

MEMORANDUM

*clerk's
file copy*

TO: Sam, Jim, Nancy and Bob

DATE: June 30, 1977

FROM: Charlie, Tyler, Gene and Dave

Summer Bench Memos

We have worked up three lists of granted cases to which you should turn your attention during the summer months. The first list consists of seven cases and one "summer project." These present major issues, and should require more than the usual amount of time to complete a summer bench memo. The second list consists of 16 cases. These are also major, but relatively less significant, cases that in our view deserve summer bench memo treatment. We would suggest that you take the total of 24 cases on Lists 1 and 2 and divide them up so that each of you has six summer bench memos to complete before the start of the October Term.

The Justice will undoubtedly give you a memo proposing a time schedule for completion of summer bench memos. At a minimum, each of you will have the eight weeks starting August through September to devote to summer bench memos. If you were to devote two weeks to each of two of the major projects from List 1, and one week to each of four of the projects from List 2, you would have completed your six projects by the beginning of the October sitting. The third list consists of five cases for which it might be helpful for the Justice to

have full summer bench memos. Those of you who finish your six summer bench memos from List 1 and List 2 prior to the beginning of the October sitting can attempt to knock out some bench memos for the cases in List 3.

Sometime during September you will be receiving from the clerk's office the list of cases to be argued during the October sitting. You can make adjustments at that time to see to it that the Justice has a "bobtail bench memo" in those cases that are scheduled for argument during October but which are not on any of the three lists attached to this memo. Also, keep in mind that our development of these three lists represents an optimal situation. Scheduling problems will undoubtedly arise. You may be ready to turn to a case for which the clerk's office has not yet received the briefs. Adjustments will have to be made at that time (for example, trading cases).

It is also possible that you might wish to make adjustments to handle the Bakke case. One possibility would be to have two clerks working on Bakke independently. If you choose this option, you could simply move ^{one} of the cases from List 2 to List 3 so that you remain with a total of 24 projects on List 1 and 2 combined (with Bakke in effect counted as two). You should of course check with the Justice on this or any other special option for handling the Bakke case to see whether he thinks it would be an effective use of your time.

6/30/77

LIST 1

1. No. 75-1914 MONELL
2. No. 76-446 NAVARETTE
3. No. 76-750 SEARS
4. No. 76-811 BAKKE
5. No. 76-1143 MARSHALL
6. No. 76-5729 OLIPHANT
7. No. 76-6513 BELL v. OHIO (Capital cases)
8. Summer Project. The eighth item is a project rather than a case. It concerns an issue which has attracted the Justice's attention, but which is not raised in any granted case. The issue is whether, absent 1983 jurisdiction, the 14th Amendment itself confers a Bivens-type jurisdiction. It will probably be helpful in this regard to consult the case file in the Mt. Healthy case, which was decided during the October 1976 Term.

6/30/77

LIST 2

1. No. 76-635 MULTI-STATE TAX COMMISSION
2. No. 76-682 MARTINEZ
3. No. 76-695 HOROWITZ
4. No. 76-709 BUTZ
5. No. 76-839 FOLEY
6. No. 76-864 CITY OF LAFAYETTE
7. No. 76-911 ADAMO WRECKING
8. No. 76-938 FEDERAL MARITIME COMMISSION
9. No. 76-944 NIXON
10. No. 76-1150 BALDWIN FISH & GAME
11. No. 76-1151 CECCOLINI
12. No. 76-1172 FIRST NATIONAL BANK
13. No. 76-1662 BOARD OF COMMISSIONERS
14. No. 76-6372 QUILLOIN
15. No. 76-6528 BURNS
16. No. 76-6617 GREEN

LIST 3

1. No. 76-616 CATHEDRAL
2. No. 76-749 PFIZER
3. No. 76-1057 DOYLE
4. No. 76-1149 CAREY
5. No. 76-1500 MASSACHUSETTS