

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 25, 1964

Dear Tom:

The suggestions I had in mind for your Atlanta Motel that I mentioned yesterday were these:

1. Page 16. I fully agree that travellers on intrastate journeys are covered in the case of any motel which also caters to interstate transients. It is in that context that I understand you discuss the problem. But what of the case of the motel which deals exclusively with intrastate customers? Should that question be expressly laid to one side or should we go all out and say that this must be such a rare motel that it is swept within the congressional power to deal generally with local activities having a substantial and harmful effect upon commerce? Your present treatment lends itself to the latter reading and I am fully content with it. I had supposed that someone else, particularly John, might be concerned about it. If no one else is concerned perhaps we ought let sleeping dogs lie.

2. Page 18. As I said yesterday, I wondered whether the paragraph citing Continental Air Lines, Bob-Lo Excursion Co. and Corsi should be revised. They follow your treatment of the Due Process Clause and of course none of them was a Due Process case. Bob-Lo held that, on the facts of that case, state legislation was not barred by the Commerce Clause and Continental Air Lines held that state legislation was not pre-empted under the Commerce Clause by the federal legislation. Corsi is closer; it deals with freedom of association objections to a state statute. My thought was that there would be less basis for criticism if that paragraph were phrased to say that no attack on a state statute has succeeded in

either federal or state courts (with one possible exception, O'Meara, 365 P. 2d 1, which however went off on other grounds) but that significantly the litigants have placed primary reliance on Commerce Clause objections; indeed in Bob-Lo, the appellant expressly discarded the Due Process and Equal Protection attacks in this Court, see 333 U. S. 28, 34 and footnote 12. Thus the states have generally assumed to have the power to enact these statutes and, as the quote from Rock Royal shows, Due Process objections gain no more strength because the power applied is federal. I agree that your present treatment has the support of language in Thompson, 346 U. S. at 109, but the underpinning there was only a citation of Bob-Lo and Corsi without explanation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Clark.