

The Burger Court Opinion Writing Database

Picard v. Connor

404 U.S. 270 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B M

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

CHAMBERS OF
THE CHIEF JUSTICE

December 10, 1971

Re: No. 70-96 - Picard v. Connor

Dear Bill:

Please join me.

Regards,



Mr. Justice Brennan

cc: The Conference

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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

2nd DRAFT

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

Held

Circulated: *12/18/71*
No. 70-96

Circulated: *12/18/71*

Philip J. Picard, Petitioner, } On Writ of Certiorari to
v. James J. Connor. } the United States Court
of Appeals for the First
Circuit.

[December —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

With all respect, I think that in this case we carry the rule of exhaustion of state remedies too far. Connor's name was added to the indictment after it was returned by the state grand jury, he being substituted for "John Doe." He raised in his brief before the Supreme Judicial Court of Massachusetts his claim that such a substitution violated that due process required by the Fourteenth Amendment "in that he was put to trial without having been indicted by a Grand Jury." He did not refer to the Equal Protection Clause which is also a part of the Fourteenth Amendment. But that is a nicety irrelevant to the maintenance of healthy state-federal relations on which the Court makes the present decision turn. The concept of due process is broad and expansive. We have held that the denial of equal protection, *viz.* invidious discrimination, may be "so unjustifiable as to be violative of due process." *Bolling v. Sharpe*, 347 U. S. 497, 499.

Yet apart from that, a due process point is plainly raised where an accused claims that no grand jury found "probable cause" to indict him, that their only finding concerned someone unknown at the time.

3rd DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 70-96
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Philip J. Picard, Petitioner, } On Writ of Certiorari to
v. } the United States Court
James J. Connor. } of Appeals for the First
Circuit.

[December —, 1971]

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¹ The Court properly says that respondent tendered the validity of the *Gedzuim* case to the Supreme Judicial Court of Massachusetts. That, however, was in his first assignment of error. But in his third and fourth assignments of error he alleged that he was prosecuted "in violation of his conditional right to due process in that he was put to trial without having been indicted by a Grand Jury."

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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

From: Douglas, J.

No. 70-96

Circulated:

Philip J. Picard, Petitioner, } On Writ of Certiorari to
v. } the United States Court
James J. Connor. } of Appeals for the First
Circuit.

Circulated:

12/11/71

[December —, 1971]

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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 William

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-96

Circulated:

Recirculated: 12-13

Philip J. Picard, Petitioner, } On Writ of Certiorari to
v. James J. Connor. } the United States Court
of Appeals for the First
Circuit.

[December —, 1971]

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S M
6th DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 70-96

Philip J. Picard, Petitioner, } On Writ of Certiorari to
v. } the United States Court
James J. Connor. } of Appeals for the First
Circuit.

[December —, 1971]

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12/14
Held for
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1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 70-96

From: Brennan, J.

Circulated: 12/3/71

Philip J. Picard, Petitioner, } On Writ of ~~Ex parte~~ ^{Ex parte} Petition to: _____
v. _____
James J. Connor. } the United States Court
of Appeals for the First
Circuit.

[December —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Court of Appeals for the First Circuit, reversing the District Court's dismissal of respondent's petition for a writ of federal habeas corpus,¹ held that "the procedure by which [respondent] was brought to trial deprived him of the Fourteenth Amendment's guarantee of equal protection of the laws." 434 F. 2d 673, 674 (1970). The Court of Appeals acknowledged that respondent had not attacked his conviction on the equal protection ground, either in the state courts or in his federal habeas petition:

"[Respondent] did not present the constitutional question to the Massachusetts court in the particular focus in which this opinion is directed. We suggested it when the case reached us, and invited the Commonwealth to file a supplemental brief. Not unnaturally its first contention was to assert that [respondent] had not exhausted his state remedy"

The Court of Appeals rejected that contention and held that respondent has exhausted available state judicial

¹ 308 F. Supp. 843 (Mass. 1970).

Please sign me
PP 3/14

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

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated: 12/9/71

No. 70-96

Philip J. Picard, Petitioner, } On Writ of Certiorari to
v. } the United States Court
James J. Connor. } of Appeals for the First
Circuit.

[December —, 1971]

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¹ 308 F. Supp. 843 (Mass. 1970).

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 6, 1971

70-96 - Picard v. Connor

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

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 6, 1971

Re: No. 70-96 - Picard v. Connor

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

• Wm Douglas
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70-96

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 10, 1971

Re: No. 70-96 - Picard v. Connor

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 7, 1971

Re: No. 70-96 - Picard v. Connor

Dear Bill:

Please join me.

Sincerely,

HB

Mr. Justice Brennan

cc: The Conference