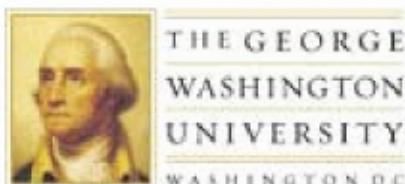


# The Burger Court Opinion Writing Database

*Sampson v. Murray*  
415 U.S. 61 (1974)

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

March 1, 1973

Re: No. 72-403 - Kunzig v. Murray

Dear Bill:

Please join me.

Regards,

WB B

Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: Douglas, J.

Circulated: 3-5-73

**SUPREME COURT OF THE UNITED STATES**

ROBERT L. KUNZIG, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL.  
*v.* JEANNE M. MURRAY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-403. Decided March —, 1973

MR. JUSTICE DOUGLAS, dissenting.

The majority today largely insulates from judicial scrutiny the day-to-day implementation of employment regulations and policies of the federal bureaucracy. It does this by cutting back on the federal courts' traditional equity power to preserve the status quo pending the final determination of a litigant's claims. *Scripps-Howard Radio, Inc. v. FCC*, 316 U. S. 4, 9-10.

It is true that Mrs. Murray may be able to seek judicial review of an adverse decision of the Civil Service Commission, but the District Court will be presented with a *fait accompli*—Mrs. Murray already will have been discharged, possibly in violation of her procedural rights under Civil Service Commission regulations. And, even if Mrs. Murray secures a favorable decision from the Commission, she will have been discharged in the interim. The Solicitor General, recognizing that employees must be protected against wrongful discharge, argues that the backpay provisions of 5 U. S. C. § 5596 afford an adequate remedy to make the employee whole and that this remedy should be exclusive. This is a gross oversimplification. An employee who is fired often suffers a permanent scar on his reputation and employment record, whether or not he is subsequently reinstated. This blot may well affect his future currency in the employment market. Nor can we lose sight of the fact that relatively



2nd DRAFT

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: [redacted]

SUPREME COURT OF THE UNITED STATES

ROBERT L. KUNZIG, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL. *Circulated:*

v. JEANNE M. MURRAY *Recirculated: 3-6-73*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-403. Decided March —, 1973

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

The majority today largely insulates from judicial scrutiny the day-to-day implementation of employment regulations and policies of the federal bureaucracy. It does this by cutting back on the federal courts' traditional equity power to preserve the status quo pending the final determination of a litigant's claims. *Scripps-Howard Radio, Inc. v. FCC*, 316 U. S. 4, 9-10.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 5, 1973

RE: No. 72-403 Kunzig v. Murray

Dear Bill:

Please join me in your dissenting  
opinion in the above.

Sincerely,

*Bill*

Mr. Justice Douglas

cc: The Conference

2nd DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES, J.

ROBERT L. KUNZIG, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION,  
*Recirculated:* FEB 27 1973

*v.* JEANNE M. MURRAY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-403. Decided March —, 1973

MR. JUSTICE STEWART, dissenting.

The respondent, a probationary employee of the General Services Administration (GSA), received written notice on Thursday, May 20, 1971, that her employment would be terminated at the end of the following week. When a probationary employee is terminated for conduct occurring during the probationary period, the Civil Service regulations require only written notice of the effective date of separation together with a statement of the agency's conclusion with respect to the inadequacies of the employee's conduct. More detailed procedures for advance notice and an opportunity to be heard are required when termination is based in whole or in part upon conditions arising before the probationary period. Compare 5 CFR § 315.804, with 5 CFR § 315.805.

When the respondent's attorneys discussed her termination with an official of the GSA, they were shown a memorandum containing derogatory information concerning the respondent's conduct before her employment by the GSA. Although this information indicated that her discharge may have been based upon matters arising prior to her probationary employment, the respondent was informed that she would not be afforded a hearing or the additional procedural rights that are mandated for terminations based on preprobationary conduct. After appealing to the Civil Service Commission and receiving indi-

— 3-4, 6, 8, 9

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun ✓  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: Stewart, J.

## SUPREME COURT OF THE UNITED STATES

ROBERT L. KUNZIG, ADMINISTRATOR GEN-  
ERAL SERVICES ADMINISTRATION, ET AL.

v. JEANNE M. MURRAY Recirculated: MAR 5 1973

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT

No. 72-403. Decided March —, 1973

MR. JUSTICE STEWART, with whom MR. JUSTICE MAR-  
SHALL joins, dissenting.

The respondent, a probationary employee of the General Services Administration (GSA), received written notice on Thursday, May 20, 1971, that her employment would be terminated at the end of the following week. When a probationary employee is terminated for conduct occurring during the probationary period, the Civil Service regulations require only written notice of the effective date of separation together with a statement of the agency's conclusion with respect to the inadequacies of the employee's conduct. More detailed procedures for advance notice and an opportunity to be heard are required when termination is based in whole or in part upon conditions arising before the probationary period. Compare 5 CFR § 315.804, with 5 CFR § 315.805.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 28, 1973

Re: No. 72-403 - Kunzig v. Murray

Dear Bill:

Join me, please.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 5, 1973

Re: No. 72-403 - Kunzig v. Murray

Dear Potter:

Please join me in your dissent.

Sincerely,

  
T.M.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 28, 1973

Re: No. 72-403 - Kunzig v. Murray

Dear Bill:

Please join me in the per curiam you propose for this  
case.

Sincerely,

*H. A. B.*

Mr. Justice Rehnquist

Copies to the Conference

March 15, 1973

No. 72-403 Kunzig v. Murray

Dear Bill:

Please join me.

Sincerely,

LFP

Mr. Justice Rehnquist

cc: The Conference

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

1st DRAFT

72-6757

SUPREME COURT OF THE UNITED STATES: Rehnquist, J.

ROBERT L. KUNZIG, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL  
v. JEANNE M. MURRAY

Circulated: 2/27/73

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

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-403. Decided March —, 1973

PER CURIAM.

Respondent is a probationary employee of petitioner General Services Administration. On May 20, 1971, she received written notice that her employment with the agency would be terminated effective May 29th. Under the applicable regulations of the Civil Service Commission, a probationary employee whose employment is terminated for conduct occurring during the probationary period is entitled only to written notice of the effective date of his separation and the "agency's conclusions as to the inadequacies of his performance or conduct."<sup>1</sup> If the termination decision is based in part on events arising prior to the probationary employment, however, the employee must in addition be given specified advance written notice detailing the reasons for the proposed termination, and an opportunity to file a written answer and to furnish affidavits in support of such answer. Where preprobationary conduct is relied upon, the agency is required to consider the employee's answer in reaching its final decision with respect to the termination.<sup>2</sup>

The regulations in question allow the employee to appeal termination to the Civil Service Commission in cases where the employee alleges that the termination has not complied with the applicable federal law and

<sup>1</sup> 5 CFR § 315.804 (1969).

<sup>2</sup> *Id.*, at § 315.805 (a)(b).

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5-6  
To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

2nd DRAFT

From: Rehnquist, J.

Circulated:

SUPREME COURT OF THE UNITED STATES

Recirculated: 3/2

ROBERT L. KUNZIG, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL.  
v. JEANNE M. MURRAY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-403. Decided March —, 1973

PER CURIAM.

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<sup>2</sup> *Id.*, at §§ 315.805 (a), (b).