

# The Burger Court Opinion Writing Database

*Nacirema Operating Co. v. Johnson*

396 U.S. 212 (1969)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

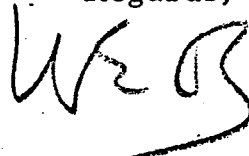
December 4, 1969

Re: Nos. 9 and 16 - Nacirema, Traynor v. Johnson

Dear Byron:

Please join me in your opinion.

Regards,

  
W.E.B.

Mr. Justice White

cc: The Conference

9816  
December second  
1969

Dear Hugo:

I think there were three of us who  
voted to affirm the Court of Appeals in  
Nos. 9 and 16 -- Nacirema Operating Co.  
v. Johnson and Traynor v. Johnson.

I have been hoping that you would  
undertake to write the dissent to White's  
opinion reversing the Court of Appeals.

William O. Douglas

Mr. Justice Black

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

Nos. 9 AND 16.—OCTOBER TERM, 1969

12/4/69

Nacirema Operating Co., Inc.,  
et al., Petitioners,

9

v.

William H. Johnson et al.

John P. Traynor and Jerry C.  
Oosting, Deputy Commis-  
sioners, Petitioners,

16

v.

William H. Johnson et al.

On Writs of Certiorari  
to the United States  
Court of Appeals for  
the Fourth Circuit.

[December —, 1969]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK  
and MR. JUSTICE BRENNAN concur, dissenting.

We dissent for the reasons stated by Judge Sobeloff speaking for the Court of Appeals sitting *en banc*. 398 F. 2d 900. As he says, the Longshoremen's and Harbor Workers' Compensation Act is not restricted to conventional "admiralty tort jurisdiction" but is "status oriented, reaching all injuries sustained by longshoremen in the course of their employment." The matter should be at rest after *Calbeck v. Travelers Ins. Co.*, 370 U. S. 114. In that suit under this Act we said that "Congress intended the Compensation Act to have a coverage co-extensive with the limits of its authority." *Id.*, at 130. Judge Sobeloff in the instant case, while answering the argument that *Calbeck* was not concerned with the meaning of "upon the navigable waters," referred to Judge Palmieri's opinion in *Michigan Mutual Liberty Co. v. Arrien*, 233 F. Supp. 496, 501, *aff'd*, 344 F. 2d 64:

"[w]hat is just as important as the actual holding in *Calbeck* is the general approach to the [Long-

December 2, 1940

For Nos. 9 and 10 - Macdowell, Traynor  
v. Johnson

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Dear Byron:

opinion. I fully agree with your very convincing

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference



Dear Mr. Justice Brennan: I am writing to you about the petition at the foot of your opinion. The Justice Brennan is in the news that in the narrow stated by Judge Sobeloff in his opinion for the Court 7 appeals, that Court's judgment should be affirmed on the authority of *Palko v. Tennessee* 302 US 114 (1932).

Attached  
Citing  
12/11/71

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 2, 1969

Nos. 9 & 16 - Nacirema v. Johnson

Dear Byron,

I am glad to join the opinion you have written  
for the Court in these cases.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Fortas  
Mr. Justice Marshall

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# SUPREME COURT OF THE UNITED STATES

From: White, J.

Nos. 9 AND 16.—OCTOBER TERM, 1969

Circulated: 12-1-69

Recirculated: \_\_\_\_\_

Nacirema Operating Co., Inc.,  
et al., Petitioners,

9 v.

William H. Johnson et al.

John P. Traynor and Jerry C.  
Oosting, Deputy Commis-  
sioners, Petitioners,

16 v.

William H. Johnson et al.

On Writs of Certiorari  
to the United States  
Court of Appeals for  
the Fourth Circuit.

[December —, 1969]

MR. JUSTICE WHITE delivered the opinion of the Court.

The single question of statutory construction presented by these cases is whether injuries to longshoremen occurring on piers permanently affixed to shore are compensable under the Longshoremen's and Harbor Workers' Compensation Act of 1927, 44 Stat. 1424, 33 U. S. C. §§ 901-950.

Johnson and Klosek were employed by the Nacirema Operating Company as longshoremen; Avery was similarly employed by the Old Dominion Stevedoring Corporation. All three men were engaged at the time of their accidents in performing similar operations as "slingers," attaching cargo from railroad cars located on piers<sup>1</sup> to ships' cranes for removal to the ships. Klosek was killed, and each of the other men was injured, when cargo hoisted by the ship's crane swung back and knocked him to the pier or crushed him against the side of the

<sup>1</sup>The piers involved extended from shore into the Patapsco River at Sparrows Point, Maryland, and into the Elizabeth River at Norfolk, Virginia.



STYLISTIC CHANGES THROUGHOUT.  
SEE PAGE 3

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Fortas  
Mr. Justice Marshall

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From: White, J.

SUPREME COURT OF THE UNITED STATES

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Nos. 9 AND 16.—OCTOBER TERM, 1969

Recirculated: 12-2-69

Nacirema Operating Co., Inc.,  
et al., Petitioners,

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pp 3, 4, 6, 10, 11

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Fortas  
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

From: White, J.

Nos. 9 AND 16.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_

Recirculated: 12-4-6

Nacirema Operating Co., Inc.,  
et al., Petitioners,

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William H. Johnson et al.

John P. Traynor and Jerry C.  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 3, 1969

Re: Nos. 9 and 16 - Nacirema; Traynor v. Johnson

Dear Byron:

Please join me.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference