

Columbia University
in the City of New York
SCHOOL OF LAW

May 27, 1936.

Hon. Justices Stone and Cardozo,
Supreme Court of the United States,
Washington, D.C.

Dear Stone and Cardozo:

Useless to expatiate on my admiration for the skill and power of your recent opinions on vital questions. They demonstrate the need for, and the presence of, creative judicial statesmanship of the first order.

This letter looks only to two suggestions for further welding of the instrument along the same lines as you have already chosen.

When the time comes that the attitude you express becomes a majority attitude, the case should be clear, with the first victory, that (1) a whole new line of doctrine, and perhaps even (2) a whole new body of recorded precedent come into authoritative being together.

The first is the more important. It can be done by regularly insisting on the growth-process in the constitutional field; by regularly rehearsing in full the prior lines of growth – in distinction to Sutherland's powerful and baleful attempt to get back to pure original intent in the Guffey Case. And another feature which I hope you may find wise is the building together of the series of dissents by taking every opportunity, in any of them, to rely on any of the prior ones – not merely on prior majority opinions. This last point seems to me vital, to give your new and sound doctrine body and power, when once a majority is attained. And the first victory-opinion should rely on the whole series of the dissents — which will be vastly easier if they are concatenated in advance.

It would also go a good distance, given one later clean victory for the line of doctrine (I do not mean a Hughes-wobble) to make clear that all issues previously decided against the dissents in question are at once to be considered ready for reopening. And that is needed, no less.

Justices Stone & Cardozo.

May 27, 1936.

I know no series of opinions bunched within a couple of years which shows anything like so coherent a development as these dissents of yours. Aren't you a bit proud, both of you? I am.

Yours sincerely,

K. N. Llewellyn

KNL:MG

But I still yearn to hear you tell a Terry story – as they came to the Dean the students loved.