

The Burger Court Opinion Writing Database

Delaware State College v. Ricks

449 U.S. 250 (1980)

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

December 12, 1980

Re: 79-939 - Delaware State College v. Ricks

Dear Lewis:

I join.

Regards,

Justice Powell

Copies to the Conference

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

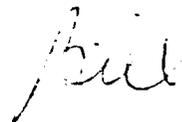
October 14, 1980

RE: No. 79-939 Delaware State College v. Ricks

Dear Potter:

I think Thurgood, you and I voted to Affirm the
1981 claim and Reverse the Title VII claim. Would
you care to undertake that dissent?

Sincerely,



Mr. Justice Stewart

cc: Mr. Justice Marshall

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

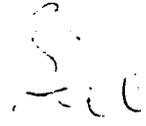
October 14, 1980

RE: No. 79-939 Delaware State College v. Ricks

Dear Potter:

The reference to our conference vote in the Title VII issue in the above should have been remand rather than reverse.

Sincerely,



Mr. Justice Stewart

cc: Mr. Justice Marshall

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

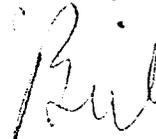
December 3, 1980

RE: No. 79-939 Delaware State College v. Ricks

Dear Lewis:

I shall await Potter's dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

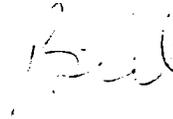
December 10, 1980

RE: No. 79-939 Delaware State College v. Ricks

Dear Potter:

Please join me in the dissenting opinion you
have prepared in the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

October 15, 1980

Re: No. 79-939, Delaware State College
v. Ricks

Dear Bill,

I shall be glad to undertake a dissenting
opinion in this case.

Sincerely yours,

Mr. Justice Brennan

Copy to Mr. Justice Marshall

P.S.
/

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 3, 1980

Re: No. 79-939, Delaware State College
v. Ricks

Dear Lewis,

In due course, I shall circulate a
dissenting opinion in this case.

Sincerely yours,

J.S.
/

Justice Powell

Copies to the Conference

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Mr. Justice

Circulated: _____

9 DEC 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-939

Delaware State College et al.,
Petitioners,
v.
Columbus B. Ricks. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[December —, 1980]

JUSTICE STEWART, dissenting.

I agree with the Court that the unlawful employment practice alleged in the respondent's complaint was a discriminatory denial of tenure, not a discriminatory termination of unemployment. See *ante*, at 6-8, and n. 9. Nevertheless, I believe that a fair reading of the complaint reveals a plausible allegation that the College actually denied Ricks tenure on September 12, 1974, the date on which the Board finally confirmed its decision to accept the faculty's recommendation that he not be given tenure.

Therefore, unlike the Court, I think Ricks should be allowed to prove to the District Court that the allegedly unlawful denial of tenure occurred on that date.¹ As noted by the Court, see *ante*, at 9, n. 14, if Ricks succeeds in this proof, his § 1981 claim would certainly be timely, and the timeliness of his Title VII claim would then depend on whether his filing of a complaint with the Delaware state Department of Labor entitled him to file his EEOC charge within 300 days of the discriminatory act, rather than within the 180 days limita-

¹The Court treats the District Court's determination of June 26, 1974, as the date of tenure denial as a factual finding which is not clearly erroneous. *Ante*, at 11. But it must be stressed that the District Court dismissed Ricks's claims on the pleadings, and so never made factual determinations on this or any other issue.

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Stylized Changes

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: 11 DEC 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-939

Delaware State College et al.,
Petitioners,
v.
Columbus B. Ricks. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[December —, 1980]

JUSTICE STEWART, dissenting.

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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: _____
12 JUL 1980
Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-939

Delaware State College et al.,
Petitioners,
v.
Columbus B. Ricks, } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[December —, 1980]

JUSTICE STEWART, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

I agree with the Court that the unlawful employment practice alleged in the respondent's complaint was a discriminatory denial of tenure, not a discriminatory termination of unemployment. See *ante*, at 6-8, and n. 9. Nevertheless, I believe that a fair reading of the complaint reveals a plausible allegation that the College actually denied Ricks tenure on September 12, 1974, the date on which the Board finally confirmed its decision to accept the faculty's recommendation that he not be given tenure.

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¹ The Court treats the District Court's determination of June 26, 1974, as the date of tenure denial as a factual finding which is not clearly erroneous. *Ante*, at 11. But it must be stressed that the District Court dismissed Rick's claims on the pleadings, and so never made factual determinations on this or any other issue.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 26, 1980

Re: 79-939 - Delaware State
College v. Ricks

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

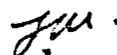
December 4, 1980

Re: No. 79-939 - Delaware State College v. Ricks

Dear Lewis:

I await the dissent.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 11, 1980

Re: No. 79-939 - Delaware State College v. Ricks

Dear Potter:

Please join me in your dissent.

Sincerely,

JM
T.M.

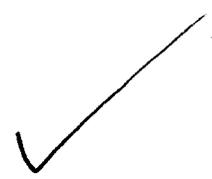
Justice Stewart

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Paul came to write

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



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1980

Re: No. 79-939 - Delaware State College v. Ricks

Dear Lewis:

I am glad to join your opinion.

Is not the year date of the June 26 letter set forth in footnote 2 in error? At least it does not agree with the date that appears in the eighth line of the text on page 2.

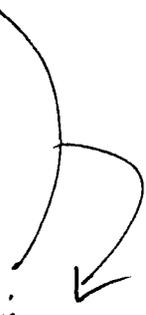
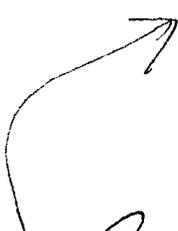
Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

P.S. [to Justice Powell only] I suspect that you may have a little problem with the Reporter's Office as to footnote 7 on page 5. That office seems to have habit and policy of noting the filing of amicus briefs at the beginning of an opinion and appended as a footnote to the appearances of counsel for the parties. See, for example 445 U.S., at 264, 427, and 465. Perhaps this is something you can work out with Mr. Lind.



Paul - we could omit & refer to Mr Lind

Reporter's office says that ~~this~~ this is indeed their policy. will change accordingly.

✓

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1980

Re: No. 79-939 - Delaware State College v. Ricks

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Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1980

Re: No. 79-939 - Delaware State College v. Ricks

Dear Lewis:

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Sincerely,



Mr. Justice Powell

cc: The Conference

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LTD
11-26-80

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

11-26-80

From: Mr. Justice Powell

Circulated: NOV 26 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 97-939

Walt

Delaware State College et al.,
Petitioners,
v.
Columbus B. Ricks. } On Writ of Certiorari to the
United States Court of Appeals for the Third Circuit.

[December —, 1980]

JUSTICE POWELL delivered the opinion of the Court.

The question in this case is whether respondent, a college professor, timely complained under the civil rights laws that he had been denied academic tenure because of his national origin.

I

Columbus Ricks is a black Liberian. In 1970, Ricks joined the faculty at Delaware State College, a state institution attended predominantly by blacks. In February 1973, the Faculty Committee on Promotions and Tenure (the tenure committee) recommended that Ricks not receive a tenured position in the education department. The tenure committee, however, agreed to reconsider its decision the following year. Upon reconsideration, in February 1974, the committee adhered to its earlier recommendation. The following month, the Faculty Senate voted to support the tenure committee's negative recommendation. On March 13, 1974, the College Board of Trustees formally voted to deny tenure to Ricks.

Dissatisfied with the decision, Ricks immediately filed a grievance with the Board's Educational Policy Committee (the grievance committee), which in May 1974 held a hearing and took the matter under submission.¹ During the pendency

¹ According to the Court of Appeals, the grievance committee almost im-

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1, 2, 4, 5, 8, 9, 10

Also, old footnote 7 (citing amici) was deleted. Thus, the footnotes have been renumbered.

Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Rehnquist
Mr. Justice Stevens

12-12-80

From: Mr. Justice Powell

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

received: DEC 2 1980

No. 79-939

Delaware State College et al.,
Petitioners,
v.
Columbus B. Ricks, } On Writ of Certiorari to the
United States Court of Appeals for the Third Circuit.

[December —, 1980]

JUSTICE POWELL delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 26, 1980

Re: No. 79-939 Delaware State College v. Ricks

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

✓

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 26, 1980

Re: 79-939 - Delaware State College v. Ricks

Dear Lewis:

At Conference I voted to affirm and I adhere to that position. I will circulate a brief dissent shortly.

Respectfully,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 9, 1980

Re: 79-939, Delaware State College v. Ricks

Dear Lewis:

Since I find that Potter's dissent opinion does not exactly express my views, I will also write a short dissent. I will try to have it around in the next day or two.

Respectfully,



Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Stevens

Circulated: DEC 11 '80

Recirculated: _____

79-939 - Delaware State College v. Ricks

JUSTICE STEVENS, dissenting.

The custom widely followed by colleges and universities of offering a one-year terminal contract immediately after making an adverse tenure decision is, in my judgment, analogous to the custom in many other personnel relationships of giving an employee two weeks advance notice of discharge. My evaluation of this case can perhaps best be explained by that analogy.

Three different reference points could arguably determine when a cause of action for a discriminatory discharge accrues: (1) when the employer decides to terminate the relationship; (2) when notice of termination is given to the employee; and (3) when the discharge becomes effective. The most sensible rule would provide that the date of discharge establishes the time when a cause of action accrues and the statute of limitations begins to run. Prior to that date, the allegedly wrongful act is subject to change; more importantly, the effective discharge date is the date which can normally be identified with the least difficulty or dispute.¹

¹ Although few courts have had the occasion to consider the issue in the context of notice of discharge preceding actual termination, some courts have recognized that the date on which

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

From: Mr. Justice Stevens

Circulated: _____

1st PRINTED DRAFT Recirculated: DEC 12 '80

SUPREME COURT OF THE UNITED STATES

No. 79-939

Delaware State College et al.,
Petitioners,
v.
Columbus B. Ricks. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[December —, 1980]

JUSTICE STEVENS, dissenting.

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³ Although few courts have had the occasion to consider the issue in the context of notice of discharge preceding actual termination, some courts have recognized that the date on which the employee actually ceases to perform services for the employer, and not a later date when the payment of benefits or accrued vacation time ceases, should determine the running of the statute of limitations. See *Bonham v. Dresser Industries*,

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