The Burger Court Opinion Writing Database

Allee v. Medrano

416 U.S. 802 (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

November 17, 1973

Re: 72-1125 - Allee v. Medrano

MEMORANDUM TO THE CONFERENCE:

On this case I indicated I leaned to reverse but would come down finally by Saturday.

On further study I conclude (a) that the District Court was wrong on the constitutional holding and (b) that there being no challenge to the findings, they should be accepted.

I therefore vote to affirm.

Regards,

WEB

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. | On Appeal from the United States District Court for the Southern District of Texas.

[January —, 1974]

Memorandum to the Conference from THE CHIEF JUSTICE.

Upon further deliberation I find that I cannot vote to affirm the judgment of the District Court. I offer the thoughts expressed in this memorandum for consideration by the Conference, and would welcome any comments which might relate to some of the problems I have come across in trying to wrestle with this case.

The District Court basically granted three forms of relief:

(1) The Court declared five statutes unconstitutional in whole or in part: Tex. Rev. Civ. Stat. Art. 5154 (d), which defines and prohibits in the section declared unconstitutional mass picketing; Tex. Rev. Stat. Art. 5154 (f), which prohibits, as defined, secondary strikes, picketing, and boycotts; Tex. Penal Code Art. 439, which defines unlawful assembly, which offense is punishable under other articles according to the unlawful act for the aiding of which by violence or otherwise persons assemble; Tex. Penal Code Art. 474, the disturbing the peace statute; and, Tex. Penal Code Art. 482, which makes abusive language unlawful.

(2) In addition to declaring the statutes unconstitutional, the District Court enjoined the enforcement thereof by all the defendants below (five of whom are

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

From: The Chief Justice

Circulated: _____

Recirculated: JAN 14 1974

DRAFT SUPPLEMENTAL MEMORANDUM TO THE CONFERENCE IN RE: No. 72-1125 - ALLEE v. MEDRANO

In my original memorandum to the Conference I proposed alternative ways of dealing with the District Court's injunction against police misconduct (paragraph 16 of its Final Judgment) on the assumption that this Court had jurisdiction to review the matter. I expressed my view that I could not affirm because there was a lack of irreparable injury; the evidently intended purpose of the District Court in issuing the injunctive relief against police misconduct could not be achieved, that purpose being the support of the primary declaratory and injunctive relief which the District Court, in my view, erred in granting.

Further consideration suggests a strong possibility that the Cou had no jurisdiction to review on appeal the District Court's injunction against police misconduct since the application for such relief was not properly a matter for a three-judge district court. Absent jurisdiction review this portion of the District Court judgment, the proper course w to vacate and remand paragraph 16 for entry of a fresh judgment from w timely appeal can be taken to the Court of Appeals for the Fifth Circuit. Edelman v. Townsend, 412 U.S. 914, 915 (1973).

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

CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1974

Re: 72-1125 - Allee v. Medrano

MEMORANDUM TO THE CONFERENCE:

The exchange of memos in this case has been helpful, and I believe a solution acceptable to a majority is available. It will likely involve a remand in part. I will try to circulate this soon.

Regards,

WEB

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

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

No. 72-1125

Circulated: MAR 15

Recirculated: _____

A. Y. Allee et al., Appellants, *v.* Francisco Medrano et al. } On Appeal from the United States District Court for the Southern District of Texas.

[March —, 1974]

Memorandum to the Conference from THE CHIEF JUSTICE.

This is an appeal from a three-judge district court (SD Texas), which granted injunctive relief and a declaratory judgment holding certain state statutes unconstitutional. On June 1, 1966, appellee United Farm Workers Organizing Committee, AFL-CIO (the Union), called a strike of farm workers in Starr County, Texas. After the strike collapsed a year later the Union and six individuals active in the strike[1] brought this action in United States District Court for the Southern District of Texas against five Texas Rangers, the Sheriff, two Deputy Sheriffs, and a Special Deputy of Starr County, Texas, and a Starr County Justice of the Peace, alleging that the defendants unlawfully suppressed the plaintiffs and the class of Union members and sympathizers they purported to represent in the exercise of their First and Fourteenth Amendment rights of free speech and association during the strike.[2] The suppression was alleged to have been caused in part through the enforcement of six Texas statutes which plaintiffs claimed to have been

[1] Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, Benjamin Rodriguez.

[2] Jurisdiction is alleged under 28 U. S. C. §§ 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

#'s 15, 17, 31, 33, 34, 35, 36

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

From: The Chief Justice

Circulated: _____

Recirculated: 3/7 - 3/8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. } On Appeal from the United States District Court for the Southern District of Texas.

[March — 1974]

Memorandum to the Conference from THE CHIEF JUSTICE.

This is an appeal from a three-judge district court (SD Texas), which granted injunctive relief and a declaratory judgment holding certain state statutes unconstitutional. On June 1, 1966, appellee United Farm Workers Organizing Committee, AFL-CIO (the Union) called a strike of farm workers in Starr County, Texas. After the strike collapsed a year later the Union and six individuals active in the strike[1] brought this action in United States District Court for the Southern District of Texas against five Texas Rangers, the Sheriff, two Deputy Sheriffs, and a Special Deputy of Starr County, Texas, and a Starr County Justice of the Peace, alleging that the defendants unlawfully suppressed the plaintiffs and the class of Union members and sympathizers they purported to represent in the exercise of their First and Fourteenth Amendment rights of free speech and association during the strike.[2] The suppression was alleged to have been caused in part through the enforcement of six Texas statutes which plaintiffs claimed to have been

[1] Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, Benjamin Rodriguez.

[2] Jurisdiction is alleged under 28 U. S. C. §§ 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

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

CHAMBERS OF
THE CHIEF JUSTICE

April 18, 1974

Re: 72-1125 - Allee v. Medrano

Dear Bill:

It appears that you have a majority by your analysis of this case, even though some of your "votes" also support part of my thesis.

In the circumstances it seems to me that I should reassign the case to you and I will "concur" in part and "dissent" in part.

Regards,

WEB

Mr. Justice Douglas

Copies to the Conference

pp. 1, 2, 6, 8, 9, 10, 14, 20, 22, 26, 30, 31-32, 36, 38-39

To: Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]

3rd DRAFT

Circulated: [illegible]

Recirculated: [illegible]

SUPREME COURT OF THE UNITED STATES

No. 72-1125

A. Y. Allee et al., Appellants, *v.* Francisco Medrano et al. | On Appeal from the United States District Court for the Southern District of Texas.

[March —, 1974]

MR. CHIEF JUSTICE BURGER, concurring in the result in part and dissenting in part,

On June 1, 1966, appellee United Farm Workers Organizing Committee, AFL-CIO (the Union), called a strike of farm workers in Starr County, Texas. After the strike collapsed a year later the Union and six individuals active in the strike[1] brought this action in United States District Court for the Southern District of Texas against five Texas Rangers, the Sheriff, two Deputy Sheriffs, and a Special Deputy of Starr County, Texas, and a Starr County Justice of the Peace, alleging that the defendants unlawfully suppressed the plaintiffs and the class of Union members and sympathizers they purported to represent in the exercise of their First and Fourteenth Amendment rights of free speech and association during the strike.[2] The suppression was alleged to have been caused in part through the enforcement of six Texas statutes which plaintiffs claimed to have been unconstitutional. The District Court, convened as a three-judge court, agreed with plaintiffs as to five of

[1] Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, Benjamin Rodriguez.

[2] Jurisdiction is alleged under 28 U. S. C. §§ 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

WOD
1/4/74
Cir

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

A. Y. Allee et al., Appellants. v. Francisco Medrano et al. } On Appeal from the United States District Court for the Southern District of Texas.

[January —, 1974]

Memorandum from MR. JUSTICE DOUGLAS.

The appellees brought this action under 42 U. S. C. §§ 1983 and 1985 charging *inter alia* that the defendants in their official capacities harassed appellees with the purpose of defeating their rights of free speech and assembly guaranteed by the First and Fourteenth Amendments. Part of the final decree issued by the three-judge court went directly to this harassment. This part of the decree, labelled part 3 in the memorandum of THE CHIEF JUSTICE, enjoined the appellants from, *inter alia*, (a) using their authority as peace officers, without adequate cause, for the purpose of preventing or discouraging peaceful organizational activities of appellees; (b) interfering with picketing, assembling, solicitation, or organizational efforts of appellees without adequate cause; (c) arresting without warrant or probable cause or without intent to present a complaint in an appropriate court.

The harassment took a variety of forms. The District Court found that the appellees were arrested for unlawful assembly in circumstances in which others would not have been arrested. (J. S., at 41–42). Bond was set at $500 for one appellee charged with an offense with a maximum punishment of $200 fine, and when his friends came to the courthouse to make bond they were

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 23, 1974

MEMO TO CONFERENCE:

I circulated a memo in 72-1125, Allee v. Medrano after the Chief Justice circulated his memo. Since that time I have dug deeper into the case and in light of the discovery that some of the statutes which we were told were involved in the case had been repealed and replaced by other statutes, I thought a more complete, thorough review of the problems should be made. Hence this memo.

WILLIAM O. DOUGLAS

The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

Circulated: 1-25

Recirculated: _____

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. } On Appeal from the United States District Court for the Southern District of Texas.

[February —, 1974]

Memorandum from MR. JUSTICE DOUGLAS.

This is a civil rights action [1] attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments, by unlawfully arresting, detaining and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. In addition the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. The appellees consist of the United Farm Workers Organizing Committee, certain plaintiffs,[2] and the class they represented in the

[1] asserted under 28 U. S. C. §§ 1343, 2201, 2202, 42 U. S. C. §§ 1983 and 1985.

[2] were Francisco Medrano, Kathy Baker, Magdaleno Dimas, and Benjamin ntiffs were named in the body of

13, 14, 15

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

2-4

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. | On Appeal from the United States District Court for the Southern District of Texas.

[February —, 1974]

Memorandum from MR. JUSTICE DOUGLAS.

This is a civil rights action [1] attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments, by unlawfully arresting, detaining and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. In addition the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. The appellees consist of the United Farm Workers Organizing Committee, certain named plaintiffs,[2] and the class they represented in the

[1] Jurisdiction is asserted under 28 U. S. C. §§ 1343, 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

[2] Named in the caption were Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, and Benjamin Rodriguez. Other individual plaintiffs were named in the body of the complaint.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 18, 1974

Dear Chief:

Re: Allee v. Medrano, 72-1125.

I agree that the union, as a named plaintiff, has standing to prosecute any of the claims in this case that a member of the union would have standing to prosecute.

I disagree fundamentally, however, with your conclusion that the record in this case is devoid of any evidence to support a finding of bad faith and harassment as to each of the statutes in question. Nevertheless I see no reason to become entangled in any Younger questions since, as you now appear to agree, it will be necessary to remand the case to the District Court to determine at least whether there are pending prosecutions. If the District Court determines that there are no pending prosecutions then the case as to the three repealed statutes will be moot. Nor would we have to reach Younger as to the two remaining statutes, even assuming, arguendo, that we did not hold them facially constitution since as to them there would remain only the issue of threatened future prosecutions. But since, as you appear to agree, it is likely that the District Court granted only declaratory relief as to the statutes, and the parties requested only declaratory relief, the case may well be controlled by Steffel v. Thompson rather than by Younger. It is, therefore, my view that in remanding it would be improper and unnecessary to speak to the merits of hypothetical Younger questions which may, on remand, be determined to be irrelevant to this case. Moreover, as you point out, the evidence in this case was all taken three years before Younger was decided, and of course the District Court did not have the benefit of our opinion in Steffel v. Thompson at the time it rendered its decision. In these circumstances I would think it appropriate to leave the first resolution of any Younger/Steffel questions to the District Court even if we knew to a certainty that it would be necessary to consider them to dispose of this aspect of the case.

I continue to believe that the injunction against police misconduct was properly before the three judge District Court and that therefore it is properly before us now, and I do not find Perez v. Ledesma, 401 US 82, inconsistent with that view. In Perez the three judge court sustained a state obscenity statute

against the federal constitutional attack that provided the basis for convening it. But the Court went on to determine that the arrests of the plaintiffs and the seizures incident thereto were unconstitutional because no prior adversary hearing had been held, 304 F. Supp. 662, 667, and therefore issued an order suppressing the evidence in the State Court case. We all reviewed this order on the merits, assuming that it was properly before us as an appeal "from an order granting or denying...an interlocutory or permanent injunction in any civil" action required to be heard by a three judge court. See 401 US at 89 (concurring opinion of Justice Stewart, joined by Justice Blackmun). I find the basis for ancillary jurisdiction here at least as compelling as in Perez.

It is true, of course, that we also held in Perez that an order striking down a local parish ordinance was not properly before us. That was an attack on a wholly different enactment not involving detailed factual inquiries common with and ancillary to the constitutional challenge supporting the three judge court's jurisdiction. And crucial to our determination on that score was the finding that this order "was not issued by a three judge court but rather by Judge Boyle, acting as a single District Judge." 401 US at 87. This is obviously not the case here. I continue to believe therefore that we should affirm this portion of the decree, as modified in accordance with my earlier memorandum.

William O. Douglas

THE CHIEF JUSTICE

cc: The Conference

Bill 9d like to do so - I still think the CJ

Supreme Court of the United States

Memorandum

3/4

, 19

72-1125

I have been in the

CJ's new memo -

- Q Allee (Texas

law case) and a

meeting w/ the Conference

& have written

a memo

to him. After he

has had a chance to

read it, I hope we can

talk about what next

W

15-17

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. | On Appeal from the United States District Court for the Southern District of Texas.

[February —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil rights action[1] attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments, by unlawfully arresting, detaining and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. In addition the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. 28 U. S. C. § 1253. The appellees consist of the United Farm Workers Organizing Com-

[1] Jurisdiction was asserted under 28 U. S. C. §§ 1343, 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. | On Appeal from the United States District Court for the Southern District of Texas.

[February —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil rights action[1] attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas, Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments by unlawfully arresting, detaining and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. In addition the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. 28 U. S. C. § 1253. The appellees consist of the United Farm Workers Organizing Com-

[1] Jurisdiction was asserted under 28 U. S. C. §§ 1343, 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1985 and 1985.

15-17 also

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

To : The Chief Justice
Mr. Justice Brennan

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1125

Circulated:

Recirculated: 4-20

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. } On Appeal from the United States District Court for the Southern District of Texas

MR. JUSTICE [illegible] delivered the opinion of the Court.

This is a civil rights action[1] attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the [illegible] ment, and a Justice of the Peace in [illegible] spired to deprive appellees of their rights under the First and Fourteenth Amendments by [illegible] detaining and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. In addition the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. 28 U. S. C. § 1253. The appellees consist of the United Farm Workers Organizing Com-

[1] Jurisdiction was asserted under 28 U. S. C. §§ 1343, 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

10

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated: 5-6

No. 72-1125

A. Y. Allee et al., Appellants, v. Francisco Medrano et al. } On Appeal from the United States District Court for the Southern District of Texas.

[February —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil rights action [1] attacking the constitutionality of certain Texas statutes, brought by appellees. It alleges that the defendants, members of the Texas Rangers and the Starr County, Texas Sheriff's Department, and a Justice of the Peace in Starr County, conspired to deprive appellees of their rights under the First and Fourteenth Amendments, by unlawfully arresting, detaining and confining them without due process and without legal justification, and by unlawfully threatening, harassing, coercing, and physically assaulting them to prevent their exercise of the rights of free speech and assembly. A three-judge court was convened which declared five Texas statutes unconstitutional and enjoined their enforcement. In addition the court permanently enjoined the defendants from a variety of unlawful practices which formed the core of the alleged conspiracy. Five defendants, all members of the Texas Rangers, have perfected this appeal. 28 U. S. C. § 1253. The appellees consist of the United Farm Workers Organizing Com-

[1] Jurisdiction was asserted under 28 U. S. C. §§ 1343, 2201, 2202, 2281, and 2285, and 42 U. S. C. §§ 1983 and 1985.

5

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 18, 1974

RE: No. 72-1125 Allee v. Medrano

Dear Bill:

I am sorry for the delay in getting back to you on your supplementary memo in Allee v. Medrano, but hopefully my belated comments will be of some assistance.

Since I have not heard anything indicating that we do not continue to have a Court for our view in Allee, I would suggest that it might be better for you to circulate a full opinion rather than a second memo. It is the facts in this case that give the true flavor of the controversy, and I'm afraid that, when the issues are addressed seriatim, as the Chief seems content to do, the forest gets lost in the trees.

I am in full accord with your views with regard to the propriety of the injunctive relief granted in paragraph 16 of the District Court's judgment restraining future police misconduct. In fact, this seems to be the most significant part of the District Court's judgment, since it prevents Texas law enforcement officials from arresting or interfering with future organizational activity unless they

have adequate cause. Although the Chief raises objection to the federal court's continuing supervision, the factual findings of the District Court make it perfectly clear why this supervision is necessary.

My views with regard to the five statutes found unconstitutional by the District Court are as follows:

I am in agreement that we can find Art. 5154(d) and Art. 5154(f), as construed, constitutional. Because they are constitutional the District Court's paragraph 16 relief, restraining future police misconduct, should provide the plaintiffs with full protection, except insofar as there are pending prosecutions under the statutes. However, the District Court's opinion gives no indication that there were in fact any pending prosecutions at the time of the hearing, and nothing I have found in the record is helpful on this point. Moreover, in looking over paragraph 15 of the District Court's judgment, I am not even sure that, if there were any pending prosecutions, the District Court intended to enjoin them.

In this circumstance, it seems appropriate to reverse the District Court's conclusions with respect to the unconstitutionality of Art. 5154(d) and Art. 5154(f) and remand to the District Court to determine (1) whether it was in fact enjoining any prosecutions and (2) if so, whether the prosecutions were commenced in bad faith.

(I should emphasize, I guess, that we have held that harassment in case of the use of a valid statute means bringing prosecutions with no intent to follow through. Your reference to harassment in use of valid statutes is not so limited. Should it not be? See e.g., p. 2 of your supplemental memorandum.)

Effective January 1, 1974, Texas has adopted a new penal code which repeals Arts. 439, 474, and 482, although those articles continue to have viability with respect to acts committed prior to January 1. The enactments which have replaced the repealed statutes are far more tightly drawn and in some instances are derived from the Model Penal Code (Art. 474 has been replaced by Secs. 42.01, 42.03, and 42.05; Art. 482 has been replaced by Sec. 42.01; and Art. 439 has been replaced by Sec. 42.02 (see attachment).

Texas did not tell us about these repealers but they certainly have an important bearing on how we should decide this case. Since the District Court's judgment protects against all future police misconduct in the enforcement of constitutional statutes or otherwise, I see no reason why we need address the issue of the constitutionality of the repealed statutes. The possibility of pending prosecutions is no more certain with regard to the repealed statutes than with regard to 5154(d) and 5154(f), and again, I am not sure

the District Court intended to enjoin pending prosecutions. I therefore suggest that we also remand with respect to the District Court's judgment concerning these three statutes for a determination of whether: (1) the findings of unconstitutionality are now moot; (2) any prosecutions were in fact pending; and (3) if so, whether sufficient injury has been shown to require that the pending prosecutions be enjoined.

Should you not also note that, while the Chief asserts that there is no evidence of any arrest or threat of arrest under Art. 482, he's just plain wrong? Reading paragraph 7.11 of the amended complaint together with p. 36 of the District Court's opinion, I conclude that five individuals were arrested on 1/26/67 for violation of the statute. Moreover, one of those arrested, Benito Rodriguez, appears to be a named-plaintiff.

All of this, of course, is not to say that the portion of the District Court's judgment restraining future police misconduct is not properly before us, as the Chief suggests in his supplementary memo. I made my views with respect to ancillarity in three-judge court cases clear in Perez v. Ledesma, 401 U.S., at 100-101, and Public Serv. Commission v. Brashear Lines, 312 U.S.621, seems to me plainly distinguishable.

I realize that these comments contemplate a substantial revision of your proposed opinion but I venture them as a way to avoid all Younger and standing problems.

Sincerely,

Bill

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 25, 1974

RE: No. 72-1125 Allee v. Medrano

Dear Bill:

I am in complete agreement with the views stated in your memorandum. Since the result reached is precisely that voted by a majority at conference, and there seems to be no reason to believe that this is not still the case, would it not be appropriate to convert your memorandum into an opinion for the Court?

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

3:50

Supreme Court of the United States

Memorandum

Ap. 18, 1974

Re: 72-1125, Allee v Medrano

Dear Mr. Justice,

Mr. Justice Blackmun called to say that Allee meets with his approval and you may make it an opinion if you desire

Sandra

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 25, 1974

RE: No. 72-1125 - Allee v. Medrano

Dear Bill:

I agree.

Sincerely,

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 28, 1974

Re: No. 72-1125, Allee v. Medrano

Dear Bill,

Your memorandum as circulated January 25 largely coincides with the views I expressed at the Conference in this case, and to which I continue to adhere.

Sincerely,

P.S.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 23, 1974

72-1125 - Allen v. Medrano

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 7, 1974

Re: No. 72-1125 - Allee v. Medrano

Dear Chief:

I am in essential agreement with you that the District Court was wrong, for one reason or another, in striking down any or all of the statutes in this case. It may be that I cannot agree with each of the grounds you present with respect to each of the statutes. I am also unsure (1) whether the state court injunction has the legal significance you ascribe to it, and (2) whether a federal injunction against police misconduct was warranted on this record, wholly aside from the issue of whether the District Court should have entertained any constitutional challenge to any of the Texas statutes involved here.

Sincerely,

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R WHITE

May 17, 1974

Re: No. 72-1125 - Allee v. Medrano

Dear Chief:

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1974

Re: No. 72-1125 -- Allee et al., v. Medrano et al.

Dear Bill:

I am in complete agreement with your memorandum in this case and am ready to join.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 29, 1974

Re: No. 72-1125 -- Allee et al., v. Medrano et al.

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 16, 1974

Re: No. 72-1125 - Allee v. Medrano

Dear Chief and Bill:

I believe I am now more or less at rest in this case after study and review of the record and briefs and of your respective recirculations of March 20 and February 4.

Up to a point, your memoranda reach similar conclusions. I do not know whether such differences as exist are reconcilable. To the extent the memos are not in agreement, I am inclined to agree with Bill's conclusions and with his letter of March 18 with one exception. That exception relates to the material on his pages 16 to 20.

With a remand to determine whether state prosecutions are pending, it seems to me that it is unnecessary to consider the constitutionality of the two remaining Texas statutes. Younger might not be an issue on remand, but it is also possible that it might be a bar to the consideration of the statutes on the merits. I would address neither issue.

Sincerely,

H.A.B.

The Chief Justice
Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1974

Dear Bill:

Re: No. 72-1125 - Allee v. Medrano

Please join me.

Sincerely,

Mr. Justice Douglas

Copies to the Conference

September 20, 1973

No. 72-1125 Allee, et al v. Medrano, et al

Dear Chief:

A number of parties have filed briefs amicus in this case, including Exxon which is a former retained client of Hunton, Williams for legal work in Virginia.

During the past two terms I have disqualified myself when a brief amicus was filed by such a client of my firm. I have done this quite without regard to whether the firm itself was involved in the litigation. Indeed, my firm has rarely been in any of the cases in question.

At one of our Conferences last spring, a question was raised as to the disqualification of Justices as a result of the filing of an amicus brief. My recollection is that a suggestion was made that we discuss the possible formulation of a policy to be followed presumptively by all of us except where a particular Justices has a personal reason for disqualification.

In view of the long relationship between my former firm and Exxon (known in Virginia as Esso until recently) I might think it desirable for me to disqualify for such a former client whereas I might feel quite differently with respect to a briefer or more casual former relationship. It is true, however that I personally have done no work for Exxon in many years.

In any event, I write this note to say that I will not participate in the above case unless the Conference concludes that some general policy of nondisqualification is appropriate.

Sincerely,

The Chief Justice

lfp/ss
cc: Mr. Rodak

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 2, 1974

No. 72-1125 Allee v. Medrano

Dear Chief:

Please note at the end of your memorandum* that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

* If it becomes a Court opinion.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1974

No. 72-1125 Allee v. Medrano

Dear Bill:

As I took no part in the above case, I would appreciate your adding at the end of the opinion that "Mr. Justice Powe took no part in the consideration or decision of this case".

Sincerely,

Lewis

Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 31, 1974

Re: Allee v. Medrano, No. 72-1125

Dear Chief:

Although I am in general agreement with most of the recommendations of your two memoranda, my view differs in a few particulars which don't seem to me to be of major importance. Since they pertain primarily to the treatment of the facts, I thought it might be worthwhile to set forth my thoughts.

Taking the statutes one by one, I agree at the outset with your general treatment of Art 482, the abusive language statute. Although it is possible to read the amended complaint and answer in conjunction with the findings of the USDC, to show arrests under that statute (see appx. 29 & 62, J.S. p. 41), it does not seem to me that any named plaintiffs were arrested. Compare names at appx. p. 20 with names at appx. p. 29. I am not persuaded by Bill Douglas' theory that other persons named in the body of the complaint somehow take on the status of named plaintiffs. Therefore, some specific threat of future enforcement is necessary to convey standing in this case. See Steffel v. Thompson.

This view of the arguments relating to Art 482 probably would place those arguments on the same footing as the arguments relating to the other statutes held unconstitutional by the District Court. It does seem to me that, reading the pleadings along with the opinion below, named plaintiffs have been arrested under each of the other provisions. Your first memo noted the arrests under Arts 439 and 5154(f), and I find arrests of named plaintiffs under Arts 474 and 5154(d) as well. Benjamin Rodriguez and Magdaleno Dimas were arrested for violating Art 474 on June 1, 1967 (appx. p. 67-68, J.S. 42) and Dimas was arrested for violating Art 5154(d) on May 18, 1967 (appx. p. 66, not mentioned in opinion).

The status of those prosecutions at the time of trial is questioned in Bill Douglas' memorandum, but the USDC op (J.S. p. 56) states clearly: "Not only are plaintiffs now facing

charges in the Texas Courts under these statutes...." It seems to me that if the prosecutions were in fact pending, that application of Younger principles in this case would be appropriate. I do not see that the sporadic incidents mentioned in the USDC opinion constitute an adequate basis for a finding of bad faith harrassment. If certain class representatives, within a single class not divided into subclasses, are barred from suit, it would not seem that the other class members, including other persons facing prosecution, could shed that identity and demand relief. Therefore Younger would bar the action.

If the prosecutions are not pending, or if the other class members are free of the Younger taint, I should think the case governed by Steffel v. Thompson. In order that there be a live controversy to decide, we should be assured that the specific named plaintiffs face a substantial threat of future prosecutions under the challenged statutes. In Steffel we remanded for consideration of this question. In the present case the complaint primarily alleges past wrongs, concluding with a general allegation that "defendants have many times publicly announced that they will continue to make arrests, charges and prosecutions under said statutes...." (appx. p. 35). The particular defendants are not named, the threatened plaintiffs (who may or may not be class members) are not named, and the specific instances are not documented. The answer denies that allegation with the exception that it admits the defendants "have frequently stated that they will continue to carry out their duties in law enforcement and that if such duties include the making of arrests and the filing of charges that they would not hesitate to do so." (appx. p. 69). The District Court makes no detailed examination of the question but simply states: "The threat of similar acts in the future lingers on." (J.S. p. 56). I do not think that these broad allegations and incomplete findings demonstrate sufficient threat of future enforcement of these particular statutes against particular named plaintiffs in this case.

Furthermore, any theoretical intent to apply the challenged statutes against named plaintiffs may have been altered by the amendment of those statutes. That would seem to further lessen the prospect of an active controversy in this case. Thus, I would favor remanding the case to the USDC for reconsideration in light of Steffel as well as for reconsideration in light of the amended statutes.

I agree with your recommended disposition of the injunction contained in paragraph 16 of the USDC order. Although there is an admitted overlap of facts between the statutory challenge an the charges of general harassment, I do not see why the three-judge court was necessary to decide the general harassment clai . I would thus vacate and remand for entry of a new order by a single judge, if appropriate, to be appealed to the Court of Appeals.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 17, 1974

Re: No. 72-1125 - Allee v. Medrano

Dear Chief:

Please join me in your concurring and dissenting opinion in this case.

Sincerely,

WHR

The Chief Justice

Copies to the Conference