

October 21, 1986

Erwin N. Griswold, Esq.  
Jones, Day, Reavis & Poque  
1735 Eye Street, N.W.  
Washington, D.C. 20006

Professor Paul A. Freund  
Harvard Law School  
Cambridge, MA 02138

Professor Archibald Cox  
Harvard Law School  
Cambridge, MA 02138

Dear Professor Cox, Professor Freund and Former Dean Griswold:

All of you knew my cousin Mark Howe better than I, but he probaby had more influence on me. I date my legal career not from my first year at the Law School, but from taking his Soc. Sci. 7 as a freshman at the College. Unfortunately, he died the spring before I entered the Law School, and in the tumultuous years that followed I always felt that perhaps if he had lived he could have contributed uniquely to easing some of that tumult. Today I am engaged in a project of which he, I think, would have approved, and I find myself in need of some rather special assistance that the three of you are uniquely able to render. Accordingly, and with admitted hesitancy, I am writing to describe my project and to invite your help if you feel able to give it.

Enclosed as background is a copy of a current resume. More to the point, however, is the enclosed draft petition for certiorari. It describes

October 17, 1986

my project: a suit to determine the constitutionality of the current monetary system, and my problem: the refusal of the courts even to address the issues that I raise.

The inescapable truth is that the legal process has broken down on these issues. The "crits" might dispute this assertion; they probably would think me naive to have expected anything else. But can that possibly be the right answer and have the law mean anything?

My petition for certiorari, coming as it does from an individual citizen having no official position or national reputation, is too easy to ignore and deny, particularly given the face of the judicial record in the lower courts. It needs additional support. Accordingly, I ask you to consider whether my right to a considered judicial determination of the issues that I raise merits your support, and if so, whether you would be willing to file an amicus brief in support of this aspect of my petition. See Rule 36.1 of the Supreme Court Rules.

I am available at your convenience to discuss this matter further, and would be honored to be given the opportunity.

Sincerely yours,

Reginald H. Howe

RHH/blb  
Enclosures

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October 29, 1986

Reginald H. Howe, Esq.  
Suite 2200  
One Beacon Street  
Boston, Massachusetts 02108

Dear Mr. Howe,

Your letter of October 21st, with the accompanying copy of a Petition for Certiorari, has reached me this morning. I have read the material with much interest.

Although I appreciate the skill and energy with which you have proceeded in this matter, I do not feel that there is any way that I can participate in this matter. Although your contentions may have much economic or philosophical merit, it does not seem to me that there is any prospect that you can get the Supreme Court to consider them. The problem is, as I see it, essentially a "political" one, dealing, as it does, with a field into which courts have been very reluctant to enter. I doubt that there is really very much more to be said, on the legal side, after the decision in the Gold Clause case, 294 U.S. 240 (1935).

After all, what is so good about gold or silver? Why not diamonds, or soy beans? Is this not an area where the decision should be made by the political agencies of the government, that is, by the Congress and the President? After all, why do we have investment advisers?

I note that you have not cited the case of Flast v. Cohen, 392 U.S. 83 (1968). That might possibly be of some use to you on the "standing" question.

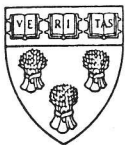
Thank you again for letting me see your materials.

With best wishes,

Very truly yours,

  
Erwin N. Griswold

cc: Professor Archibald Cox  
Professor Paul A. Freund



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November 5, 1986

Reginald H. Howe, Esquire  
Suite 2200  
One Beacon Street  
Boston, MA 02108

Dear Mr. Howe,

I appreciate your courtesy in inviting me to join you in challenging the validity of our abandoning the gold standard.

I find myself in full agreement with Erwin Griswold, who has shown me a copy of his letter to you, that the question as presented in the petition for certiorari is a political rather than a justiciable one. This view of the matter rests on both procedural and substantive grounds. Indeed the two grounds appear to coalesce: it is difficult to identify your standing apart from that of the undifferentiated mass of citizens, and for the citizenry at large it is an arguable question of policy whether they are better off with or without a nominal link between gold and the dollar. J. M. Keynes said somewhere that the only reason for the gold standard was as a safeguard lest all the managers of the currency should suddenly go mad at once.

Perhaps I am prejudiced by having participated on the Government's side in the Gold Clause cases. Without the complication of an explicit gold clause, the legal issue appears to me to have been effectively determined by the Legal Tender Cases. Whether the relationship between gold and the currency is settled officially by Gresham's law and the market or by a declaratory law of Congress and the float, the constitutional authority would seem to be the same.

I am sorry not to be able to be more cooperative.

Sincerely,

*Paul A. Freund*

Paul A. Freund

PF:EA

cc: Erwin N. Griswold  
Archibald Cox



HARVARD LAW SCHOOL

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November 7, 1986

Reginald Howe, Esq.  
One Beacon Street, Suite 2200  
Boston, MA 02108

Dear Mr. Howe:

This will acknowledge your letter of October 21 addressed to Dean Griswold as well as Prof. Freund and myself. I have read the draft petition for certiorari with considerable interest.

My commitments do not leave me anything like the time necessary to prepare a brief amicus curiae in support of your petition. I have long held the view that the many amicus briefs filed as little more than letters of endorsement are an unwarranted imposition on the court. Consequently, the only kind of brief I could consider filing would be the kind I would have no time to prepare.

As I write I have had the benefit of seeing Dean Griswold's comments. His letter seems to me to contain some sound observations.

With best wishes.

Sincerely,

Archibald Cox  
Archibald Cox *mc*

AC:mr  
Dictated but not signed.