

116 Palm Way, Kissimmee, Florida.
January 26, 1948.

Mr. Justice Robert Jackson,
U. S. Supreme Court,
Washington, D.C.

Dear Bob:

Inclosed is a copy of a letter to Justice Reed about the restrictive covenants recusations. If you chance to look at my new book, James Madison the Nationalist, which is to be published on February 26, I think you will be interested in the chapters dealing with freedom of religion (leading up to the First Amendment) and the Washington-Madison campaign for improvement of inland waterway navigation in 1784. The latter is a connected account of the matters about which you once asked me to send excerpts from my notes.

It's pretty nice, sunbathing in the summer heat down here while you are freezing to death. Just think, the thermometer will only drop to 32 above zero tonight, according to the forecast. That would give sunstroke to a Patagonian.

With best regards,

James Brant

Sheldon

February 9, 1948.

Mr. Irving Brant,
116 Palm Way,
Kissimmee, Florida.

My dear Irving:

Thanks for your letter calling attention to the information in your new book dealing with freedom of religion and improvement of inland waterways.

Your comments on the withdrawal of Justices Reed and Rutledge and myself raised questions which I am sure we have all considered. The papers have published the fact that property in which I have an interest is encumbered by covenants of this character. What their value would be is questionable. If someone were to attempt to erect a shack close to the residence property, it might have considerable value to be able to stop it on any grounds. On the other hand, if I wanted to dispose of the property and my only market were one of the prohibited class, the covenant would be a disadvantage. The essence of the covenant scheme, of course, is that one accepts the disadvantages in order to have the advantages from restricting others.

In a matter of this kind, however, the most important thing, from my point of view, is that the members of the Court who render the decision are not open to the charge that they have been serving their own financial interests. You will recall that there was a time when New Dealers made a good deal of criticism, particularly of Mr. Justice Butler, on such grounds. I have never been able to accept the view that the "newly constructed Court," as it has been called, should adopt the same practices that we had condemned in the old.

A quorum of the Court is disinterested -- at least, financially -- in the results and I suppose the purpose of fixing a quorum at six was to provide for the possible disqualifications. Therefore, for myself, I decided it would be better not to sit.

With best wishes, I am

Sincerely yours,

cc: Justice Reed

February 17, 1948

Mr. Irving Brant,
116 Palm Way,
Kissimmee, Florida.

My dear Mr. Brant:

Thank you for your letter of January 26th in regard to my recusancy in the covenant cases. It has not been customary for a judge of this Court to state in the court order the reasons for his withdrawal from a case. Of course the assumption is that he has a personal interest that would make him subject to challenge by either party. As no provision is made in the statutes for the challenge of a judge of this Court by the parties, the judge must use his own discretion as to when he thinks he should not sit in a particular case. I grant that this is an unsatisfactory method, but at least it has the benediction of time.

It would seem to me unwise to depart from the practice in this case. I have not seen any statistics which indicate the amount of property that is covered by the various types of restricted covenants. I know, however, that it is large and that the properties are widely scattered throughout the nation. It would only underscore this fact if the Court practice of long standing were disregarded in this particular case.

I was glad to read that you were enjoying Florida and hope that you can stay there until Florida weather comes to Washington.

With all good wishes,

Faithfully yours,



cc Mr. Justice Jackson
Mr. Justice Rutledge