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Texas v. New Mexico

468 U.S. 1201 (1984)

Paul J. Wahlbeck, George Washington University
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Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

September 8, 1983

Re: No. 65 Orig. Texas v. New Mexico

Dear Byron:

Re your memo of August 25, I agree.

Regards,

A handwritten signature in dark ink, appearing to be 'WB', written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1984

MEMORANDUM TO THE CONFERENCE:

RE: 65 Original - Texas v. New Mexico, p.3

The above-mentioned case has been relisted for me for Thursday's Conference. Since I will not be here on Thursday, I would like to discuss it when we meet on Tuesday.

Regards,



Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

August 30, 1983

MEMORANDUM TO THE CONFERENCE

No. 65, Original -- Texas v. New Mexico

After reading Byron's informative memorandum, I vote to permit Judge Breitenstein to withdraw and to appoint Charles Meyers as the successor Special Master.

Sincerely,



HAB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

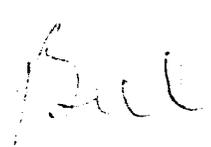
June 26, 1984

No. 65 Original
Texas v. New Mexico

Dear Byron,

I agree with your proposed order in
the above.

Sincerely,



Justice White

Copies to the Conference

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United States Court of Appeals

Tenth Circuit

United States Courthouse

Denver, Colorado 80294

August 25, 1983

BYRON R. WHITE
Circuit Justice

Telephone

303-837-4111

Fax 327-4111

Memorandum to the Conference

Texas v. New Mexico
No. 65, Original

As requested by the Conference, I have discussed this case with Jean Breitenstein and have informed him that although we value his service as Special Master very much, we would be willing to relieve him of the burdens of this litigation if that is his wish. The Judge appreciated this advice, for he has already informed the parties that because of the amendments to the Social Security law, he will very likely not be available past the end of this year. If that is the case, as it seems to be, we shall be appointing a new Master at some point; and had the Judge wanted to be relieved now, we surely would have tried to accommodate him.

Jean informs me, however, that in the wake of our decision last June, he has specified four or five issues relating to the "1947 Condition" that must be decided before any more evidence is taken. He has recently obtained virtual agreement from the parties as to the definition of these issues, but the parties are at loggerheads as to their resolution. Judge Breitenstein believes that he can resolve these issues before the end of the year, at which time a new Master could take over and try out the remaining issues that will require additional evidence and factual determinations relating to the departures, if any, from the "1947 Condition" as already determined. The Judge, of course, would be available to help educate his successor in the intricacies of this difficult case.

Although Judge Breitenstein's willingness to continue temporarily gives us some breathing room, I think we should make some early progress in appointing his successor. It is settled, of course, that we should look to the private bar for a new Master. In some cases, we have asked the parties for their joint or separate suggestions. In other cases, we have acted on our own. Since the parties to this litigation have a

Memorandum to the Conference
August 25, 1983
Page 2

difficult time stipulating to anything, it would be my preference that we act without consulting them. Of course, I shall cheerfully abide by the wishes of the Conference.

If we do not ask for suggestions from the parties, I propose that we name Charles Meyers as the successor Special Master. He is the former Dean of Stanford Law School and now a practitioner here in Denver. You will also recall that he has acted as Special Master for us in another Original case and was Simon Rifkind's law clerk in *Arizona v. California*. His biographical data from Martindale is enclosed. I should say I have discussed with him the possibility of his serving in this case. He is agreeable, if it turns out that this is the Court's desire.

I should also point out that Meyers has roots in Texas, having gone to Rice and the University of Texas, having taught at Texas, and being a member of the Texas Bar. He has been away from Texas, however, for 30 years and does not practice law in that State. Also, he was employed, but was never actually used, as an expert witness by the City of El Paso, in a case which was very similar to our *Sporhase v. Nebraska*, #81-613. Personally, I do not think that any of this would disqualify him, but we might have some adverse reaction from New Mexico. If we are to look further, I should be glad to do so and shall await your wishes.

As a postscript, it seems to me--and Jean Breitenstein is inclined to agree--that the issues to be tried out in this case are unique and turn on such complicated factual consideration that only experts who have investigated them will be of much use. Hence, whether or not the new Master is a "water" lawyer, he must be educated in the factual complexities of this case. His problems will be managing and trying the case and dealing with expert testimony. It follows that we need not confine our search to those lawyers presumably skilled in the water law of the western states.

Perhaps this matter could be on our agenda for our first Conference.

Cheers,



Enclosure

Memorandum to the Conference
August 25, 1983
Page 3

P.S. Since I forgot to bring some of my own, I came up with this interesting stationery. Some have already remarked that they had missed the story of my retirement.

P-PS. I suggest that Charles Meyers' request for fees in the *Louisiana* case be on the September agenda.


B.R.W.

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MEMBERS OF FIRM

GEORGE W. BERMANT, born July 2, 1926; admitted to bar, 1954, California; 1981, Colorado. *Education:* University of Southern California (B.A., magna cum laude, 1950); Yale University (LL.B., cum laude, 1953). Phi Beta Kappa; Order of the Coif. *Member:* Los Angeles County and American Bar Associations.

CHARLES S. BATTLES, JR., born June 24, 1934; admitted to bar, 1963, California; 1981, Colorado. *Education:* Princeton University (A.B., summa cum laude, 1956); Yale University (LL.B., cum laude, 1962). Phi Delta Phi; Order of the Coif. Lecturer, University of California School of Law, 1964-1965. *Member:* Beverly Hills, Los Angeles County and American Bar Associations.

CHARLES J. MEYERS, born August 7, 1925; admitted to bar, 1949, Texas, 1981, Colorado. *Education:* Rice University (B.A., 1949); University of Texas (LL.B., 1949); Columbia University (LL.M., 1953; J.S.D., 1964). Phi Beta Kappa; Order of the Coif; Phi Delta Phi. Member, Chancellors. Co-Author, with: H.R. Williams, "Treaties on Oil and Gas Law," 7 Volumes, 1959, 1964; H.R. Williams and Richard C. Maxwell, "Cases on Oil and Gas Law," 1979; A Dan Tarlock, "Water Resource Management," 1979. Professor of Law, 1962-1971, Charles A. Beardsley, Professor of Law, 1971-1976 and Richard E. Lang, Professor of Law and Dean, 1976-1981, Stanford University. Assistant Professor of Law, 1949-1952 and Associate Professor of Law, 1952-1954, University of Texas. Associate Professor of Law, 1954-1957 and Professor of Law, 1957-1962, Columbia University. President, Association of American Law Schools, 1975. Member, Board of Advisors, Ecology Law Quarterly, 1971—. Member, Board of Directors, Public Advocates, Inc., 1971-1980. Chairman, Governor's Commission to Review California Water Rights Law, 1977-1979. *Member:* State Bar of Texas; American Bar Association; American Law Institute.

PAMELA A. RAY, born July 29, 1948; admitted to bar, 1973, Colorado. *Education:* Cottey College and University of Colorado (B.A., cum laude, 1970); University of Notre Dame (J.D., 1973). Phi Beta Kappa. Co-Author: "Federal Land Policy and Management Act, Section 603: An Analysis of the BLM's Wilderness Study Process," 21 Arizona Law Review, 1979. *Member:* Denver, Colorado and American Bar Associations; Colorado Women's Bar Association (Member, Board of Directors, 1979-1981).

CRAIG R. CARVER, born August 5, 1948; admitted to bar, 1974, Colorado. *Education:* Stanford University (A.B., with distinction, 1970); University of Michigan and University of Denver (J.D., 1974). Member, Order of St. Ives. Co-Author: "Federal Land Policy and Management Act, Section 603: An Analysis of the BLM's Wilderness Study Process," 21 Arizona Law Review, 1979. *Member:* Denver, Colorado and American Bar Associations.

ASSOCIATES

RICHARD MICHAEL RUSSO, born June 19, 1950; admitted to bar, 1975, California; 1981, Colorado. *Education:* New York University (B.A., magna cum laude, with Honors in Psychology, 1971); Yale University (J.D., 1974) Phi Beta Kappa

GEORGE B. CURTIS, born June 27, 1947; admitted to bar, 1976, California; 1981, Colorado. *Education:* Fordham University (B.A., 1970); University of Virginia (M.A., 1971; Ph.D., 1973); University of Chicago (J.D., 1976). Member, Raven Society.

REBECCA LOVE, born November 11, 1952; admitted to bar, 1976, Colorado; 1979, District of Columbia. *Education:* Stanford University (B.A., 1973; LL.B., with distinction, 1976).

KENNETH E. WITT, born Wisconsin, 1945; admitted to bar, 1979, California; 1982, Colorado. *Education:* University of Wisconsin (B.A., 1967); Stanford University (M.A., 1972; J.D., 1979). Member, Stanford Law Review, 1978-1979.

GREGG AMBER, born May 14, 1956; admitted to bar, 1981, California; 1982, Colorado. *Education:* The Principia College (B.A., 1978); Stanford University (J.D., 1981).

(For complete biographical data on all firm personnel, see Biographical card at Los Angeles, California)

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LAWRENCE D. GILL, born Pocatello, Idaho, May 24, 1934; admitted to bar, 1962, Ohio; 1970, Colorado. *Education:* Columbia College and Columbia University (B.A., 1956); New York University (J.D., 1962); Western Reserve University. *Member:* Denver, Colorado and American (Member, Section on Taxation) Bar Associations.

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SOLOMON GIRSH, born Buffalo, New York, January 27, 1906; admitted to bar, 1927, Colorado. *Education:* University of Denver (LL.B., 1927). Denver (Member: Judiciary Committee, 1958-1972; Judicial Administration Committee, 1978-1979; Vice President, 1971-1972) and Colorado Bar Associations.

ROBERT B. ROTTMAN, born Denver, Colorado, September 16, 1928; admitted to bar, 1952, Colorado; 1957, U.S. Supreme Court; 1963, U.S. Court of Appeals, Tenth Circuit. *Education:* University of Denver (B.A., 1949; LL.B., cum laude, 1952). Phi Alpha Delta; Phi Beta Kappa. Member, Colorado Civil Rights Commission, 1979—. *Member:* Denver and Colorado Bar Associations. Colorado Trial Lawyers Association.

WILLIAM L. BROMBERG, born Council Bluffs, Iowa, February 20, 1929; admitted to bar, 1953, Colorado; 1956, U.S. Court of Appeals; 1959, U.S. Supreme Court. *Education:* Creighton University and University of Denver (B.S., 1951); University of Denver (LL.B., 1953). Law Clerk to Judge Jean Breitenstein, Federal District Judge, 1954-1955. *Member:* Denver and Colorado (Member, Family Law Committee, 1969-1971; Secretary-Treasurer, Family Law Section, 1971-1973) Bar Associations.

REPRESENTATIVE CLIENTS: American Canvas Co.; American Furniture Warehouse Co.; Amick Transfer and Storage Co.; Arapahoe Heating Service, Inc.; Cable of America, Inc.; Central Paint Supply Co., Inc.; Champa Linen Service Co.; City Floral, Inc.; Englander Funding Corp.; Great Western Furniture Mfg. Co.; Intercontinental Financial Services; Midland Packaging Supply Co.; Standard Precision Electronics, Inc.; Valli-Hi Motor Hotel, Inc.
 REFERENCES: Colorado National Bank, Denver, Colorado; American National Bank Denver Colorado

#116

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 18, 1984

MEMORANDUM TO THE CONFERENCE

Re: 65 Original - Texas v. New Mexico

I have chatted with Charles Meyers and found that he did want to pursue the possibility of his serving as Special Master in this case. He then read the Special Master's report, talked to Judge Breitenstein at length, and then called to say that he would like to serve. I think he knows what kind of messy case he is getting into.

He did report that he has a brother who works for the Texas Railroad Commission, an administrative agency that has nothing to do with water affairs such as this case. Neither he nor Jean Breitenstein thought that this is a disqualifying fact. I am inclined to agree with them. I told him I would bring the matter before the Conference.

Cheers
BWR

HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1984

MEMORANDUM TO THE CONFERENCE

Re: 65, Original - Texas v. New Mexico

I propose that the attached order be
entered in this case.



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

September 6, 1982

65 Orig. Texas v. New Mexico

Dear Byron:

I think Charlie Meyers is an excellent choice.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

71B

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1984

65 Original - Texas v. New Mexico

Dear Byron:

I agree that a brother on the Railroad Commission would not in any way disqualify Charlie Meyers to succeed Judge Breitenstein.

Sincerely,

Lewis

Justice White

Copies to the Conference

LFP/vde

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CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 8, 1983

Re: No. 65 Orig. Texas v. New Mexico

Dear Byron:

I agree with your letter of August 25th, suggesting that Judge Breitenstein continue on a temporary basis and that we ultimately appoint Charlie Meyers as Special Master. I also like your stationery. I have ordered some very much like it, except that mine, of course, refers to the Ninth Circuit, and the address is "Lake Tahoe, California."

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 2, 1983

Re: 65 Original - Texas v. New Mexico

Dear Byron:

Your suggestion that we appoint Charles Meyers as the successor Special Master makes sense to me. I also like your classy stationery.

Respectfully,



Justice White

Copies to the Conference

448
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

September 14, 1983

Re: No. 65, Original Texas v. New Mexico

MEMORANDUM TO THE CONFERENCE:

I agree with Byron's proposal that Charlie Meyers be appointed as Special Master when Judge Breitenstein wants to be relieved.

Sincerely,

Sandra