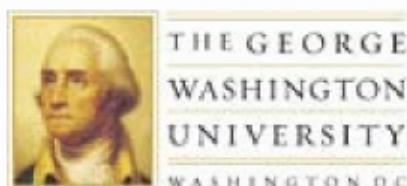


The Burger Court Opinion Writing Database

*McDonald v. Santa Fe Trail
Transportation Co.*

427 U.S. 273 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

✓

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1976

Re: 75-260 - McDonald v. Santa Fe Trail Transportation Co.

Dear Thurgood:

To keep things moving, albeit slowly, I now join in the judgment and when I complete some work now in progress I may well enlarge the "join".

Regards,

W. B.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1976

Re: 75-260 - McDonald v. Santa Fe Trail Transportation Co.

Dear Lewis:

I agree strongly with your view that this is "not the way to run the railroad". I might come to the position Thurgood's opinion reaches but I want it done in accord with traditional procedures.

Please show me as joining in your concurring and dissenting opinion.

Regards,

WRB

Mr. Justice Powell

Copies to the Conference

WJ

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1976

Re: 75-260 - McDonald v. Santa Fe Trail Transportation Co.

Dear Thurgood:

I am delighted to join you con gusto!

Regards,

WRB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 2, 1976

MEMORANDUM TO THE CONFERENCE

RE: No. 75-260 McDonald v. Santa Fe Transportation Co.

On November 3 last we granted certiorari in the above to review the Fifth Circuit's summary affirmance of a District Court holding that white employees have no standing to sue under the 1866 Civil Rights Act, 42 U.S.C. 1981. Attached is a Law Week report of a decision by the same District Judge stating that he has concluded he was wrong in McDonald and that white citizens do have standing to sue under Sec. 1981. Does this indicate that we should vacate our grant of certiorari, vacate the Fifth Circuit's judgment and remand for consideration of this development?

W.J.B. Jr.

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

WJ

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 15, 1976

RE: No. 75-260 McDonald v. Santa Fe Trail Transportation
Company

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543
①

CHAMBERS OF
JUSTICE POTTER STEWART

June 14, 1976

75-260 - McDonald v. Santa Fe Co.

Dear Thurgood,

Although I share the first two of
John's three doubts, I am glad to join your
opinion for the Court in this case.

Sincerely yours,

P. S.
✓

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 22, 1976

Re: No. 75-260, McDonald v. Santa Fe
Trail Transp. Co.

Dear Thurgood,

I would be quite happy with the deletion
of all of footnote 5.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1976

Re: No. 75-260 - McDonald v. Santa Fe Trail
Transportation Co.

Dear Thurgood:

Please add at the foot of your opinion in this case the following statement:

Mr. Justice White joins Parts I and II of the Court's opinion, but for the reasons stated in his dissenting opinion in Runyon v. McCrary, ante at ___, he cannot join Part III since he does not agree that § 1981 is applicable in this case. To that extent he dissents.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall
Circulated: JUN 11 1976

Recirculated: _____

No. 75-260 - McDonald v. Santa Fe Trail Transportation Company

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioners L. N. McDonald and Raymond L. Laird brought this action in the United States District Court for the Southern District of Texas seeking relief against Santa Fe Trail Transportation Co. (Santa Fe) and International Brotherhood of Teamsters Local 988 (Local 988), which represented Santa Fe's Houston employees, for alleged violations of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., in connection with their discharge from Santa Fe's employment. The District Court dismissed the complaint on the pleadings. The Court of Appeals for the Fifth Circuit affirmed. In determining whether the decisions of these courts were correct, we must decide,

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 15, 1976

Re: No. 75-260 -- McDonald v. Santa Fe Trail Trans. Co.

Dear John:

Thank you for your note on the captioned case. I do not understand your third point to ask for a response from me: but as to the other two, let me suggest the following:

(1) First, I do not believe McDonnell Douglas, 411 U.S. 792, 798, or Alexander v. Gardner-Denver Co., 415 U.S. 35, 47 (1974) (essentially reciting McDonnell Douglas) to have decided whether the 90-day limitation was a non-waivable jurisdictional prerequisite. In McDonnell Douglas we said:

"Respondent satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting on the Commission's statutory notice of the right to sue"

I read that sentence only to say that jurisdiction was secure there, not that all the details fulfilled are necessarily jurisdictional. As I understood it, the particular phrasing simply served to emphasize the next following statement, that an EEOC finding of reasonable cause was not a jurisdictional requirement -- but without deciding the question presented here, as the Court of Appeals had done below (finding timeliness not jurisdictional). 463 F.2d 337, 343 (CA 8 1972). Second, I do not understand that the Courts of Appeals have been unanimous in characterizing the 90 day limitations period as a non-waivable "jurisdictional" requirement. Besides the 8th Circuit statement above, at least the 5th Circuit has specifically left the question open, see Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924 (CA 5 1974); and though these labels are not a great deal of help, the 9th and 10th circuits have depicted the 90 day period as a statute of limitations, see Davis v. Valley Distributing Co.,

- 2 -

522 F.2d 827 (CA 9 1975), cert pending, No. 75-836; Sanchez v. TWA, 499 F.2d 1107 (CA 10 1974). Nor, third, do I think the particular phrasing of the 90-day limitation means that it must be jurisdictional. "Non-jurisdictional" statutes of limitation are frequently phrased in similar language. See Developments in the Law -- Statutes of Limitations, 63 Harv. L. Rev. 1177, 1179 (1950). (I would also note that the original House version of the limitations period in Title VII, was patterned on § 10(b) of the NLRA, which we characterized as a "statute of limitations" in Machinists Local 1424 v. NLRB, 362 U.S. 411 (1960); and there does not appear to be any significance to the rephrasing of the limitations period in the Senate compromise bill.) Finally, I was at some pains to assure myself before proceeding in this case that the 90 day limitation period was not a jurisdictional matter, because I thought it inappropriate to attempt a resolution of the merits of the question whether the limitations period was tolled during grievance proceedings. That issue is presented in Guy v. Robbins & Myers, Inc., Nos. 75-1264 & 75-1276, to be argued next Term, and Davis v. Valley Distributing Co., supra, held for Guy. Are you suggesting, perhaps, that we might decide § 1981 and hold Title VII over, see Retail Clerks Local 1625 v. Schermerhorn, 373 U.S. 746, 757 (1963)?

(2) As to fn. 9, we agree that a judicially required affirmative action program, which is not the subject in this case, is not ruled out in my draft. I cannot agree with you, however, that a program which a judge can lawfully require is necessarily illegal without a judge's order. If this were true, then, among other things, the conciliation goal of Title VII, and the EEOC's role in implementing it, would be much deemphasized, if not ruled out, in many instances where they might otherwise be most valuable.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1976

Re: No. 75-260 -- McDonald v. Santa Fe Trail Transp. Co.

Dear Lewis:

I hope my note yesterday to John will satisfy your questions regarding the 90-day limitations period.

As to the last sentence of footnote 12, in order to avoid the problems of misinterpretation which I understand to concern you, I shall rephrase the statement as follows:

Of course, precise equivalence in culpability between employees is not the ultimate question: as we indicated in McDonnell Douglas, an allegation that "other employees involved in acts against [the employer] of comparable seriousness . . . were nevertheless retained . . . " is adequate to plead an inferential case that the employer's reliance on his discharged employee's misconduct as grounds for terminating him was merely pretextual. 411 U. S., at 804 (emphasis added).

Sincerely,



Mr. Justice Powell

cc: The Conference

pp 8, 9, 11, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

Recirculated: JUN 17 1976

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-260

L. N. McDonald and Raymond L. Laird,
Petitioners,
v.
Santa Fe Trail Transportation Company et al. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth
Circuit.

[June —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioners L. N. McDonald and Raymond L. Laird brought this action in the United States District Court for the Southern District of Texas seeking relief against Santa Fe Trail Transportation Co. (Santa Fe) and International Brotherhood of Teamsters Local 988 (Local 988), which represented Santa Fe's Houston employees, for alleged violations of the Civil Rights Act of 1866, 42 U. S. C. § 1981, and of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, in connection with their discharge from Santa Fe's employment. The District Court dismissed the complaint on the pleadings. The Court of Appeals for the Fifth Circuit affirmed. In determining whether the decisions of these courts were correct, we must decide, first, whether a complaint alleging that white employees charged with misappropriating property from their employer were dismissed from employment, while a black employee similarly charged was not dismissed, states a claim under Title VII. Second, we must decide whether § 1981, which provides that

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: 75-260 -- McDonald v. Santa Fe Trail Transportation Co.

I am willing to make an effort to get this case down on Friday in order not to hold up Potter's cases.

I, therefore, am willing to take out all of footnote 5 of my opinion. If this is agreeable to the others, please let me know.



T. M.

abiotic changes throughout

pp. 3, 4, 6, 9

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: 11/13/00

Recirculated: JUN 23 1976

2d Draft.
~~1st DRAFT~~

SUPREME COURT OF THE UNITED STATES

No. 75-260

L. N. McDonald and Ray-
mond L. Laird,
Petitioners,
v.
Santa Fe Trail Transporta-
tion Company et al. } On Writ of Certiorari to the
United States Court of
Appeals for the Fifth
Circuit.

[June —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioners L. N. McDonald and Raymond L. Laird brought this action in the United States District Court for the Southern District of Texas seeking relief against Santa Fe Trail Transportation Co. (Santa Fe) and International Brotherhood of Teamsters Local 988 (Local 988), which represented Santa Fe's Houston employees, for alleged violations of the Civil Rights Act of 1866, 42 U. S. C. § 1981, and of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, in connection with their discharge from Santa Fe's employment. The District Court dismissed the complaint on the pleadings. The Court of Appeals for the Fifth Circuit affirmed. In determining whether the decisions of these courts were correct, we must decide, first, whether a complaint alleging that white employees charged with misappropriating property from their employer were dismissed from employment, while a black employee similarly charged was not dismissed, states a claim under Title VII. Second, we must decide whether § 1981, which provides that

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1976

MEMORANDUM TO THE CONFERENCE

Re: Case being held for 75-260, McDonald v. Santa Fe Trail Transportation Co.

No. 75-155, Larkin v. Patterson. This case arises out of a settlement of Title VII litigation in the New York newspaper industry. Because the amount of work varies with each edition, industry employers have traditionally employed three levels of workers in their delivery departments: (a) regularly employed workers, who are union members; (b) union member "shapers" -- extras who were formerly regularly employed workers and who are eligible for re-advancement to that position -- who appear several days a week for work, but may not be given work each day; and (c) non-union shapers -- who have never been regularly employed, and consequently have lower priority for day work or advancement to group (a) than group (b) workers -- who also appear from day to day. Although advancement and union membership are nominally open to any, in fact, due to artificial inflation of group (b) lists through various devices and connections, group (a) and (b) membership has generally been achieved laterally. Since 1963, no one has progressed from group (c) to group (a). The Union has consistently discouraged minority membership, and 99% of its members are white. Few group (c) members are non-white, both out of discouragement of advancement, and because of overt pressure against access even to (c) lists.

This litigation was begun in the Southern District of New York as two separate lawsuits against the Union and acquiescent employers, by the EEOC and by private persons, alleging racial discrimination. Petitioners, white group (c) shapers, were permitted to intervene with respect to relief. After four weeks of trial a settlement was reached, providing in part that ascension from group (c) to group (b) shall be regularized; that group (c) shapers shall move steadily to group (b) and then (a) alternatively by race (a 1:1, minority: non-minority ratio); and that new entries to group (c)

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 17, 1976

Re: No. 75-260 - McDonald v. Santa Fe Transportation Co.

Dear Thurgood:

I am generally with you and shall at least concur in the judgment. I share some of the discomfort that has been expressed by John and Lewis, particularly John's first two points and Lewis' distress at the last sentence in footnote 12.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1976

✓

Re: No. 75-260 - McDonald v. Santa Fe Transportation Co.

Dear Lewis:

Please join me in your short opinion dissenting in part
and concurring in part.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1976

Re: No. 75-260 - McDonald v. Santa Fe Trail Trans. Co.

Dear Thurgood:

With footnote 5 in your opinion to be eliminated, I am now glad to join that opinion.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 15, 1976

No. 75-260 McDonald v. Santa Fe Trail

Dear Thurgood:

I have the same reservation as that expressed by John as to the 90-day limitation being a "jurisdictional prerequisite". We said it was jurisdictional in McDonnell, 411 U.S., at 798, although I do not recall that it was an issue in the case. Nor, indeed, do I recall this question being presented in this case or discussed at Conference.

A somewhat less serious reservation relates to the last sentence in footnote 12. I rather hesitate to invite District Courts to balance "culpability" on some "degree of equivalence" rationale. I am inclined to think that a Title VII action should lie only when there has been disparate treatment among employees engaged in the same action or in the same general course of conduct. This is not a major point with me, but on balance I would prefer to omit this sentence.

Apart from the foregoing, I agree with your opinion. I am giving some further thought, however, to the 90-day limitation issue which your opinion would have the Court decide in footnote 5.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

1fp/ss 6/17/76

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell
Circulated: JUN 17 1976

Recirculated: _____

No. 75-260 McDONALD v. SANTE FE TRIAL CO.

MR. JUSTICE POWELL, dissenting and concurring.

In footnote 5 the Court holds that the 90-day limitation on filing a charge with EEOC is not a "jurisdictional prerequisite". This issue, certainly not an unimportant one, was resolved in a footnote, and was neither assigned as error nor argued in this case. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974).

Although I express no opinion on its merits, I dissent from this type of judicial resolution of an important issue. But given the holding in footnote 5, and subject to my dissent, I concur in the opinion of the Court.

V ✓

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

1st DRAFT

Recirculated: _____

JUN 21 1978

SUPREME COURT OF THE UNITED STATES

No. 75-260

L. N. McDonald and Raymond L. Laird,
Petitioners,
v.
Santa Fe Trail Transportation Company et al. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth
Circuit.

[June —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, dissenting and concurring.

In n. 5 the Court holds that the 90-day limitation on filing a charge with EEOC is not a "jurisdictional prerequisite." This issue, certainly not an unimportant one, was resolved in a footnote, and was neither assigned as error nor argued in this case. See *McDonnell Douglas Corp. v. Green*, 411 U. S. 792, 798 (1973); *Alexander v. Gardner-Denver Co.*, 415 U. S. 36, 47 (1974).

Although I express no opinion on its merits, I dissent from this type of ~~judicial resolution~~ of an important issue. But given the ~~holding~~ in n. 5 and subject to my dissent, I concur in the opinion of the Court.

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 - Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

~~1976-2-1946~~

JUN 22 1976

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 22 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-260

L. N. McDonald and Raymond L. Laird,
 Petitioners,
 v.
 Santa Fe Trail Transportation Company et al. } On Writ of Certiorari to the
 } United States Court of
 } Appeals for the Fifth
 } Circuit.

[June —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, dissenting and concurring.

In n. 5 the Court holds that the 90-day limitation on filing a charge with EEOC is not a "jurisdictional prerequisite." This issue, certainly not an unimportant one, was resolved in a footnote, and was neither assigned as error nor argued in this case. See *McDonnell Douglas Corp. v. Green*, 411 U. S. 792, 798 (1973); *Alexander v. Gardner-Denver Co.*, 415 U. S. 36, 47 (1974).

Although I express no opinion on its merits, I dissent from this type of judicial resolution of an important issue. But given the holding in n. 5, and subject to my dissent, I concur in the opinion of the Court.

the Chief
Justice and

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 22, 1976

✓

No. 75-260 McDonald v. Santa Fe Trail

Dear Thurgood:

In view of the omission of footnote 5, I am happy to join your opinion.

I will withdraw my dissent.

Many thanks.

Sincerely,

L Lewis

Mr. Justice Marshall

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 16, 1976

Re: No. 75-260 - McDonald v. Santa Fe Transportation Co.

Dear Thurgood:

Would you please note me as being in the same posture
as Byron with respect to your opinion in this case.

Sincerely,

WWR

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 18, 1976

Re: No. 75-260 - McDonald v. Santa Fe Transportation Co.

Dear Thurgood:

Earlier I asked that you show me as being in the same position as Byron with respect to your opinion for the Court in this case. As I indicated at Conference yesterday, however, I had not really addressed the ninety-day time period issue first noted by John in his letter to you. Since Harry and Lewis have now indicated their disagreement with the summary decision of it, I wish to reserve judgment on that one point for a couple of days.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 22, 1976

Re: No. 75-260 - McDonald v. Santa Fe Trail Transporta-
tion Co.

Dear Thurgood:

I shall continue to remain with Byron's position
on your entire opinion.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 14, 1976

Re: 75-260 McDonald v. Santa Fe Trail Trans. Co.

Dear Thurgood:

Although I will probably end up joining most of your opinion, I have these problems:

- (1) At present I am not prepared to accept the holding in footnote 5. In McDonnel the Court characterized the 90-day limitation as a "jurisdictional prerequisite," 411 U.S. at 798; that is, I believe, the unanimous view of the courts of appeal; it seems to be required by the mandatory character of the statutory language.
- (2) I think we are kidding ourselves in footnote 9 to the extent that you disavow consideration of the validity of a voluntary affirmative action program. I agree that a judicially required program would not be covered, but the reasoning in the text will surely support the typical reverse discrimination claim which any quota system will stimulate.
- (3) On the basic § 1981 issue, I agree that the words "all persons" mean what they say, but I have the same problem with the application of this statute to employment discrimination that I have in the private school case. I think, however, that the result is controlled by stare decisis.

In all events, I will respond finally as soon as I come to rest in Runyon.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 22, 1976

Re: 75-260 - McDonald v. Santa Fe Trail Trans. Co.

Dear Thurgood:

On the assumption that footnote 5 will be omitted,
I am happy to join your opinion.

Sincerely,



Mr. Justice Marshall

Copies to the Conference