The Burger Court Opinion Writing Database

County of Los Angeles v. Davis

440 U.S. 625 (1979)

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

March 22, 1979

Re: 77-1553 - Co. of Los Angeles v. Davis

Dear Lewis:

I join you.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Brennan

1st DRAFT

Circulated: 8 JAN 1979

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The District Court for the Central District of California determined in 1973 that hiring practices of the County of Los Angeles respecting the County Fire Department violated 42 U. S. C. § 1981.[1] The District Court in an unreported opinion and order permanently enjoined all future discrimination and entered a remedial hiring order. The Court of Appeals for the Ninth Circuit affirmed in part, reversed in part and remanded the case for further consideration. 566 F. 2d 1334 (1977). We granted certiorari to consider questions presented as to whether the use of arbitrary employment criteria, racially exclusionary in operation, but not purposefully discriminatory, violate 42 U. S. C. § 1981 and, if so, whether the imposition of minimum hiring quotas for fully qualified minority applicants is an appropriate remedy in this employment discrimination case. 437 U. S. 903 (1978). We now find that the controversy has become moot during the pend-

[1] Title 42 U. S. C. § 1981 provides:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1979

MEMORANDUM TO THE CONFERENCE

RE: No. 77-1553 County of Los Angeles v. Davis

I apologize for not having circulated an explanatory note with the proposed opinion for the Court. Lewis and Potter are correct that our conference discussion of the case or controversy question was not in terms of mootness but of standing.

At conference I suggested that there was no live case or controversy: standing was lacking with respect to the 1972 test because it was an emergency situation and because the test was never given. On further examination I have decided that the concept of mootness describes this lack of case or controversy more accurately than the concept of standing.

In sum, this is just a "nothing" case (or in John Harlan's graphic words a "peewee") and it strikes me that this is the best way to get rid of it.

W.J.B., Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 24, 1979

MEMORANDUM TO THE CONFERENCE

RE: No. 77-1553 County of Los Angeles v. Van Davis

I plan to insert, in appropriate places, the following footnotes:

1. Of necessity our decison "vacating the judgment of the Court of Appeals deprives that court's opinion of precedential effect . . . " O'Connor v. Donaldson, 422 U.S. 563, 577-78 n. 12 (1975). See also Meckling Barge Lines v. United States, 368 U.S. 324, 329-30 (1961).

2. The dissent erroneously characterizes the alleged wrong as the use of aptitude tests and argues that the case is not moot because petitioners are likely to use aptitude tests once the injunction is vacated. See post at 10.

But the hiring practice condemned below was not the use of aptitude tests. The practice condemned was the use of aptitude tests in a manner violative of the Title VII standards set forth in Griggs v. Duke Power, 401 U.S. 424 (1971) -- that is, the use of aptitude tests that had not been validated as predictive of job performance and that had a disparate adverse impact on minority hiring. See Davis v. County of Los Angeles, supra. 566 F. 2d at 1341. The critical inquiry, therefore, is not whether petitioners will again base hiring on aptitude tests but rather whether petitioners will base hiring on unvalidated aptitude tests that have a disproportionate adverse impact on minority job applicants. For the reasons stated in text we think it extremely unlikely that petitioners will ever resume this particular hiring practice.

W.J.B. Jr.

Pages 6 and 9

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 30 JAN 79

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

page 6
— former footnote 5 omitted
page 7

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 28 MAR 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1979

MEMO TO THE CONFERENCE

Case Held for No. 77-1553 - County of Los Angeles v. Dav

The only cases held are Johnson v. Ryder Truck Lines, No. 78-179 and Sledge v. J.P. Stevens, No. 78-1185. The question presented - one for which our decision in Davis provides no guidance - is whether a facially neutral seniority system which has been found to perpetuate the effects of past discrimination violates 42 U.S.C.§1981 when the seniority system is bona fide under Section 703(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(h) as interperted in Teamsters v. United States, 431 U.S. 324 (1977).

The Fourth Circuit held in Johnson that it did not,relying upon 42 U.S.C. §1988 which directs the federal courts to enforce §1981 "in conformity with the laws of the United States." This holding was reaffirmed in Sledge The Fifth Circuit has reached a similar conclusion. See Pettway v. American Cast Iron Pipe Co., 576 F. 2d 1157, 1191 (5th Cir. 1978).

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 3, 1979

Re: No. 77-1553, County of Los Angeles v. Davis

Dear Bill,

Like Lewis, I do not recall that we discussed the subject of mootness during our Conference consideration of this case. Although my notes indicate that a majority acquiesced in the view that the case should be remanded to the District Court with directions to dismiss the complaint, my recollection is that this was to be done on the basis of "case or controversy" or "standing" concepts. Accordingly, I shall wait to see what others have to say.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 24, 1979

Re: No. 77-1553 - County of Los Angeles v. Davis

Dear Bill:

As presently advised, I think Lewis has the better of the argument on the mootness question. (You are correct, however, that your proposed disposition would set aside the opinion and judgment of the Court of Appeals). As I think I indicated at our conference, I also agree with Lewis on the merits of the §1981 issue.

Since a majority at the conference discussion were of the view that the judgment should be set aside and the case remanded to the District Court to dismiss the complaint for lack of standing on the part of plaintiffs, I have asked my law clerk to pursue the validity of that position.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 15, 1979

MEMORANDUM TO THE CONFERENCE

Re: No. 77-1553, County of Los Angeles v. Davis

The Court of Appeals dealt with three alleged instances of discrimination by the Petitioners in hiring firemen: a minimum height requirement, the use of a written test in 1969 to establish hiring priorities, and the threatened reliance on the results of a test administered in 1972. The Court of Appeals ruled that the height requirement violated federal law. That ruling has not been challenged here. It concluded that these respondents did not have standing to challenge the 1969 test results. All members of this Court agree. Thus, only the third claim remains in this case.

At least some of the respondents do have standing to challenge the threatened use of the 1972 test. They had applied for employment with the County in 1971 and took the 1972 test. Clearly, they would be affected by the County's decision to use the results of that test to select applicants for interviews. If the County's proposed use of the test was illegal, those respondents were threatened with injury in fact. For the reasons expressed by Mr. Justice Powell, I believe that their controversy with the County is still alive.

I cannot agree with Mr. Justice Powell, however, that we should reach the §1981 question in this case. The respondents' second amended complaint alleged that the County had violated Title VII. The complaint included copies of "right to sue" letters from the E.E.O.C. Title VII became applicable to local governmental units in March, 1972. The County decided to use the 1972 test to rank applicants at the end of 1972. The District Court held that the County had violated both §1981 and Title VII. The Court of Appeals expressly affirmed that decision.

> "Of course, this continued threat to use the 1972 test as part of the selection process right up to the filing of the complaint in this case is admittedly a violation of Title VII." 566 F.2d 1334, 1341 n. 14.

Mr. Justice Powell concludes that the Court of Appeals did not make a considered judgment on the Title VII issue. While it is true that the text of the court's opinion dealt almost exclusively with §1981, the court clearly held that Title VII standards apply to alleged violations of §1981. Under the court's analysis, if a violation of §1981 were made out and the conduct occurred while the defendant was covered by Title VII, Title VII must have been violated also. As the dissenting opinion in the Court of Appeals recognized, the decision on Title VII thus made completely unnecessary the court's discussion of whether §1981 requires proof of discriminatory intent. 566 F.2d 1334, 1347.

The petitioners did not question the ruling of the Court of Appeals on the Title VII claim,*/ and any opinion this Court might render on the §1981 question would not affect the judgment below that Petitioners' action was illegal under Title VII. Thus, it would truly be an advisory opinion.

It is clear, however, that the only violation remaining in this case, the threatened use of the 1972 test to rank job applicants, cannot justify the extensive remedy ordered by the District Court. "As with any equity case, the nature of the violation determines the scope of the remedy. Swann v. Charlotte-Mecklenburg Bd of Educ., 402 U.S. 1, 16. A simple order enjoining the illegal use of the 1972 test would seem sufficient to remedy the only violation of which the respondents had standing to complain. Therefore, I would vacate the judgment of the Court of Appeals and remand the case to the District Court with directions to narrow the scope of the remedy substantially.

P.S.

P.S.

*/ The second question presented in the petition for certiorari does bear on Title VII, but not in a sense relevant to this question:

> "Is a racial quota hiring order to be effective until the entire fire department achieves current racial parity with the general population beyond the jurisdiction of the court when:
> (c) The plaintiffs had no standing to represent any pre-March 24, 1972 applicants and no discriminatory hiring has occurred subsequent to Title VII's effective date . . . ."
> (emphasis added).

This does not challenge the holding of the Court of Appeals that the threatened use of the 1972 test was itself a Title VII violation, nor, in fact, does it challenge any finding of violation at all. Rather, it is addressed solely to the remedy.

In their brief Petitioners argue that the mere threat to use the test results to rank applicants cannot constitute a violation of Title VII and that a pattern or practice of discrimination must be shown. They also urge that Title VII cannot be applied to local governmental units absent some showing of discriminatory intent. See Dothard v. Rawlinson, 433 U.S. 321, 323 n. 1; Hazelwood School District v. United States, 433 U.S. 299, 306 n. 12. Because these issues were not raised in the petition for certiorari, it is not necessary to address them.

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

From: Mr. Justice Stewart

Circulated: 05 MAR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March —, 1979]

MR. JUSTICE STEWART, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The Court of Appeals dealt with three alleged instances of discrimination by the petitioners in hiring firemen: a minimum-height requirement, the use of a written test in 1969 to establish hiring priorities, and the threatened reliance on the results of a test administered in 1972. The Court of Appeals ruled that the height requirement violated federal law. That ruling has not been challenged here. It concluded that these respondents did not have standing to challenge the 1969 test results. All Members of this Court agree. Thus, only the third claim remains in this case.

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I cannot agree with MR. JUSTICE POWELL, however, that we should reach the § 1981 question in this case. The respondents' second amended complaint alleged that the County had violated Title VII. The complaint included copies of "right to sue" letters from the EEOC. Title VII became applicable

p. 1

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

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 14 MAR 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March —, 1979]

MR. JUSTICE STEWART, with whom MR. JUSTICE REHNQUIST joins, dissenting.

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I cannot agree with MR. JUSTICE POWELL, however, that the § 1981 question is properly presented in this case. The respondents' second amended complaint alleged that the County had violated Title VII. The complaint included copies of "right to sue" letters from the EEOC. Title VII became

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 3, 1979

Re: 77-1553 - County of Los Angeles v. Davis

Dear Bill,

I shall await the dissent in this case.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 24, 1979

Re: 77-1553 - County of Los Angeles, et al., v. Van Davis, et al.

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1979

Re: No. 77-1553 - County of Los Angeles v. Davis

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 11, 1979

Re: No. 77-1553 - County of Los Angeles v. Davis

Dear Bill:

For now, I would like to see what Lewis has in mind.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 29, 1979

Re: No. 77-1553 - County of Los Angeles v. Davis

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 2, 1979

No. 77-1553 County of Los Angeles v. Davis

Dear Bill:

In due time, I will circulate a dissent.

Incidentally, I had not recalled that there was a Conference vote, or indeed much discussion on the issue of mootness. I will, of course, address the issue in my dissent.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

January 4, 1979

No. 77-1553 County of Los Angeles v. Davis

Dear Bill:

Thank you for your letter.

Although I had doubts as to standing and expressed them (as I recall) at the Conference, a closer examination of the case has led me to conclude that there is standing. The District Court found, and the Court of Appeals agreed, that the County did not use the 1972 test only because this suit was filed. If the planned use of the test would have discriminated against minority applicants in violation of §1981, I believe the applicants had standing to challenge this use. It seems to me, on the basis of the District Court's findings, that the applicants suffered an injury in fact that entitles them to litigate.

For much the same reason, I do not believe the case is moot. I have not thought that a case is mooted out because the party defendant has complied with the very court order that is in dispute. See NLRB v. Raytheon Co., 398 U.S. 25 (1970); NLRB v. Greyhound Lines, Inc., 303 U.S. 261 (1938). The District Court's order forbade the County from engaging in any employment practice that has a disproportionate effect on minority groups, and the County is in the position of being held in contempt if it is perceived to have violated this order. In sum, unless I have missed something quite relevant, I just do not understand the mootness argument.

Thus I would reach the 1981 issue, and address it on the merits. That is a substantive issue of considerable importance, as to which the federal courts are not in agreement. The issue deserves to be decided by this Court. I would not try to duck it.

I am fairly well along with a dissent that I did some work on during the "holiday".

Sincerely,

Mr. Justice Reqhnquist

lfp/ss

cc: Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 24, 1979

MEMORANDUM TO THE CONFERENCE

County of Los Angeles v. Davis, No. 77-1553

In due course I will circulate another draft of my dissent, which will contain, in the appropriate places, the following footnotes:

1. The assertion of the Court that "it is extremely unlikely" petitioners will base hiring on unvalidated aptitude tests, ante, at ___, lacks any record support and is contrary to the assumptions upon which the courts below based their actions. There has been no change in circumstances of any relevance to the Court's conclusion since petitioners attempted to use their unvalidated 1972 test as a hiring device. Title VII, which the Court appears to suggest as an intervening factor, applied with full force to petitioners when in January 1973 they sought to limit hiring to applicants with the highest scores on the 1972 test. Under W.T. Grant, the burden is on petitioners to demonstrate there is little chance they will resume their allegedly illegal conduct. Petitioners have not attempted to meet that burden here. The Court's assumption that in the future the County will seek to validate its tests before relying on them not only is unsubstantiated by the record facts; it also reverses the presumption we normally apply in mootness cases.

It is instructive to compare the facts of this case with those of DeFunis v. Odegaard, 416 U.S. 312 (1974). Here petitioners have made no change in their hiring procedures except in response to the court order, and have put on this record no evidence that they contemplate any further changes. The Court's belief that petitioners will not resume their use of unvalidated tests rests solely on speculation. In DeFunis, by constrast, the Law School had admitted DeFunis to his final quarter in school and represented to this Court that it would make no attempt to rescind this registration. Unlike the case at bar, DeFunis had not brought a class action; hence only his individual right not to be discriminated against in law school

admissions was at stake. Id., at 317. Because it was virtually certain that DeFunis never again would need to submit to the admission process he challenged, we held that the case had become moot. Id., at 318. Even the very slight chance that DeFunis might not receive his degree was considered sufficiently substantial by four members of the Court to render the case a live controversy. Id., at 348-350.

2. Although a decision vacating a judgment necessarily prevents the opinion of the lower court from being the law of the case, O'Connor v. Donaldson, 422 U.S. 563, 577-578, n. 12 (1975); Meckling Barge Lines v. United States, 368 U.S. 324, 329-330 (1961); United States v. Munsingwear, Inc., 340 U.S. 36 (1950), the expressions of the court below on the merits, if not reversed, will continue to have precedential weight and, until contrary authority is decided, is likely to be viewed as persuasive authority if not the governing law of the Ninth Circuit.

L.F.P.

L.F.P., Jr.

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: 22 JAN 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE POWELL, dissenting.

Today the Court orders dismissal of a suit challenging the hiring practices of the Los Angeles County Fire Department. The dismissal is predicated on the view that the case has become moot. This disposition of the case is opposed by petitioners, and is not urged by respondents either in their briefs or oral argument. But apart from this, I believe the Court's decision misapplies settled principles of mootness, and think the case is properly before us. We should reach, rather than seek a questionable means of avoiding, the important question—heretofore unresolved by this Court—whether cases brought under 42 U. S. C. § 1981, like those brought directly under the Fourteenth Amendment, require proof of racially discriminatory intent or purpose. As I believe the history and purpose of § 1981 establish that the constitutional standard requiring purposeful discrimination is applicable, I would reverse the decision below and remand the case for futher proceedings.

I

This suit was brought to eliminate the effects of alleged racial discrimination in the Los Angeles County Fire Department. The plaintiffs, respondents here, were persons who applied unsuccessfully for fireman jobs in 1971; the class they represented was certified to include present and future, but not past, black and Mexican-American job applicants to the

1,4,6,9-1/16

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

2nd DRAFT

Circulated: _____

Recirculated: 26 JAN 1979

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE POWELL, dissenting.

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1, 3, 4, 5, 7, 9, 10, 11

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: _____

Recirculated: 8 MAR 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1553

County of Los Angeles et al., Petitioners, *v.* Van Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1979]

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This suit was brought to eliminate the effects of alleged racial discrimination in the Los Angeles County Fire Department. The plaintiffs, respondents here, were persons who applied unsuccessfully for fireman jobs in 1971; the class they represented was certified to include present and future, but not past, black and Mexican-American job applicants to the Fire Department. The County was accused of a variety of employment practices said to discriminate against minorities, including the use of "written tests as a promotion and hiring selection device" even though the tests had "disproportionate detrimental impact" on blacks and Mexican-Americans. App.

/ omission

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1979

Re: No. 77-1553 - County of Los Angeles v. Van Davis

Dear Lewis:

I shall await your writing in this case, because I agree with the intimation in your letter of today that Bill's proposed opinion does not carry out the Conference vote. Needless to say, it would not be the first such opinion that did not carry out the Conference vote but nonetheless got a Court; but as I recall the Conference vote in this case, it was that there was no "case or controversy" to begin with, rather than that the originally existing case or controversy had become moot by the time it got here. While I assume that the Conference discussion would require the same result as Bill reaches -- a dismissal of the complaint -- it seems to me that the first inquiry must necessarily be whether there was a case or controversy when the case began. Only if there were would it be proper to conclude that the case had become moot after that time but before decision here. Since Bill and I have already taken so many pot-shots at one another in Quern v. Jordan, I am not circulating this letter to the Conference, but am sending a copy to Potter with whom I casually discussed it on the telephone.

Sincerely,

WHR

Mr. Justice Powell

Copy to Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 2, 1979

Re: No. 77-1553 - County of Los Angeles v. Davis

Dear Potter:

Having read and pondered Bill's, Lewis', and your treatments of this case, I am most closely in accord with yours. I agree with Lewis on the merits of the § 1981 question, but am persuaded by your memorandum that an opinion on that point would be "advisory". If you convert your memorandum of February 15th into a separate opinion, I will join it.

Sincerely,

WR

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

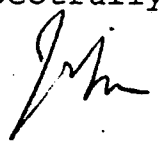
January 4, 1979

Re: 77-1553 - County of Los Angeles v. Davis

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference