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CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

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

February 25, 1985

Re: No. 83-1919 Oklahoma City v. Tuttle

Dear John: Re: 83-1919 City of Oklahoma City, v. Tuttle, etc.

I said at Conference today that I would write you about why I thought this case, in which I have circulated a proposed opinion, is different from Western Airlines v. Criswell, which has been assigned to you to write an opinion explaining a DIG. I really think that is not my province; I think there are differences between this case and Criswell, which I will explain. Sincerely,  
The main purpose of this letter is to defend the procedural position I have taken in Tuttle. If my view of the procedural matter in that case commands the support of a majority, it is still up to you to write the opinion in Criswell should be written in the light of that view. If my view does not command the support of a majority, a fortiori it is up to you in Criswell.

Sandra

The basis for my treatment of the procedural issue in Tuttle is Justice Rehnquist's view--and I think it is one shared by others--that it is a great waste of time to dismiss a case as improvident when the Court wishes to decide on the merits. To this end, I would try to concentrate any claims that such issues could not be reached if the Court took the case at the certiorari stage of our deliberations, rather than waiting until after briefing and argument on the merits. By analogy, I think our decision in Michigan v. Long with respect to "independent and adequate state grounds" has been very successful in focusing the parties' attention on this issue at the certiorari stage of the case, and as I recall we have not taken any case since Michigan v. Long which we have felt obligated to DIG because the state court decision rested upon an independent and adequate state ground.

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