

# The Burger Court Opinion Writing Database

## *Consolidated Freightways Corp. of Delaware v. Kassel*

455 U.S. 329 (1982)

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  
JUSTICE POTTER STEWART

April 2, 1981

Re: No. 79-1618, Consolidated Freightways  
Corp. v. Kassel

Dear Bill,

Please add my name to your dissenting opinion.

Sincerely yours,

P.S.  
/

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 2, 1981

MEMORANDUM TO THE CONFERENCE

No. 79-1618 Consolidated Freightways Corp. v. Kassel

In the "Hold" memorandum that I circulated for this case last week, my recommendation - with more than a little reluctance - was to GVR on Thiboutot.

Bill Rehnquist has now circulated a dissent from my earlier proposal. I must say that Bill has focused on a distinction that had not occurred to me. If the clear intention of the Congress that adopted § 1983 is still to be respected, there is a great deal to be said for Bill's position.

Accordingly, and happily, I reverse myself, withdraw my prior recommendation, and will join three others to grant this case or four to deny it. If there are not the requisite votes for either of these results, I will join Bill's dissent.

L.F.P., Jr.

*L. F. P.*

*Brennan*

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: APR 1 1981

Recirculated: \_\_\_\_\_

Re: No. 79-1618 Consolidated Freightways Corp. v. Kassel

JUSTICE REHNQUIST, dissenting.

Although an order of the Court "granting, vacating, and remanding" for further consideration in light of a very recently decided case by this Court does not by any means require the court to which the case is remanded to reach a result different than that which it previously did, it is generally regarded as an indication that this Court thinks the judgment of the lower court may be at odds with the case in light of which that judgment is to be reconsidered. Since the further consideration ordered here

STYLISTIC CHANGES THROUGHOUT

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: \_\_\_\_\_

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SECOND DRAFT

Re: No. 79-1618 Consolidated Freightways Corp. v. Kassel

JUSTICE REHNQUIST, with whom JUSTICE STEWART joins,  
dissenting.

Although an order of the Court "granting, vacating, and remanding" for further consideration in light of a very recently decided case by this Court does not by any means require the court to which the case is remanded to reach a result different from that which it previously did, it is generally regarded as an indication that this Court thinks the judgment of the lower court may be at odds with the case in light of which that judgment is to be reconsidered. Since the further consideration ordered here