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Memorandum to the Conference

Potter Stewart
US Supreme Court Justice

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 23, 1970

MEMORANDUM TO THE CONFERENCE

No. 79, Connell v. Higginbotham

After the Conference last Friday, it occurred to me that I had not made entirely clear my position in this case. It is simply this:

I would uphold as clearly constitutional the first clause of the oath as it comes to us from the 3-judge district court: "I will support the Constitution of the United States and of the State of Florida" As to the second clause of the oath: "and that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence," I would remand to the district court to give the parties an opportunity to get an authoritative construction from the state courts of the meaning of the clause. If the clause embraces the teacher's philosophical or political beliefs, I think it is constitutionally invalid. If, on the other hand, the clause does no more than test whether the first clause of the oath can be taken "without mental reservation or purpose of evasion," I think it is constitutionally valid. I therefore believe it would be wise to give the Florida courts an opportunity to construe the meaning of the clause before we pass on its constitutionality. As you know, the Supreme Court of Florida has explicitly held that the various clauses of the oath are severable. Cramp v. Board of Public Instruction of Orange County, 137 So.2d 828.

P.S.
P.S.