

The Burger Court Opinion Writing Database

Gropi v. Wisconsin

400 U.S. 505 (January 25, 1971)

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

January 11, 1971

Re: No. 26 - Groppi v. Wisconsin

MEMORANDUM TO THE CONFERENCE:

Please note that Mr. Justice Black has reassigned the
above case to Mr. Justice Stewart.

WSB

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

CHAMBERS OF
THE CHIEF JUSTICE

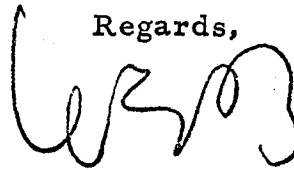
January 22, 1971

MEMORANDUM TO THE CONFERENCE:

Re: No. 26 -- Groppi v. Wisconsin

I note that Justice Stewart has now altered his opinion to direct a remand. This may lead Justice Black to change his dissent to concurrence. I will join both Justices Black and Blackmun and if time permits today I will add a few words or see if one of them will embrace my few words.

Regards,

A handwritten signature in dark ink, appearing to be "WJB", written in a cursive, flowing style.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: [redacted]

Circulated to: [redacted]

No. 26.—OCTOBER TERM, 1970 Received: [redacted]

James Edmund Groppi,
Appellant,
v.
State of Wisconsin. } On Appeal From the Supreme
Court of Wisconsin.

[January —, 1971]

MR. JUSTICE BLACK, dissenting.

I dissent from the Court's vacation of the judgment of conviction. I agree, of course, that this appellant is entitled to trial before an impartial jury. This right is guaranteed by the Sixth Amendment and made binding on the States by the Fourteenth. *Ante*, at —. *Parker v. Gladden*, 385 U. S. 363 (1966); See also *Adamson v. California*, 332 U. S. 46, 68 (1947) (dissenting opinion of MR. JUSTICE BLACK).

As the Wisconsin Supreme Court suggested, the right to trial before an impartial jury can be protected in many ways: by granting a continuance until community passions subside; by challenging jurors for cause and by preemptory challenges during *voir dire* proceedings. But it simply cannot be said that the right to trial by an impartial jury must necessarily include a right to change of venue. It may or may not be wiser to implement the Sixth Amendment by a change of venue ~~provision~~ provision, but in my view, the Constitution does not require it. If the usual devices for protection of the Sixth Amendment right to trial by an impartial jury are insufficient, the defendant can always be given a new trial on the grounds of jury prejudice.

The Court suggests that *Rideau v. Louisiana*, 373 U. S. 723 (1963), controls the disposition of this case. But

January 14, 1971

Dear Potter:

In No. 26 - Groppi v. Wisconsin,
you have written an excellent opinion, and
I am happy to join it.

W. O. D.

cc: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

January 18, 1971

Re: No. 26 - Cropp v. Wisconsin

Dear Potter:

I am glad to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

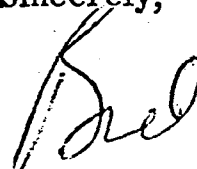
January 14, 1970

RE: No. 26 - Groppi v. Wisconsin

Dear Potter:

I think this is very good indeed and
I am happy to join it.

Sincerely,



W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2

SUPREME COURT OF THE UNITED STATES

No. 26.—OCTOBER TERM, 1970

From: Stewart, J.

Circulated: JAN 14 1971

James Edmund Groppi,
Appellant,
v.
State of Wisconsin.

On Appeal From the Supreme
Court of Wisconsin.

Regirculated: _____

[January —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

On August 31, 1967, during a period of civil disturbances in Milwaukee, Wisconsin, the appellant, a Roman Catholic priest, was arrested in that city on a charge of resisting arrest. Under Wisconsin law that offense is a misdemeanor, punishable by a fine of not more than \$500 or imprisonment in the county jail for not more than one year, or both.¹ After a series of continuances, the appellant was brought to trial before a jury in a Milwaukee County court on February 8, 1968. The first morning of the trial was occupied with qualifying the jurors, during the course of which the appellant exhausted all of his peremptory challenges.² The trial then proceeded, and at its conclusion the jury convicted the appellant as charged.

Prior to the trial, counsel for the appellant filed a motion for a change of venue from Milwaukee County "to a county where community prejudice against this defendant does not exist and where an impartial jury trial

¹ "Whoever knowingly resists or obstructs an officer while such officer is doing any act in his official capacity and with lawful authority, may be fined not more than \$500 or imprisoned not more than one year in county jail or both." Wis. Stat. § 946.41 (1) (1967).

² Apparently no transcript was made of the *voir dire* proceedings.

7

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

3

SUPREME COURT OF THE UNITED STATES

No. 26.—OCTOBER TERM, 1970

From: Stewart, J.

Circulated: _____

James Edmund Groppi,
 Appellant,
 v.
 State of Wisconsin.

On Appeal From the Supreme
 Court of Wisconsin.

Recirculated: _____

JAN 18 1971

[January —, 1971]

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² Apparently no transcript was made of the *voir dire* proceedings.

January 14, 1971

Re: No. 26 - Groppi v. Wisconsin

Dear Potter:

Please join me in your opinion
in this case.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1971

Re: No. 26 - Groppi v. Wisconsin

Dear Potter:

Please join me.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference

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January 18, 1971

Re: No. 26 - Groppi v. Wisconsin

Dear Potter:

If you do not mind too much, I believe that I shall write in concurrence. I hope to have this in your hands no later than Wednesday.

In view of the contents of footnote 13 in your opinion, do you think it would be advisable to "vacate" rather than to "reverse" the Wisconsin court's judgment? I may be over-technical here, but this was the phrase employed in Coleman v. Alabama, which is cited in footnote 13.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES Blackmun, J.

No. 26.—OCTOBER TERM, 1970

Circulated: 11/19/71

Recirculated: _____

James Edmund Groppi,
Appellant,
v.
State of Wisconsin.

On Appeal From the Supreme
Court of Wisconsin.

[January —, 1971]

MR. JUSTICE BLACKMUN, concurring.

I join in the Court's judgment that this conviction of Father Groppi must be vacated and the case remanded for further proceedings. In so doing, however, I feel compelled to make the following observations:

1. The basic issue, it seems to me, is whether the defendant received a fair trial, not whether, as a matter of abstract constitutional law, he was entitled to a change of venue in a Wisconsin misdemeanor prosecution in 1968.

2. A fair trial, of course, is fundamental. No one disputes that. As the Court points out in footnote 12 of its opinion, this principle of English-American jurisprudence was evolved prior to the embodiment of the treasured concepts of an impartial jury in the Sixth Amendment and of due process in the Fifth and Fourteenth.

3. If the defense believes that a fair trial is unlikely because of community prejudice, that is a matter for proof by the defense, and, when proved, should constitutionally warrant, and indeed demand, a change of venue in any case, whether the prosecution be for a felony or for a misdemeanor.

4. Thus, I find myself in agreement with the two dissenting Justices of the Supreme Court of Wisconsin and with that court's Chief Justice, in concurring in the result of the majority opinion, when the three conclude,

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