherent independence of lawyers.

I thoroughly enjoy our Conferences. I had the vague impression - not without historical support - that over the years there have been many periods of disharmony among the Justices, resulting in acrimonious exchanges at Conference. The nine of us now serving are congenial personally, despite differences that each of us sometimes feel keenly about. I give you a large share of the credit for making our Conferences so pleasant. You preside with a light touch, and a sense of humor that tends to defuse the rare occasions when some of us differ with unnecessary vigor.

I also greatly admire your overall interest in the Federal Judicial System and your high sense of responsibility in discharging the duties of the Chief Justice of the United States.

My only concern is that the burdens you carry are too heavy. Wherever there is an opportunity to delegate those that relate to the system itself, rather than this Court you will have my encouragement.

As Chief Justice you are the focal target of attack by those who do not like particular decisions or who even resent the Court's constitutional authority. You bear these "arrows" with more grace than I would. In view of the marked trend in this country to tear down leaders and even our institutions, we cannot expect the Supreme Court and its members to be immune. I believe, however, that the verdict of history will be that your Court has been a good one.

In sum, I look back on my seven years here with a genuine sense of pride in having been a part of this institution, and with warm memories of my associations with you and our Brothers.

As ever,

The Chief Justice

lfp/ss

cg
January 22, 1979

Spencer Campbell's Retirement Party

Dear Chief:

As you know, the retirement party for Spencer is scheduled for tomorrow, Tuesday, the 23rd, in the East Conference Room, commencing at 4:30.

We are, of course, counting on you to attend - at least for part of the time, and I will call on you for a few remarks.

If you think it appropriate, I know Spencer would appreciate an autographed picture of the Chief Justice. You could present this at the party.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1979

Dear Chief:

Enroute in to work this morning, after having dug myself out of some snow in McLean, I arrived in the Capitol Hill area shortly before 10:30 AM. I was re-routed several times from the normal route, and finally at Second Street and A, S.E. -- the southeast corner of the Court building -- I was told by an officer of the Metropolitan Police that I would have to turn right (east) rather than proceed the extra couple hundred feet along Second Street in order to turn left into the Court garage. I told him I was a Justice of this Court and that going straight ahead was the only way I had of getting to work -- he, harried as he was, responded that he didn't care who I was, I would have to turn right. I went straight ahead anyway and managed to safely reach this judicial enclave without further trouble. The re-routing of traffic apparently was the result of some sort of demonstration by the tractor farmers, but to me it raises rather serious questions as to our access to this building.

If the Metropolitan Police, the Capitol Police, or whoever else is ultimately responsible for these decisions, choose to allow the tractors to parade around the Capitol square and tie up traffic, it is hard to see how they will be able to turn down other groups in the future. There are enough Senators and Representatives, and enough Capitol Police, to make sure that members of Congress have access in spite of ordinary mortals being barred, but since there are so few of us in this

Sally - I'll report
that you & I agree!

building I suppose we will have a harder time making our case. It is quite understandable when there is advance notice, such as in the case of an inauguration parade, a mass demonstration which has been planned and noticed several days in advance, and the like. But so far as I can tell this was completely spontaneous, and I gather that our police force (and perhaps the Metropolitan and Capitol police forces) had no advance notice or little advance notice of it.

I think it is worth discussing at Conference whether we are not entitled to be treated a little bit differently than I was this morning, whether our police force should not be made privy to decisions of the Metropolitan or Capitol Police to allow parades which block access to our building, and the like. If these matters cannot be worked out satisfactorily, I think there are some fairly strong arguments for moving the seat of our operations -- which not only are not generally intended to be the target of mass demonstrations, but are prohibited by law from being so -- to some place that is not across the street from the nation's Capitol. The latter by nature is going to attract all sorts of demonstrators exercising their constitutional right to petition their legislators, but I remain of the view that we should be petitioned only in the manner prescribed by law, and that we should not be unwilling conscripts in somebody else's demonstration just because of our location.

Sincerely,



The Chief Justice

Copies to the Conference,
Mr. Cannon and Marshal Wong

February 14, 1979

Dear Chief:

Please put the following cases on the Discuss List
for the February 16, 1979 Conference:

78-5746 Kasto v. U. S. - p. 6
78-5981 Ferri v. Ackerman - p. 33

Sincerely,

The Chief Justice

LFP/lab

29
February 20, 1979

Interior Illumination of the Court

Dear Chief:

In view of your proper concern not to be wasteful of electric energy, I make this report.

I was at the Court in the middle of the day on Sunday. In "stretching my legs", I did a tour around the corridors of the first and ground floors. About half of all of the corridor lights on the first floor (I counted roughly 18 to 20 of the total number of lights) were "on". Only a few of these were even arguably needed. During daylight, the four courtyards provide quite adequate lighting for the four main corridors that serve the Chambers of the Justices. Even the three interior corridors (the two that parallel the great hall and the one that runs north and south) do not need as much artificial light as they were receiving. There were two of the great light fixtures "on" in the great hall, and in view of the relative darkness of that area these may be needed.

On the ground floor level, and in the absence of the courtyard windows, there is a greater need for artificial light. It may not have been excessive on that floor, although I think some study of it could be made as to the need on Sundays when only a handful of people - other than officers - are here.

I did not take a look at the second floor.

Sincerely,

The Chief Justice

lfp/ss

cg
March 1, 1979

Dear Chief:

Please put the following case on the Discuss List
for the March 2, 1979 Conference:

78-1140 Michigan v. Jones - page 3

Sincerely,

The Chief Justice

LFP/lab

c 9

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,

The Chief Justice

cc: The Confernce

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 10, 1979

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Sincerely,

Lewis

The Chief Justice

cc: The Confernce

lfp/ss

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

CHAMBERS OF
THE CHIEF JUSTICE

File 19
Hamberd
C.J. 1979
Friday 7/1/79

Dear Lewis

Conference went off rather quickly with a decision to proceed without deferring any cases.

This leaves you free to participate in any or all at your option - Brie having made that choice last Term. There is another option I will mention when you are congenial to "court talk."

I have sent a modest bottle
from my cellar - to your
residence. I feared you
might drink it all at once
in your dehydrated state!
Additionally a 1961 vintage
should not be bruised by
15 miles travel

We are overjoyed with
all reports. Keep it up!

As ever

Levon

C9

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

March 21, 1979

Memorandum

To: The Chief Justice

From: The Librarian

Subject: Discarding of Library Materials

1979 MAR 21 PM 4 50

RECEIVED
MEMBERS OF THE
SUPREME COURT
CHIEF JUSTICE

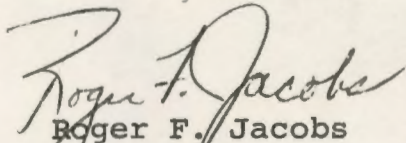
Over a period of years the Library has developed a substantial collection of duplicate and other redundant or unnecessary materials. Some of this duplication has continued to the present day, based on a three-decade perception that it was necessary to provide core collections in both the "Bar Library" and the "Justices' Library." This perception in turn was probably based on the assumption that the collections in these two spaces would receive, if not equal use, sufficient use to justify the large level of duplication. Library analysis indicates that such dual usage, if it ever did exist, does not exist today.

This unnecessary duplication in the face of severe pressure for both book funds and shelving space required a review of our duplication practices. Moreover, while conducting this review the practice of retaining materials with remote if any value to the Court was brought into serious question.

I am now convinced that there are many titles which occupy shelving space and are no longer necessary. In the attached Appendix I have listed examples of these titles, the space that would be saved, and the suggested reason for discarding.

Although the removal of all of these titles would free up space, the discarding of some would provide the additional advantage of reducing expenditures by eliminating the annual cost associated with them. This savings could in turn be used to fight inflation or purchase unique titles for the Library.

As I move forward to discard these materials and reduce the quantity of subscriptions, I believe it appropriate to inform the Court of my intentions and invite any comments it might wish to make.


Roger F. Jacobs

cc: Mark Cannon

APPENDIX

Materials to Be Discarded

1. All India Reporter. 1950-77. 48 lineal feet.
Reason: Lack of use.
2. Pakistan Legal Decisions. 1947-75. 26 lineal feet.
Reason: Lack of use.
3. English Parliamentary Debates. 1909-63. 144 lineal feet.
Reason: Lack of use.
4. Records of the War of the Rebellion. 140 vols. 28 lineal feet.
Reason: Lack of use; also in Serial Set which library has complete.
5. Law Reports (England) 1865-1978. 125 lineal feet.
Reason: This is Library's second copy; usage figures indicate one copy is adequate.
6. American Digest System. Century-5th Decennial. 93 lineal feet.
Reason: Library's second copy; lack of use.
7. Individual State Digests contained in Regional Digests.
20 lineal feet.
Reason: Regional Digests make State Digests redundant;
lack of use; annual subscription savings of \$2500.
8. National Reporter System. 639 lineal feet.
Reasons: Copy 2; circulation data suggests one copy sufficient
particularly when Library has complete collection of
official state reports; annual subscription savings
of \$2108.00
9. Official State Reports. 2659 lineal feet.
Reasons: Copy 2; circulation data indicates one copy sufficient;
annual subscription savings of \$2000.
10. State Legal Encyclopedias (excepting Va., Md., N.Y., & Calif.)
50 lineal feet.
Reasons: Lack of use; annual subscription savings of \$400.

Total shelf space gained - 4012 lineal feet (i.e., shelving for
20,000 books or 40 months growth)

Total annual subscriptions savings - \$7,008.00

AMERICAN BAR ASSOCIATION

SECRETARY
Herbert D. Sledd
308 W. Short Street
Lexington, KY 40507

STANT SECRETARY
F. Wm. McCalpin
Room 1400
611 Olive Street
St. Louis, MO 63101

1155 EAST 60TH ST., CHICAGO, ILLINOIS 60637 TELEPHONE (312) 947-4016

1979 MAR 26 PM 1 46

March 21, 1979

Judicial Conference of the United States
The Chief Justice
The Supreme Court
Washington, D.C. 20543

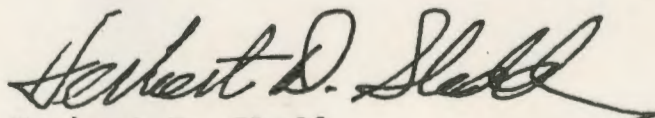
Dear Mr. Chief Justice:

At the meeting of the House of Delegates of the American Bar Association held February 12-13, 1979 the attached resolution was adopted upon recommendation of the Section of Criminal Justice.

This resolution is being transmitted for your information and whatever action you may deem appropriate.

Please do not hesitate to let us know if you need any further information, have any questions or whether we can be of any assistance.

Sincerely yours,


Herbert D. Sledd

HDS/apr

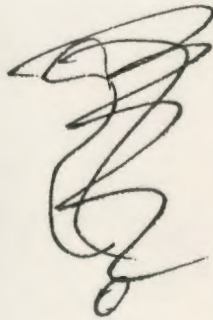
Attachment

cc: Tom Karas, Esquire
Chairman, Section of Criminal Justice

BE IT RESOLVED, That the American Bar Association recommends that the United States Supreme Court adopt a rule providing for appointment of counsel to prepare petitions for discretionary review of state court convictions, including appropriate postconviction or clemency petitions if necessary, in death penalty cases where the defendant cannot afford to hire counsel; and

BE IT FURTHER RESOLVED, That the American Bar Association offers to assist the United States Supreme Court in identifying qualified attorneys who are willing to accept appointment to prepare and file a petition for discretionary review in state death penalty cases, and to urge the Court to begin making appointments in state death penalty cases immediately; and

BE IT FURTHER RESOLVED, That the American Bar Association recommends to Congress that the Criminal Justice Act (19 U.S.C. §3600A) be amended to provide for the payment of adequate compensation to counsel appointed by the United States Supreme Court to prepare and file petitions for discretionary review in state death penalty cases.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke at the bottom.

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

March 29, 1979

MEMORANDUM FOR THE CHIEF JUSTICE

Subject: Proposed Amendments to Rules of Appellate
Procedure, Criminal Procedure, §2254 Procedure,
§2255 Procedure and Evidence

If these amendments are to go into effect this year,
they must be transmitted to Congress by May 1.^{*/}

The AO sent the Court the text of the rules as amended,
and an excerpt from the Report of the Judicial Conference's
Committee on Rules of Practice and Procedure, showing the
current language and the proposed additions and deletions.
The Report also contains Advisory Committee Notes, explain-
ing each of the proposals in detail.

This memorandum briefly summarizes each proposal, and
is keyed to the pages in the Report. Although I am no
expert on procedure in the lower courts, all the changes
seem reasonable and desirable. However, regarding several,
I have included comments and, where it seemed appropriate,
suggested changes.

Marc Richman

Marc Richman

^{*/}See 18 U.S.C. 3771; 28 U.S.C. 2072, 2075, 2076. Apparently,
changes in post-verdict criminal rules, including appeal, do not
have to be approved by Congress (18 U.S.C. 3772), but the practice
has been to send them along with the others.

FEDERAL RULES OF APPELLATE PROCEDURE
(Keyed to Appendix A of Report)

● RULE 1. Scope of Rules p. 1

Adds provision to clarify that a motion or application which F.R.A.P. requires to be made in the district court must be made in accordance with district court practice, not F.R.A.P. 27.

● RULE 3. Appeal as of Right - How Taken p. 2

(c) Content of the Notice of Appeal

Adds provision that an appeal will not be dismissed for formal defects in the notice of appeal.

(d) Service of the Notice of Appeal

Expands to all cases the present practice in criminal, habeas, and §2255 proceedings whereby the district court clerk transmits the notice of appeal and docket entries to the court of appeals as soon as the notice is filed. This is the first step in giving the courts of appeals increased practical control over the early steps of the appeal, a major goal of these proposals.

(e) Payment of Fees

This new paragraph provides that the court of appeals fees are to be collected by the district court when the notice of appeal is filed; the transmission of the appeal notice and docket entries will include reference thereto. (At present the fee is paid in the court of appeals before the appeal is docketed.) The notes agree with the case law that failure to pay the required

fees is not jurisdictional and that the time for payment can be extended by the court of appeals.

COMMENT: The rule does not say how this will work, but presumably the district court will accept the notice without payment of the fee, leaving the rest up to the court of appeals. Otherwise, the court of appeals would have to act on the excuse before the notice of appeal time expired and that could present problems. However, it does not seem necessary to amend the proposal.

● RULE 4. Appeal as of Right - When Taken p. 5

(a) Appeals in Civil Cases

(1) Clarified to show intent to cover all civil cases, and that the notice must be filed the indicated number of days "after" entry of judgment; the present "of" is ambiguous. A new sentence provides that a notice mistakenly filed in the court of appeals will be deemed to have been filed in the district court on the same date.

(2) New provision to avoid loss of appeal due to premature filing of notice: a notice filed after announcement of a decision but before entry of the judgment or order will be treated as filed immediately after such entry, except where a post-trial motion suspends the finality of the judgment or order. See infra.

(4) Clarifies that a post-trial motion (for judgment n.o.v.; to amend or make additional findings; to alter or amend judgment; or for a new trial) filed by any party suspends finality of the judgment for all parties to the case, and that their time for appeal also runs from disposition of the motion. Newly provides that a notice of appeal filed before disposition of the post trial motion has no effect, and that a new notice must be filed after disposition of the motion, with no additional fees.

COMMENT: Presumably, if the ruling on the motion eliminates the party's needs to file a new notice of appeal, the fee previously paid will be refunded.

SUGGESTION: Paragraph (4) could be amended by adding the following at the end: ", and if a new notice is not filed, the fees previously paid will be refunded."

(5) Clarifies that time-extension requests must be filed within 30 days after expiration of the time for filing the notice of appeal. If filed within the original time period, they may be ex parte, unless the district court requires otherwise. Thereafter (but not more than 30 days after), service may be required in accordance with local rules. Newly provides that the period may be extended beyond the 30-day period if the district judge does not act within that period on a timely motion, but the maximum is 10 days beyond the date the judge acts. Eases the standard to include "good cause," because the present

"excusable neglect" does not cover the situation where the time has not already run.

(6) Redrafted to emphasize that a civil judgment must be embodied in a separate document. The notes suggest that when the notice of appeal is filed, the district court clerk should check for compliance with this requirement and notify the judge and the parties if it has not been met.

● RULE 5. Appeals by Permission Under 28 U.S.C. §1292(b) p. 10

(d) Grant of Permission; Cost of Bond; Filing of Record

Redrafted to conform to proposed amendment to Rule 3(e) requiring payment of court of appeals fee in district court. Makes clear that a notice of appeal is not required.

● RULE 6. Appeals by Allowance in Bankruptcy Proceedings p. 11

(d) Allowance of the Appeal; Fees; Cost Bond; Filing of Record

Redrafted the same as Rule 5(d), supra.

● RULE 7. Bond for Costs on Appeal in Civil Cases p. 12

Eliminates mandatory \$250 bond set in 1937, and substitutes discretionary power in the district court to require such security as necessary.

● RULE 10. The Record on Appeal p. 14

(b) The Transcript of Proceedings; Duty of Appellant to Order; Notice of Appellee if Partial Transcript is Ordered

Newly subjects ordering of trial transcript to local court of appeals rules, because, for example, some require transcripts in all short criminal trials of indigents. Newly requires appellant to place a written order with the court

reporter and file a copy with the district court clerk, stating whether it is to be paid for under the CJA. If no transcript is ordered, the appellant must so certify. Newly places a time limit on motions of appellee to require the appellant to order additional portions.

● RULE 11. Transmission of the Record p. 16

(a) - (c); (d) abrogated as unnecessary

Presently, the appellant has the nominal duty to see that the record is transmitted; but once he orders the transcript it is really out of his hands. So, the sections are revised to place the duty directly on the court reporter and the district court clerk. After receiving a transcript order, the court reporter must advise the court of appeals clerk when he expects the transcript to be ready; if that is more than 30 days from the request, the reporter must get an extension from the court of appeals clerk. When the transcript is finished, it is filed in the district court, with notice to the court of appeals. If the transcript is not filed on time, the court of appeals clerk will notify the district court and take any steps directed by the court of appeals.

Also new: When the record is complete, the district court clerk is to transmit it forthwith; but the parties may agree to retention of the record in the district court for use in preparing the appeal, or the district court may so order. And the court of appeals may by local rule designate parts of records that are not to be transmitted routinely.

- RULE 12. Docketing the Appeal; Filing of the Record p. 21

(a) - (b); (c) abrogated as unnecessary

Sections changed to conform with new procedures for payment of fees in district court and transmission of the record. Docketing is now automatic when notice of appeal is received from district court.

- RULE 13. Review of Decisions of the Tax Court p. 23

Name of court changed to United States Tax Court to conform with statute; similar conforming changes are made in other places.

- RULE 24. Proceedings In Forma Pauperis p. 24

Tax court name change.

- RULE 27. Motions p. 24

(b) Determination of Motions for Procedural Orders

Changed to allow local court of appeals rules to give clerk power to decide certain procedural motions.

- RULE 28. Briefs p. 25

(g) Length of Briefs

Deletes alternative lengths for briefs which are not printed, but typed and Xeroxed, because number of words on a printed small page (6-1/8 by 9-1/4 inches) is the same as on a large page (8-1/2 by 11 inches) typed in elite. (Our new rules would require pica type and small pages; the differences are significant.) But, local court of appeals rules may require pica type and correspondingly extend the page limits.

(j) Citation of Supplemental Authorities

This new paragraph permits such citations (after the brief or argument) to be made by letter to the clerk, with

reference to pertinent pages in the brief, but without argument. Responses are allowed in the same manner.

● RULE 34. Oral Argument p. 34

(a) In General; Local Rule

Newly provides that argument is allowed in all cases unless, under local rule, a three-judge panel unanimously determines it is unnecessary. Such rules must allow any party to file a statement of reasons why argument is necessary. Such rules must include a statement of criteria allowing argument unless the appeal is frivolous, the dispositive issue has recently been decided, or the briefs are adequate and the decisional process would not be significantly aided.

(b) Notice of Argument: Postponement

Newly allows parties to request more time for argument.

COMMENT: The old rule allowed 30 minutes unless local rules provided otherwise for all cases or classes of cases. That has been deleted, and presumably the panel which decides whether there will be argument also will decide its length, but the new rule does not so provide.

SUGGESTION: This could be remedied by amending the first sentence to include the underlined language: "Oral argument shall be allowed for 30 minutes in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument

is not needed or that the time should be modified.

And the second sentence probably should be amended at the end to give the parties the opportunity to give reasons why argument "should be heard and for how long."

● RULE 35. Determination of Causes by the Court In Banc p. 29

(b) - (c)

Makes explicit that responses to en banc suggestions may not be filed without court order. Newly provides that rehearing suggestions be circulated to senior judges on the panel, even though they cannot vote. Newly provides that request for initial hearing en banc be filed by date on which appellee's brief is filed.

COMMENT: Because the brief is deemed filed on the day it is mailed, but a suggestion is filed when it is received by the court, there could be some confusion because the appellee could not send his suggestion with his brief if mailed on the last day.

SUGGESTION: This could be remedied by amending the first sentence in ¶(c) to provide that the suggestion must be made "by the date on which the appellee's brief is filed, or, if filed by mail, by the date it is received by the court."

• RULE 39. Costs p. 30

(c) - (d)

Newly permits local court of appeals rules to award printing costs different from those where the clerk's office is located, because in geographically large circuits this is sometimes unfair to the parties. Newly allows time for objections to requested costs, and provides that issuance of the mandate shall not be delayed because costs have not yet been assessed.

• RULE 40. Petition for Rehearing

(a) - (b)

Allows local rules to vary filing time from 14 days, and increases permissible length from 10 to 15 pages. Also eliminates difference for non-printed petitions, but allows local rules to modify. (See proposed Amendment to Rule 28, supra.).

FEDERAL RULES OF CRIMINAL PROCEDURE
(Keyed to Appendix B of Report)

● RULE 6. The Grand Jury p. 1

(e) Recording and Disclosure of Proceedings

(1) Recording of Proceedings

New section requires stenographic or tape recording of all proceedings, except deliberations and voting. Unintentional failure to do so would not affect the validity of a prosecution. The recording or reporter's notes remain in the custody of the government attorney, unless otherwise ordered by the district court.

Presently recording is permissive, although some courts of appeals (and states) have required or encouraged it. The relatively small cost is outweighed by the following benefits: enabling impeachment of witnesses whose trial testimony is inconsistent; ensuring reliability by providing record for perjury prosecution; restraining prosecutorial abuses; and supporting prosecutor where witnesses are later intimidated. Commentators Moore, Wright, and the ABA support this change, which does not affect grand jury secrecy.

(3) Exceptions

(C) Where disclosure is ordered under present provisions, the district court is newly given express control over manner, time, and conditions. This would allow, for example, an indigent defendant to be given a copy of a tape recording, rather than a transcript.

● RULE 7. The Indictment and Information p. 10

(c) Nature and Contents

(2) Criminal Forfeiture

Emphasizes that a judgment of forfeiture may not be entered in a criminal proceeding unless the indictment or information alleges the extent of the interest or property subject to forfeiture.

● RULE 9. Warrant or Summons Upon Indictment or Information p. 12

(a) Issuance

Amended to make it explicit that an arrest warrant may be based only on an information supported by sworn probable cause, in conformity with Gerstein v. Pugh, 420 U.S. 103 (1975). Because the present rule provides a warrant "shall" issue if the government requests one, the language appearing to allow the district court to issue a summons instead is deleted. However, where "no request is made," the district court may issue either.

COMMENT: Presumably this means that if the government's request does not specify a warrant or summons, the district court may issue either, not that the district court may issue either in the absence of any government request simply because an indictment or information has been filed.

SUGGESTION: This could be remedied by amending the third sentence to read: "If the ~~[no]~~ request ~~[is-made]~~ does not specify which, the court may issue either a warrant or a summons in its discretion."

(e) Plea Agreement Procedure

(2) Notice of Such Agreement

Amended to provide a record of the defendant's awareness that a plea bargain where the prosecutor promises only to recommend a sentence, or not to oppose the defendant's request, is not binding on the court, and that its rejection will not be a reason for allowing withdrawal of the guilty plea.

(6) Inadmissibility of Pleas, Plea Discussions, and Related Statements

Amended to describe more precisely what evidence relating to plea discussions is inadmissible in later proceedings. The present language could be read to exclude an otherwise voluntary admission to law enforcement officers merely because it was made in the hope of obtaining leniency by a plea. The provision is redrafted to protect only such statements made "in the course of plea discussions with an attorney for the government," leaving questions of such confrontations between suspects and law enforcement officers to be resolved in the body of case law dealing with police interrogation. Express protection is also given to statements made in the course of formal plea proceedings, which the notes indicate would include statements in a related probation report.

Also added is a second exception to the rule of inadmissibility (the first is in a perjury prosecution), namely where another statement made in the course of the same plea proceeding or discussion has been introduced and the statement ought in fairness be considered contemporaneously with it. For example, in a

motion to dismiss a prosecution, if a defendant introduced evidence of favorable prosecutorial statements made in aborted plea discussions, then other relevant statements from the same discussions, including those of the defendant, could be introduced against him in the interest of truth.

Finally, the word order is changed to clarify that what is prohibited is use of the statement "against" the declarant, not its use in later proceedings "against" him. However, the notes disclaim intent to imply that a defendant has a right to use statements of the prosecutor favorable to the defendant; the rule simply would not prohibit such use in an appropriate instance.

- RULE 17. Subpoena p. 27

- (h) Information not Subject to Subpoena

New section to provide that statements of witnesses or prospective witnesses are no longer subject to subpoena but may be requested only in accordance with proposed Rule 26.2, infra.

- RULE 18. Place of Prosecution and Trial p. 28

Amended to allow place of trial in a district with statutory divisions to be set with due regard to the prompt administration of justice, as well as the present considerations of convenience to the defendant and the witnesses. The present language has been construed not to allow this, but the Speedy Trial Act does. The amendment is not inconsistent with any venue provisions or with the Jury Selection Act statement of policy.

Contains substance of Jencks Act and analogous procedures for production of statements of court witnesses and defense witnesses other than the defendant (the latter implementing United States v. Nobles, 422 U.S. 225 (1975)). Underlying this new rule is the feeling that purely procedural matters belong in the rules rather than in Title 18. The sanction for a defendant's failure to produce does not include granting a mistrial, but only striking of the witness's testimony. Where the statement is alleged to contain irrelevant matter, the court may examine it in camera and excise whatever should not be disclosed.

COMMENT: The rule does not allow the judge to preclude the witness from testifying where it is known in advance that the statement will not be produced, as happened in Nobles. Nor do the notes (p. 36) adequately explain why the court should not be able to grant a mistrial for the prosecutor where the defense witness has testified and the defendant's refusal to produce a statement creates "manifest necessity" or where "the ends of public justice would otherwise be defeated." United States v. Perez, 9 Wheat. 579, 580 (1824). Cf. United States v. Dinitz, 424 U.S. 600 (1976).

SUGGESTION: Amend ¶(e) to end as follows: "the court shall order that the witness not be allowed to testify or that the testimony of the witness

be stricken from the record and that the trial proceed, or [~~if it is the attorney for the government who elects not to comply,~~] shall declare a mistrial if [~~required by the interest~~] the ends of justice would otherwise be defeated."

● RULE 32. Sentence and Judgment p. 37

(c) Presentence Investigation

(3) Disclosure

(E) Changed to conform references to the Parole Commission Act.

(f) Revocation of Probation

Abrogated. Subject now in proposed new Rule 32.1, infra.

● RULE 32.1. Revocation or Modification of Probation [New Rule] p. 38

Old rule 32(f) provided only that there be a hearing with the defendant present and apprised of the grounds, with bail permitted. The new rule implements the holdings of Morrissey v. Brewer, 408 U.S. 471 (1972), and Gagnon v. Scarpelli, 411 U.S. 778 (1973).

First it provides for a prompt preliminary hearing when the probationer is in custody, with rights to notice of the hearing, its purpose and the alleged violation; opportunity to appear and present evidence; upon request, to question witnesses against him (unless justice does not require appearance of witnesses); and notice of right to be represented by counsel. (Scarpelli did not require the latter, but 18 U.S.C. 3006A(b) does). The proceedings are to be recorded, and the test is probable cause of a violation.

Pending the violation hearing, the probationer may be released under Rule 46(c).

Second, the revocation hearing must be held within a reasonable time, unless waived. In addition to the rights he has at the preliminary hearing, the probationer gets notice in writing and the unqualified right to question witnesses against him.

Finally, the new rule provides for a hearing with assistance of counsel before the existing terms or conditions of probation can be modified, unless the relief is granted to the probationer on his request or is favorable to him.

COMMENT: The rule does not prescribe the evidentiary rules, the standards for finding a violation, or what happens upon revocation, although the notes discuss them (pp. 42, 43).

Presumably, these would not be binding.

• RULE 35. Correction or Reduction of Sentence p. 45

Rule is broken down into new subparagraphs.

(a) Correction of Sentence - no change in substance.

(b) Reduction of Sentence

Previous language retained. Adds new provision that changing a sentence from imprisonment to probation is a permissible reduction of sentence. To the extent this happens where a defendant has already begun his prison sentence it is a change in law: U.S. v. Murray, 275 U.S. 347 (1928), and Affronti v. U.S., 350 U.S. 79 (1955), held that the Probation Act did give the court power to do so, because Congress could not have intended to allow this option during the entire period of the jail sentence,

and because that would undercut the parole and pardon powers of the executive and subject district judges to unending reduction motions from prisoners. These concerns are not present here because of the Rule's 120-day limitation. The new provision may sometimes implicate 18 U.S.C. 3651, which allows the judge to impose a lengthy sentence, with the first six months in prison, and the rest suspended with probation.

RULE 40. Commitment to Another District p. 48

This substantial revision abolishes the present distinction between arrest in a nearby district and that in a distant district; clarifies the authority of the magistrate with respect to bail, where bail has been fixed in another district; adds a provision regarding arrest of a probationer in a district other than that of his supervision; and adds a provision regarding arrest of a defendant or witness for failure to appear in another district.

(a) Appearance Before Federal Magistrate

Abolishes warrant of removal proceedings where a defendant is arrested outside the state or more than 100 miles from the district where a warrant has issued or the offense is alleged to have been committed. The provisions of Rules 5 and 5.1 are adequate to protect the rights of those arrested in distant districts because such an arrest is based on a warrant, indictment, or information; or, if there is no warrant, there must be a complaint with sworn probable cause. See Rules 3, 4(a), 5(a). A preliminary examination (Rules 5, 5.1) must be held unless an indictment or information has been filed in the other district, or the defendant requests that the examination be held in the other district.

(b) Statement by Federal Magistrate

Newly requires the defendant to be notified of Rule 20, which allows him to have the underlying case transferred to the district in which he was arrested if he wishes to plead guilty or nolo.

(c) Papers

Provides that if defendant is held or discharged, the papers and bail are to be transferred to district where prosecution is pending.

(d) Arrest of Probationer

Newly provides that probationer arrested in another district must be taken promptly before a magistrate, who will hold a preliminary hearing under Rule 32.1(a) if jurisdiction has been transferred or if the violation occurred in that district. If the latter, the magistrate may either hold the probationer to answer in the district having probation supervision, or dismiss the proceeding and notify that court. Otherwise, he may hold the probationer to answer only upon production of a certified copy of the probation order, the warrant, and the application for the warrant, if he finds that the person before him is the one named in the warrant.

(e) Arrest for Failure to Appear

Newly provides that a person arrested on a warrant issued in another district for failure to appear as required by a subpoena or the terms of release must be taken to a magistrate without unnecessary delay. Upon production of the warrant (or a certified copy) and a finding that the arrestee is the person

named therein, the magistrate shall hold him to answer in the district which issued the warrant. This was added because of some confusion whether present Rule 40(b) applied to bench warrants.

(f) Bail

Newly provides that the magistrate shall take into account the amount of bail previously fixed in the other district and the reasons therefor, but is not bound thereby. However, if he fixes different bail, he must state the reasons in writing. The notes mention with approval that the magistrates' manual suggests consultation with the judge in the other district, but the rule does not so require.

● RULE 41. Search and Seizure p. 60

Amended to permit warrants to search for a person in two circumstances: (1) where there is probable cause for his arrest, or (2) where he is being unlawfully restrained, e.g., a kidnap victim. (Although a kidnap victim is not a criminal, he is and has evidence of a crime.) However, the rule does not require such a warrant in any situation. That will be up to developing case law. If the cases someday require a warrant to search for a person, the procedure will exist. But even if not required, it should be available for a cautious officer who wants a probable cause determination by a neutral magistrate.

● RULE 44. Right to and Assignment of Counsel p. 67

(c) Joint Representation

Establishes a new procedure designed to avoid post-conviction claims of denial of effective counsel due to joint representation. Provides that whenever two or more defendants

have been jointly charged, or have been joined for trial, and are represented by the same retained or assigned counsel (or by counsel who are associated in the practice of law), the court shall promptly inquire with respect to that representation and personally advise each defendant of right to effective assistance of counsel, including separate representation. Unless there is good cause to believe a conflict of interest is not likely to arise, the court must take appropriate measures to protect each defendant's rights, including obtaining a waiver or ordering separate counsel. The rule is consistent with the law of several circuits and with ABA standards.

RULES GOVERNING §2254 PROCEEDINGS

● RULE 10. Powers of Magistrate p. 80

Amended to conform with 28 U.S.C. 636. Provides that duties imposed on district court judges under the §2254 rules may be performed by magistrates under that statute. The remainder of the rule is omitted as unnecessary.

RULES GOVERNING §2255 PROCEEDINGS

● RULE 10. Powers of Magistrates p. 82

Amended to track Rule 10 in §2254 proceedings, supra.

● RULE 11. Time for Appeal p. 83

Adds sentence to clarify that time for appeal is governed by F.R.A.P. 4(a), even though §2255 motions are now considered steps in the criminal case.

FEDERAL RULES OF EVIDENCE

- RULE 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements p. 85

Amended to conform to the proposed amendment to Rule 11(e)
(6) of Criminal Rules, supra.

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

c9

CHAMBERS OF
THE CHIEF JUSTICE

March 29, 1979

MEMORANDUM TO THE CONFERENCE:

I asked Marc Richman to review the rule changes on §§
2254 and 2255, Appellate Procedure and Criminal Procedure.

A copy is enclosed for your information.

Regards,

Les B

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

RECEIVED
OFFICE OF THE
CLERK

March 30, 1979
APR 2 AM 11 23

MEMORANDUM FOR THE CHIEF JUSTICE

Subject: ABA Resolution on Appointment of Counsel in
Capital Cases

Facts: In February, the ABA passed a resolution urging the Court to "adopt a rule providing for appointment of counsel to prepare petitions for discretionary review of state court convictions, including appropriate postconviction or clemency petitions if necessary, in death penalty cases [involving indigents]." Further, the ABA offers assistance in identifying qualified attorneys willing (apparently pro bono) "to prepare and file a petition for discretionary review in state death penalty cases," and urges the Court to begin making appointments immediately. Finally, the ABA recommends to Congress that the CJA be amended to provide payment for attorneys who receive such appointments.

Discussion: It is unclear whether this resolution is aimed solely at certiorari petitions in this Court, or also at discretionary review of capital cases by state courts. The resolution's first paragraph seems to suggest the latter, because it mentions "postconviction or clemency petitions," which must refer to state court proceedings. However, it could mean only that counsel would pursue such avenues after

this Court disposes of the case. In any event, it is unlikely that this Court would want to become involved in appointing counsel for state proceedings of any kind. Let the ABA make its offer directly to the state courts.

What remains is an offer to find attorneys willing to prepare certiorari petitions in this Court for indigent state capital defendants who do not have counsel. There is no apparent need for a rule, but the Clerk could be instructed to refer any such defendants who request counsel to the appropriate ABA committee. The Court might wish to issue that instruction in writing and send a copy to the ABA, or the Clerk could advise the ABA.

Marc

Marc Richman

cc: Mark Cannon

Attachment: Copy of resolution
and cover letter

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

c 9

CHAMBERS OF
THE CHIEF JUSTICE

April 2, 1979

MEMORANDUM TO THE CONFERENCE:

Enclosed is copy of a letter from an ABA Committee and a memorandum prepared by Mr. Richman at my request.

Regards,

WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 3, 1979

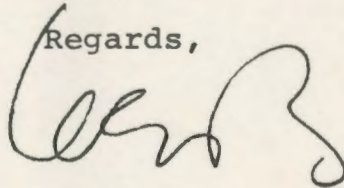
MEMORANDUM TO THE CONFERENCE:

Re: Library

Enclosed is a memorandum from Mr. Jacobs on
disposition of obsolete and unneeded books.

Absent dissent, I will tell him to proceed.

Regards,

A handwritten signature in dark ink, appearing to be "C. B. S.", written in a cursive style.

-2

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 9, 1979

Re: ABA Committee Letter

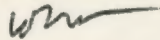
Dear Chief:

I have received the copy of the letter from the Secretary of the ABA dated March 21st, transmitting a resolution adopted by the House of Delegates at its Mid-Winter Meeting, together with Marc Richman's memorandum to you dated March 30th. Since you circulated it to the Conference, I assume that it will be the subject of discussion at one of our future Conferences. As to the substantive questions raised by the ABA resolution -- whether this Court could, by rule, require states to appoint (and presumably pay for) counsel and discretionary or post-conviction review of cases in which the death penalty has been imposed, I will await the appropriate time at Conference to express my views. As a matter of fact, having written Ross v. Moffitt, 417 U.S. 600 (1974), I guess those views are a matter of record.

But I do feel sufficiently concerned with one small part of Marc's memorandum to mention it at this stage. He suggests that the Court might wish to respond by way of instruction or informal advice to the ABA; I think it would be a definite mistake to do this. While all of us are lawyers, or at least former lawyers, and thus have that sort of professional tie with the ABA, I think it would be a great mistake to leave that

Association or any member of the general public with the notion that their resolutions or opinions had some peculiar status or influence with the members of this Court. I am sure that if the American Pharmacists' Association (if there be such an organization, and I don't doubt that there is) had adopted a resolution after Harry's opinion in Virginia Board of Pharmacy had come down suggesting some sort of disapproval of it, and forwarded the resolution to you, you would have felt under no obligation to make any answer at all. I do not see why a resolution forwarded to you by the Secretary of the American Bar Association should stand on any different footing.

Sincerely,



The Chief Justice
Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 10, 1979

MEMORANDUM TO THE CONFERENCE:

Re: Word Processing/Publication System for
the Supreme Court

No negative responses have been received
relating to my memorandum of March 22.

Accordingly the program will proceed.

Regards,

WBZ

c9

April 12, 1979

Opinions to be Brought Down

Dear Chief:

If all goes well, I expect to return to the Court for the arguments commencing on the 16th.

As you (and my doctors) have suggested, I will not remain at the Court all day and will try to get some rest in Chambers during the lunch hour. But I believe I can attend the arguments.

I also believe that I will be able to announce from the Bench two or three of my Court opinions that I believe are ready to come down. I believe all of the votes are in in the following cases: Caban v. Mohammed, 77-6431; Gladstone Realtors v. Village of Bellwood, 77-1493; Douglas Oil v. Petrol Stops Northwest, 77-1547; Dalia v. U. S., 77-1722; and Ambach v. Norwick, 76-808.

I would prefer not to bring more than three cases down next week.

If your Chambers would advise my law clerks, during the Conference on Friday, which - if any - of my cases are to come down next Tuesday, this will give me an opportunity to prepare brief statements. I will keep them quite brief.

I would prefer not to bring any cases down on Monday, and so I am thinking about Tuesday or Wednesday.

Sincerely,

The Chief Justice

LFP/lab



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

CHAMBERS OF
THE CHIEF JUSTICE

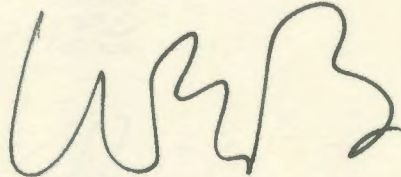
✓

April 14, 1979

Dear Lewis:

Apart from the cost factor on the fireplace,
bear in mind that when a vacancy occurs, we are free to
play "musical chairs" with chambers on a seniority basis.

Regards,



Mr. Justice Powell

C O

April 30, 1979

PERSONAL

Dear Chief:

Since our brief talk upon leaving the bench this morning, I have checked my Conference notes on the Columbus and Dayton cases.

They reflect, quite explicitly, that there are five votes to affirm in both cases: Brennan, Marshall, White, Blackmun and Stevens. In the Columbus case, Stewart will make a 6th vote.

In Dayton, Stewart, Rehnquist and Powell voted to reverse, and you reserved judgment in both cases.

The only possibility of a change may be with Harry. I mention this only because I have a general feeling that Harry shared views common to you and me in school busing cases. He joined your opinion in Milliken I, which - as I view it - enunciated principles quite incompatible with the decisions of CA6 in these two cases. Yet, according to my notes, Harry voted to affirm in both.

As to assignments, I am in fairly good shape as I have no opinions to write for the March Term. Indeed, I have circulated opinions in all cases assigned to me except Bellotti. I may be able to circulate that within a week.

Thus, I could handle three additional assignments provided they are average cases in terms of overall complexity. For example, in view of my having written a fairly full dissent from the original denial of dissent, I could write Baptist Hospital in a few days.

I have suggested the reassignment of Jones v. Wolf, as there is no way I can get a Court in it. Thus, as of now, I have only nine Court opinions for the entire Term.

Sincerely,

The Chief Justice

lfp/ss

cg
May 7, 1979

Dear Chief:

As the first three paragraphs of the enclosed letter from my sister, Eleanor Dewey, are about you and Vera, I thought you might be interested in seeing it.

I can confirm what she says about your "ranking" at William and Mary. It also is true that the Center for State Courts already has had, as Eleanor states, "an incalculable impact on the law school."

Sincerely,

The Chief Justice

lfp/ss
Enc.

May 9, 1979

Dear Chief:

Please put the following case, which appears on List 3, Sheet 1, of the May 10, 1979 Conference, on the Discuss List:

78-1405 Thies v. Joint Bar Assoc. Grievance
 Committee, p. 9

Sincerely,

The Chief Justice

LFP/lab

May 23, 1979

Dear Chief:

The news story in Saturday's Post with respect to reporters' use of the library prompts me to write.

The new rule, as I understand it, requires an escort for newsmen who wish to use the library - I believe after specified hours. As you stated at Conference, there is reason not to allow newsmen or anyone else to roam the building without control. But I do have reservations as to the wisdom of reacting quite this far to the breach of security by a single reporter.

As you have said, the record of the press over the years in not breaching the basic security of the Court has been exceptionally good. On the record, I think the regular reporters here can properly feel displeased by sanctions imposed on them for the misdeed of a relative newcomer. It is at least possible, I would think, that the stricter regulations could be viewed as a challenge that would cause some reporters to feel no further responsibility to preserve security.

I assume we have someone in the library whenever it is open. Would it not be sufficient for that person to require anyone who uses the library, whether reporter or member of the bar, personally to sign a register both in and out? This would provide a record at least of movement out of the press area. Or we could require an escort for every outsider after a specified hour.

I could name members of our bar whom I think are far less trustworthy than the regular reporters here. To be sure, they are not as frequently in the building. But when

they elect to come, apparently we presume that they are less likely to breach confidentiality (and pass the information on to the media) than members of the media whom we accredit.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
THE CHIEF JUSTICE

May 24, 1979

Dear Lewis:

In response to your memorandum of today, it is, of course, correct that reporters in common with other non-Supreme Court staff must have an escort to the Library after regular public hours. The building cannot conceivably be operated any other way. It is difficult enough to deal with this problem even with these mild "controls."

I do not agree that "regular reporters here can feel properly displeased about this." On the contrary, "regulars" participated with Mr. McGurn in framing these arrangements. For some days Mr. McGurn negotiated, talking at various times with Owens of the United Press International, Carelli of the Associated Press, Mintz of the Washington Post, Greenhouse of the New York Times, Falk of the Wall Street Journal and the Dow Jones Market Wire, and others, seeking to meet all legitimate needs of the working press, while at the same time safeguarding the essentials of Court security.

The "new" regulations in a sense formalize what have been our procedures. Personnel changes through the years tend to slacken adherence to these necessary arrangements.

People register in and out at the Library at all hours.

During the after-hour periods we could not possibly permit reporters, or others, to move in and out of the Library without escort and surveillance. The exits from the Library provide avenues to every part of the building; they constitute the weakest link in our security. No non-employee, except members of our Bar, can have open access to the Library at any time, and especially after hours. We go a long way in granting the dispensation now extant.

The only cards issued are an admission card to get "regulars" into the Press Box without going through the electronic metal detector.

As to the comparison between some attorneys and the media folk, I agree. But if an attorney is found -- unauthorized -- in the Library after hours, standard operating procedure would take him into custody, as yesterday's intruder in Bryon's office was taken, and require him to explain his presence.

This problem has consumed not less than 20 hours on my personal schedule and May hours are worth more than those of any of the other eleven months! I do not believe there is any challenge and none would be warranted. A comprehensive study of all aspects of this problem included on "our side" with Messrs. Cannon, Jacobs, McGurn, and Wong.

Regards,

WBB

Mr. Justice Powell

cg
May 30, 1979

Dear Chief:

Please put the following case on the Discuss List
for the May 31, 1979 Conference:

78-1529 Hunt v. Commodity Futures Trading Comm'n.
 p. 2

Sincerely,

The Chief Justice

LFP/lab

29
June 6, 1979

Air Travel Arrangements

Dear Chief:

Although I use the airlines infrequently during the 10 months of the year that we are here at the Court, I find that increasingly the task of making arrangements is burdensome. My secretaries tell me, for example, that they can spend up to a couple of hours on occasions simply trying to get the telephone of the airline ticket offices. That, is merely the beginning of the process.

In most organizations with which I was familiar a single individual was charged with responsibility for making travel arrangements (other than for personal pleasure) of senior people in the organization. It seems to me that it is desirable and appropriate for the Court to centralize this function in one individual. He or she would become expert, and would relieve the Chambers - and perhaps other offices here - of this tiresome responsibility.

Although we have not requested it, on the initiative of the Senate Subcommittee, we have been authorized for the second year to employ a number of additional secretaries here at the Court. My suggestion is that we employ a qualified individual who would serve as transportation secretary. This, of course, would be only a part-time responsibility, and so the individual could have such other duties - secretarial or otherwise - as you may think appropriate. I suppose that ideally he or she would be a part of the Marshal's staff, a staff which some of us here think could be strengthened to advantage.

In sum, we have a need and we also have legislative authority for additional secretarial assistance. I would like to see us fill this need.

Sincerely,

The Chief Justice

lfp/ss

cc:. The Conference



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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1979

c-g
File

Re: Air Travel Arrangements

Dear Lewis:

Your memorandum re the above ties in with an organizational change which is "in the wings." The additional staff members would also be available to handle some of the "social" burdens. For example, Vera spends 8-10 hours a week answering (usually declining) myriad invitations. *Great*

I'll have the "new plan" ready for unveiling before or by the June 21 Conference.

Cordially,

Mr. Justice Powell

Copies to the Conference

09

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

CHAMBERS OF
THE CHIEF JUSTICE

✓

June 8, 1979

MEMORANDUM TO THE CONFERENCE:

June 14 is the last scheduled Conference, but with 37 cases still in the pipeline after Monday, we will need a Conference the week of June 18.

It is possible that June 25 could be our last sitting for opinions -- perhaps with another for Tuesday, June 26 or during that week.

We should, therefore, set a tentative Conference later than the 14th. I suggest Thursday, June 21.

I should be at the Fourth Circuit Conference June 27-29. I have been absent five of the past ten years, but it appears that with luck we can wind up by June 25 or 26.

Regards,

LEB

- 9

June 9, 1979

Dear Chief:

The possibility, suggested in your memo of June 8, of our concluding the Term's opinion work by June 25 or June 26 is encouraging.

I believe this would be the earliest "ending" of the eight Junes that I have been on the Court.

Your reference to the Fourth Circuit Conference prompts me to say that I have accepted, subject to demands here at the Court, Clement Haynsworth's invitation to attend the Fourth Circuit Conference, June 27-29, an invitation he has extended each year. I hope it will be possible for both of us to attend.

Sincerely,

The Chief Justice

Copies to the Conference

LFP/lab

-9

June 27, 1979

Summer Plans

CONFIDENTIAL

Dear Chief:

So that you will know where to reach me if needed, I write to give you a summary of my plans.

We go to Richmond when the Court adjourns for the summer, probably on the afternoon of July 2.

We plan to remain in our Richmond home (telephone number 1-804-358-4647), except for the trips mentioned below, until Labor Day weekend.

We plan two trips. On August 8, we go to Mayo for a checkup. I still have not recovered 100% from recent surgery, and it has been four or five years since your people at Mayo checked me over. In August, we will be in Dallas for the ABA meeting probably from August 10th to the 15th. Unless too much work has piled up, Jo and I will go from Dallas out to Salt Lake City to spend a few days with Molly and her husband, and our two small grandchildren there.

I regret the trips, as they will substantially disrupt the quiet summer in Richmond that I would prefer.

I probably will spend a day or two in my Chambers en route to or from the destinations of these two trips.

I am in regular touch with my office here at the Court, which is staffed throughout the summer by one secretary, law clerks and - for most of the time - the messenger.

Sincerely,

The Chief Justice

LFP/lab

c9

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

July 2, 1979

Word Processing Equipment

Dear Chief:

As a decision with respect to word processing equipment possibly may be made during this summer, I write to report as follows.

As suggested, we have now experimented with the Atex equipment since last September. Although it has not come up fully to our expectations, it is somewhat more advanced in some respects than the Wang equipment we used previously. It has been subject to "shut-downs", occurring several times - for various lengths of time - each week. Although the Atex personnel have been cooperative in the sense that they usually send people here promptly upon request to get the equipment back in operation, we have not been favorably impressed with the competency of all of the people who have been sent.

Atex is a little more flexible than Wang, and its storage capacity is substantially greater than that of the Wang 20 that we formerly had. My information is that the Wang 25, and perhaps even a later model, does provide substantially greater storage capacity.

My understanding is that during the summer, proposals will be received from Atex, Wang and other suppliers to equip the Justices' Chambers and the Print Shop with integrated word processing and printing equipment. It would be most unfortunate, in my view, if neither Atex or Wang is the prevailing bidder. It takes a Chambers - based on our experience over the past two years - several weeks to adjust to new equipment. Indeed, as I am sure your secretaries and clerks will agree, it takes several

months before personnel are fully competent on word processing equipment. Again, based on our experience, there are significant differences in the products of the various suppliers.

If, however, neither Wang nor Atex becomes the supplier for the Court, I consider it essential that Chambers be allowed to continue to use (on a rental basis) the present equipment (both Wang and Atex) until the new equipment has been proved satisfactory and all bugs eliminated. The worst scenario would be for our Chambers to give up Wang and Atex, and then find that adapting the new equipment to Court use required several months of experimentation. When I speak of demonstrating the effectiveness and utility of any new equipment, I am not willing to volunteer again as the "guinea pig". Work here in my Chambers was slowed for a couple of months when we moved into Wang, and slowed down even more last fall when we undertook to experiment with Atex. If there is a new supplier, I would insist that it - perhaps working with some designated Court personnel - demonstrate in its own facilities that the equipment can do the things we require of it.

If there is a choice between Atex and Wang, we can function satisfactorily with either. For the long-term, our guess is that Atex - because of its greater sophistication - will prove to be somewhat more beneficial. But Wang, with the System 25 storage unit is entirely adequate for Chambers use.

One final point. It is extremely helpful to have six work stations in one's Chambers, as this relieves the pressure on the secretaries. You may recall that the Congress - on the initiative of the Senate sub-committee - has authorized two additional secretaries for each Chambers. When I last testified before the Senate committee, I stated that there was reason to believe that the word processing equipment would make the addition of all of these secretaries unnecessary. I would feel differently (at least to the extent of adding one secretary) unless the law clerks are able to do their cert memos and bench memos on the word processing machines.

Linda Blandford will be here for the month of July and she will be happy to confer with anyone whom you or Mark Cannon may designate - if this seems desirable.

Sincerely,

The Chief Justice

cc: Mr. Mark Cannon

LFP/lab

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

CHAMBERS OF
THE CHIEF JUSTICE

Cherb
July 2, 1979

Pa.
7/2/79

MEMORANDUM TO THE CONFERENCE:

The cost of the silver tray for Henry Putzel was \$47.25 -- \$5.25 for each of us.

I have paid the bill. You can reimburse me when it is convenient.

τ
Regards,

WEB

c9

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

July 5, 1979

The Chief Justice Warren E. Burger
United States Supreme Court
Washington, D. C. 20543

Dear Chief,

The enclosed editorial from The Virginian-Pilot was written by J. Wilkinson, a former clerk who is now editor of the Pilot.

The Virginian-Pilot, published in Norfolk, has the largest circulation of any state paper.

The observations about Weber are quite perceptive.

Sincerely,

Enclosure:
Editorial

Attention: Law Clerks

ZA ✓
BR ✓
ER ✓
PBS ✓

*This may be of
interest.*

The Virginian-Pilot

Established 1865

Perry Morgan
Publisher

Robert D. Benson
President

Published by
Landmark Communications, Inc.

Frank Batten
Chairman

Frank Caperton
Executive Editor

J. Harvie Wilkinson III
Editor

William G. Connolly
Managing Editor

Richard F. Barry III
President

Page A10

Friday, June 29, 1979

Racial Quotas

The Supreme Court approved on Wednesday the use of racial quotas by private employers to bring more blacks into skilled jobs.

Minority groups were jubilant. NAACP Executive Director Benjamin Hooks called the court's ruling "probably the most important civil-rights decision in recent history." President Vilma S. Martinez of the Mexican-American Legal Defense and Educational Fund termed it tremendous for Hispanics, "soon to be the nation's largest minority." A long list of would-be quota beneficiaries lined up to applaud.

The facts of this momentous ruling are simple. Kaiser Aluminum and Chemical Corporation agreed with its union, the United Steelworkers of America, to reserve 50 percent of the openings in a training skills program for blacks. In the first year of the plan, Kaiser selected seven blacks and six whites for the program. The most junior black selected had less seniority than several whites who had been rejected, including one Brian Weber.

So Weber brought suit, claiming reverse racial discrimination. The Supreme Court scotched his claim. The law now is that private employers may "voluntarily" utilize "benign" racial quotas more easily than universities supported by federal funds.

The tricky word in the court's lexicon is, of course, "voluntary." With the court's imprimatur now on racial quotas in the marketplace, employers are going to start feeling federal and minority pressures not so readily characterized as "voluntary."

The real question, however, is



Brian Weber

whether numerical quotas are the right way to overcome this nation's shameful legacy of racial discrimination. We believe they are not.

For one thing, they breed hostility. Whites rejected for employment or admission to a university tend to blame that fact on special preferences for blacks. The racial resentment generated will be just as unhealthy in the long run as that inflicted in the past by our indefensible segregation laws.

For another thing, quotas tend to afflict minority achievement with a presumption of charity. Some people always assume—wrongly—that the only reason this or that black person is in professional school or a top management post is because of racial preference. That is a racially degrading notion which quotas are only helping to perpetuate.

Just who will benefit from quotas in education or employment? Blacks? Hispanics? Women? Filipinos? Chinese Americans? Irish Americans? Appalachian whites? Italian Americans? American Indians? Though this nation's wrongs against blacks are unique in severity, that will not stop others from pressing their claims. As a result of the court's ruling, we may anticipate a scramble for preferred status in which gracious losers will be few.

Where quotas will leave notions of qualification and merit is difficult to say. But it is dangerous for a nation to assert that one's ethnic or racial affiliation should eclipse individual merit. "In a society in which men and women expect to succeed by hard work and to better themselves by making themselves better, it is no trivial moral wrong to proceed systematically to defeat this expectation. . . . To reject an applicant who meets established, realistic, and unchanged qualifications in favor of a less qualified candidate is morally wrong, and in the aggregate, practically disastrous." So wrote Yale law professor Alexander Bickel shortly before his death.

Justice Lewis Powell suggested last summer in the *Bakke* case a far saner means of achieving an integrated society than the one the court approved this week. Universities could acknowledge an individual's race or disadvantaged background in their decisions, said he, but not set aside a specified number of places on racial or ethnic grounds.

May his advice yet be heeded. We shall not hear the last of this debate for a very long time.

29
July 7, 1979

Word Processing Equipment

Dear Chief:

Since my letter to you of July 2, the Marshal has brought to my attention a bill from Atex for about \$1,000 for servicing the equipment used by my Chambers.

My understanding is that this covers the work on this equipment by Atex personnel that is not provided for in the contract. Atex is required by the contract to provide what may be called "routine" service.

As I indicated in my earlier letter, the Atex equipment is subject to frequent "down time". This necessitates our calling for repairmen, and quite often the personnel sent here are not fully trained. We have the impression that there is a good deal of "on-the-job" training at the Court's expense. This is distinctly a negative in terms of making a long-term contractual arrangement with Atex.

If more detailed information on this maintenance problem is desired, Linda Blandford - who does not go on vacation until August 1 - will be glad to cooperate. Also, my clerk Eric Andersen has become rather skillful in maintaining the equipment. Eric will be here through July, and also could be a source of detailed information.

Sincerely,

The Chief Justice

cc: Mr. Mark Cannon
Mr. Alfred Wong

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

CHAMBERS OF
THE CHIEF JUSTICE

c9
JUL
RECEIVED

Richmond, Va,

JUL 10 1979

Dear Lewis

In case you missed
them I enclose two
clippings from the
local press. I fear Ray
are quite on target.

I'm off for N.Y. + then
3 conferences or committees in
the West.

Hope you can get some
rest + sun.

Regards

WJB

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

7/20/79

Dear Lewis

The enclosures are revealing. (The clips). For me the Post editorial is somewhat hilarious but it is sad to see a great newspaper write a stupid-but snarling-editorial on a "nothing" subject. I have been warned that the media will grasp any stick or stone to beat the Court and me personally as the

"lightening rod" until we (2)
bow to their demands.

I enclose also a lecture
given in 1974 by a Baltimore
lawyer whom I met at
Hot Springs. Perhaps you
know him. It is an
excellent piece. What
would he say in 1979!?

I now hit the road
for three meetings in the
West - all of them I
consider important. If
you have trouble keeping

just read my Two

3

Western species -

also enclosed. I

wish I had speech

writers - like Jimmy -

instead of Intent to

dig out facts, etc.

On second thought

I think I'm just as well

as writing my own!

Our best to you

both.

Regards

W.B.

P.S. The fact on the "Marshall
Portrait" story is that when
the crates were opened Gail
called me. I saw at once
they were not genuine & she
had independently decided
that before I saw them. Because
she would not talk to the
reporter he "punished" her
by leaving her name out
even though we gave them
the whole story. Moral:
Kneel under to reporters!

BB ✓
EA ✓
GM ✓
ER ✓
CHAMBERS OF
THE CHIEF JUSTICE

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

cj

July 16, 1979

MEMORANDUM TO THE CONFERENCE:

We have informal advice that Lev Smirnov, President of the Supreme Court of the U.S.S.R., will visit Washington in October. It is likely that he will visit New York or Philadelphia or both in addition to the visit in Washington, and I am suggesting that the last few days of his visit be spent at Williamsburg.

No information as to the specific dates has come to me as yet, but as soon as any additional information is received I will pass it on. I assume that at a very minimum we will have a dinner for him at the Supreme Court and arrange for a visit to the Court itself, particularly if his visit occurs while the Court is in session.

Regards,

WRB

c 9

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

CONTACT - Barrett McGurn
(202) 252 3211

July 16, 1979 For immediate release

JUDICIAL COOPERATION WITH ENERGY CONSERVATION

Chief Justice Warren E. Burger has taken the following steps to cooperate with the President's energy conservation program:

With the exception of small areas where there are technical problems such as the library and the computer room building cooling is now limited to seventy-eight degrees in warm months and heating is limited to sixty-five degrees during colder periods.

Monitors are being appointed in all departments to assure compliance.

Signs: "Turn Out That Light" will remind employees to conserve lighting throughout the building. Two daily patrols will monitor unneeded lighting.

Energy conservation efforts begun many months ago at the onset of the energy shortage will be continued. An example is the Justices' corridor on the first floor where alternate ceiling lights have been extinguished. The Chief Justice's work chamber always has been held at 65 degrees during the cold months, and that will continue.

The computer room is being held at a temperature of 68 to 70 degrees because a higher temperature

would cause a malfunction. The library is being maintained at seventy-two degrees with a fifty percent relative humidity (give or take five percent). To avoid serious harm to the collection of 250,000 volumes. The Library is exempt from temperature limits. Higher temperatures would accelerate the breakdown of components of some of the library materials and would contribute to mold and fungus. High temperature also would make glues, paper and parchment fragile as energy conservation efforts at the Winthrop Library in South Carolina recently demonstrated.

In addition to his responsibilities at the Supreme Court, the Chief Justice is chairman of the Judicial Conference of the United States which provides recommendations to the 100 federal District Courts and Courts of Appeals. He has written to all Chief Judges:

"I am fully aware of the problems of trying to conduct trials and other proceedings in excessively high temperatures. I am also aware that virtually all modern court buildings, that is those built within the last thirty years, are likely to have sealed windows. As a result the admonition to open the windows is unrealistic.

"We have a national crisis in the use of energy, and for the past two months we have been making adjustments in the Supreme Court Building to cooperate with the national effort in this respect.

"Air conditioning and heating are not the only factors in the consumption of energy. Modern office lighting consumes a great deal of energy, and in the Supreme Court Building, every office, without exception, has a prominently displayed sign, "turn off that light". Obviously this does not mean turn off the lights at all times but to turn them off when they are not needed, as when the occupant of that office goes to lunch or leaves for any significant period of time.

"I urge you to designate an 'energy monitor' for every office under the control of your court and to make every effort to reduce energy consumption".

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

19 JUL 1979

9

CHAMBERS OF
THE CHIEF JUSTICE

July 18, 1979

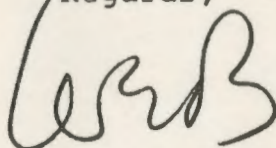
Re: Ethics in Government Act

MEMORANDUM TO: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Powell

Re my memo to you of July 6, I find there are such a rarity of valid complaints on this "lunatic legislation" that a conference committee would hardly know where to begin.

We can canvass judges but I'd like to start by having you submit specific suggestions. I will pass them on to the "drafting" people.

Regards,



29
August 2, 1979

Dear Chief,

I have now had an opportunity to read your address, prepared for delivery at the Conference of Chief Justices.

As you surmised, I am particularly interested in your proposal for a study of the feasibility of limiting use of juries in complex litigation. It makes a lot of sense.

We look forward to seeing you and Vera in Dallas.

Sincerely,

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

lfp/djb

September 10, 1979

Dear Chief:

The enclosed column by Buchanan may cheer you up a bit.

It appeared in the Richmond Times-Dispatch of 9/6/79, and was sent to me by a friend.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

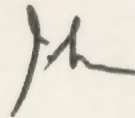
September 14, 1979

Re: Legal Officers

Dear Chief:

My views about the Legal Officers are similar
to those expressed by Lewis and Byron.

Respectfully,



The Chief Justice

Copies to the Conference

c 9

September 18, 1979

PERSONAL

Dear Chief:

I have now completed my clerk selection for 1980, after personally interviewing a couple of dozen - selected by me during the summer from about 200 applicants.

As you have indicated an interest in the past in any recommendations that I wish to make for your committee, I enclose biographical data sheets on two applicants who particularly impressed me:

John N. Coleman, a graduate of Haverford (where his father was president) and of the Chicago Law School. John was first in his class and Phi Beta Kappa at Haverford, and had an A average at Chicago. He clerked for John Butzner (CA4), and John says that Coleman is as good as any clerk he ever had and writes extremely well. Coleman was student assistant for a year to Ed Levi at Chicago, and in a personal conversation, Ed told me that Coleman was the best student assistant he had had in his 20-some years at Chicago. Finally, I was taken to Coleman because he served in the Air Force in Vietnam in a combat role and won two air medals.

Richard C. Wilkins, graduated summa cum laude from college at Brigham Young, and was No. 1 in his law class at Brigham Young, also serving as Editor-in-Chief of the Law Review. I have strong letters of recommendation from Dallin Oaks, Rex Lee, Carl Hawkins (formerly of the Michigan faculty), and Gordon Gee. Wilkins is now clerking for Bob Ainsworth (CA5), who also wrote me a strong letter of recommendation.

By this time, no doubt, you are wondering why I did not take these two superstars. The answer is that I had a clerk last Term from Brigham Young and I thought it best not to go back quite this soon to a law school as "young" as

Brigham Young - especially when there are so many other fine law schools around the country from which I have not taken clerks. In Coleman's case, the "call" was also based on the law school. I have had more clerks from Chicago than any other law school except Virginia.

The four clerks whom I have selected are, in my judgment, no stronger in intellectual ability, or more attractive in personality, than Coleman and Wilkins. I simply had to select four from these six - who ended up being the half-dozen applicants who impressed me most favorably of the 20-odd whom I interviewed.

I think you would find both of them agreeable and supportive personally as well as exceptionally able.

Sincerely,

The Chief Justice

lfp/ss

C0

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

9/18/78

CHAMBERS OF
THE CHIEF JUSTICE

Dear Justice

They roll around
too fast but I'm glad
you are catching up to
me.

Many more. Meanwhile
take it easy - but
don't let your work
ball behind!

Steven

(Note from CQ on
my 72nd birthday)

c9

September 19, 1979

Dear Chief:

It came to my attention yesterday that a plan probably has been worked out that will enable David Douglas to remain with the Court.

This is good news. I have come to know David to some extent, in view of my interest in the cabinetmaker's shop. David is the kind of young person we like to keep here. In addition, if he can remain - even to some extent - under his father's training, it would be a great thing to have that family tradition carried forward.

Cabinetmakers, in the true sense of that term (as we learned at Colonial Williamsburg) are a disappearing "breed". I therefore am more than a little impressed when a young man wishes to follow that important and highly skilled trade.

I write merely to let you know that I fully support your efforts to find a proper way to keep David with us.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF

JUSTICE LEWIS F. POWELL, JR.

Conference Material

September 20, 1979

Legal Officers

Dear Chief:

I write to make a few additional observations in light of Bill Rehnquist's letter of the 19th.

Bill states that the "balancing of stay equities", and the judgment as to the "likelihood" of four votes, can best be made within each Chambers. His thought seems to be that a legal officer, who initiates an initial memorandum, may exercise an undue influence over the law clerks and Justice. This attributes more influence to the initial memorandum, and less to the sense of responsibility of the Justice, than I would have thought. As outlined in my initial response to the Chief's memorandum, the legal office's memo is the beginning of a process. Although it saves my clerks a considerable amount of time, and therefore is helpful, the remainder of the process is quite similar to that familiar to all of us in the cert pool.

Based on experience of four or five years, and particularly when the legal officers had the quality of Ken Ripple, Jim Ginty and Susan Goltz, I detected no vast difference between the quality of the memos on applications for stays prepared in the legal office and those prepared by my own clerks, especially when the legal officers may have had considerable experience and the annually rotating law clerks were new.

In short, on the basis of considerable experience, I simply do not share Bill's concern. Nor do I have any reason to believe that the decisions in my Chambers on stay applications have been less sound than decisions made - in a different manner perhaps - in other Chambers.

The proposal that each Chambers decide which motions from his circuit are sufficiently meritorious to justify a memo, and then circulate a memo when deemed desirable, seems likely to result in duplication of effort and more than a little confusion. Perhaps I do not understand the proposed new plan, but it has seemed to me that the type of motions in question should go initially to a single office for the preparation of an appropriate memorandum. Each Chambers is then informed at the same time, and can make its own independent judgment - as we do now.

With the addition of 150 new federal judges, it is certain that the workload of this Court - in all categories of our functions - will increase substantially. With all deference to the views of differing Brothers, it simply seems imprudent at this time to consider abandoning a resource that certainly has been useful to some of us, and well could be of greater assistance in the future.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

1 7/6/79

Dear Louis

Your digest of
the "Digest" was effort
above and beyond the
call of duty. I had
barely scanned but not
read the 20 pages and
even without doing so I
can see the value of a
four page treatment. I thank
you. The enclosed had
best be refrigerated until

You carry it on home
for a pre-dinner
snack - with frozen
Russian (or Turkish)
Vodka if available!

Regards
LWRB

CHAMBERS OF
THE CHIEF JUSTICE

29
Sally - Xerox this Revised
Assignment
October 8, 1979

Memo to The Conference:

In my desire to avoid keeping both the President and the Pope waiting on Saturday, I did not closely check the Assignment List to make sure my longhand "balloons" shifting cases "hither and yon" were accurate.

A revised list is enclosed.

Regards
WRB

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

RECEIVED
U.S. DEPT. OF JUSTICE

1979 OCT 11 AM 11 18

October 11, 1979

Dear Mr. Chief Justice:

For a long time, and especially since the issuance of our comprehensive, updated Style Manual, I have been considering possible ways to simplify the procedure for making editorial changes in the bench opinions, with a resultant saving of time for all concerned. What I now propose is that this office obtain from each Justice blanket approval to correct all typographical errors, misquotes, and errors in citations, and to change all items that do not conform to the Style Manual without having to submit such corrections or changes to the Justice for perusal. (We would, of course, continue to defer to the individual preferences of Justices differing from a rule in the Style Manual.) Only those matters, primarily changes of a substantive nature, that do not fall within the "automatic" categories would be submitted. Where there is any doubt as to whether a particular item falls within an "automatic" category, it would be submitted.

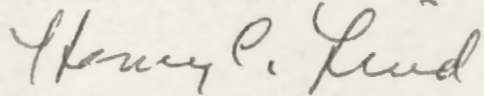
According to a tabulation made by Louise Graves of this office in January 1978, of 26 bench opinions totaling 617 pages and consisting of representative opinions from each of the nine Justices extending over the preceding three Terms of the Court, 89% of the 2,876 editorial corrections and changes suggested and approved for the preliminary prints fell within the "automatic" categories.

As to the mechanics for accomplishing this proposed new procedure, each suggestion requiring the Justice's approval could be identified in some way (such as by a red check mark), and all other changes could be ignored by the Justice or his law clerk (although they would be there to examine if desired).

A similar procedure would apply to bound volume corrections and changes where an even higher percentage falls within the "automatic" categories.

I have discussed this proposal preliminarily with Justice Blackmun, who is favorably disposed to it, and he recommended that I submit it formally to you for possible consideration by the Conference. If a more detailed explanation of the proposal is desired, I would be happy to furnish it.

Respectfully,

A handwritten signature in cursive script, reading "Henry C. Lind".

Henry C. Lind
Reporter of Decisions

Honorable Warren E. Burger
The Chief Justice
of the United States

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

CHAMBERS OF
THE CHIEF JUSTICE

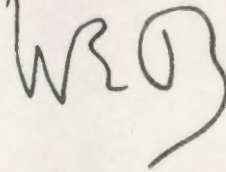
October 11, 1979

Dear Henry:

I have your memo of October 11.

I wholly agree with your suggestion to "streamline" the procedure. The Conference views will be canvassed.

Regards,

A handwritten signature in dark ink, appearing to be 'WRO' with a long, sweeping flourish extending from the bottom right.

Mr. Henry C. Lind
Reporter of Decisions
Supreme Court of the United States

Copies to the Conference

Lewis - your copy to toss

Los Angeles Times

WASHINGTON BUREAU

Oct. 15, 1979

Justice Byron R. White
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Dear Justice White:

I have of course received your note and have also shown it to Jack Nelson, as you asked. We both regret that you took offense at the story.

① → Certainly no offense was intended. What I wrote was not in any way meant to be some sort of "shot", cheap or otherwise. The story took note of the unsolicited, independent speculations of several persons concerning your health. Whether a newspaper should air such questions is a matter on which, I suppose, we disagree.

There have been several instances over the years in which members of the Court have not made public the existence, or the extent, of health problems. As a result, I do not feel I can rely completely on the public record in this area.

② → The story did not say or suggest that The Times had any definite inside knowledge. I am sincerely sorry if your friends received that impression.

Yours truly,

Jim Mann
Jim Mann

Lewis :

① Concedes that published speculation that I might be ill

② Defends on ground that didn't claim to have reliable information

Burger court beginning to show signs of age

By Jim Mann
Los Angeles Times

WASHINGTON — Eight years ago, Supreme Court Justice Hugo L. Black asked his son, Hugo Jr., to fly up from Florida to Washington.

"Son," said Black, who was then 85 years old, "I can't do my job, 'cause I can't see. I've got to quit. I always told you I would know when I had to get off the court — and the time has come."

Black handed his son a letter of resignation to give to President Richard Nixon. But Hugo Jr. temporarily pocketed the letter. Both he and his father's doctors held on to the hope that the justice might make a miraculous recovery.

Finally, weeks later and only eight days before Black's death, his family gave in and let him step down from the court.

The story tells something of the difficulty Supreme Court justices have always had in deciding when to retire. Many who serve on the court dream of celebrating their 90th birthdays on the bench, as did Justice Oliver Wendell Holmes. And even those who consider resigning earlier are sometimes dissuaded from doing so by family, friends or even doctors.

As the Supreme Court headed by Chief Justice Warren E. Burger begins a new term, however, it appears that several of its members are beginning to wonder whether, as Black would put it, the time may soon be coming.

The Burger court is beginning to show signs of age. Since the tumultuous period from 1969 to 1971 when four justices stepped down and were replaced by Nixon, the court has been remarkably stable. For the past eight years, the only change in personnel has been the replacement of Justice William O. Douglas by John Paul Stevens.

Now, five of the nine justices, including three of the Nixon appointees, have passed the age of 70 and all five are exhibiting varying degrees of wear and tear. Thus it seems probable that within the next three years, at least one justice, and perhaps as many as three or four, will decide to retire.

Even one retirement can have vast repercussions for the court and for the laws that govern the nation. The Burger Court, like its predecessors, has decided a number of important cases by a single vote.

The 1978 decision permitting Allan P. Bakke to enter the University of California at Davis medical school but upholding the concept of affirmative action came on a 5-to-4 vote. So did last July's ruling that the press and public have no right to attend pretrial hearings.

Those believed to be in the most fragile health at the moment are Justices Lewis F. Powell Jr. and William J. Brennan Jr.

Powell, 72, underwent major surgery for a tumor of the colon last March. The growth was later reported to be benign. Powell returned to the bench in April, but was also treated again briefly over the summer for a urological problem.

Powell complained of fatigue last spring and has told friends he thought briefly then of retiring. He has apparently decided to stay on for now, but any further health problems could cause him to step aside.

Brennan, 73, was operated on for cancer of the vocal cords in January, 1978. He returned to full-time activity at the court a month later. Early in September, while returning from summer vacation on Nantucket, he suffered a slight stroke, affecting a hand, arm and leg.

Brennan is already back at the court, and his doctors say that his mental faculties are as sharp as ever. But his right hand is still weak, and Brennan is right-handed. "He writes with difficulty, and his writing is not very legible," one acquaintance said recently. Until his hand improves, Brennan may dictate his memos and opinions.

The other justices over 70 have also had health problems. Justice Thurgood Marshall, 71, seems strong at the moment, but he suffered a heart attack in 1976, and remains considerably overweight. Justice Harry A. Blackmun, 70, had prostate surgery two years ago. And Burger, 72, was hospitalized for eight days for a lower back ailment in 1977.

"Boston Globe"
October 8, 1979

Even the two men once considered the court's youth wing, Justices Potter Stewart and Byron R. White — both of whom were appointed while in their early 40s — have reached the point at which, in virtually any other job, they would be considering retirement.

Stewart is now 64 and White 62. In the past two years, White's athletic frame has taken on a thin, almost emaciated look, causing observers to question whether he has some undisclosed ailment. None has been reported.

The only two justices who seem to have most of their careers on the Supreme Court still in front of them are Stevens, 59, and Justice William H. Rehnquist, 54. It is these two men who appear the most actively engaged in the court's cases; both could remain on the bench until well into the 1990's.

However, so far none of the justices' health problems have reached the stage where they are seriously hampering the court's work — as did the stroke that led to Douglas's retirement in 1975. Douglas was away from the court for five months, slowing down the court's opinion-writing while his law clerks shuttled papers back and forth to his hospital bed.

There is, of course, no fixed retirement age for the justices, although the court has upheld mandatory-retirement laws for other occupations.

In 1971, while Black and Douglas were still on the court, Burger, in his role as judicial reformer, suggested that Congress might want at some point to set mandatory retirement ages for the justices.

But Burger's idea met the same fate as Pope Paul VI's suggestion that a mandatory-retirement age be set for cardinals: no one acted on the proposal, and it hasn't been mentioned lately.

Under current federal law, justices over 70 who have been on the federal bench for 10 years may retire at full pay. All the septuagenarians on the court but Powell already qualify — and Powell, the wealthiest man on the court, is not likely to let a pension stand in his way if he should decide he would like to step down.

Among those watching closely for the possibility of a retirement at the court is President Jimmy Carter. At the moment, Carter is still in the running to become the first American President since Andrew Johnson, more than a century ago, to leave the White House without appointing a single Supreme Court justice.

Should any vacancy occur within the next year, many administration officials believe Carter would seize the opportunity to appoint the first woman justice in the nation's history. The all-male Burger court has been repeatedly confronted in recent years with sex-discrimination and abortion cases.

Carter has already named nine women to the federal appeals courts, the highest rung in the federal judiciary except for the Supreme Court. The speculation here is that Carter would elevate one of these women — perhaps

Judge Patricia M. Wald of the District of Columbia or Judge Amalya L. Kearse of New York City — to the Supreme Court. Secretary of Health, Education and Welfare Secretary Patricia Roberts Harris also seems to have aspirations for a court appointment.

Should Carter leave the White House, of course, the picture would change.

If Sen. Edward M. Kennedy were to succeed Carter, he would be under the same pressures as Carter to name a woman justice or a black if Marshall retires. But he might not consider the same candidates.

For example, McCree's chances would diminish; although he has been a loyal Carter Administration official, he has also been unpopular with some civil rights and women's groups because of positions he took within the Department of Justice in the Bakke case and on the question of veterans' preferences.

If a Republican should be elected President, former Housing and Urban Development Secretary Carla A. Hills and US Circuit Judge Cornelia G. Kennedy would be prime candidates. So would former Secretary of Transportation Secretary William T. Coleman, a well-established black lawyer and longtime civil rights supporter.

Q-1
October 15, 1979

Dear Henry:

I agree with your excellent suggestions in your memorandum of October 11.

Sincerely,

Mr. Henry Lind

lfp/ss

cc: The Conference

10/15/79

Chief Justice Burger

The Chief Justice holds two offices: Chief Justice of the United States, and Chief Justice of the Supreme Court. His duties in the latter capacity are well known. Those as chief judicial officer of the United States are not correspondingly well known. The purpose of this memorandum, without elaboration or pretending to be comprehensive, simply identifies some of the duties and accomplishments of Warren E. Burger primarily in his role as Chief Justice of the United States.

The Federal Courts

There soon will be more than 500 federal judges. The CJ has a variety of duties - both required and cooperative - relating to federal judges at the district and circuit court levels. The organizations through which many of these duties are carried out are the Administrative Office of the United States Courts and the Federal Judicial Center. They have an array of programs requiring some 600 hundred staff members. The CJ is chairman of both organizations. And these are not honorary positions. Indeed, these require - and receive from the CJ - substantial leadership.

The CJ also is chairman of the Judicial Conference of the United States, a body composed of the Chief Judges of

Administrative Office for the federal courts serves those of that system.

The World Conference (Minneapolis 1977) - A major conference that sought to identify problem areas in the judicial system and that initiated various programs for reform. Many of these programs have now been undertaken by the 11 Circuits, the chief judges of specialized courts, and the chief judges of a number of the District Courts. The Conference meets regularly, and has significant responsibilities with respect to the functioning of the entire system. Administrative problems, as well as policy and legislative matters, are included in the responsibility of this Conference.

Improvement of the System of Justice

This brief memo will not undertake to describe the leadership of the CJ in achieving efficiency in the operation of our system, and improvement in the quality and availability of justice. The following are some of his more important initiatives and achievements.

Institute of Court Management - A program initiated by the CJ for the training of executives for the Circuit and District Courts.

State/Federal Judicial Councils - Councils composed of State Supreme Court Justices and State Federal District Judges to coordinate efforts, particularly where there are multi-litigations involving the same subject or accident.

National Center for State Courts - Now established in Williamsburg at the cost of several million dollars, serves the state courts in the same manner that the

responsibility of this office to provide the exhibits and supervise the Court museum, located in the "Great Hall" of the Court on the ground floor level. The Curator also has a primary responsibility to assemble historical records and preserve them.

The museum, including the 20 minute motion picture, serves the purpose of making the Court a more attractive place to visit and of educating visitors as to the role of the Court in our society.

Additional Statutory Duties

Statutes require the Chief Justice to serve as Chairman of the Board of the Smithsonian Institute, and also as Chairman of the Board of the National Museum. Neither of these positions is simply honorary or perfunctory.

c9
October 16, 1979

PERSONAL AND CONFIDENTIAL

Dear Chief:

I return herewith the confidential, first draft of a memorandum prepared in the office of your Administrative Assistant.

Recognizing, as you suggested, that the memorandum is a bit long, I have made a summary - in my own words - of what seems to me to be the more important points. My summary is quite preliminary, and should be refined and probably expanded.

The question is what one does with it. It could, as a minimum, serve as helpful material for Barrett McGurn. You will be a better judge than I as to the possible availability of a memorandum of this kind for more extended purposes.

Sincerely,

The Chief Justice

lfp/ss

C9

October 22, 1979

Alibi Dinner

Dear Chief:

Admiral Wright has given me a difficult assignment.

The Admiral says your presence at the fall dinner of the Alibi on Wednesday evening, 7:00 p.m., black tie, is expected, and that your brothers there will be keenly disappointed if you are a "no show". Accordingly, he has detailed me as a committee of one to make sure that you do show.

These are pleasant occasions, and this is not an evening before an argument. I do hope you can attend.

Sincerely,

The Chief Justice

lfp/ss

cg
October 24, 1979

Dear Chief:

As I have a luncheon date with an English visitor,
I will not be able to meet in Bill's office until 2:30 p.m.

I suggest that you and Bill go ahead, and I'll join
you as soon as I can.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Brennan
Mr. Justice Stevens

cg
October 24, 1979

Dear Chief:

Please put the following case on the Discuss List
for the October 26, 1979 Conference:

79-5163 Rowton v. New Mexico - p. 14

Sincerely,

The Chief Justice

LFP/lab

October 25, 1979

Legal Officer

Dear Chief:

At Bill Brennan's request, I write to report the result of our interviews on yesterday with three applicants for the vacant position of legal officer.

I enclose the biographical summary sheet on these applicants prepared by our able personnel officer, Jim Robbins.

Your committee (WJB, JPS and LFP) recommends the employment of Joe Caldwell, Jr. Although we were favorably impressed by all three applicants, Caldwell is our first choice primarily because he is the youngest and also is available for a smaller salary.

As our advertisement indicated a salary of \$34,000, we think it appropriate to pay Mr. Caldwell on this basis. It is a steep increase over his current military salary, and yet he will be giving up the substantial retirement benefits available after 20 years of service to military personnel plus certain perquisites (e.g., post exchange privileges).

All three candidates also were interviewed by three former legal officers (Ginty, Goltz and Richman), and by Jim Robbins. They recommend all three of the applicants as being well qualified professionally and personally.

Mr. Caldwell will be able to report within 30 days, and will commit to staying with us for three years.

L.F.P., Jr.

SS

cc: The Conference

November 2, 1979

Dear Chief:

Here is a copy of the letter written to Byron by Jim Mann, the reporter of the Los Angeles Times who covers the Court.

The story in question has been syndicated in newspapers all over the United States. I enclose a copy from the Boston Globe, sent to me by a friend. As you will observe, it is based on unconfirmed "speculations", as the reporter admits.

Sincerely,

The Chief Justice

LFP/lab

cg
November 1, 1979

Dear Chief:

Please put the following case on the Discuss List
for the November 2, 1979 Conference:

79-306 American Motors Corp. v. FTC, p. 2

Sincerely,

The Chief Justice

LFP/lab

C O

November 9, 1979

Dear Chief:

Potter has told me that he is assigning Chiarella (78-1202) to me. The vote in that case (now that Thurgood has voted) is 4 to reverse on the 10(b) and 10b-5 issue, 4 to affirm on that issue, with John Stevens taking the position that if the government had properly indicted Chiarella he could have been convicted under 10(b) and 10b-5.

Thus, my opinion will be a plurality opinion on the judgment, but the law with respect to the applicability of these provisions of the Securities Act will be in considerable doubt.

Potter apologized for assigning me a case that will end up so indecisively. But, of course, someone has to write it.

I hope you will give me two other cases, perhaps two than can be written in tandem. You were good enough to discuss with me the two military cases (Glines and Huff). As I have some background in this area, I will be glad to write these if you wish me to.

Sincerely,

The Chief Justice
lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 13, 1979

Temperature in our Chambers

Dear Chief:

Even though the outside temperature today is considerably above freezing, the room temperature in my Chambers is causing a good deal of discomfort. In the room I occupy, it has hovered between 64 and 65 degrees. This is simply too cold for me to be comfortable. (As you have observed, I am not very well padded, and also susceptible to colds.)

My secretaries also are quite uncomfortable.

I hope you have been successful in asserting your jurisdiction over the temperature within this building. We have only a small staff of people. They work - at least many of them - quite long hours, and the work in Chambers is sedentary. I just do not think a general directive of the Executive or Legislative Branches should control temperatures in buildings occupied by the Federal Judiciary.

Sincerely,

Lewis

The Chief Justice

lfp/ss

Lewis
I've had these people
& will keep them there
The carpet
WES

82 6 PM NOV 13 1979
RECEIVED THE
CLERK OF THE
SUPREME COURT
U.S. DEPT. OF JUSTICE

cg
November 13, 1979

Temperature in our Chambers

Dear Chief:

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Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
THE CHIEF JUSTICE

✓
November 14, 1979

Re: 77-69 - Mackey v. Montrym

MEMORANDUM TO THE CONFERENCE:

The Reporter received a letter objecting to the generic use of the trademark "breathalyzer" in the opinion. Since the briefs and three-judge district court opinion also so used the word, I saw no reason to do otherwise. However, absent dissent, I now propose to substitute the words "breath analysis" for "breathalyzer" wherever it appears in the opinion.

Regards,

RBZ