



U.S. Department of Justice  
Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

August 1, 1984

MEMORANDUM FOR: Carol E. Dinkins  
Deputy Attorney General

FROM: Roger Clegg <sup>RC</sup>  
Associate Deputy Attorney General

SUBJECT: Meeting on the Supreme Court's Upcoming Term

Here are my notes from Monday's meeting with Rex, Ted, and the litigating division heads on the Supreme Court's upcoming term. I am also attaching the summary of our cases which Rex handed out at the meeting.

I. Richard Willard (Civil Division)

- (1) suggests Provenzano for McConnell to argue.
- (2) Simms (a CIA FOIA case) is significant.
- (3) Cheney (lethal injections); suggests trying to get this case moved up, since it's bad precedent and it is being cited; a good one for Rex to argue, too.  
- Bator: hard to move it up because we're trying to get this consolidated with Falkowski.
- (4) we're already working on Felton, so it will be ready to go with Grand Rapids (Establishment Clause cases).
- (5) Dellums case (9th Cir.: Neutrality Act and special prosecutor); 9th has not ruled yet.
- (6) Medical improvements (social security: if legislation doesn't pass, will need to get a case before Supreme Court).

II. Paul McGrath (Antitrust Division)

Light term for Antitrust.

- (1) Southern Motor Carriers (state antitrust liability).
- (2) Town of Halie (will want to keep low profile; municipal antitrust liability).
- (3) Mozina case (Japanese electronics); State Department will want cert. granted; we think it's not cert. worthy.
- (4) cases involving judgments requiring defendants to do things besides pay fines: give money to charity, etc.

III. Brad Reynolds (Civil Rights Division)

- (1) St. Louis case (if cert. granted).
- (2) 3 voting cases: 2 of which we may be asked for our opinion, one we are in.
  - Miss. redistricting case, challenging constitutionality of §2.
  - Texas redistricting case, with interim plan made permanent being challenged.
  - S.C. redistricting.
- (3) cert. pet. filed in Indonesian slavery case in Los Angeles; we're opposing cert. (our only cert. petition).
- (4) Baby Doe cases: we've put on fast track before 2d Cir.  
Rex: will it be cert. worthy in light of intervening legislation? (in conference now).  
Brad: yes; that is a fund termination statute aimed at states, and doesn't involve all federal funding.
- (5) Jaffree (silent prayer): Rex should argue it.
- (6) Tennessee medicare resolution (Alexander v. NOW); we have 10 minutes of argument time.
- (7) Paul Bator: we have time in Grand Rapids, and Alexander; have asked for time in Jaffree (Establishment Clause cases).

IV. Hank Habicht (Lands Division)

Big term for them.

- (1) South Oregon case; NEPA and 9th Cir.; whether federal land management agency can use FIFRA, or has to conduct its own study.
- (2) EPA v. NRDC; Clean Water Act equivalent to "bubble" case; flexibility of agency approaches.
- (3) Riverside Bay View Homes: 6th Cir.; issue is scope of the term "waters of the U.S.": does it extend to isolated marsh areas?; everyone wants us to take an expansive view, and Army Corps of Engineers is willing to do this to get it resolved.
- (4) Kovacs case (hazardous waste clean-up).
- (5) Truckee River case: Endangered Species Act case: must Secretary not only protect, but take action to bring back, the species? (the Stampede Dam case); two kinds of fishes.
- (6) two takings cases.
- (7) 8(g) won't get to Court this term, asks Rex? No, says Hank.

V. Glenn Archer (Tax Division)

- (1) South Carolina original jurisdiction case.
- (2) two pending for cert., including Green v. Clarksdale (challenging standing for plaintiffs and raising first amendment issues), and
- (3) National Bank of Commerce case.

VI. Ron Gainer (Associate's Office)

(passed).

VII. Ted Olson (OLC)

- (1) pocket veto case (aid to El Salvador) (intersession recess pocket veto).
- (2) recess appointment case (Criminal Division case; judge in Hawaii; 9th Circuit en banc argument coming up in Aug.); there's a recess appointment case elsewhere, too, involving Legal Services Corporation.

VIII. Rex Lee (Solicitor General)

- (1) Thanks everyone for their fine work last term.
- (2) Paul Bator talks about review of appeal/no appeal decisions; he will be in touch; first instinct is to staff this working group with deputies.
- (3) Council of Economic Advisors: Paul McGrath discussed how CEA has gotten involved in more line responsibilities; Niskanen has said he resents being out of the loop on Supreme Court decisions, etc.; Paul thinks he should be included when there are economic issues; Rich says that CEA isn't legally separate from White House, and why ask the views of one part of the White House? (were interested in Hawaii v. Midkiff and pensions). Rex concluded that it would be okay to touch base with him, since he probably wouldn't have much to say anyway.

Reproduced from the Holdings of the:  
 National Archives and Records Administration  
 Record Group 60, Department of Justice  
 Files of Roger Clegg, 1984  
 Accession #060-88-258 Box: 5  
 Folder: Supreme Court Upcoming Term

SUMMARY OF CASES BY DIVISION AS OF JULY 25, 1984

|  | <u>CIVIL</u> | <u>CIVIL RIGHTS</u> | <u>LANDS</u> | <u>CRIMINAL</u> | <u>TAX</u> | <u>ANTITRUST</u> | <u>OTHER</u> |
|--|--------------|---------------------|--------------|-----------------|------------|------------------|--------------|
| Briefs filed   | 6            | 4                   | 11           | 8               | 2          | 0                | —            |
| Pending Merits<br>Briefs   | 7            | 1                   | 0            | 4               | 2          | 1                | —            |
| Petitions or<br>Jurisdictional<br>Statements Awaiting<br>Disposition | 12           | 1                   | 0            | 8               | 1          | —                | 5            |
| Petitions<br>Authorized But<br>Not Filed                             | 2            | —                   | 1            | —               | —          | —                | 1            |
| <b>TOTAL</b>   | <b>27</b>    | <b>6</b>            | <b>12</b>    | <b>20</b>       | <b>5</b>   | <b>1</b>         | <b>6</b>     |

Pending Merits Briefs

25-Jul-84  
 Page 1

| NUM<br>BER | PETNAME                                | RESPNAME                                | DIVISION | ATTORNEY  | DEPUTY | US<br>BR<br>DUE | DR<br>BR<br>RCD |
|------------|--|---|----------|-----------|--------|-----------------|-----------------|
| 83-0832    | PAULSEN, HAROLD T ET AL                | CIR                                     | TAX      | LAUBER    | LGW    | 84-07-27        | 84-07-20        |
| 83-1084    | VISTA RESOURCES INC ET AL              | SEAGRAVE CORP                           | SEC      | ETKIND    | LGW    | 84-07-28        | - -             |
| 82-1913    | GARCIA, JOE G                          | SAN ANTONIO METROPOLITAN TRANSIT        | CIVIL    | SCHWARTZ  | KSG    | 84-07-30        | - -             |
| 82-1951    | RAYMOND J DONOVAN, SECRETARY OF LABOR  | SAN ANTONIO MET TRANSIT AUTHORITY ET AL | CIVIL    | SCHWARTZ  | KSG    | 84-07-30        | - -             |
| 83-0712    | STATE OF NEW JERSEY                    | TLD A JUVENILE                          | CRIMINAL | OBERLY    | ALF    | 84-07-30        | - -             |
| 82-2157    | CENTRAL STATE, S.E. ET AL              | CENTRAL TRANSPORT, INC., ET AL.         | LABOR    | SCHWARTZ  | KSG    | 84-08-02        | - -             |
| 83-0529    | USA                                    | WILLIAM HARRIS SHARPE & DONALD D SAVAGE | CRIMINAL | SCHULDER  | ALF    | 84-08-02        | - -             |
| 83-1015    | NAACP ET AL                            | HAMPTON COUNTY ELECTION COMMISSION ETAL | CIV RTS  | ETKIND    | LGW    | 84-08-02        | - -             |
| 83-1625    | UNITED STATES OF AMERICA               | LYLE GERALD JOHNS ET AL                 | CRIMINAL | SCHWARTZ  | ALF    | 84-08-02        | - -             |
| 83-1660    | ATKINS, CHARLES M ETC                  | GILL PARKER ET AL                       | CIVIL    | MCCONNELL | KSG    | 84-08-02        | - -             |
| 83-6381    | PARKER, GILL ET AL                     | JOHN R BLOCK SECRETARY OF AGRICULTURE   | CIVIL    | MCCONNELL | KSG    | 84-08-02        | - -             |
| 83-1878    | HECKLER, MARGARET M SECT OF HHS        | LARRY LEON CHANEY ET AL                 | CIVIL    | ALITO     | KSG    | 84-08-16        | - -             |
| 83-1007    | TIFFANY FINE ARTS INC ET AL            | USA ET AL                               | TAX      | LAUBER    | LGW    | 84-08-17        | - -             |
| 83-1292    | WAYTE, DAVID ALAN                      | USA                                     | CRIMINAL | LEVY      | ALF    | 84-08-20        | - -             |
| 82-1922    | SOUTHERN MOTOR CARRIERS RATE ETC ET AL | USA                                     | ANTITR   | STRAUSS   | LGW    | 84-08-25        | - -             |
| 83-5954    | LINDAHL, WAYNE                         | OFFICE OF PERSONNEL MANAGEMENT          | CIVIL    | KNEEDLER  | KSG    | 84-09-01        | - -             |
| 83-1249    | SIMS, JOHN CARY AND SIDNEY M WOLFE     | CIA ET AL                               | CIVIL    | STRAUSS   | KSG    | 84-09-14        | - -             |

Merits Cases in which US Brief has been filed

25-Jul-84  
Page 1

| NUM<br>BER | PETNAME                                 | RESPNAME                                | DIVISION | ATTORNEY   | DEPUTY | TOP<br>BR<br>FLD | ROT<br>BR<br>FLD | US<br>BR<br>FILED |
|------------|---|---|----------|------------|--------|------------------|------------------|-------------------|
| 33-0240    | LAWRENCE COUNTY ET AL                   | LEAD-DEADWOOD SCHOOL DISTRICT           | LANDS    | CORWIN     | LFC    | 84-06-11         | - -              | 84-06-07          |
| 33-0469    | USA                                     | BILLY G YOUNG                           | CRIMINAL | MCCONNELL  | ALF    | 84-05-21         | 84-06-26         | 84-05-21          |
| 33-0703    | FLORIDA POWER & LIGHT COMPANY           | JOETTE LORION ET AL                     | LANDS    | OBERLY     | LFC    | 84-06-12         | - -              | 84-06-08          |
| 33-0727    | ALEXANDER, LAMAR GOV STATE OF TENN      | HERSHEL CHOATE ET AL                    | CIV RTS  | GARVEY     | PMB    | 84-05-21         | - -              | 84-05-24          |
| 33-0728    | HERB'S WELDING INC ET AL                | GRAY, ROBERT H                          | LABOR    | CORWIN     | KSG    | 84-05-04         | 84-07-03         | 84-07-03          |
| 33-0773    | STATE OF OREGON                         | MICHAEL JAMES ELSTAD                    | CRIMINAL | STRAUSS    | ALF    | 84-05-30         | - -              | 84-05-31          |
| 33-0812    | WALLACE, GEORGE C ET AL                 | JAFFREE, ISHMAEL ET AL                  | CIV RTS  | MCCONNELL  | PMB    | 84-07-05         | - -              | 84-07-10          |
| 33-0859    | PEOPLE OF THE STATE OF CALIFORNIA       | CHARLES R CARNEY                        | CRIMINAL | HOROWITZ   | ALF    | 84-06-06         | - -              | 84-06-08          |
| 33-0912    | LUCE, EDWARD                            | USA                                     | CRIMINAL | KUHLIK     | ALF    | 84-06-01         | 84-07-24         | 84-07-24          |
| 33-0929    | BOARD OF SCHOOL COMMISSIONERS OF MOBILE | ISHMAEL JAFFREE ET AL                   | CIV RTS  | MCCONNELL  | PMB    | 84-07-05         | - -              | 84-07-10          |
| 33-0935    | USA                                     | ABEL, JOHN CLYDE                        | CRIMINAL | ALITO      | ALF    | 84-06-04         | - -              | 84-06-04          |
| 33-0990    | SCHOOL DISTRICT OF CITY OF GRAND RAPIDS | PHYLLIS BALL ET AL                      | CIVIL    | MCCONNELL  | PMB    | 84-05-16         | 84-06-12         | 84-05-17          |
| 33-0997    | TRANS WORLD AIRLINES INC                | HAROLD H THURSTON ET AL                 | EEOC     | SHAPIRO, H | LGW    | 84-05-22         | 84-07-06         | 84-07-06          |
| 33-1013    | CHEMICAL MANUFACTURERS ASSOC            | NRDC AND EPA                            | LANDS    | ALITO      | LFC    | 84-07-09         | - -              | 84-07-06          |
| 33-1020    | STATE OF OHIO                           | WILLIAM LEE KOVACS                      | LANDS    | OBERLY     | LFC    | 84-05-31         | 84-06-26         | 84-05-18          |
| 33-1031    | US NUCLEAR REGULATORY COMM & USA        | JOETTE LORION ET AL                     | LANDS    | OBERLY     | LFC    | 84-06-08         | - -              | 84-06-08          |
| 33-1045    | US DEPARTMENT OF JUSTICE ET AL          | ANTHONY PROVENZANO                      | CIVIL    | SCHULDER   | KSG    | 84-07-06         | - -              | 84-07-06          |
| 33-1065    | COUNTY OF ONEIDA NEW YORK ET AL         | ONEIDA INDIAN NATION OF NEW YORK ET AL  | LANDS    | KNEEDLER   | LFC    | 84-06-18         | - -              | 84-07-23          |
| 33-1075    | CIA AND WILLIAM J CASEY                 | JOHN CARY SIMS AND SIDNEY M WOLFE       | CIVIL    | STRAUSS    | KSG    | 84-06-14         | - -              | 84-06-14          |
| 33-1097    | HECKLER, MARGARET M SECRETARY OF H & HS | SANDRA TURNER ET AL                     | CIVIL    | WILKINS    | KSG    | 84-05-14         | - -              | 84-05-14          |
| 33-1158    | THORNTON, ESTATE OF DONALD E            | CALDOR INC                              | CIV RTS  | MCCONNELL  | PMB    | 84-06-06         | - -              | 84-06-05          |
| 33-1170    | USA                                     | 50 ACRES OF LAND ETC ET AL              | LANDS    | SCHWARTZ   | LFC    | 84-06-11         | 84-07-06         | 84-06-11          |
| 33-1240    | STATE OF NEW YORK                       | ONEIDA INDIAN NATION OF NEW YORK        | LANDS    | KNEEDLER   | LFC    | 84-06-14         | - -              | 84-07-23          |
| 33-1266    | UNITED STATES OF AMERICA                | ROBERT W BOYLE                          | TAX      | LAUBER     | LGW    | 84-06-15         | 84-07-11         | 84-06-15          |
| 33-1307    | UNITED STATES OF AMERICA                | BETTY LOU POWELL                        | CRIMINAL | LEVY       | ALF    | 84-07-05         | - -              | 84-07-05          |
| 33-1325    | AIR LINE PILOTS ASSOC INTERNATIONAL     | HAROLD H THURSTON ET AL                 | EEOC     | SHAPIRO, H | LGW    | 84-06-05         | 84-07-06         | 84-07-06          |
| 33-1330    | USA                                     | THOMAS J HENSLEY                        | CRIMINAL | OBERLY     | ALF    | 84-07-05         | - -              | 84-07-05          |
| 33-1373    | US ENVIRONMENTAL PROTECTION AGENCY      | NATURAL RESOURCES DEFENSE ETC ET AL     | LANDS    | ALITO      | LFC    | 84-07-06         | - -              | 84-07-06          |
| 33-1394    | USA ET AL                               | MADISON D LOCKE ET AL                   | LANDS    | CORWIN     | LFC    | 84-07-19         | - -              | 84-07-19          |
| 33-1416    | NATIONAL LABOR RELATIONS BOARD          | ACTION AUTOMOTIVE INC                   | NLRB     | PHILLIPS   | LGW    | 84-07-18         | - -              | 84-07-18          |
| 33-1437    | MAREK, JEFFREY ET AL                    | ALFRED W CHESNY                         | CIVIL    | OBERLY     | KSG    | - -              | - -              | 84-07-16          |
| 33-1476    | USA                                     | MARY DANN & CARRIE DANN                 | LANDS    | SCHWARTZ   | LFC    | 84-07-13         | - -              | 84-07-13          |
| 83-1620    | FIRST NATIONAL BANK OF ATLANTA          | BARTOW COUNTY BD OF TAX ASSESSORS ET AL | TAX      | HOROWITZ   | LGW    | 84-07-17         | - -              | 84-07-13          |
| 83-1622    | ELIZABETH BRANDON ET AL                 | JOHN D HOLT ET AL                       | CIVIL    | KUHLIK     | KSG    | - -              | - -              | 84-07-12          |
| 83-6061    | BARCIA, JOSA AND FRANCISCO              | USA                                     | CRIMINAL | GANZFRIED  | ALF    | 84-05-22         | 84-07-10         | 84-07-10          |

Authorized Petitions or J.S. Not Yet Filed

25-Jul-84  
Page 1

| NUM<br>BER | PETNAME                              | RESPNAME                 | DUECOURT | EXT | DIVISION | ATTORNEY | DEPUTY |
|------------|--------------------------------------|--------------------------|----------|-----|----------|----------|--------|
| 1          | CFTC                                 | GARY WEINTRAUB ET AL     | 84-08-16 | 1   | CFTC     | KUHLIK   | FMB    |
| 40         | WILLIAM F CLARK SECT OF THE INTERIOR | SOUTHERN OREGON CITIZENS | 84-08-18 | 2   | LANDS    | PHILLIPS | FMB    |
| A-960      | USA                                  | LOUISE SHEARER           | 84-08-04 | 1   | CIVIL    | STRAUSS  | KSG    |
| A1039      | MITCHELL, JOHN N                     | KEITH FORSYTH            | 84-08-31 | 1   | CIVIL    | ALITO    | FMB    |

GOVT PETITIONS (OR SUPPORTED) NOT ACTED UPON

25-Jul-84  
Page 1

| NUMBER  | PETNAME                             | RESPNAME                              | FILED    | REPLY    | DIVISION | ATTORNEY   | DEPUTY | AMICUS | SUPPET |
|---------|-------------------------------------|---------------------------------------|----------|----------|----------|------------|--------|--------|--------|
| 83-0396 | USA                                 | GILBERT MORENO                        | 83-09-08 | 83-11-25 | CRIMINAL | SCHULDER   | ALF    |        |        |
| 83-0613 | USA                                 | THOMAS O ROBINSON JR                  | 83-10-12 | 84-03-05 | CRIMINAL | MCCONNELL  | ALF    |        |        |
| 83-1038 | ESTATE OF JESSIE E KERBER           | USA                                   | 84-02-03 | - -      | TAX      | LAUBER     | LGW    |        | Y      |
| 83-1234 | ASHLAND OIL ET AL                   | FRANK GOOD ET AL                      | 84-03-23 | 84-05-07 | FERC     | SCHULDER   | LFC    | Y      | Y      |
| 83-1248 | MOBIL OIL CORP ET AL                | FERN BATCHELDER ET AL                 | 84-03-23 | 84-05-07 | FERC     | SCHULDER   | LFC    | Y      | Y      |
| 83-1278 | CITIES SERVICE OIL CO               | MATZEN                                | 84-03-23 | 84-05-07 | FERC     | SCHULDER   | LFC    | Y      | Y      |
| 83-1441 | HECKLER, MARGARET M SECY OF H & H S | SAMMIE GAIL BLANKENSHIP ET AL         | 84-02-29 | 84-05-14 | CIVIL    | KNEEDLER   | KSG    |        |        |
| 83-1492 | NATIONAL RAILROAD PASSENGER CORP    | ATCHISON, TOPEKA & SANTA FE ETC ET AL | 84-03-29 | 84-05-18 | CIVIL    | OBERLY     | PMB    |        | Y      |
| 83-1554 | USA                                 | RICHARD DIMATTEO ET AL                | 84-03-19 | 84-04-09 | CRIMINAL | KUHLIK     | ALF    |        |        |
| 83-1593 | HECKLER, MARGARET SECRETARY OF HHS  | FRANK KUEHNER ET AL                   | 84-03-27 | 84-06-05 | CIVIL    | KNEEDLER   | KSG    |        |        |
| 83-1624 | USA                                 | JAMES VINCENT ALBERTINI               | 84-04-03 | 84-06-05 | CRIMINAL | STRAUSS    | LGW    |        |        |
| 83-1673 | DEVINE, DONALD J, DIRECTOR OF OPM   | ALLISON E NUTT ET AL                  | 84-04-13 | 84-06-19 | CIVIL    | ETKIND     | KSG    |        |        |
| 83-1691 | BLOCK, JOHN R, SEC OF AGRICULTURE   | RONALD E PAYNE ET AL                  | 84-04-16 | 84-06-01 | CIVIL    | SCHWARTZ   | KSG    |        |        |
| 83-1750 | USA                                 | JAMES RUAL MILLER                     | 84-04-27 | 84-06-14 | CRIMINAL | CORWIN     | ALF    |        |        |
| 83-1798 | BELL, TERREL H SEC OF EDUCATION     | COMMONWEALTH OF KY DEPT OF EDUCATION  | 84-05-03 | 84-06-13 | CIVIL    | SHAPIRO, H | KSG    |        |        |
| 83-1818 | UNITED STATES OF AMERICA            | DONNA HYLIN ET AL                     | 84-05-04 | 84-06-08 | CIVIL    | PHILLIPS   | KSG    |        |        |
| 83-1893 | EEOC                                | MARTIN INDUSTRIES INC                 | 84-05-18 | - -      | EEOC     | KNEEDLER   | KSG    |        |        |
| 83-1938 | EEOC                                | WESTINGHOUSE ELECTRIC CORP            | 84-05-25 | 84-07-02 | EEOC     | KNEEDLER   | KSG    |        |        |
| 83-1947 | UNITED STATES OF AMERICA            | CHARLES NOEL WOODWARD                 | 84-05-29 | - -      | CRIMINAL | LEVY       | ALF    |        |        |
| 83-2032 | INS                                 | BERNARDO RIOS-PINEDA ET AL            | 84-06-11 | - -      | CIVIL    | SCHULDER   | KSG    |        |        |
| 83-2034 | US DEPARTMENT OF JUSTICE            | EVELYN FALKOWSKI                      | 84-06-11 | - -      | CIVIL    | ALITO      | PMB    |        |        |
| 83-2035 | USA                                 | MARK ARDEN SCHMUCKER                  | 84-06-11 | - -      | CRIMINAL | LEVY       | ALF    |        |        |
| 83-2064 | T H BELL, SECRETARY OF EDUCATION    | STATE OF NEW JERSEY                   | 84-06-15 | - -      | CIVIL    | SHAPIRO, H | KSG    |        |        |
| 83-2103 | IN RE UNITED STATES                 |                                       | 84-06-21 | 84-07-07 | CIV RTS  | KUHLIK     | PMB    |        |        |
| 84-0048 | USA & WALTER T LUMPKIN              | HUGHES ANDERSON BAGLEY                | 84-07-10 | - -      | CRIMINAL | STRAUSS    | ALF    |        |        |
| 84-0115 | HECKLER, MARGARET M, SEC OF HHS     | MARIO LOPEZ ET AL                     | 84-07-20 | - -      | CIVIL    | KNEEDLER   | KSG    |        |        |
| 84-0120 | HECKLER, MARGARET M, SEC OF HHS     | MICHIGAN ACADEMY OF FAMILY PHYSICIANS | 84-07-23 | - -      | CIVIL    | KNEEDLER   | KSG    |        |        |