The Burger Court Opinion Writing Database

J. Truett Payne Co. v. Chrysler Motors Corp.

451 U.S. 557 (1981)

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

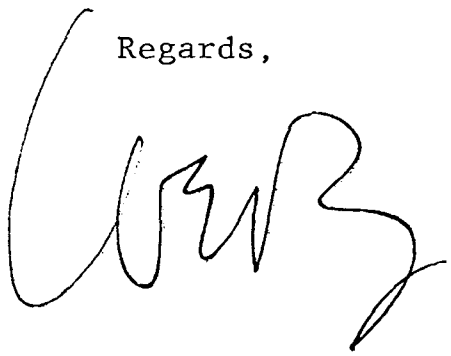
March 18, 1981

RE: 79-1944 - J. Truett Payne Co. v. Chrysler Motors Corp.

Dear Bill:

Subject to a bit of pulling and hauling I conclude your approach is the "least undesirable" and I'm about where Lewis stands -- including a DIG on Part II.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 30, 1981

Re: 79-1944 - J. Truett Payne Co. v. Chrysler

Dear Bill:

I am still ready to affirm but I will join you to produce a result. This is not an earthshaking case and does not merit much more time.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 15, 1981

Re: 79-1944 - J. Truett Payne Co., Inc. v. Chrysler Motors Corp.

Dear Bill:

This will confirm my "I join."

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1981

Re: No. 79-1944, Truett Payne Co. v. Chrysler Motors Corp.

Dear Bill:

I share Lewis's concern. I voted at Conference to affirm the Court of Appeals, and still believe that is the proper disposition. As your opinion recognizes, pp. 3-5, proof of a violation of Section 2(a) of the Robinson-Patman Act does not suffice to establish antitrust injury under Section 4 of the Clayton Act. The Court of Appeals found that there was insufficient evidence to go to the jury on the issue of antitrust injury, and I do not think we would be justified in reversing that determination on this record. Zenith, Bigelow, and like cases stand for the proposition that plaintiffs are excused from an unduly rigorous standard of proving the amount of damages once their entitlement to some damages is established; the cases should not be read to excuse plaintiffs from the burden of proving the fact of antitrust injury with specificity by a preponderance of the evidence. Thus, I do not see how a decision on the Section 2(a) violation issue could affect the Court of Appeals' conclusion on the Section 4 question.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 11, 1981

RE: No. 79-1944 J. Truett Payne Co., Inc. v. Chrysler

Dear Lewis:

Please join me.

Sincerely,

Bill

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 9, 1981

Re: No. 79-1944, J. Truett Payne Co. v.
Chrysler Motors Corp.

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1981

Re: No. 79-1944, J. Truett Payne Co.
v. Chrysler

Dear Bill,

Many thanks for your helpful letter of April 29, in which you propose three alternative options. I joined your proposed opinion for the Court several weeks ago, and Option 1 continues to be my first choice. I would be quite willing, however, to accept Option 2 if my doing so would help achieve an opinion of the Court.

Sincerely yours,

P.S.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 10, 1981

Re: 79-1944 - Payne v. Chrysler

Dear Bill,

I agree with your Part I and would join four others in Part II. If the Court's ultimate judgment is to affirm, I would be in dissent.

Sincerely yours,

Byron

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 30, 1981

Re: 79-1944 - J. Truett Payne Co.
v. Chrysler

Dear Bill,

I shall follow your lead with respect to Option 1 or 2.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 30, 1981

Re: No. 79-1944 - J. Truett Payne Co. v. Chrysler

Dear Bill:

I think I can go along with Option 2.

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 13, 1981

Re: No. 79-1944 - J. Truett Payne Company, Inc. v. Chrysler Motors Corporation

Dear Lewis:

Please join me in your dissent.

Sincerely,

T.M.

Justice Powell

cc: The Conference

March 11, 1981

Re: No. 79-1944 - J. Truett Payne Co., Inc.
v. Chrysler Motors Corp.

Dear Bill:

You have made a valiant effort, under a difficult assignment, to effect a disposition that might be palatable to a majority of the Court. My present view, just as it was expressed at conference, remains to affirm. I am not inflexible as to this, however, particularly if my vote would be critical in assembling a Court.

For the moment, I would like to let the dust settle over the correspondence that has passed between you and Lewis and John.

I have three trivial observations:

1. I wonder if the last sentence of the full paragraph on page 10 might be a candidate for elimination. I am not sure that it is fully consistent with the second sentence of the last paragraph on page 9.

Ha may 9 to be eliminated

2. In the 11th, 13th, and 17th lines on page 6, are references to "Petitioner," which, I believe, are really references to Mr. Payne individually (although the first may be otherwise).

3. In the 7th line of the first quoted material on page 8, there are typographical errors which, for me at least, scramble the meaning.

Sincerely,

HAB

WHR calls
& generally accepts

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 8, 1981

Re: No. 79-1944 - J. Truett Payne Company
v. Chrysler Motors Corporation

Dear Bill:

Just to help to get this case off dead center, I express my position as being essentially the same as stated by Lewis in his letter of March 26.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 30, 1981

Re: No. 79-1944 - J. Truett Payne Company, Inc.
v. Chrysler Motors Coporation

Dear Bill:

Your memorandum of April 29 is helpful.

I am in agreement with Lewis. My first vote is for your Option Number 2.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1981

Re: No. 79-1944 - J. Truett Payne Co., Inc.
v. Chrysler Motors Corp.

Dear Lewis:

Please join me in your printed circulation of May 11.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 9, 1981

No. 79-1944 Truett Payne Co. v. Chrysler

Dear Bill:

I can join Part I of your opinion circulated March 6, but cannot join Part II in its present form.

My notes indicate a majority at Conference voted simply to affirm CA 5, agreeing that the "automatic damage" rule was not applicable, and that CA 5 reasonably could have held that even if the Act were violated, the plaintiff had failed to carry its burden of proving damages.

You were in the minority on the latter point, and perhaps the case should not have assigned to you. You have tried to avoid this dilemma by a remand, but it seems to me - in view of the weakness of the evidence as you describe it - that we should defer to CA 5 rather than undertake an independent review. While you do not suggest we make a judgment on the evidence, a remand must be predicated on the view that if liability is established the evidence could be sufficient to justify a damage award.

In a more fundamental sense, I think your opinion can be read as requiring in Robinson-Patman Act cases a determination of liability before the evidence of injury is addressed. I have not thought that this was the law.

In sum, and apart from the precedential affect of what you say in Part II, I would not impose upon CA 5 the burden on remand of determining whether there has been a violation of the Act, when it already has found a failure of proof of damages.

Sincerely,

Lewis

Mr. Justice Rehnquist

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 12, 1981

No. 79-1944 Truett Payne Co. v. Chrysler

Dear Bill:

You were good to reply at such length to my letter of March 9.

I had overlooked your correspondence with the Chief Justice with respect to the assignment of the case. I suppose all of us have been in your position at one time or the other and I agree that your opinion is one way - if accepted by five Justices - to harmonize (compromise) the views expressed at Conference.

My principle difficulty, however, is that although we lay at rest the per se "automatic damages" rule, I am afraid your opinion will be read as creating a different per se rule. In every Robinson-Patman Act case, the trial court would be required to decide the question of liability - however complex it may be - before considering whether the plaintiff had carried its burden of proving damages and causation. I would think that in a good many cases, upon conclusion of the plaintiff's evidence, a court properly could conclude that even with the benefit of all inferences that might be drawn if liability were proved, the plaintiff simply had failed to present sufficient evidence to go to a jury on the damages issue.

I wonder if we can't simply dismiss our grant of certiorari insofar as it may require us to look at the evidence in this case. We certainly didn't take the case for this purpose, as making evidentiary judgments properly is left to the courts better equipped to do this. We should

have limited our grant to the "automatic damages" rule, as to which the conflict exists.

I believe we have a unanimous court on the automatic damage issue. I doubt that anyone is seriously interested in the second issue on which we are so divided. Perhaps we could dismiss as to it.

Sincerely,

Mr. Justice Rehnquist

L. Lewis

LFP/lab

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 26, 1981

No. 79-1944 J. Truett Payne Co. v. Chrysler

Dear Bill:

In reviewing files prior to tomorrow's Conference, I write to summarize where "I am at".

I would prefer simply to affirm CA-5's decision, as this is my understanding of our Conference vote.

Unless we simply affirm, my second choice vote is to dismiss our grant of certiorari as to the "actual damages" issue, and affirm with respect to the issue that prompted us to take the case.

If your circulation obtains five votes, I will join Part I and dissent as to Part II.

Sincerely,

Lewis

Mr. Justice Rehnquist

LFP/lab

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 29, 1981

79-1944 J. Truett Payne Co. v. Chrysler

Dear Bill:

Your memorandum of April 29 is constructive, and lays out the "options" available.

My first vote is for Option No. 2. This would leave Part I of your opinion as you have written it, addressing the "automatic damages" rule. This was the question - and the only one - that prompted us to take the case. Under Option 2, we would DIG the "actual damages" issue.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

05/07/81

Circulated: MAY 7 1981

Recirculated: _____

No. 79-1944, J. Truett Payne Co., Inc. v. Chrysler Motors Corp.

JUSTICE POWELL, dissenting in part.

I concur in Part I of the Court's opinion, but simply would affirm the judgment of the Court of Appeals.

The Court of Appeals concluded that petitioner "failed to introduce substantial evidence of injury attributable to [respondent's program], much less substantial evidence of the amount of such injury" 607 F. 2d 1133, 1135. In Part II of its opinion, the Court today reviews the evidence, vacates the judgment of the Court of Appeals, and remands the case for a resifting of the evidence and determination of whether respondent violated the Robinson-Patman Act. The Court identifies no error of fact or law in the judgment of the Court of Appeals, but vacates that judgment only because the Court finds it "unclear" whether there is sufficient evidence. I find no

1, 2

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

5-11-81

From: Mr. Justice Powell

1st PRINTED DRAFT

Circulated: MAY 11 1981

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-1944

J. Truett Payne Company, Inc., Petitioner, *v.* Chrysler Motors Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1981]

JUSTICE POWELL, dissenting in part.

I concur in Part I of the Court's opinion, but simply would affirm the judgment of the Court of Appeals.

The Court of Appeals concluded that petitioner "failed to introduce substantial evidence of injury attributable to [respondent's program], much less substantial evidence of the amount of such injury" 607 F. 2d 1133, 1135. In Part II of its opinion, the Court today reviews the evidence, vacates the judgment of the Court of Appeals, and remands the case for a resifting of the evidence and determination of whether respondent violated the Robinson-Patman Act. The Court identifies no error of fact or law in the judgment of the Court of Appeals, but vacates that judgment only because the Court finds it "unclear" whether there is sufficient evidence. I find no basis for this Court undertaking to second guess the Court of Appeals as to the sufficiency of evidence.

Even if there were some satisfactory reason for us to review the evidence in this relatively uncomplicated case, I think the Court of Appeals was plainly correct in finding petitioner's evidence insufficient to show a competitive injury of the kind that the antitrust laws were enacted to prevent. See *Brunswick Corp.* v. *Pueblo Bowling-O-Matic, Inc.*, 429 U. S. 477, 488–489 (1977). Section 2 (a) is a prophylactic statute that makes unlawful price discrimination that "may . . . lessen competition." Thus, a court cannot infer from the fact of a violation that defendant's behavior has

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

5-13-81

Circulated: _____

2nd DRAFT

Recirculated: MAY 13 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1944

J. Truett Payne Company, Inc., Petitioner, *v.* Chrysler Motors Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1981]

JUSTICE POWELL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting in part.

I concur in Part I of the Court's opinion, but simply would affirm the judgment of the Court of Appeals.

The Court of Appeals concluded that petitioner "failed to introduce substantial evidence of injury attributable to [respondent's program], much less substantial evidence of the amount of such injury" 607 F. 2d 1133, 1135. In Part II of its opinion, the Court today reviews the evidence, vacates the judgment of the Court of Appeals, and remands the case for a resifting of the evidence and determination of whether respondent violated the Robinson-Patman Act. The Court identifies no error of fact or law in the judgment of the Court of Appeals, but vacates that judgment only because the Court finds it "unclear" whether there is sufficient evidence. I find no basis for this Court undertaking to second guess the Court of Appeals as to the sufficiency of evidence.

Even if there were some satisfactory reason for us to review the evidence in this relatively uncomplicated case, I think the Court of Appeals was plainly correct in finding petitioner's evidence insufficient to show a competitive injury of the kind that the antitrust laws were enacted to prevent. See *Brunswick Corp.* v. *Pueblo Bowling-O-Matic, Inc.*, 429 U. S. 477, 488–489 (1977). Section 2 (a) is a prophylactic statute that makes unlawful price discrimination that "may . . . lessen competition." Thus, a court cannot infer

3/19

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 27, 1981

Dear Chief:

Your assignment to me of the opinion in Payne v. Chrysler Motors Corp. may present some problems, in view of my recollection of the Conference discussion. Since my notes are very impressionistic and often inaccurate, I do not pretend to be referring to anything akin to a transcript, but the notes indicate that Byron, John, and I, while agreeing with the other five members present at the Conference that there should be no automatic damage rule under the Robinson-Patman Act, felt that there was actual testimony as to damages (albeit very weak testimony) sufficient to survive a directed verdict but not a motion for new trial. The remaining colleagues present at the Conference, again according to my notes, would have affirmed outright the judgment of the Court of Appeals which directed dismissal of the complaint.

Thus I would have no trouble writing an opinion conforming to what I believe to have been the Conference vote as to the first question presented -- the automatic damages question -- but would have a great deal more difficulty writing an opinion which affirmed the judgment of the Court of Appeals in this particular case in the light of earlier precedents such as Bigelow v. RKO Radio Pictures, 327 U.S. 251 (1946) and Story Parchment Co. v. Paterson Co., 282 U.S. 555 (1931). I am perfectly willing to try my hand at an opinion which rejects the automatic damages rule, but I am not sure that the Court of Appeals was completely correct in its application of Story Parchment Co. and Bigelow as to proof of damages. Nonetheless, my position at Conference was not firmly held, and I think I would be able to undertake the assignment for the Court.

On the basis of these sentiments, I would certainly not be offended if you re-assigned the case. However, since a couple of the assigned opinions which I have written do not seem to have fared too well, I will be glad to undertake this assignment unless I hear otherwise from you.

Sincerely,

wlr

The Chief Justice
Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–1944

J. Truett Payne Company, Inc., Petitioner, *v.* Chrysler Motors Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented in this case is the appropriate measure of damages in a suit brought under § 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.[1]

Petitioner, for several decades a Chrysler-Plymouth dealer in Birmingham, Ala., went out of business in 1974. It subsequently brought suit against respondent in the United

[1] Section 2 (a) of the Robinson-Patman Act, 15 U. S. C. § 13 (a) provides in pertinent part:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States . . . and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefits of such discrimination, or with customers of either of them. . . ."

Section 4 of the Clayton Act, 15 U. S. C. § 15 provides:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 10, 1981

Re: No. 79-1944 Truett Payne Co. v. Chrysler

Dear Lewis:

Thank you for your letter of March 9th regarding my proposed draft opinion in this case. As you will recall, I sent a note to the Chief Justice after he had assigned the case to me suggesting that he might wish to re-assign it to one of the Members of the Conference who had simply voted to affirm the Court of Appeals flat out. Because it has been my understanding that we are not at liberty to "trade" assignments without his assent -- a practice which I think is thoroughly desirable from an administrative standpoint -- his decision not to re-assign the case left me the task of reconciling the majority view expressed at Conference with my view that if the Court of Appeals had affirmed the finding of the District Court that Chrysler had in fact violated the Robinson-Patman Act, petitioner's evidence of damages, though weak, was entitled to go to the jury.

As you indicate in your letter, I had no trouble in drafting Part I of the opinion, since we were unanimous at Conference that a mere violation of the Robinson-Patman Act without any showing of actual damage would not support an award of damages.

When it came to writing Part II, I felt that if the Court of Appeals had affirmed a jury finding of a violation of the Act, petitioner would be entitled to the relaxed rules of damages indicated in Bigelow v. RKO and Story Parchment. I realize that this was not the view expressed by the majority at Conference, but I also thought that the vote of some Members of the Conference to affirm outright the Court of Appeals decision was based primarily on their rejection of the "automatic damages" rule. My understanding of the way actions for damages are traditionally treated is that the question of liability is answered before the question of damages is addressed. Although I certainly

would not want to impose any absolute rule on the Courts of Appeals as to the order in which they treat these issues, I think it preferable for a court to advert to the issue of liability in a case such as this one where a finding of liability triggers relaxed rules as to the fact and extent of damages and where it is a close question whether the evidence of damage adduced by plaintiff is sufficient to be submitted to the jury.

If the Court of Appeals had found no violation of the Robinson-Patman Act, or had at least expressed some view to the effect that the violations of the Act were of a minimal or peripheral nature, I believe that it would have been justified in holding that the petitioner was not entitled to the presumptions contained in RKO and Story Parchment. The court, however, deliberately and expressly declined to pass on the question of liability and simply held that the evidence of damages was insufficient. I concede that the evidence here was weak, but the fact remains that the plaintiff himself testified to damage and a expert witness, who was allowed to testify by the trial court, also testified to damage. I think if we were to say outright that, regardless of whether a finding of liability was affirmed, this evidence was insufficient to go to the jury, we would find ourselves in the difficult position of having to draw some very fine lines. I think the way I have written Part II leaves it open to the Courts of Appeals, who deal with the question much more frequently than we do, to decide how much evidence of damage is "enough", assuming there has been a finding of liability.

If the Court of Appeals concludes on remand that there was liability under the Robinson-Patman Act, but that the damages adduced by the two witnesses were insufficient, I would have no hesitation in denying a second petition for certiorari by the plaintiff. I would deny not because I would feel that the Court of Appeals had necessarily been correct, but because I would prefer to see these more or less garden variety sufficiency of the evidence cases dealt with by the Courts of Appeals, without our having to commit ourselves any sooner than we have to. We took this case because of the split in the circuits as to automatic damages and Part I of the opinion emphatically affirms that there are no "automatic damages". I think that finessing the issue of actual damages in Part II enables us to avoid laying down any fixed rule in an area with which we do not regularly deal.

If there are any changes which you could suggest which would make Part II more palatable to you, I would naturally be happy to entertain them. As to your comment in the third paragraph of your letter that "A remand must be predicated on the view that if liability is established the evidence could be sufficient to justify damage awards," I would agree that that is undoubtedly true. But, as I tried to made clear in the opinion, that is a far cry from suggesting that the evidence then would be sufficient to justify a damage award. My view is based only on the idea that one who has been the victim of the violation of the Act will be treated more favorably with respect to the amount of evidence of damage which he must produce than one who has not.

I would be the first to agree that the majority of the Conference voted to affirm outright the judgment of the Court of Appeals, and that therefore my opinion which vacates that judgment in order that the Court of Appeals may pass on the question of liability does not represent that view in toto. But in view of the correspondence with the Chief, and the fact that Part I does decide the issue which was the reason for taking the case, I felt that Part II might muster a majority simply because it decides virtually nothing as to whether the evidence of actual damage is sufficient to be submitted to the jury.

Sincerely,

wbr

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 13, 1981

Re: No. 79-1944 J. Truett Payne Co. v. Chrysler

Dear Lewis:

Thank you for your letter of March 12th, suggesting that because we are so divided as to Part II of my draft opinion in the case, we dismiss our grant of certiorari as to the "actual damages" issue. I think there is some precedent for doing this, and would certainly be willing to consider it if my opinion in its present form is unable to attract four other votes. I would be most loath to attempt any essay, one way or the other, on the necessary quantum of evidence to entitle a plaintiff to go to the jury in a typical damages action, because I think these questions are better handled by the Courts of Appeals who deal with them far more often than we do.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 29, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-1944 J. Truett Payne Co. v. Chrysler

Because this case seems to be pretty much on dead center, and other more dramatic cases will undoubtedly occupy our time between now and the summer recess, I have suggested to the Chief Justice, and he has concurred, that I circulate this Memorandum to the Conference as a sort of "talking-paper" which could form the basis of another discussion and vote. Though most of the correspondence has been circulated to all of the Conference, a couple of items have been sent only to me. Because I think that the inclusion of everything I have received, at least in some form, is necessary for a disposition of this case one way or the other, I have taken the liberty of quoting or paraphrasing that which was sent only to me, believing as I do that the communications were not intended to be "private", but simply to let me know the position of the various colleagues who wrote them. In the case of correspondence circulated to the entire Conference, I will simply refer to the date, since each of you undoubtedly has a copy of it in your file.

This case was argued during the January argument session. My Conference notes, which I believe to be correct, show that at that time the Chief, Bill Brennan, Potter, Thurgood, and Lewis voted to affirm outright the judgment of the Court of Appeals for the Fifth Circuit. The Court of Appeals had held that there were no "automatic damages" available to one who was a victim of a Robinson-Patman Act violation, and that the evidence of actual damages was insufficient to go to the jury. Byron, John, and I agreed on the principal point--that there were no automatic damages. But we believed that the evidence of

"actual damages"--having survived a motion for directed verdict, a motion for judgment n.o.v., and a motion for new trial at the hands of the District Court--was sufficient to go to the jury.

When the assignment list came around following the January argument session, I was assigned the preparation of the opinion in this case. On January 27th, I wrote the Chief (copies to the Conference) stating that my notes showed me to have been in a minority on the second point, and while I would try to undertake the writing of an opinion that would command a Court, I thought I would have some difficulty doing so. The Chief simply sent back the original of my letter to him, advising me to go ahead and try my hand at the opinion.

I then undertook the drafting of an opinion in the case, which was circulated to the Conference on March 6, 1981. After stating the facts, Part I of the opinion rejected the "automatic damages" theory. Part II attempted to "split the difference" by emphasizing the difficulity of proving with exactitude business damages, and by stating the familiar principle laid down in Bigelow v. RKO Pictures, Inc., 327 U.S. 251 (1946), and Story Parchment Co. v. Patterson Parchment Co., 282 U.S. 555 (1931), that one who has established he has been wronged will be held to a somewhat relaxed standard of proving damages. Because the Court of Appeals had simply and explicitly bypassed the issue of violation, and had gone directly to the question of damages, my opinion vacated the judgment below so that the court could first pass upon respondent's contention that the evidence adduced at trial was insufficient to support a finding of violation of the Robinson-Patman Act. If the court found a violation, it could then turn to the question of the sufficiency of the evidence as to actual damages.

Following my circulation of March 6th, I received, in chronological order, the following comments:

PS: Joined my opinion for the court. (3/9/81).

LFP: Can join Part I of your opinion, but cannot join Part II in its present form. (3/9/81).

JPS: Would prefer to reverse the Court of Appeals on the ground that the record does contain sufficient proof of damages, but probably can join you if that will help obtain five votes for your opinion (3/10/81).

BRW: Agree with Part I and would join four others in Part II. If the Court's ultimate judgment is to affirm, I would be in dissent. (3/10/81).

WJB: "I share Lewis's concern. Zenith, Bigelow, and like cases stand for the proposition that plaintiffs are excused from an unduly rigorous standard of proving the amount of damages once their entitlement to some damages is established; the cases should not be read to excuse plaintiffs from the burden of proving the fact of antitrust injury with specificity by a preponderance of the evidence." (3/11/81).

LFP: Suggests that we could simply dismiss the grant of certiorari insofar as it may require us to look at the evidence in this case. We didn't take the case for this purpose, and the grant should have been limited to the "automatic damages" rule. (3/12/81).

CJ: "Subject to a bit of pulling and hauling I conclude your approach is the 'least undesirable' and I'm about where Lewis stands--including a DIG on Part II." (3/18/81).

LFP: Would prefer simply to affirm CA5's decision, as this is my understanding of the Conference vote. Unless we simply affirm, my second choice is to dismiss our grant of certiorari as to the "actual damages" issue. If your circulation obtains five votes, I will joint Part I and dissent as to Part II. (3/26/81).

HAB: "Just to help get this case off dead center, I express my position as being essentially the same as stated by Lewis in his letter of March 26th." (4/8/81).

JPS: "... Frankly, like you I much prefer your proposed dispositin than any other course. I can go along with a DIG, but would rather not so indicate unless it becomes evident that it is the only recourse. I am pleased you would be unwilling to find the evidence insufficient to support the verdict on the damage issue because I think there would be quite a bit of mischief in such a holding." (4/13/81).

In view of this rough summary, it seems to me that we have basically three options in the case (although if we devote sufficient time to it at Conference, it may turn out that we have nine options).

1. My draft of March 6th as it presently stands, with such minor alterations as are customary before handing down an opinion for the full Court. Naturally, I could in good conscience author such an opinion if there were four additional votes for it.

2. Part I of my opinion as to the "automatic damages", followed by a paragraph explaining why we are dismissing as improvidently granted the issue as to whether there was sufficient evidence to go to the jury on the issue of actual damages. While I would definitely feel that this is my second choice, I think I could in good conscience write it.

3. Affirm the Court of Appeals outright--that is, there are no automatic damages, and on the facts of this case the evidence of actual damage was insufficient to go to the jury. I could not in good conscience write such an opinion, and if the majority of the Conference favors that outcome, I believe the case should be reassigned.

Sincerely,

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 30, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-1944 J. Truett Payne Co. v. Chrysler

Results from the rural precincts have been trickling in, and I assume from them that the Chief, Potter, Byron, John, and I are content with Option No. 1 described in my Memorandum circulated earlier this week. I therefore "opt" for it: the opinion as written, with such changes as may be necessary and agreed to to respond to the inevitable dissents by those who feel differently on the question.

Sincerely,

Stylistic
p. 9, 11

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: _____

Recirculated: MAY 14 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1944

J. Truett Payne Company, Inc., Petitioner, *v.* Chrysler Motors Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented in this case is the appropriate measure of damages in a suit brought under § 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.[1]

Petitioner, for several decades a Chrysler-Plymouth dealer in Birmingham, Ala., went out of business in 1974. It subsequently brought suit against respondent in the United

[1] Section 2 (a) of the Robinson-Patman Act, 15 U. S. C. § 13 (a) provides in pertinent part:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States . . . and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefits of such discrimination, or with customers of either of them. . . ."

Section 4 of the Clayton Act, 15 U. S. C. § 15 provides:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 27, 1981

Memorandum to the Conference

Re: Cases held for 79-1944 J. Truett Payne Co. v. Chrysler Motors Corp.

The only case held for Truett Payne is No. 80-1353, Van Dyk Research Corp. v. Xerox. Petr is a small company which sought to develop a high speed copier in competition with resp, Xerox. Petr's efforts were largely unsuccessful and it brought an antitrust action against resp, alleging that resp had monopolized the paper copier market by abusing the patent system, creating a "rental only" market to frustrate competition, and various other monopolistic acts. The federal district court (Lacey) found that resp had not "acquired or maintained its market position by exclusionary conduct" and thus had not violated the antitrust laws. It also found that it had failed to prove that it was damaged by any of the alleged actions and that the evidence of damages presented was highly speculative. A divided panel of the CA3 affirmed. It concluded that petr had not shown a causal relationship between its injury and the alleged antitrust violations. Relying on Story Parchment v. Paterson Parchment Paper Co., 282 U.S. 555 (1931), it concluded that the "fact of injury" had not been demonstrated. Judge Sloviter concurred. She criticized the majority's reliance on "injury in fact" and believed that there was sufficient evidence presented to allow the trier of fact to make the causal connection between violation and injury. She concurred, however, because in this case the trier of fact, after considering all of the evidence, did conclude in favor of resp. Those findings were not clearly erroneous.

Though I think there is a good deal of merit to Judge Sloviter's analysis, she concurred in the judgment of affirmance even though she differed with the reasoning of

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1981

Re: 79-1944 - Truett Payne Co. v. Chrysler

Dear Bill:

It seems to me that you have done an admirable job of trying to put together an opinion that might command a Court. If joining you could produce a Court, I think I am sufficiently flexible to do so, but Lewis' letter prompts me to write to suggest that my difficulties actually are in the other direction. I was going to suggest that perhaps the opinion should point out that the trial judge had given an instruction to the jury that rejected the automatic damage rule. In view of that instruction, and the testimony that you describe in the opinion, it seems to me perfectly clear that the trial judge was required to submit the case to the jury and therefore that the Court of Appeals erred in reversing on the evidentiary ground.

I agree with Lewis that there is no absolute rule requiring a Court of Appeals to decide the liability issue if a failure of proof on damages would require reversal but I think I could accept your disposition if you could somehow tailor it to the specific facts of this case.

In sum, I would prefer to reverse the Court of Appeals on the ground that the record does contain sufficient proof of damages, but I probably can join you if that will help obtain five votes for your opinion.

Respectfully,

JPS

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 30, 1981

Re: 79-1944 - J. Truett Payne Co v. Chrysler

Dear Bill:

You have my proxy.

My first vote is for Option Number 1 but, if necessary, like you, I could join Option Number 2.

Respectfully,

JPS

Justice Rehnquist

Copies to the Conference