

The Burger Court Opinion Writing Database

Meltzer v. G. Buck LeCraw & Co.

402 U.S. 954 (1971)

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To: The Chief Justice
Mr. Justice Douglas
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

October Term, 1970

Circulated: **MAR 31 1971**

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MEMORANDUM FROM MR. JUSTICE BLACK

Re Nos. 5048, 5050, 5054, 5067, 5208, 5971, 6158, and 6374

[March 30, 1971]

Memorandum of MR. JUSTICE BLACK.

On March 2, 1971, this Court decided *Boddie v. Connecticut*, — U. S. —, holding that Connecticut could not consistently with the Due Process and Equal Protection Clauses deny access to its divorce courts to indigents unable to pay relatively small filing and service of process fees.¹ We now have eight other cases pending on appeal or on petition for writ of certiorari in which indigents were denied access to civil courts because of their poverty. In light of the *Boddie* decision, I would grant the petitions or note jurisdiction in each of these cases and set them for argument or reverse them summarily.

One case, *Sloatman v. Gibbons*, No. 5067, is distinguishable from *Boddie* only by the fact that Arizona permits an extension of time for an indigent to pay the statutory fee when filing for a divorce. *In re Garland*, No. 5971, involves the right of a bankrupt to file a

¹ The author of this Memorandum dissented in *Boddie v. Connecticut*, — U. S. — (1970), but now believes that if the decision in that case is to continue to be the law, it cannot and should not be restricted to persons seeking a divorce. It is bound to be expanded to all civil cases. Persons seeking a divorce are no different from other members of society who must resort to the judicial process for resolution of their disputes. Special favors cannot and should not be accorded to divorce litigants consistent with the Equal Protection Clause of the Constitution.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

October Term, 1970

Author: Douglas, J.

YVETTE MELTZER AND MARCY STINE v.
G. BUCK LECRAW & COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

No. 5048. Decided April —, 1971*

MR. JUSTICE DOUGLAS.

The facts of these cases are set out by MR. JUSTICE BLACK. All of them except *Kaufman* involve people who are denied access to the judicial process solely because of their indigency. *Kaufman* presents a distinctly different problem. There the State has commenced a civil suit to declare her an unfit mother and take five of her seven children away from her. The State is enforcing its view of proper public policy. That procedure has consequences for the citizen so great that it is hardly an extension to say the rationale of *Douglas v. California*, 372 U. S. 353, demands that she be provided counsel.

I believe a proper application of the Equal Protection Clause also requires that the access cases be reversed. Courts ought not be a private preserve for the affluent.

*Together with No. 5050, *Joyce Frederick et al. v. Irving Schwartz, Etc., et al.*, on appeal from the United States District Court of Connecticut; No. 5064, *Elmer Joseph Jagers v. Kentucky*, on petition for writ of certiorari to the Court of Appeals of Kentucky; No. 5208, *June Daniels Beverly v. Scotland Urban Enterprises, Inc.*, on appeal from the Supreme Court of Louisiana; No. 5971, *In the Matter of Athen Carlton Garland et al.*, on petition for writ of certiorari to the United States Court of Appeals, First Circuit; No. 6158, *Donald Lindsey et al. v. Dorothea M. Normet et al.*, on appeal from the United States District Court for the District of Oregon; and No. 6375, *Constance Kaufman v. Leland C. Carter, Chief Probation Officer, Etc.*, on petition for writ of certiorari to the Court of Appeals of California, Second Appellate District.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

October Term, 1970

From: Douglas, J.

YVETTE MELTZER AND MARCY STINE v.

G. BUCK LECRAW & COMPANY

Circulated: _____

Recirculated: 4-5

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

No. 5048. Decided April —, 1971*

MR. JUSTICE DOUGLAS.

The facts of these cases are set out by MR. JUSTICE BLACK. All of them except *Kaufman* involve people who are denied access to the judicial process solely because of their indigency. *Kaufman* presents a distinctly different problem. There the State has commenced a civil suit to declare her an unfit mother and take five of her seven children away from her. The State is enforcing its view of proper public policy. That procedure has consequences for the citizen so great that it is hardly an extension to say the rationale of *Douglas v. California*, 372 U. S. 353, demands that she be provided counsel. I would grant and reverse in this case.

I believe a proper application of the Equal Protection Clause also requires that the access cases be reversed. Courts ought not be a private preserve for the affluent. All of these cases contain an invidious discrimination based on poverty, a suspect legislative classification. See

*Together with No. 5050, *Joyce Frederick et al. v. Irving Schwartz, Etc., et al.*, on appeal from the United States District Court of Connecticut; No. 5208, *June Daniels Beverly v. Scotland Urban Enterprises, Inc.*, on appeal from the Supreme Court of Louisiana; No. 5971, *In the Matter of Athen Carlton Garland et al.*, on petition for writ of certiorari to the United States Court of Appeals, First Circuit; No. 5054, *Bourbeau v. Lancaster*; and No. 6375, *Constance Kaufman v. Leland C. Carter, Chief Probation Officer, Etc.*, on petition for writ of certiorari to the Court of Appeals of California, Second Appellate District.

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

October Term, 1970

From: Douglas, J.

YVETTE MELTZER AND MARCY STINE v.
G. BUCK LECRAW & COMPANY

4/16/71

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

No. 5048. Decided April —, 1971*

MR. JUSTICE DOUGLAS.

The facts of these cases are set out by MR. JUSTICE BLACK. All of them except *Kaufman* involve people who are denied access to the judicial process solely because of their indigency. *Kaufman* presents a distinctly different problem. There the State commenced a civil suit in 1963, declared her an unfit mother and took five of her seven children away from her. The status of the children is reviewed annually as required by state law. She did not initially seek counsel; but in the 1968 review proceedings she did. The State is enforcing its view of proper public policy. That procedure has consequences for the citizen so great that it is hardly an extension to say the rationale of *Douglas v. California*, 372 U. S. 353, demands that she be provided counsel. I would grant and reverse in this case.

*Together with No. 5050, *Joyce Frederick et al. v. Irving Schwartz, Etc., et al.*, on appeal from the United States District Court of Connecticut; No. 5208, *June Daniels Beverly v. Scotland Urban Enterprises, Inc.*, on appeal from the Supreme Court of Louisiana; No. 5971, *In the Matter of Athen Carlton Garland et al.*, on petition for writ of certiorari to the United States Court of Appeals, First Circuit; No. 5054, *Bourbeau v. Lancaster*, on petition for writ of certiorari to the Superior Court, Fairfield County, Conn.; and No. 6375, *Constance Kaufman v. Leland C. Carter, Chief Probation Officer, Etc.*, on petition for writ of certiorari to the Court of Appeals of California, Second Appellate District.

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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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

October Term, 1970

YVETTE MELTZER AND MARCY STINE v.
G. BUCK LECRAW & COMPANY

4/17/71

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

No. 5048. Decided April —, 1971*

MR. JUSTICE DOUGLAS.

The facts of these cases are set out by MR. JUSTICE BLACK. All of them except *Kaufman* involve people who are denied access to the judicial process solely because of their indigency. *Kaufman* presents a distinctly different problem. There the State commenced a civil suit in 1963, declared her an unfit mother and took five of her seven children away from her. The status of the children is reviewed annually as required by state law. She did not initially seek counsel; but in the 1968 review proceedings she did. The State is enforcing its view of proper public policy. That procedure has consequences for the citizen so great that it is hardly an extension to say the rationale of *Douglas v. California*, 372 U. S. 353, demands that she be provided counsel. I would grant and reverse in this case.

*Together with No. 5050, *Joyce Frederick et al. v. Irving Schwartz, Etc., et al.*, on appeal from the United States District Court of Connecticut; No. 5208, *June Daniels Beverly v. Scotland Urban Enterprises, Inc.*, on appeal from the Supreme Court of Louisiana; No. 5971, *In the Matter of Athen Carlton Garland et al.*, on petition for writ of certiorari to the United States Court of Appeals, First Circuit; No. 5054, *Bourbeau v. Lancaster*, on petition for writ of certiorari to the Superior Court, Fairfield County, Conn.; and No. 6375, *Constance Kaufman v. Leland C. Carter, Chief Probation Officer, Etc.*, on petition for writ of certiorari to the Court of Appeals of California, Second Appellate District.

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES *as, J.*

October Term, 1970 Circulated: _____

YVETTE MELTZER AND MARCY STINE *Re: 4-29*
G. BUCK LECRAW & COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

No. 5048. Decided May 3, 1971*

MR. JUSTICE DOUGLAS.

The facts of these cases are set out by MR. JUSTICE BLACK. All of them except *Kaufman* involve people who are denied access to the judicial process solely because of their indigency. *Kaufman* presents a distinctly different problem. There the State commenced a civil suit in 1963, declared her an unfit mother and took five of her seven children away from her. The status of the children is reviewed annually as required by state law. She did not initially seek counsel; but in the 1968 review proceedings she did. The State is enforcing its view of proper public policy. That procedure has consequences for the citizen so great that it is hardly an extension to say the rationale of *Douglas v. California*, 372 U. S. 353, demands that she be provided counsel. I would grant and reverse in this case.

I believe a proper application of the Equal Protection Clause also requires that the access cases be reversed.

Deletion
*Together with No. 5208, *June Daniels Beverly v. Scotland Urban Enterprises, Inc.*, on appeal from the Supreme Court of Louisiana; No. 5971, *In the Matter of Athen Carlton Garland et al.*, on petition for writ of certiorari to the United States Court of Appeals, First Circuit; No. 5054, *Bourbeau v. Lancaster*, on petition for writ of certiorari to the Superior Court, Fairfield County, Conn.; and No. 6375, *Constance Kaufman v. Leland C. Carter, Chief Probation Officer, Etc.*, on petition for writ of certiorari to the Court of Appeals of California, Second Appellate District.