Dear [Name],

I agree completely with your views about changing the introduction to the opinions in the expected judgment case. It is within the scope of the case and the issue at hand, as it is directly concerned.

[Signature]

Note: The date on the document is Oct. 1, 1971.
Dear Potter and Lewis:

It does seem fairly clear that the form of the introduction was confusing. I think the suggestion Lewis has made in his letter of September 29, 1976 is a good one and I join either that suggestion, or any modification that you prefer.

In view of the reference in footnote 51 on page 44 to "the limited grant", perhaps we should change the first full sentence on page 5 to read something like this:

"We granted the petitioner's application for a writ of certiorari limited to his challenge to the imposition . . . ."

Sincerely,

[Signature]

Mr. Justice Stewart
Mr. Justice Powell
Dear Henry:

As I think you know, a great deal of confusion - in the media and at the bar - was occasioned by the way in which these cases were announced and recorded in the slip opinions.

In recent discussions (and exchanges of notes) with Justices Stewart and Stevens, we are agreed that a change in the language now appearing in the slip opinions is desirable before these cases go into the U.S. Reports. Our suggestion is that the announcement of the opinions be reported as follows:

"STEWART, J., announced the judgment of the Court and delivered an opinion by STEWART, POWELL and STEVENS, JJ."

This formulation would be in accord with what is said at the end of the first paragraph of the syllabus:

"Held: The judgment is affirmed. Pp. 1150 (opinion of STEWART, POWELL and STEVENS, JJ.); * * *"

It may be that you will think of a more accurate statement. If so, I have been deputized by Justices Stewart and Stevens to discuss this with you. Otherwise, we would prefer the language set forth above.

With best wishes.

Sincerely,

Mr. Henry Putzel, jr.

cc: The Chief Justice
Mr. Justice Stewart
Mr. Justice Stevens
October 1, 1976

Capital Cases (1975 Term)

Dear Potter and John:

Mr. Putzel came to see me in response to my letter.

He agrees completely that the formulation in the slip opinions is misleading and without precedent. He suggested two alternatives, in addition to the one we suggested. I enclose his memorandum containing the three versions, each of which would be acceptable to Mr. Putzel.

He stated that both the Chief Justice and Byron took an interest last June in what the slip opinions said in this respect, and suggest that at least the Chief's approval should be obtained for any change.

I sent the Chief a copy of my earlier letter, and have not yet heard from him. Before going forward with the Chief, I would welcome your views as to which of the three suggestions (as attached) you like best.

I agree with Henry Putzel that each is a substantial improvement over what we now have. I am inclined, perhaps naturally, to have a slight preference for No. 3, but would be content with any one of them.

Sincerely,

Mr. Justice Stewart
Mr. Justice Stevens

Enc.
Judgment of the Court and opinion by MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS, announced by MR. JUSTICE STEWART.

(cf. 398 U.S. 25)

MR. JUSTICE STEWART announced the judgment of the Court and an opinion by MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS.

MR. JUSTICE STEWART announced the judgment of the Court and delivered an opinion by MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS.

#3 was suggested in my letter to Mr. Putzel of 10/1. #1 and #2 are variants suggested by Mr. Putzel for consideration. Each of these is acceptable to him. He agrees that the slip opinion formulation is confusing, and prefers one (or any) of the foregoing.
October 1, 1976

Capital Cases (1975 Term)

Dear Lewis,

Of Mr. Putzel's three alternative proposals, I rather prefer No. 1. This version, unlike the other two, puts the authors of the opinion first and thus minimizes, I think, the possibility of misunderstanding. My second choice would be No. 3.

Sincerely yours,

Mr. Justice Powell

Copy to Mr. Justice Stevens
October 4, 1976

Re: Capital Cases (1975 Term)

Dear Lewis:

I have the copy of your note to Henry Putzel concerning these cases.

I thought the recitals in the opinions were open to question at the time of circulation and so expressed myself to Henry and later to you. However, the responsibility was not mine beyond expressing my view.

Perhaps the matter may need consideration of the entire Court if any change concerning Byron's opinion is also in order; if so, all changes should be coordinated.

Regards,

Mr. Justice Powel

cc: Mr. Justice Stewart
    Mr. Justice White
    Mr. Justice Stevens
Judgment of the Court and opinion of MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS, announced by MR. JUSTICE STEWART.

(cf. 398 U.S. 25)

MR. JUSTICE STEWART announced the judgment of the Court and an opinion by MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS.

MR. JUSTICE STEWART announced the judgment of the Court and delivered an opinion by MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS.
October 4, 1976

Capital Cases (1975 Term)

Dear Lewis:

Any one of the three proposals is acceptable to me.

Respectfully,

Mr. Justice Powell

Copy to Mr. Justice Stewart
October 19, 1976

Capital Cases - 1975 Term

MEMORANDUM TO THE CONFERENCE:

Potter, John and I think a change is desirable in the way in which our opinions in these cases were announced and recorded in the slip opinions. No doubt each of you noted the resulting confusion in the media, and among lawyers and judges, as to "who had written what".

At the suggestion of my co-authors I have discussed this with Mr. Putzel and also the Chief Justice. Both agree - as the Chief put it - that "the recitals in the opinions were open to question". The slip opinion in Gregg, for example, states:

"STEWART, POWELL and STEVENS, JJ., announced the judgment of the Court and filed an opinion delivered by STEWART, J."

I would interpret this ambiguous language as probably meaning that the three of us spoke for the Court in announcing the judgment, but that the opinion was the product of a single Justice only.

In discussions with Mr. Putzel, he agreed that a change was desirable. One of his suggestions was as follows:

"Judgment of the Court, and opinion by MR. JUSTICE STEWART, MR. JUSTICE POWELL and MR. JUSTICE STEVENS, announced by MR. JUSTICE STEWART."

Mr. Putzel's suggestion is acceptable to Potter, John and me. I suppose the remainder of the recitals as to the opinions would remain the same unless one of the authors desires a change.

We would welcome suggestions or comments from any of our Brothers. Absent these, I will advise Mr. Putzel to make the change in the official reports.

L.F.P., Jr.
October 20, 1976

RE: CAPITAL CASES

Dear Lewis:

The change agreed upon with Mr. Putzel by Potter, John and yourself seems wholly appropriate to me.

Sincerely,

Mr. Justice Powell

cc: The Conference
October 21, 1976

Re: Capital Cases 1975 Term

Dear Lewis:

Although I think Henry Putzel could far more profitably have devoted his time to changing other parts of your opinions in these cases than the part which you discuss in your letter of October 19th, I have no objection to the change described in that letter.

Sincerely,

Mr. Justice Powell

Copies to the conference
November 4, 1976

Re: Capital Cases - 1975 Term

Dear Mr. Putzel:

The Conference has approved the following wording for the announcement of the capital cases:

"Judgment of the Court, and opinion by Mr. Justice Stewart, Mr. Justice Powell and Mr. Justice Stevens, announced by Mr. Justice Stewart."

Sincerely,

[Signature]

Mr. Henry Putzel, jr.

cc: Mr. Justice Stewart
    Mr. Justice Powell
November 4, 1976

Capital Cases - 1975 Term

Dear Henry:

This refers to our conversation concerning the recording of the "line-up" in these cases.

After due consultation we have agreed upon your suggestion as follows:

"Judgment of the Court, and opinion of MR. JUSTICE STEWART, MR. JUSTICE POWELL and MR. JUSTICE STEVENS, announced by MR. JUSTICE STEWART."

If you would make this change on behalf of Justice Stewart, Justice Stevens and myself we would appreciate it.

Sincerely,

Mr. Henry Putzel, jr.

cc: The Chief Justice
Mr. Justice Stewart
Mr. Justice Stevens