

The Burger Court Opinion Writing Database

Negre v. Larsen

401 U.S. 437 (1971)

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James F. Spriggs, II, Washington University

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 325.—OCTOBER TERM, 1970

Circulated: 2-12

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Louis A. Negre, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Stanley R. Larsen et al. } Appeals for the Ninth
Circuit.

[February —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

I approach the facts of this case with some diffidence, as they involve doctrines of the Catholic Church in which I was not raised. But we have on one of petitioner's briefs an authoritative lay Catholic scholar, Dr. John T. Noonan, Jr., and from that brief I deduce the following.

Under the doctrines of the Catholic Church a person has a moral duty to take part in wars declared by his government so long as they comply with the tests of his church for just wars.¹ Conversely, a Catholic has a moral duty not to participate in unjust wars.²

¹ The theological basis for this was explained by Pope John XXIII in Part II of *Pacem in Terris*, ¶ 46: "Human society can be neither well-ordered nor prosperous unless it has some people invested with legitimate authority to preserve its institutions. . . . These however derive their authority from God, as St. Paul teaches in the words, *There exists no authority except from God*. These words of St. Paul are explained thus by St. John Chrysostom: . . . *What I say is, that it is the divine wisdom and not mere chance, that has ordained that there should be government, that some should command and others obey*." ¶ 50 adds: "When in fact, men obey their rulers it is not at all as men that they obey them, but through their obedience it is God . . . since He has decreed that men's dealings with one another should be regulated by an order which He himself has established."

² "Since the right to command is required by the moral order and has its source in God, it follows that if civil authorities pass laws or command anything opposed to the moral order and consequently con-

6

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 325.—OCTOBER TERM, 1970

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3/16/71

[March —, 1971]

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February 16, 1971

Re: No. 325 - Negre v. Larsen

Dear Thurgood:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference