

10-28-1969

## 10-28-1969 Correspondence from Harlan to Burger

John Harlan  
*US Supreme Court Justice*

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

October 28, 1969

Re: No. 632 - Alexander v. Holmes County

Dear Chief:

I am prepared to concur in your circulation of this afternoon, with the two minor modifications suggested below. My readiness to do this reflects what I hope was implicit in my two earlier letters of today, namely, that we have reached the point in our deliberations where the differences amongst us hang not on any matters of substance but on pure semantics. Frankly, I think the important thing now is to reach an agreement on some disposition which can be announced at the earliest possible moment, preferably not later than tomorrow afternoon.

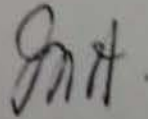
The two modifications which I submit for your consideration follow:

1. I suggest that the third sentence in your draft be modified so as to eliminate the word "continued" [denial] and that the sentence end with the phrase "under segregated conditions." I think that we should be scrupulous in avoiding any implied criticism of the lower courts for sanctioning a course of events that has become "illegal" only since our decisions in Griffin and Green.

2. At the end of paragraph 3 of the proposed order I suggest the addition of the sentence "No amendment shall become effective before being passed upon by the Court of Appeals." My reason for this is that the phrase-

ology in your draft might lend itself to the misinterpretation that the District Court is free to set at naught provisions in the Court of Appeals' order before the District Court amendments have been reviewed by the Court of Appeals.

Sincerely,

A handwritten signature in dark ink, appearing to be the initials 'J.M.H.' with a stylized flourish.

J. M. H.

The Chief Justice

CC: The Conference