

# The Burger Court Opinion Writing Database

## *Leo Sheep Co. v. United States*

440 U.S. 668 (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

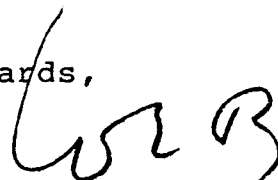
Re: 77-1686 - Leo Sheep Co. v. United States

Dear Bill:

It has taken me a bit of time to check out those battles and on a few of them I'm not sure. I'll accept on faith in your research as to the latter!

In short, I join.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 13, 1979

RE: No. 77-1686 Leo Sheep Co. v. United States

Dear Bill:

I expressed the other view at conference. However, to paraphrase that Southern Commander "First I fight and then I surrender." (your footnote 11). Please join me.

Sincerely,

*Bill*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 9, 1979

Re: No. 77-1686, Leo Sheep Co. v. U.S.

Dear Bill,

I am glad to join your opinion for the Court. Thanks for your contribution to our continuing education in American history.

Sincerely yours,

P.S.  
/

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 15, 1979

Re: 77-1686 - Leo Sheep Company v. United States

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 13, 1979

Re: No. 77-1686 - Leo Sheep Co. v. United States

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 10, 1979

77-1686 Leo Sheep Company v. U.S.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Confernce

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~~WHR~~  
~~FB~~  
P 7, 18

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

From: Mr. Justice Rehnquist

Circulated: MAR 18

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

77-1686

Leo Sheep Company et al.,  
Petitioners,  
v.  
United States et al. } On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Tenth Circuit.

[March —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This is one of those rare cases evoking episodes in this country's history that, if not forgotten, are remembered as dry facts and not as adventure. Admittedly the issue is mundane: Whether the Government has an implied easement to build a road across land that was originally granted to the Union Pacific Railroad under the Union Pacific Act of 1862—a grant that was part of a governmental scheme to subsidize the construction of the transcontinental railroad. But that issue is posed against the backdrop of a fascinating chapter in our history. As this Court noted in another case involving the Union Pacific Railroad, "courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it." *United States v. Union Pacific Railroad Co.*, 91 U. S. 72, 79 (1875). In this spirit we relate the events underlying passage of the Union Pacific Act of 1862.

The early 19th Century—from the Louisiana Purchase in 1803 to the Gadsden Purchase in 1853—saw the acquisition of

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 9, 1979

RE: No. 77-1686 - Leo Sheep Co. v. U.S.

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference