Justices Black and Douglas Deny FRCP Story judicial Courts

“Mr. Justice Black and Mr. Justice Douglas are opposed to the submission of these rules (FRCP --ed) to the Congress under a statute which permits them to ‘take effect’ and to repeal ‘all laws in conflict with such rules’ without any affirmative consideration, action, or approval of the rules by Congress or by the President. ***We believe that while some of the rules are simply housekeeping details, many determine matters so substantially affecting the rights of litigants in lawsuits that in practical effect they are the equivalent of new legislation which, in our judgment, the Constitution requires to be initiated by the Congress and approved by the President. The Constitution, as we read it, provides that all laws shall be enacted by the House, the Senate, and the President, not by the mere failure of Congress to reject proposals of an outside agency*** ….”

Justices Black and Douglas dissenting from the adoption of

changes to the Federal Rules of Civil procedure

Members of the jury you are instructed that:

Dissent from changes to the FRCP 2 of 3

“***Even were not this constitutional limitation, the authorizing statute itself qualifies this Court’s power by imposing upon it a solemn responsibility not to submit rules that ‘abridge, enlarge, or modify any substantive right’ and by specifically charging the Court with the duty to ‘preserve the right to a trial by jury as at common law and as declared by the 7th Amendment to the Constitution‘. Our chief objection to the rules relate essentially to the fact that many of their provisions do “abridge, enlarge, or modify substantive rights” and do not preserve the right to trial by jury but actually encroach upon it***.”

Justices Black and Douglas dissenting from the adoption of

changes to the Federal Rules of Civil procedure

Members of the jury you are instructed that:

Dissent from changes to the FRCP 3 of 3

“… These suggestions chiefly center around rules that grant broad discretion to trial judges (FRCP 56 ?, FRCP 12(b)(6) ?? --ed) with reference to class suits, pretrial procedures, and dismissal of cases with prejudice. Cases coming before the federal courts over the years now filling nearly 40 volumes of Federal Rules Decisions show …***grievances … about the way many trial judges exercise their almost unlimited discretionary powers to use pretrial procedures to dismiss cases without trials. In fact, many of these cases indicate a belief of many judges and legal commentators that the cause of justice is best served in the long run not by trials on the merits but by summary dismissals based on out-of-court affidavits, pretrial depositions, and other pretrial techniques***. ***My belief is that open court trials on the merits where litigants have the right to prove their case or defense best comport with due process of law***.”

Justices Black and Douglas dissenting from the adoption of

changes to the Federal Rules of Civil procedure

Members of the jury you are instructed that:

***Mandatory*** existence of judicial courts 1 of 5

“Section 1584: in considering the first clause of the third section, declaring that “the judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the Congress may from time to time ordain and establish”, we are naturally led to the inquiry, whether congress possesses any discretion as to the creation of a Supreme Court and inferior courts, in whom the constitutional jurisdiction is to be vested. This was at one time a matter of much discussion; and it is ***vital*** to the existence of the judicial department. ***If Congress possess any discretion on this subject, it is obvious that the judiciary, as a co-ordinate department of government, may at the will of Congress, be annihilated, or stripped of all of its important jurisdiction*** …..”

***Story’s Commentaries on the Constitution (1833)***

Justice Joseph Story