

Other members
Court

Supreme Court of the United States

Memorandum

3/2, 1981

To the Conference:

The attached picture is on the front page of the U. Va. Law School newspaper.

Quite an impressive "chip off of the old block"!

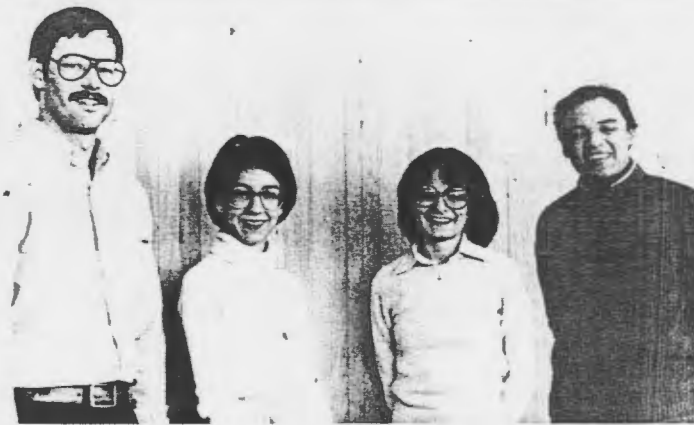
L. F. P.

[ENCLOSED IN MARCH 2, 1981]

VIRGINIA LAW WEEKLY

Charlottesville, Virginia, Friday, February 20, 1981

Seventy-Five Cents



Jellins Photo

SEMI FINA- LISTS



Jellins Photo

Moot Court's semifinalists are, from l. to r.: Jeff Bird, Stephanie Tsacoumis, Jan Pitterle, Thurgood Marshall, Jr., Carter Lester, Bob Spencer, Tim O'Rourke, and Marie Kaczynski.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

*File
Correspondence
File - Other Justice*

March 25, 1981

Dear Lewis:

I return, with thanks, your copy of "The Spike." I enjoyed reading it, but it has its chilling effect. Perhaps everyone should read it. There was another book, similar to this, that came out a few years ago, but with an opposite ending.

Sincerely,

Harry

Mr. Justice Powell

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

April 1, 1981

MEMORANDUM TO JUSTICE POWELL

This is in response to your request of March 17, 1981.

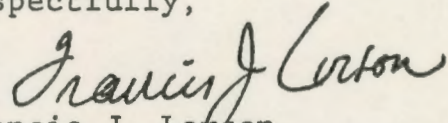
Since the Court announced its judgment in Gregg v. Georgia, 428 U.S. 153 (1976), the Court has acted upon a total of 111 petitions for certiorari involving prisoners on death row in Georgia. Of that number, 24 persons have had two petitions before the Court and three have been here three times. Two cases have been argued - Coker v. Georgia and Godfrey v. Georgia - each of which resulted in the cases being returned to the Supreme Court of Georgia. Twenty-two petitions were to review the denial of state habeas corpus petitions; two have been to review denial of federal habeas corpus - all others have been on direct review of the affirmance of conviction and sentence by the Supreme Court of Georgia.

Beginning with the 1976 Term, only 12 applications for stay of execution of sentence of death have been brought before the Circuit Justice from Georgia. This low figure can be attributed to the fact that the Clerk of the Supreme Court of Georgia has consistently held the remittitur of her Court until certiorari has been denied and a petition for rehearing, if any, has been denied. The state itself has filed one application to vacate a stay issued by CA-5, Zant, Warden v. Jack Potts, and that application was denied by the full Court after referral to the Court by Justice Powell.

This Court has either vacated or reversed the sentence of death in four cases. The sentences of death in eight other cases have been either reversed or vacated by the Georgia state courts on habeas after denial of certiorari by this Court. In one case, Jerry Banks, the sentence and conviction were reversed after certiorari had been twice denied by this Court when the trial court was apprised of the fact that the state investigator had seriously mishandled the evidence (shell casings). Banks was released from prison on December 24, 1980. I have been informed that during a family quarrel (his wife apparently was seeking divorce) he shot and killed his wife and then took his own life. During the course of an escape attempt, Troy Gregg was killed by one of his co-escapees.

Marge McFarland, Louise Covington, Ed Schade and Pat Dean assisted in gathering these figures. If you might have need for a further breakdown; i.e. docket numbers, names of petitioners, etc., we can gather this information by hand as well.

Respectfully,

A handwritten signature in cursive script, reading "Francis J. Lotson". The signature is written in dark ink and is positioned above the printed name and title.

Francis J. Lotson
Chief Deputy Clerk

Correspondence
80-5980

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 3, 1981

80-5980 Coleman v. ~~Galcom~~
80-6030 Willis v. ~~Galcom~~

Dear Bill:

I read with much interest your dissent in these cases.

Although I agree with much of what you say, I am not inclined to join you - for reasons that at least are satisfactory to me.

I personally favor capital punishment as a legitimate, and with respect to some crimes, a necessary form of punishment. I do think the death sentence often was discriminatorily applied for many years. But this is now largely behind us. If there had been a Court for my dissenting opinion in Furman, I would have preferred it to Gregg. There is much to your view that the safeguards we have imposed - while meritorious in theory - have expanded the opportunity to exploit our generous system of direct and collateral review. Gregg was a compromise, necessary to obtaining a court decision that would allow the states to determine for themselves whether to reimpose capital punishment.

Having said this, I do not believe that this Court - or indeed courts generally - are primarily responsible for the situation you describe, though we are not without fault. In my view the political system, impacting on state governors or clemency boards, has failed to implement final judgments of the courts. I enclose a copy of a memorandum from Frank Lorson that I requested the Clerk's Office to prepare some time ago. It is the record of cases that have come to this Court from Georgia since Gregg was decided. There have been fewer repetitive petitions than I had thought.

When I served on the Crime Commission in 1966-67, we considered capital punishment at some length - although because of disagreements among our members, we included very little in our report. We did express the view that I urged on the Commission, and still hold: capital punishment

either should be enforced or abolished. The situation in the 1960's was that hundreds of prisoners were on "death row", but executions had substantially ceased. There was a perception that the public simply would not tolerate what would appear to be an excessive number of executions. We again are in that situation. In theory there is a substantial majority sentiment for capital punishment. In practice there simply is no stomach for it. This is not unique to the people of the United States. For example, one would think that the way to end the hijacking of airplanes by terrorists would be prompt trial and execution. There rarely is ever any question as to guilt. Terrorists are trained and armed by "rogue" countries. As long as they are simply jailed, other terrorists will continue to hijack for the purpose of freeing those incarcerated. Society may be losing the will even to protect itself from terrorism.

Returning to the question of abuse of habeas corpus. Despite the attempt of the Congress to rationalize and restrict habeas corpus to its historic purpose, §2254 was too loosely drawn - and too generously interpreted - to be effective in this respect. The need is for Congress to enact legislation that prevents the multiple exploitation of judicial review without regard to guilt.

Forgive me for writing at such length. Although we share common objectives to a large extent - our views as to causes and solutions are not entirely congruent.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Chief Justice

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

Copy to other
members of the
Court

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 6, 1981

79-880 Kissinger v. Halperin

Dear Thurgood:

It is good of you to continue giving thought to ways to reach some sort of decision in Kissinger.

You may recall that we are holding two cases for Kissinger involving the "whistle blower" Fitzgerald. Nixon is the petitioner in No. 79-1738, Alexander Butterfield and Bryce Harlow are the petitioners in the other case, No. 80-945. The only reason that Bill Rehnquist is "out" of Kissinger is the presence as a party of Mitchell, for whom Bill worked.

The pendency of these cases may be relevant to your inquiry whether the idea of carrying Kissinger over for reargument has merit. Rehnquist, of course, would continue to be out because of Mitchell's presence. If the vote after reargument remained 5 to 3 as at present, there would be no problem - except the further delay in resolving the issues. If, however, there were a change of mind by any one of the present majority, resulting in a 4-4 split as to Nixon, the opinion of CADC would be the law of the case in the retrial before the District Court.

This would create a problem. There would certainly be four votes to grant Nixon v. Fitzgerald, which also presents the absolute immunity issue, and in which we would have a full Court. It would be some months, however, before that case could be decided. Meanwhile, the District Court in Kissinger may have gone ahead with a retrial on the basis of the CADC opinion. If Bill Rehnquist voted for absolute immunity in the Fitzgerald case, it is reasonable to assume that at least four of us who now share that view would continue to entertain it. Thus, we would end up sometime next year with Kissinger having been remanded to the DC for trial - and quite possibly retried - based on a decision with respect to absolute immunity for the President that would later be discredited.

In sum, in considering all of the alternatives, it seems to me that if the five of us remain firm as to the President, we should decide the case at this Term. Otherwise, for the reasons indicated above, we will postpone ultimate decision of the issue until Rehnquist can participate in Nixon v. Butterfield - with all of the possible confusion and delay incident to that course of action. Nor, indeed, is it likely that we will know any more about this case after a reargument than we know now.

Although the Court may be split 4-4 as to the immunity to be accorded Kissinger and Mitchell, the differences there are not necessarily substantial in terms of the ultimate outcome. Under my view, the District Court could still impose liability on these two petitioners for any actions occurring after a bona fide national security purpose no longer existed.

I think we are together with respect to qualified immunity for Haldeman throughout.

In any event, I am most grateful to you for trying to help me arrive at a proper resolution of this troublesome case.

Sincerely,

Mr. Justice Marshall

lfp/ss

John F. Jones

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 7, 1981

80-251 Rostker v. Goldberg

Dear Bill:

I am writing you a separate "join" note in this case. Your opinion is quite persuasive, although I have rarely seen Justice Rehnquist so "deferential" to anything or anybody!

In my view, Congress would have been irresponsible to have included women in the registration/draft law. We already have an army that probably cannot fight, as thoughtful articles recently in The Atlantic Monthly and the London Economist have documented. The Economist, for example, concluded:

"Beneath a hard surface, the core is soft and spongy. The American army's weaknesses have to be cured, soon, if it is to face the challenges of the 1980's." The Economist, April 25, 1981, p. 23.

But my purpose in writing is not to share my concerns. Rather, it is to suggest a possible addition or two. For the most part, your opinion relies on generalities in the record of hearings, and particularly with respect to the "policy" against women in combat. It seems to me that the reasons for this policy merit greater emphasis. You do have a good quote commencing on page 23 of your opinion from the Senate Report. I suggest the addition of General Rogers' testimony on page 16 of the Senate Subcommittee Report, 1979, commencing "General Rogers. Mr. Chairman, may I add a footnote . . .", and continuing with his description of emergencies that often require "non-combatant" soldiers to fight.

In recent wars there rarely have been stabilized front lines. With modern mobility on land and in the air, no one can predict when and where fighting may occur. In my

view, there are relatively few places in the armed services for personnel - male or female - who cannot fight.

Apart from the foregoing, another point made by witnesses and included in the Senate Report, relates to "societal reasons". See page 159 of the Senate Report, emphasizing that "drafting women would place unprecedented strains on family life, whether in peacetime or in time of emergency".

Finally, I do not recall that you have included a reference to "administrative problems" that would result from drafting women, such as "housing and different treatment with regard to dependency, hardship and physical standards". Senate Report, p. 159.

In sum, I think the opinion would be strengthened by greater emphasis on the facts that prompted Congress to reject the President's novel view that military needs should be subordinated to "equitable" considerations.

Sincerely,

Lewin

Mr. Justice Rehnquist

lfp/ss

May 26, 1981

MEMORANDUM TO THE CONFERENCE

Having in mind the "hatchet job" that the 60 Minutes program did on the Chief, you will be interested in the enclosed article on the ethics of the producers and participants in that "show".

And Janet Cooke who wrote the Pulitzer Prize winning piece on "Jimmy" was fired!

LFP/lab

June 4, 1981

MEMORANDUM TO THE CONFERENCE:

I think you will be interested in the enclosed copy of an article by Joe Kraft in the May issue of "Commentary".

Mr. Kraft's view of the role and performance of the media in our society is refreshing, coming from a widely read columnist. I was particularly gratified by his review and discussion of our decisions that members of the media have criticized with so little restraint.

L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 18, 1981

My dear Colleagues,

As you know, I shall be retiring from the Court in early July. In confirmation, there is enclosed a copy of my letter of May 18 to the President. I shall hope in my retirement to serve from time to time as a member of the federal judiciary, but I cannot look forward to serving ever again with you.

This is not the time to try to say what these years as a Member of the Court have meant to me. Probably you know. Let me only thank each one of you for your friendship and your help.

Respectfully and affectionately,

Potter

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1981

The President
The White House
Washington, D.C.

My dear Mr. President:

The purpose of this letter is to let you know that, in accord with the provisions of 28 U.S.C. § 371(b), I will retire from regular active service as an Associate Justice of the Supreme Court of the United States at the end of the day on July 3, 1981. By that time I shall have served as a member of the federal judiciary for more than twenty-seven years, almost twenty-three of them as a Justice of the Supreme Court.

Hardly a day has passed during those years that I have not felt renewed gratitude for this opportunity to serve both my profession and my country. And, now that it is time to go, I leave with the hope that the Supreme Court will be in good and wise hands, as it works in the years ahead to preserve and protect the constitutional structure of our Republic.

Faithfully,

Potter Stewart

June 18, 1981

Dear Potter:

I hardly need say that your decision to retire is deeply distressing to me.

In a personal sense, you have befriended me - and been generous with your counsel - since the first week of my service here. Also, Jo and I have been closer personally to you and Andy than to any other couple among our colleagues. I appreciate, gratefully, that you will continue to have Chambers here, and this ameliorates my sense of personal loss. Yet, I will miss the closeness of our professional relationship.

Your retirement also is a significant institutional loss. Both of our lawyer children, Molly and Lewis, III, have called me because they know of my admiration for you. I repeated to them that, while I respect and admire others on the Court, you have had an exceptionally high sense of institutional responsibility as well as a place of intellectual leadership. No one will truly replace you - at least for me.

Having said all of this, I do understand your decision. In addition to the reasons that will be understood by all, I also know how concerned you have been by the shabby and irresponsible criticism by Cranberg and others with respect to recusals.

In any event, you fully deserve the opportunity to live under less pressure, and to share the latter years of your life more fully with your wonderful family: Andy, your children and grandchildren.

You always will have my admiration and affection.

Sincerely,

Mr. Justice Stewart

lfp/ss

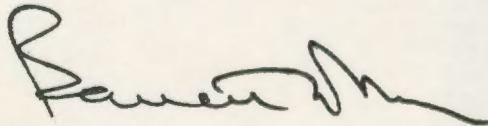
Public Information Office
Supreme Court of the United States
Washington, D. C. 20543

June 18, 1981

TO CORRESPONDENTS

Members of the press caring to meet with Justice Stewart on the occasion of his retirement from this Court are invited cordially to do so at 10:30 a.m. tomorrow in the first floor Lawyers' Lounge.

The Justice is in the Court Conference today and will be unavailable for conversations with news personnel until tomorrow's meeting.



Barrett McGurn

My File on

*Correspondence
with Justice*

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 18, 1981

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Respectfully and affectionately,

Potter

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

July 1, 1981

Dear Potter:

Your decision to retire from the Court took most by surprise and even after several weeks we are not fully reconciled. We respect your view that "twenty-three years is enough" but you will be missed in the deliberations at the Conference Table where your close grasp of the cases decided during your long tenure - as well as those before - were a very valuable resource to the Court.

You have had a long tenure on the Court, but we know that longevity is but one measure of the contribution of a Justice. You have combined more than two decades here with more than a quarter of a century of judicial service in a period of significant changes in the Law and your important contributions are a matter of record.

Apart from our work as colleagues, as friends we will miss these regular contacts with you on the Bench and in Conference. However, although it goes without saying, we firmly assert that we expect you to share our table as you have for 23 years at the Court. A long and close relationship such as we share here, is not to be changed on the personal level by the act of retirement.

All of us join in repeating to you and Andy our heartfelt wishes for continued good health and for many good years ahead.

Sincerely,

Leon E. Burger

W. J. Brennan Jr.
Byron White
Thurgood Marshall

Harry A. Blackmun
Lewis F. Powell Jr.
William H. Rehnquist

John Paul Stevens

July 1, 1981

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W. J. Brennan Jr.

Byron White

Thurgood Marshall

Harry A. Blackmun

Lewis F. Powell Jr.

William H. Rehnquist

John Paul Stevens

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

CHAMBERS OF
JUSTICE POTTER STEWART

July 2, 1981

My dear Colleagues,

Your kind letter has greatly touched Andy and me. The decision to retire was not easy, but it would have been much harder without the knowledge that in my retirement our friendship will continue unaffected.

I shall greatly miss participating with you in the work of the Court. But, though no longer a professional colleague, I shall look forward with happiness to the personal companionship of each of you in the years ahead.

Best wishes to you all.

Sincerely yours,

Potter

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

*Personal correspondence
with justices*

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

July 2, 1981

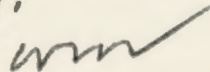
Dear Chief:

I wonder if I might be excused from the post-bench session this afternoon? I have one more appointment with the Capitol Physician to keep, in order to solidify his assurance that I am free to fly to Vermont on Monday where Nan will meet me at the Burlington airport. If I get this assurance she plans to leave early tomorrow morning, and so many things would come "unhinged" that I feel I must make sure that I get over there before the doctor leaves -- which he is scheduled to do in the late part of the afternoon.

For the information of you and the rest of my colleagues, the viral pneumonia which came on me so suddenly Sunday morning, appears to be clearing up, and I will be able to leave for Vermont Monday. Meanwhile, I find that I lost my wallet at the Bethesda Hospital Emergency Room on Sunday, and have become virtually a "stateless" person. Yesterday I got a temporary driver's license, but that has to be converted into a regular duplicate by Monday or all of my driving will be illegal.

Needless to say, I wish all of you the very best of summer recesses, and will cheerfully abide any result of the discussion which occurs at the meeting from which I ask to be excused.

Sincerely,



The Chief Justice

Copies to the Conference

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

*With
Justice*

July 2 1981

TO: Justice Powell
FROM: Barrett McGurn
RE: Justice Stewart's retirement

FYI, I have given the attached to the news media.

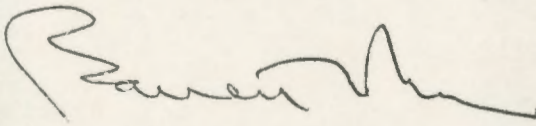
Public Information Office
Supreme Court of the United States
Washington, D. C. 20543

July 2 1981

TO CORRESPONDENTS

Embargoed until 3 p.m.

Attached is a farewell statement read at 3 p.m. today from the bench of the Supreme Court to Justice Stewart by the Chief Justice. Also included is a letter of the Justices to Justice Stewart and the latter's reply on the occasion of his retirement.

A handwritten signature in dark ink, appearing to read "Barrett McGurn", with a stylized, flowing script.

Barrett McGurn

Statement of
Chief Justice Burger

BEFORE WE TURN TO THE REGULAR BUSINESS OF THE COURT ON TODAY'S CALENDAR, WE WISH TO TAKE NOTE OF THE RETIREMENT OF JUSTICE STEWART AS A MEMBER OF THE COURT. OUR TRIBUTE TO HIM AS A COLLEAGUE AND FRIEND IS EXPRESSED IN A LETTER TO HIM SIGNED BY ALL MEMBERS OF THE COURT. THAT LETTER AND JUSTICE STEWART'S RESPONSE WILL BE MADE PART OF THE JOURNAL OF TODAY'S PROCEEDINGS.

JUSTICE STEWART'S 23 YEARS ON THIS COURT EMBRACE A STIRRING PERIOD OF MAJOR POLITICAL, ECONOMIC AND SOCIAL CHANGES IN OUR COUNTRY. AS LORD BRYCE AND OTHERS OBSERVED MANY YEARS AGO, MOST OF THE PROBLEMS OF THE CHANGES IN OUR SOCIETY HAVE A WAY OF FINDING THEIR WAY INTO THIS COURT. THIS IS NOT - AS SOME OBSERVERS ERRONEOUSLY SUGGEST - THAT COURTS REACH OUT FOR THESE PROBLEMS. ON THE CONTRARY, THE PROBLEMS ARE THRUST UPON THE COURTS. THIS TREND HAS SHOWN A MARKED ACCELERATION IN RECENT YEARS. AS IT INCREASES, THE MYTHOLOGY OF THE COURTS' SEEKING OUT CONTROVERSIES EXPANDS APACE.

IN THIS PERIOD JUSTICE STEWART HAS SOUGHT CONSTANTLY TO MAINTAIN A BALANCED VIEW OF THE ROLE OF THE JUDICIARY AS ONE LIMITED BY PRECEDENT AND TRADITION AS WELL AS BY THE CONSTITUTION ITSELF. HE HAS SOUGHT TO PRESERVE APPROPRIATE BOUNDARIES CONSISTENT WITH THE CONSTITUTIONAL DUTIES PLACED ON THE JUDICIARY BY ARTICLE III. HIS OPINIONS PARTICULARLY REFLECT HIS STRONG VIEWS ON GUARANTEES OF INDIVIDUAL LIBERTY AND FREEDOM OF EXPRESSION AND THOSE VIEWS MAKE UP A SUBSTANTIAL BODY OF OUR JURISPRUDENCE OF THE PAST TWO DECADES.

OUR LETTER TO JUSTICE STEWART, SIGNED BY ALL MEMBERS OF THE COURT
READS AS FOLLOWS:

DEAR POTTER:

YOUR DECISION TO RETIRE FROM THE COURT TOOK MOST BY SURPRISE
AND EVEN AFTER SEVERAL WEEKS WE ARE NOT FULLY RECONCILED. WE
RESPECT YOUR VIEW THAT "TWENTY-THREE YEARS IS ENOUGH" BUT YOU
WILL BE MISSED IN THE DELIBERATIONS AT THE CONFERENCE TABLE WHERE
YOUR CLOSE GRASP OF THE CASES DECIDED DURING YOUR LONG TENURE -
AS WELL AS THOSE BEFORE - WERE A VERY VALUABLE RESOURCE TO THE
COURT.

YOU HAVE HAD A LONG TENURE ON THE COURT, BUT WE KNOW THAT
LONGEVITY IS BUT ONE MEASURE OF THE CONTRIBUTION OF A JUSTICE.
YOU HAVE COMBINED MORE THAN TWO DECADES HERE WITH MORE THAN A
QUARTER OF A CENTURY OF JUDICIAL SERVICE IN A PERIOD OF
SIGNIFICANT CHANGES IN THE LAW AND YOUR IMPORTANT CONTRIBUTIONS
ARE A MATTER OF RECORD.

APART FROM OUR WORK AS COLLEAGUES, AS FRIENDS WE WILL MISS
THESE REGULAR CONTACTS WITH YOU ON THE BENCH AND IN CONFERENCE.
HOWEVER, ALTHOUGH IT GOES WITHOUT SAYING, WE FIRMLY ASSERT THAT
WE EXPECT YOU TO SHARE OUR TABLE AS YOU HAVE FOR 23 YEARS AT THE
COURT. A LONG AND CLOSE RELATIONSHIP SUCH AS WE SHARE HERE, IS
NOT TO BE CHANGED ON THE PERSONAL LEVEL BY THE ACT OF RETIREMENT.

ALL OF US JOIN IN REPEATING TO YOU AND ANDY OUR HEARTFELT
WISHES FOR CONTINUED GOOD HEALTH AND FOR MANY GOOD YEARS AHEAD.

SINCERELY,

SIGNED BY THE JUSTICES

JUSTICE STEWART HAS RESPONDED AS FOLLOWS:

MY DEAR COLLEAGUES,

YOUR KIND LETTER HAS GREATLY TOUCHED ANDY AND ME. THE DECISION TO RETIRE WAS NOT EASY, BUT IT WOULD HAVE BEEN MUCH HARDER WITHOUT THE KNOWLEDGE THAT IN MY RETIREMENT OUR FRIENDSHIP WILL CONTINUE UNAFFECTED.

I SHALL GREATLY MISS PARTICIPATING WITH YOU IN THE WORK OF THE COURT. BUT, THOUGH NO LONGER A PROFESSIONAL COLLEAGUE, I SHALL LOOK FORWARD WITH HAPPINESS TO THE PERSONAL COMPANIONSHIP OF EACH OF YOU IN THE YEARS AHEAD.

BEST WISHES TO YOU ALL.

SINCERELY YOURS,

SIGNED BY JUSTICE POTTER STEWART

CHAMBERS OF
JUSTICE POTTER STEWART

July 2, 1981

My dear Colleagues,

Your kind letter has greatly touched Andy and me. The decision to retire was not easy, but it would have been much harder without the knowledge that in my retirement our friendship will continue unaffected.

I shall greatly miss participating with you in the work of the Court. But, though no longer a professional colleague, I shall look forward with happiness to the personal companionship of each of you in the years ahead.

Best wishes to you all.

Sincerely yours,

Potter

Cover

July 7, 1981

Dear Potter,

Before leaving for Richmond, I obtained from Barrett McGurn a copy of the transcript of your press conference.

I read it over the week end with special interest and admiration. It should be required reading for every new Justice of the Supreme Court - indeed, for every new judge, federal or state.

I particularly liked your response to the question whether consideration of race or sex should be appropriate in choosing a Supreme Court Justice. As you stated, the relevant considerations are "quality and competence, and temperament, character and diligence". I do hope the President shares your views.

We returned to Richmond on Friday, and I am now settled again in my CA 4 chambers where I have a most pleasant view of the Capitol grounds of Virginia, and the facade of the State Capitol designed by Jefferson. As pleasant as this is, I would trade it for the view that you have of the New Hampshire mountains. I would particularly like to trade the weather.

We returned to Richmond with warm memories of the Stewarts and of the delightful dinner with you at the Sulgrave.

C-107

July 7, 1981

Dear Potter,

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We returned to Richmond with warm memories of the Stewarts and of the delightful dinner with you at the Sulgrave.

July 8, 1981

MA

M

Dear Justice Howell

I just could not wait to write
you concerning my good friend
Sandra O'Connor. Tim and I have
known Sandra and John since coming
to Arizona and they are very special. We had
dinner with them last night and shared in on
their family's excitement. Their three sons are
also most attractive. She is so unassuming
and has such simplicity and dignity. Her
knowledge of her law I believe speaks for itself.
We know her socially and also just recently
I was elected to the Arizona Commission on
Appellate Court Appointments. -- Nine of us (a
Supreme Court justice, 3 attorneys, and 5
lay people) I in very short time. We been only
have found it very interesting that on still quite

a novice. In writing you & ask if you might
watch our Sandra. I know you will like her.
I ~~can~~ get over heat, if she makes it, I will
know two people whom I admire more
than I can express to you on the Supreme
Court of our great land. You and Sandra.
It makes me feel good.

I think of you and Mrs. Powell
often and I read your wonderful telegram to
Lowell on his 50th Birthday. I went back to
surprise him. He has loved seeing Jo and
Dick Skimp in Park City. It's funny how we
keep bumping into each other. We could not
plan it better.

I hope we shall see each
other someday soon. Meanwhile lots of
love to you and Mrs. Powell. May-Audrey
[MELLOR]

WBA Linda - Put in
file on Correspondence
with or about
other Justices

July 14, 1981

Dear Mary Audrey,

Jo and I - especially me - were
so pleased to receive your letter of
July 8. It was most thoughtful of you
to write.

Your description of Sandra
O'Connor is of a most charming and
delightful person. It is evident that
she also is a talented lawyer and judge.
Relationships among the Justices are so
close, we almost are as much interested
in the personality of a new Justice as in
his or her intellectual qualities and
legal ability. It pleases me particularly
that you and Jim are close friends of the
O'Connors.

We also have heard fine things
about him. Potter Stewart knows him from
being together at the Bohemian Grove in
California.

Despite the rumblings which with
you are familiar, I have no doubt that
Judge O'Connor will be confirmed by a wide
margin in the Senate. She will be most
welcome at the Court, and indeed she and

Mrs. James K. Mellor
Page Two

her husband will be warmly received in
Washington. She already is a celebrity!

We are glad that you and Jim
continue to see the Smiths. I do wish
you lived closer together, as I think the
four of you have common interests and
values. When you write your mother, give
her our special love.

As ever,

Mrs. James K. Mellor
6330 East MacDonald Drive
Scottsdale, Arizona 85253

LFP/djb

Court of Appeals
STATE OF ARIZONA
DIVISION ONE
WEST WING, STATE CAPITOL BUILDING
1700 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

7/27/1981
*Communications
with other
Justices. She
will be one
soon.*

July 22, 1981

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

Dear Justice Powell and Mrs. Powell:

Both your letters were most welcome. Mary Audrey Mellor speaks of you both frequently and in glowing terms. I know that it will be a special pleasure to know you and to work with you.

I have not allowed myself to think beyond the process of the confirmation hearing. It may be very challenging, indeed, and I have weeks of study ahead. It is tentatively set for September 8-10.

If either of you know of a two bedroom furnished apartment which might be available temporarily as of September 1, you might let me know. I do not want to decide on a permanent dwelling until I am better acquainted with the area.

Again, my thanks to you both for extending a gracious "welcome."

Sincerely,

Sandra O'Connor

Sandra D. O'Connor

SO'C/bw

Court

August 13, 1981

Dear Potter:

Here is a copy of my speech to the American College of Trial Lawyers, given at the annual banquet during the ABA meeting in New Orleans.

You will note that I took my "text" from a couple of "Stewart's famous sayings". The speech was well recieved, and I am told that some of my "ad libbing" (about new plumbing at the Court) made national television.

We saw many mutual friends who asked about you and Andy, always expressing regret that you elected to retire - but understanding.

Byron and John Stevens were at the meeting, which I think was good for the Court as well as the Bar.

Jo and I will return to Washington early in September.

As ever,

Justice Stewart

lfp/ss
Enc.

AUG 20 1981

CHAMBERS OF
JUSTICE POTTER STEWART

August 18, 1981

Dear Lewis -

Thanks for your thoughtfulness in sending me
a copy of your speech to the American College
of Trial Lawyers. I thought it was very good
indeed, despite or perhaps because of the fact that
you quoted me.

Andy and I were sorry not to be in New
Orleans, but we both agree that this was not
the year for us to go. We look forward
with much happiness to seeing you and Jo
in September.

Best personal wishes.

Sincerely yours, Potter

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

August 18, 1981

Dear Lewis:

Today's mail brought me a warning of the forthcoming invitation to be present in Atlanta for the formal splitting of the Fifth Circuit. I assume that, as Circuit Justice, you will be present. Do you have any feeling as to whether any of the rest of us should be there? All this, of course, depends on whether we finish the September conference in time.

Sincerely,

H.A.B.
by bus

Mr. Justice Powell

Revised
court

August 21, 1981

Dear Harry,

Thank you for your note of
August 18.

I have written Judge Godbold
that attendance by me at the Fifth Circuit
ceremonies is speculative, depending on
our September conference and also my
preparations for the October Term.

You would be warmly welcomed
if you could attend. The Chief, I under-
stand, has advised that his participation
is uncertain, but that he will try to
attend.

There certainly is no obligation
on you or other Justices to accept the
invitation. You do have a special interest
in Atlanta. I would say that the choice is
entirely yours.

Sincerely,

Mr. Justice Blackmun

LFP/djb

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 21, 1981

MEMORANDUM TO THE CONFERENCE:

The Conference asked that I review the docket sheet for Original Cases. You will recall that the sheet is sadly out-of-date and not very useful facially. The legal officers last Spring made some suggestions, and I have taken it from there.

The enclosure is what I propose. I am not very happy with it, but I think it is an improvement over what we have been using for so long. It is somewhat of a compromise, for I am aware that not all of us use the same basic docket sheet for routine cases. I have the following comments:

1. I suppose every Original Case arrives with a Motion for Leave to File, so I have taken the liberty of inserting that on the face of the sheet.

2. The first vote column is similarly designated. All the other columns (and they carry over to the reverse side) are merely designated "other" so as to be useful for the various kinds of motions that are presented in Original Cases.

3. I have eliminated the columns for "absent" and "not voting" and have done so on the assumption that an absence or a pass can be recorded in the particular vote column itself.

4. I have inverted the list of Members of the Court so that the names appear in voting order rather than in reverse voting order.

This is not the most urgent of matters, but perhaps we shall all be relieved when a revised form is in use.

H.A.B.
—

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

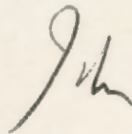
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 22, 1981

Dear Harry:

Your proposed revision of the docket sheet for original cases seems eminently sensible to me. The only thought that has occurred to me is that possibly in setting it up in print, the Printer might be able to narrow the columns for "Motion for Leave to File" somewhat and make room for an additional "Other" column.

Respectfully,

A handwritten signature in dark ink, appearing to be "J. Blackmun", written in a cursive style.

Justice Blackmun

Copies to the Conference

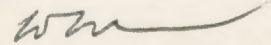
CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 22, 1981

Dear Harry,

I think the proposed revision in the form of docket sheet for Original Cases which you circulated on September 21st is a vast improvement over what we presently use, and have no hesitancy in agreeing to its adoption.

Sincerely,



Justice Blackmun

cc: The Conference

Dear Harry,

*I shall Bill Rehnquist's
enthusiasm for your new
Docket sheet for Original Cases.*

Sincerely

September 22, 1981

Dear Harry:

I share Bill Rehnquist's enthusiasm for your new
docket sheet for Original Cases.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

September 24, 1981

Dear Harry:

This year's crop of applicants for clerkships may well be - on the basis of the 23 whom I interviewed - the best I've seen.

I have selected four, but I would have been just as pleased with any of the ones on the enclosed list. You may be interested in George Howell who started the University of Virginia Tax Review this year.

Of course, there are many other fine prospects from applicants whom I did not interview.

Sincerely,

Mr. Justice Blackmun

lfp/ss

9/22/81 lfp/ss

Interview List

Dreyfuss, Rochelle Cooper

Wellesley College
Columbia University School of Law -
Articles & Book Reviews Editor
CA2, J. Feinberg

Howell, George C., III

Princeton University
University of Virginia Law School -
Editor in Chief, Virginia Tax Review
EDVa, J. Williams

Schwab, Stewart

Swarthmore College
Michigan Law School
CA4, J. Phillips

Smalley, Mary Kathleen

Rice University
Harvard Law School
CA5, J. Wisdom

Tu, Lawrence P.

Magdalen College, Oxford University
Harvard Law School - Note Editor
CA2, J. Mansfield

Vehko, Jane F.

Southwestern College (Memphis)
William and Mary Law School
Editor in Chief, Law Review
CA5, J. Hill

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

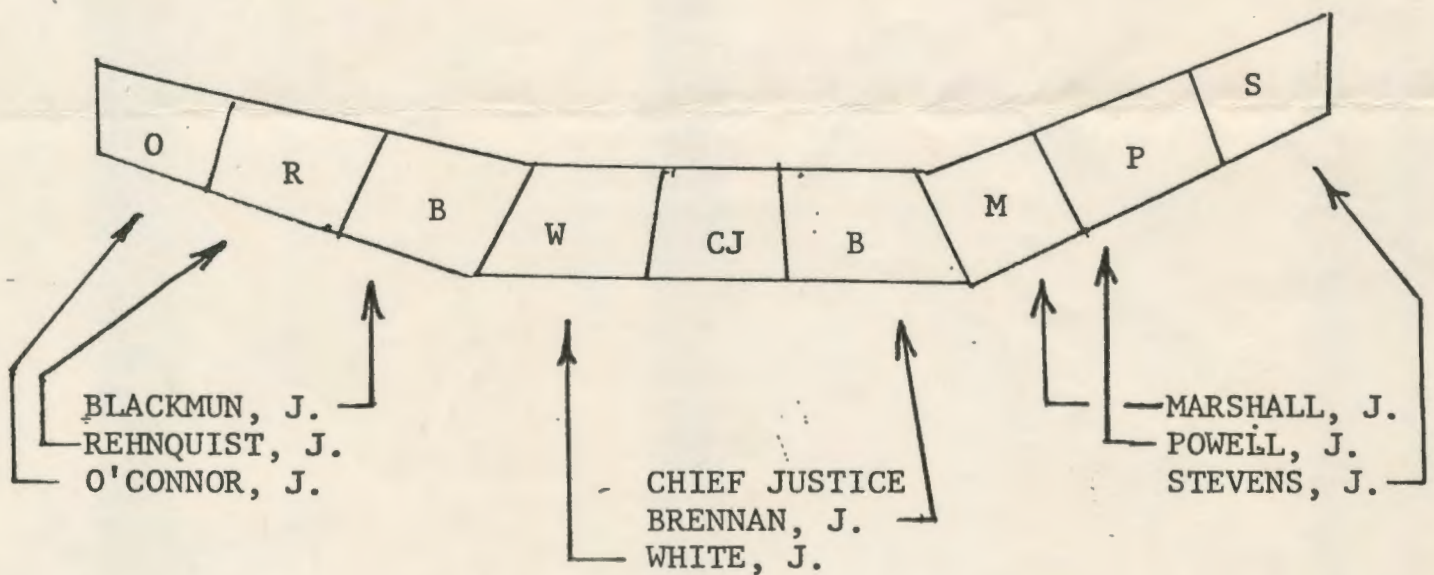
September 24, 1981

MEMORANDUM TO THE CONFERENCE

SUBJECT: Entry and Seating Protocol

Adherence to the traditional seniority form
would now necessitate the following entry to and seating
arrangement at the Bench.

PUBLIC AREA



CHIEF JUSTICE
BRENNAN, J.
WHITE, J.

- MARSHALL, J. →
- BLACKMUN, J. →
- POWELL, J. →
- REHNQUIST, J. →
- STEVENS, J. →
- O'CONNOR, J. →

Alfred Wong
Alfred Wong
Marshal

*for correspondence
with Chambers
(Conference)*

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 28, 1981

Dear Chief:

Congress has vested the power to make Circuit Justice assignments in the Court, not in the Chief Justice. See 28 U.S.C. § 42. Your announcement of new assignments on Friday was not authorized by the Court and therefore is without any present legal effect.

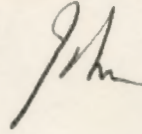
Since the statute authorizes the division as well as the multiplication of Circuit Justice responsibilities, and since we now have two Justices from the Ninth Circuit, the possibility of splitting the responsibilities for what is now our largest and busiest Circuit is at least worthy of discussion. In all events, even if the Court agrees with your views on the matter, an appropriate order should be entered after action is taken by the Court. If this is not done, I shall express my views on the question in the Monday Order List.

I would also like to propose that the Court decide whether or not television cameras should be permitted in the Courtroom on ceremonial occasions. As you know, the Judicial Conference regards this practice as appropriate in other federal courts. Had I been consulted on the question, I would have favored such action last Friday. There is simply no valid reason why the American public should have been deprived of the privilege of witnessing what I regarded as a very moving ceremony of unique historical significance.

Surely television coverage of the Court proceeding would have been preferable to what I regard as a serious departure from Court tradition in extending selected invitations to attend and to photograph the administration of the constitutional oath in the Conference room. It is my understanding

that such invitations have never been extended in the past and I do not believe they should be extended in the future; most certainly, such action should not be taken without the prior approval of the Court.

Respectfully,

A handwritten signature in dark ink, appearing to be 'J. H.' or similar, written in a cursive style.

The Chief Justice

Copies to the Conference

copy

October 2, 1981

Dear John:

Jo and I accept your invitation
to dinner.

Sincerely,

Justice Stevens

lfp/ss

October 8, 1981

MEMORANDUM TO THE CONFERENCE:

News accounts of a new report by the Defense Department on the Soviet Military Power prompted me to request a couple of copies.

Secretary Weinberger responded generously to my request. I enclose a copy of his note of October 1, and in accordance with his suggestion - a copy of the Report.

L.F.P., Jr.

SS

cc: Justice Stewart

October 9, 1981

Clerk Applicants

Dear Sandra:

As we discussed, I enclose a list of eight clerk applicants whom I interviewed, and who were in contention with me up to the end.

Some - perhaps all - of these also have applied to you. If so, you have the same information as to their records that I have. There is no question as to their impressive qualifications.

I will be glad to discuss these, or some of them, with you when you reach the point of developing an interview list, if you think this might be helpful.

You have plenty of time. The Chief Justice and Harry do not employ until later - the Chief usually in December and Harry after the first of the year, as they like to have recommendations from judges with whom the applicants are working. I believe the other Chambers may have completed their hiring. There was an unusually strong list of applicants this year, and so you can count on highly competent young lawyers being available.

As the applicants on the enclosed list impressed me most favorably, I recommend them for your consideration. Of course, there are others well qualified.

Sincerely,

Justice O'Connor

lfp/ss

10/9/81

Howell, George C., III

Princeton
U.Va. Law School
Editor-in-Chief (Va. Tax Review)
EDVa., Judge Williams

Leffell, Daniel

Yale
Columbia School of Law
Editor in Chief
CA5, Judge Wisdom

Morawetz, Nancy

Princeton University
New York Univ. School of Law
Editor in Chief
CADC, Judge Wald

Schwab, Stewart

Swathmore
Michigan, Ph.D. in Economics
Michigan Law School
CA4, Judge Phillips

Smalley, Mary Kathleen

Rice University
Harvard Law School
CA5, Judge Wisdom

Sullivan, Kathleen

Cornell
Oxford (Marshall Scholar)
Harvard Law School
CA2, Judge Oakes

Tu, Lawrence P.

Magdalen College, Oxford University
Harvard Law School - Note Editor
CA2, Judge Mansfield

Vehko, Jane F.

Southwestern at Memphis
William and Mary Law School
Editor in Chief
CA5, Judge Hill



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dear Jo and Lewis,

what a special treat
it was to join you
for dinner last night.
We were so pleased to
meet the Bernisses, and
it was great to see
the Bakers and Potter.
A delicious meal, good
company and good
conversation — an
unbeatable combination.

You two have
done so much to make
us feel welcome.

we thank you
again for all
of your kindly
deeds and gestures.

Fondly,

11/17/81

Sandra

Correspondence with
Justice

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

CHAMBERS OF
JUSTICE POTTER STEWART

Thursday, November 17, 1981

Dear Jo -

It was a lovely dinner party -
the setting, the food, the guests, and
most of all the gracious host and hostess -
all were perfect. It was typically
thoughtful of you and Lenni to invite
the people that you did. My only
regret is that Andy could not be
there to enjoy it too.

Affectionate best wishes, and many
thanks, to you both.
Potter

December 12, 1981

Rules of Criminal Procedure

Dear Sandra:

In view of the discussion of the proposed changes in the Rules of Criminal Procedure, and the possibility that you may wish to dissent if the Court approves them, I enclose a copy of the amendments to the Civil Rules that were approved last year. Commencing on page 10, you will see the dissent that I wrote in which Potter and Bill Rehnquist joined.

The fact that we dissented prompted the ABA Committee and the American College of Trial Lawyers Committee to renew efforts to accomplish genuine reform. I like to think, also, that our dissent prompted the Committees of Judicial Conference, and its Advisory Committee, to go back to work on the Discovery Rules.

Sincerely,

Justice O'Connor

lfp/ss