

# The Burger Court Opinion Writing Database

*Mayer v. Chicago*

404 U.S. 189 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



1/ *W*  
To: ~~Mr. Justice Black~~  
Mr. Justice Douglas  
~~Mr. Justice Harlan~~  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

No. 70-5040 -- Jack L. Mayer v. City of Chicago

MR. CHIEF JUSTICE BURGER, concurring.

From: The Clerk of Justice

Circulated: DEC 7 1971

I concur but add these observations chiefly to underscore that there  
Recirculated:  
are alternatives in the majority of cases to a full verbatim transcript of an entire trial. The references to what was said in Draper v. Washington, supra, emphasize the duty of counsel as officers of the Court to seek only what is needed. In most cases, unlike this one, the essential facts are not in dispute, or if there is dispute it centers on certain limited aspects of the case. One need only examine briefs in appeals to see that at the appellate state the area of conflict on the facts is generally narrow.

Every busy court is plagued with excessive demands for free transcripts in criminal cases. 1/ My own experience over the years indicates

1/

It is not the increase in number of requested transcripts alone which has resulted in delay. The delay has been caused by the combination of this increase with the failure of the system to increase its ability to produce transcripts. Cf. Committee of Section of Criminal Law of American Bar Association, Appellate Delay in Criminal Cases: A Report, 2 Am Crim. L. Q. 150, 153 (1964). In the typical situation in federal courts the reporter is an independent contractor selected by the government to make a verbatim record of the entire proceedings. In some states the court reporter is an employee. In most systems the reporter independently contracts with the parties to transcribe the record at a certain fee per page. Although courts have supervisory power over the reporter, administration of the transcribing of the notes is often left largely if not completely to the discretion of the reporter. With the enormous increase in criminal cases, reporters are often

(continued on next page)

3 A

To: Mr. Justice Black  
 Mr. Justice Douglas  
 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

\_\_\_\_\_  
 No. 70-5040  
 \_\_\_\_\_

From: The Chief Justice

Circulated: 12/11/71

Jack L. Mayer, Appellant. } On Appeal from the ~~Re~~ Circulated: \_\_\_\_\_  
 v. \_\_\_\_\_  
 City of Chicago. } Supreme Court of Illinois.

[December —, 1971]

MR. CHIEF JUSTICE BURGER, concurring.

372 U.S. 487 (1963),  
 on appeal, 1  
 8/

I join the Court's opinion but add these observations chiefly to underscore that there are alternatives in the majority of cases to a full verbatim transcript of an entire trial. The references to what was said in *Draper v. Washington*, *supra*, emphasize the duty of counsel as officers of the Court to seek only what is needed. In most cases, unlike this one, the essential facts are not in dispute, or if there is dispute it centers on certain limited aspects of the case. One need only examine briefs in appeals to see that at the appellate stage the area of conflict on the facts is generally narrow.

Every busy court is plagued with excessive demands for free transcripts in criminal cases.<sup>1</sup> My own experi-

<sup>1</sup> It is not the increase in number of requested transcripts alone which has resulted in delay. The delay has been caused by the combination of this increase with the failure of the system to increase its ability to produce transcripts. Cf. Committee of Section of Criminal Law of American Bar Association, Appellate Delay in Criminal Cases: A Report, 2 Am. Crim. L. Q. 150, 153 (1964). In the typical situation in federal courts the reporter is an independent contractor selected by the government to make a verbatim record of the entire proceedings. In some States the court reporter is an employee. In most systems the reporter independently contracts with the parties to transcribe the record at a certain fee per page. Although courts have supervisory power over the reporter, administration of the transcribing of the notes is often left largely if not completely to the discretion of the reporter. See generally Admin-

✓ Mr. Justice White  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun

From: Brennan, J.

1st DRAFT

Circulated: 11-3-71

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

No. 70-5040

Jack L. Mayer, Appellant, v. On Appeal from the Supreme Court of Illinois.  
 City of Chicago.

[November —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in the Circuit Court of Cook County, Illinois, convicted appellant on nonfelony charges of disorderly conduct and interference with a police officer in violation of ordinances of the City of Chicago. He was sentenced to a \$250 fine on each offense; violation of each ordinance carried a maximum penalty of \$500. Desiring to appeal, he petitioned the Circuit Court for a free transcript of the proceedings of his trial to support his grounds of appeal that the evidence was insufficient for conviction, and that misconduct of the prosecutor denied him a fair trial.<sup>1</sup> The Circuit Court

<sup>1</sup> Illinois provides court reporters in all trials in the Circuit Courts. 37 Ill. Rev. Stat. § 6651 *et seq.* (Smith-Hurd ed., 1970). See, e. g., Circuit Court of Cook County, General Order No. 17.6, "Official Court Reporter." It was estimated that the cost of preparing a transcript in this case would be \$300. The record refers in some places to a two-day trial and in other places to a three-day trial.

Under Illinois law an appeal lies as of right either to the Illinois Supreme Court or to the Illinois Appellate Court, depending upon the nature of the case or the contentions raised. See Illinois Constitution of 1870, Art. 6, §§ 5, 7. If a case is erroneously appealed to the wrong court, it is transferred to the proper court without any loss of rights. Illinois Supreme Court Rule 365, 110A Ill. Rev. Stat.

SP — *list of changes throughout*  
See Page 6.

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

2nd DRAFT

From: Brennan, J.

**SUPREME COURT OF THE UNITED STATES**

Plated: \_\_\_\_\_  
No. 70-5040  
Recirculated: 1/2/71

Jack L. Mayer, Appellant, v. On Appeal from the Supreme Court of Illinois.  
City of Chicago.

[November —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in the Circuit Court of Cook County, Illinois, convicted appellant on nonfelony charges of disorderly conduct and interference with a police officer in violation of ordinances of the City of Chicago. He was sentenced to a \$250 fine on each offense; violation of each ordinance carried a maximum penalty of \$500. Desiring to appeal, he petitioned the Circuit Court for a free transcript of the proceedings of his trial to support his grounds of appeal that the evidence was insufficient for conviction, and that misconduct of the prosecutor denied him a fair trial.<sup>1</sup> The Circuit Court

<sup>1</sup> A court reporter was provided at appellant's trial pursuant to the State Court Reporters Act, Ill. Rev. Stat., c. 37, §§ 651 *et seq.* (State Bar Assoc. ed., 1969). It was estimated that the cost of preparing a transcript would be \$300. The record refers in some places to a two-day trial and in other places to a three-day trial.

Under Illinois law at the time of appellant's convictions an appeal lay as of right either to the Illinois Supreme Court or to the Illinois Appellate Court, depending upon the nature of the case or the contentions raised. See Constitution of Illinois 1870, Art. 6, §§ 5, 7, 1 Ill. Rev. Stats. (State Bar Assoc. ed., 1969). If a case was erroneously appealed to the wrong court, it was transferred to the proper court without any loss of right. Illinois Supreme Court Rule 365, Ill. Rev. Stat., c. 110A, § 365 (State Bar Assoc. ed., 1969). Of

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

3rd DRAFT

From: Brennan, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated:

No. 70-5040

Recirculated: 11/17/71

Jack L. Mayer, Appellant, } On Appeal from the Su-  
v. } preme Court of Illinois.  
City of Chicago.

[November —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in the Circuit Court of Cook County, Illinois, convicted appellant on nonfelony charges of disorderly conduct and interference with a police officer in violation of ordinances of the City of Chicago. He was sentenced to a \$250 fine on each offense; violation of each ordinance carried a maximum penalty of \$500. Desiring to appeal, he petitioned the Circuit Court for a free transcript of the proceedings of his trial to support his grounds of appeal that the evidence was insufficient for conviction and that misconduct of the prosecutor denied him a fair trial.<sup>1</sup> The Circuit Court

<sup>1</sup> A court reporter was provided at appellant's trial pursuant to the State Court Reporters Act, Ill. Rev. Stat., c. 37, §§ 651 *et seq.* (State Bar Assoc. ed., 1969). It was estimated that the cost of preparing a transcript would be \$300. The record refers in some places to a two-day trial and in other places to a three-day trial.

Under Illinois law at the time of appellant's convictions an appeal lay as of right either to the Illinois Supreme Court or to the Illinois Appellate Court, depending upon the nature of the case or the contentions raised. See Constitution of Illinois 1870, Art. 6, §§ 5, 7, 1 Ill. Rev. Stats. (State Bar Assoc. ed., 1969). If a case was erroneously appealed to the wrong court, it was transferred to the proper court without any loss of rights. Illinois Supreme Court Rule 365, Ill. Rev. Stat., c. 110A, § 365 (State Bar Assoc. ed., 1969). Of

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 30, 1971

50-5040  
File

RE: No. 70-5048 - Warden v. Jankowski  
No. 70-5092 - Colbert v. California

These two cases were held for No. 70-5040 - Mayer v. City of Chicago which we handed down on December 13. We sent the case back to the Illinois Supreme Court to determine whether petitioner was entitled to a trial transcript in a non-felony cases in light of Supreme Court Rules providing for substitutes.

I think both the held cases should be granted and remanded for reconsideration in light of Mayer.

No. 70-5048 - Warden v. Jankowski is also from Illinois and presents the identical question decided in Mayer.

No. 70-5092 - Colbert v. California is from California and presents the question whether, contrary to our holding in Mayer, the petitioner was held to carry the burden of proof to show that a substitute to a transcript is inadequate for the purposes of his appeal.

W. J. B. Jr.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 4, 1971

No. 70-5040 -- Mayer v. Chicago

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

SP

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 5, 1971

Re: No. 70-5040 - Mayer v. Chicago

Dear Bill:

Please join me.

Sincerely,

*Byron*

Mr. Justice Brennan

Copies to Conference

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

*No reply  
from Chief Justice  
14 R P*

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

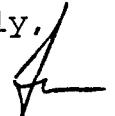
November 3, 1971

Re: No. 70-5040 - Mayer v. Chicago

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: The Conference

AP

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 16, 1971

Re: No. 70-5040 - Mayer v. Chicago

Dear Bill:

Would you please add the following at the end  
of your proposed opinion"

"MR. JUSTICE BLACKMUN, concurring.

I concur in the opinion and judgment of  
the Court. I merely add an observation:  
The record indicates that in 1969, when the  
charges were brought against the petitioner  
and he asserted his indigency, he was a third  
year student in New York University Medical  
School. Perhaps, in the intervening two  
years, the petitioner has completed his pro-  
fessional training. Perhaps by now he is  
even licensed and is earning his living. If  
so, these will be factors to be considered by  
the Illinois courts on remand."

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference