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

January 11, 1974

Re: 72-403 - Sampson v. Murray

Dear Bill:

Please join me.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 13, 1974

Re: 72-403 - Sampson v. Murray

Dear Bill:

Please join me in your latest circulation.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 19, 1973

Dear Thurgood:

Would you want to take on the dissent in 72-403, Sampson v. Murray?

William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 9, 1974

MEMO TO THE CONFERENCE:

I will circulate a dissent in 72-403, Sampson v. Murray "with all deliberate speed".

WILLIAM O. DOUGLAS

The Conference

To : The Chief Justice

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-403

1-17

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, v. Jeanne M. Murray.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[January —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

I think with all respect that while the narrow isolated issue exposed in this litigation is exposed in the opinion of the Court the nature of the problem is not.

Respondent, a probationary employee, claims that her discharge was not based exclusively on her work as probationary employee. If it were based on her work as probationary employee, the procedure is quite summary and her right of appeal to the Civil Service Commission is limited to only a few grounds such as discrimination based on race, color, religion, sex, or national origin, 5 CFR § 315.806. But her claim is that her discharge was based at least in part on conduct prior to her federal employment. In case that prior conduct is the basis of the discharge, the employee is entitled to advance notice of proposed termination, an opportunity to respond in writing with supporting affidavits, and notice of any adverse decisions on or prior to the effective date of the termination, 5 CFR § 315.805.

The Congress in 1966 provided that all wrongfully discharged federal employees, including probationary employees are entitled to backpay, 5 U. S. C. § 5596, and the Court concludes that that is the employee's exclusive remedy.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 1, 1974

MEMORANDUM TO THE CONFERENCE:

Re: 72-403 Sampson v. Murray.

I agree with Bill Rehnquist's memo of February 1st that the District Court's order was a preliminary injunction and appealable. I would not ask for briefs on the question.

William O. Douglas

The Conference

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-403

From:

Circulated:

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, v. Jeanne M. Murray.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

2-11

[January —, 1974]

MR. JUSTICE DOUGLAS, dissenting

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Respondent, a probationary employee, claims that her discharge was not based exclusively on her work as probationary employee. If it were based on her work as probationary employee, the procedure is quite summary and her right of appeal to the Civil Service Commission is limited to only a few grounds such as discrimination based on race, color, religion, sex, or national origin, 5 CFR § 315.806. But her claim is that her discharge was based at least in part on conduct prior to her federal employment. In case that prior conduct is the basis of the discharge, the employee is entitled to advance notice of proposed termination, an opportunity to respond in writing with supporting affidavits, and notice of any adverse decisions on or prior to the effective date of the termination, 5 CFR § 315.805.

The Congress in 1966 provided that all wrongfully discharged federal employees, including probationary employees are entitled to backpay, 5 U. S. C. § 5596, and the Court concludes that that is the employee's exclusive remedy.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 1, 1974

RE: No. 72-403 Sampson v. Murray

Dear Thurgood:

I think the question as to the appealability of the District Court order is not an easy one and my preference would be at least to have the parties address it in supplemental briefs.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Re: No. 72-403 Sampson v. Murray

Dear Thurgood,

Please join me in your dissent.

Sincerely yours,

WJB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 1, 1974

MEMORANDUM TO THE CONFERENCE

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

As of now, I am persuaded by Bill Rehnquist's memorandum that the order involved in this case was a preliminary injunction, and not a temporary restraining order. I doubt that further briefing could persuade me otherwise, but I would not oppose asking for further briefs on the question if as many as four others wish to do so.

P.S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 13, 1974

72-403 - Sampson v. Murray

Dear Bill,

I am glad to join your opinion for the Court in this case, as recirculated on February 11.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 10, 1974

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

Dear Bill:

I shall await the dissent in this case.

Sincerely,

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 28, 1974

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

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 6, 1974

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

Dear Bill:

Your suggested footnote in this case is all right with me, perhaps with the amendment we chatted about on the telephone.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 6, 1974

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

Dear Bill:

With respect to the appealability of the District Court's order in this case, I agree with you.

Sincerely,

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1973

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

Dear Bill:

Thanks. I will be happy to take on the dissent in this case.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference

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

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: JAN 11 1974

No. 72-403

Recirculated: _____

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, *v.* Jeanne M. Murray. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[January —, 1974]

MR. JUSTICE MARSHALL, concurring.

I am in complete agreement with the Court's conclusion that Congress has not divested federal courts of their long-exercised authority to issue temporary injunctive relief pending the exhaustion of both administrative and judicial review of an employee's claim of wrongful dismissal. Although I have some difficulty with the Court's attempt to draw a distinction between the traditional equitable standards governing the issuance of stays, see *Virginia Petroleum Jobbers Assn.* v. *Federal Power Comm'n*, 104 U. S. App. D. C. 106, 259 F. 2d 921 (1958), and the equitable principles which the Court believes should govern this case, see *ante*, at p. 22, this difference in approach seems to be more one of form than of substance.[1]

[1] It would seem that the factors which the majority would have the District Court weigh before granting injunctive relief are all encompassed within the traditional standards for temporary equitable relief. The adequacy of backpay as a remedy, for example, is relevant in determining whether the party seeking relief has shown that "without such relief, it will be irreparably injured." *Virginia Petroleum Jobbers*, *supra*, 104 U. S. App. D. C., at 110, 259 F. 2d, at 925 (1958). Likewise, the possible disruptive effect which temporary injunctive relief might have on the office where

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 31, 1974

MEMORANDUM TO THE CONFERENCE

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

After circulating my concurring opinion and examining the dissenting opinion of Bill Douglas, I have given this case closer consideration and wish to suggest the possibility that no appealable order has yet been issued. As I understand the matter, the only orders ever issued by the District Court were non-appealable temporary restraining orders.

Acting ex parte upon the filing of the complaint, the District Court first issued a TRO on May 28, enjoining Mrs. Murray's dismissal and setting a hearing on her motion for a preliminary injunction for June 4. At that hearing, the government's attorney indicated that Mr. Sanders, the authority responsible for Mrs. Murray's discharge, had been out of town all week. Counsel had spoken with Sanders by phone, and had drafted an affidavit for his signature, but no affidavit had yet been signed. The District Court informed counsel that, in any event, he would rather hear Mr. Sanders in person to determine what factors Sanders considered in approving Mrs. Murray's discharge. Counsel for the government, pointing out again that Sanders was still on vacation, said that she would "see what I can do" about bringing him in to testify, hereby clearly leaving the impression that she would attempt to bring in Sanders as soon as possible so the hearing on the motion for a preliminary injunction could continue. The court then issued a second order providing "that the Temporary Restraining Order issued by this Court [on] May 28, 1971, is continued until the appearance of the aforesaid W. H. Sanders."

As I see this case, no preliminary injunction was ever issued by the District Court. The hearing on the preliminary injunction was suspended after it had just begun, and Mrs. Murray had not yet been given an opportunity to substantiate her allegation that she would suffer irreparable injury if not granted injunctive relief. As Bill Rehnquist's opinion indicates, at 23, the Court of Appeals recognized that the trial judge had not yet held interim relief proper in Mrs. Murray's case. The Court of Appeals expressly states that it was not evaluating Mrs. Murray's claim of irreparable injury because "any such finding . . . is for the trial judge, who has not yet (and may never) decide this point in favor of Mrs. Murray."

In these circumstances, I doubt whether an appealable order has been entered. Though I do not believe this Court has ever expressly addressed the point before, the cases are legion to the effect that a temporary restraining order is not appealable. See Wright & Miller, Fed. Pract. & Pro., §2962, at 616 n. 92. And the rationale of that principle would seem to bar any attempt by this Court to consider whether or not Mrs. Murray has shown sufficient likelihood of irreparable injury to warrant injunctive relief. The trial court should have an opportunity to have a full presentation of the facts before entering an appealable order, and it makes no sense for appellate courts to resolve factual issues that have not yet even been presented to or decided by the trial court.

The majority opinion seems to suggest that we have authority to determine whether the District Court was correct in issuing a temporary restraining order on the basis of the allegations in the complaint. See 25-26. I fear that this will be read as indicating that temporary restraining orders are reviewable by appellate courts, a result I do not believe the majority intends to reach.

It is suggested that the TRO might be treated like a preliminary injunction because it extends beyond the time permitted under Rule 65. Rule 65 expressly provides, however, that a temporary restraining order can last only 10 days "unless the party against whom the order is directed consents that it may be extended for a longer period." And where a TRO has been extended by consent of the parties, it remains a non-appealable order. See, e.g., Ross v. Evans, 325 F. 2d 160 (CA 5 1963). In this case, the government effectively consented

to an extension of the TRO until Mr. Sanders could be present and the hearing completed by giving the District Court the impression that it would bring Sanders into court as soon as possible.

To put matters simply, I don't think the government played by the rules of the game in this case. Were the government unwilling to produce Sanders as a witness, it should have so informed the District Court and allowed the Court to rule on the preliminary injunction on the basis of the available evidence, including any evidence Mrs. Murray might have produced if given an opportunity to do so. Had the District Court then issued a preliminary injunction, appellate jurisdiction would clearly exist. But here the government lead the District Court to believe that its TRO should be continued until counsel could obtain Sanders' appearance in court, and then tried to shortcut the District Court by appealing the TRO.

Unless we are now to permit appellate review of TRO's, I think we should vacate the judgment of the Court of Appeals for lack of jurisdiction. As this issue is not touched upon in the briefs of the parties, perhaps supplemental briefing would be helpful.

Thurgood Marshall

FEB 7 1974

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-403

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, v. Jeanne M. Murray.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[February —, 1974]

MR. JUSTICE MARSHALL, dissenting.

In my view no appealable order has been entered in this case, and both the Court of Appeals and this Court accordingly lack jurisdiction.

The orders issued by the District Court are both temporary restraining orders. The first, issued on May 28 and captioned "Temporary Restraining Order," enjoined Mrs. Murray's dismissal until the determination of her application for an injunction. The second, issued on June 4 and also captioned "Temporary Restraining order," provides "that the Temporary Restraining Order issued by this Court at twelve o'clock p. m., May 28, 1971, is continued until the appearance of the aforesaid W. H. Sanders." At no time did the District Court indicate it was issuing anything but a temporary restraining order. During the hearing on the application for a preliminary injunction, after the court indicated it wanted to hear from Mr. Sanders in person, the Government informed the court that Mr. Sanders was then out of town on vacation. The court replied: "Let me know when he can be available." Counsel for the Government responded: "Very well." And the District Court then said: "The T R O will be continued until he

2nd DRAFT

1,2

SUPREME COURT OF THE UNITED STATES

No. 72–403

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, v. Jeanne M. Murray.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[February —, 1974]

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

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

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-403

Recirculated: FEB 14

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, v. Jeanne M. Murray. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

pp 4-7

[February —, 1974]

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

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 14, 1974

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

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 11, 1974

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

Dear Bill:

I am with you on your recirculation of February 11.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 9, 1974

No. 72-403 Sampson v. Murray

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 13, 1974

No. 72-403 Sampson v. Murray

Dear Bill:

Please join me in your recirculation of February 11.

Sincerely,

L. Powell

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–403

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, *v.* Jeanne M. Murray.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[January —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court

Respondent is a probationary employee in the Public Buildings Service of the General Services Administration (GSA). In May 1971, approximately four months after her employment with GSA began, she was advised in writing by the Acting Commissioner of the Public Buildings Service, W. H. Sanders, that she would be discharged from her position on May 29, 1971. She then filed this action in the United States District Court for the District of Columbia, seeking to temporarily enjoin her dismissal pending her pursuit of an administrative appeal to the Civil Service Commission. The District Court granted a temporary restraining order, and after an adversary hearing extended the interim injunctive relief in favor of respondent until the Acting Commissioner of the Public Buildings Service testified about the reasons for respondent's dismissal.

A divided Court of Appeals for the District of Columbia affirmed,[1] rejecting the Government's conten-

[1] *Murray* v. *Kunzig*, — U. S. App. D. C. —, 462 F. 2d 871 (1972).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 1, 1974

MEMORANDUM TO THE CONFERENCE

Re: Sampson v. Murray, No. 72-403

I have read Thurgood's memorandum dated January 31, 1974, suggesting that the District Court's order in this case was not appealable; this is undoubtedly a threshhold question which requires attention. However, I am satisfied after reviewing the record that this order was a preliminary injunction, and not a temporary restraining order.

I do not doubt in the least the correctness of Thurgood's statement that a temporary restraining order is not appealable. But I think it flows from this well established doctrine of law, as illustrated by the Conference discussion in Granny Goose, that the non-appealability of temporary restraining orders, and the limits placed upon them by Rule 65, indicate that temporary restraining orders are to be held within very strictly defined limits, and that an order which in fact exceeds these bounds is to be treated as a preliminary injunction. If this were not the case, and an indefinitely extended temporary restraining order which was not consented to by both parties remained unappealable, the District Court would have virtually unlimited authority over the parties in an injunctive action.

I observed in the proposed opinion for the Court that the Court of Appeals for the District of Columbia Circuit had held that "a temporary restraining order continued beyond the time permissible under Rule 65 must be treated as a preliminary injunction, and must conform to the standards applicable to preliminary injunctions," (p. 24) National Mediation Board v. Airline Pilots Association International, DC Cir, 323 F.2d 305 (1963). I went on to say that we need not decide that question in this case, since I was thinking only in terms of analysis for purposes of a determination of irreparable injury. I quite

agree, however, with Thurgood's suggestion that we must now decide whether or not the order was indeed a preliminary injunction, in order to determine its appealability and our jurisdiction.

In view of my previously stated observations about the nature of temporary restraining orders, I think the Court of Appeals opinion just cited is persuasive on this point, and that unless the government consented to the extension of the order as a temporary restraining order, it became a preliminary injunction after the adversary hearing in the District Court.

The record indicates that a hearing was held in the District Court at which both sides were fully represented, and that at the conclusion of the hearing the order was continued long past the time permitted under the rules for temporary restraining orders. Thurgood's suggestion that the extension was by consent, based on an implication that the government attorney misled the District Court into thinking that Sanders, the sought-after supervisor in this case, would be produced as soon as possible, does not square with my reading of the record.

A reading of the transcript of the hearing before the District Court to me belies any notion of consent on the part of the government. The transcript of hearing shows counsel for the government reacted to the District Court's demand that she produce Sanders by saying that she "would object to that" and that "it would be error for you to endeavor to ascertain the merits of the case in this manner." Furthermore, the judge's own memorandum, dictated immediately after the hearing, states:

> "The Court is now advised that the government does not intend to call Mr. Sanders."*/

Thurgood's memorandum says (page 3) that "were the government unwilling to produce Sanders as a witness, it should have so informed the District Court...." Yet it seems to me that the Court's own memorandum indicates the government did exactly that. In the opinion for the Court, I stated that the District Court was entitled to resolve the issue of success on the merits against the government by reason of its failure to produce Sanders, but not the issue of irreparable injury. It was, therefore, the decision of the District Court, and not the government, to leave the order standing without further proceedings. I do not believe this is consent by any standards, and therefore the principle of National Mediation Board, supra, applies.

---

*/Petn. for cert. p. 42a.

If I am right, the order ultimately entered by the District Court in this case was a preliminary injunction, appealable to the Court of Appeals under the provisions of 28 USC § 1292, and reviewable on certiorari here. If those who have joined the opinion agree with my analysis, I will modify it in order to so state.

Sincerely,

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 4, 1974

MEMORANDUM

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

Potter Stewart has suggested that a footnote be included in the opinion to indicate specifically that relief is not precluded in genuinely extraordinary cases. I am quite willing to include the footnote, because I think that fact should be made clear, and also because I think it desirable to indicate that the type of case Thurgood mentions in his separate concurrence is not one in which the Court's opinion would authorize a finding of irreparable injury. I drafted the attached footnote 67 (which would be substituted for existing footnote 67), and Potter has approved it and indicated that he will join in the opinion if it is inserted. Since the addressees of this memorandum compose those who have already joined the opinion, I will of course not go ahead and add the footnote if any of you object. Please let me know.

Sincerely,

WHR

Copy to: The Chief Justice
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell

Attached to WHR 2-4-1974
72-403

Sampson v. Murray

Footnote 67 (revised):

We recognize that cases may arise in which the circumstances surrounding an employee's discharge, and the resultant effect on the employee, so far depart from the normal situation that irreparable injury might be found. Such extraordinary cases are hard to define in advance of their occurrence. While we do not agree with our Brother Marshall that an insufficiency of savings or difficulties in immediately obtaining other employment -- external factors common to most discharged employees and not attributable to any unusual actions relating to the discharge itself -- would support a finding of irreparable injury, we do not wish to be understood as totally foreclosing relief for the sort of case we have described. But use of the Court's injunctive power, when discharge of probationary employees is at issue, should be reserved for the special not the routine case. See also Wettre v. Hague, 74 F. Supp. 396 (Mass. (1947)), vacated and remanded on other grounds, 168 F.2d 825 (CA 1 1947).

p. 1, 24-26, 30

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

3rd DRAFT

Mr. Justice Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

2/11/74

No. 72-403

Arthur F. Sampson, Administrator, General Services Administration, et al., Petitioners, v. Jeanne M. Murray	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[January — 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent is a probationary employee in the Public Buildings Service of the General Services Administration (GSA). In May 1971, approximately four months after her employment with GSA began, she was advised in writing by the Acting Commissioner of the Public Buildings Service, W. H. Sanders, that she would be discharged from her position on May 29, 1971. She then filed this action in the United States District Court for the District of Columbia, seeking to temporarily enjoin her dismissal pending her pursuit of an administrative appeal to the Civil Service Commission. The District Court granted a temporary restraining order, and after an adversary hearing extended the interim injunctive relief in favor of respondent until the Acting Commissioner of the Public Buildings Service testified about the reasons for respondent's dismissal.

A divided Court of Appeals for the District of Columbia affirmed,[1] rejecting the Government's conten-

[1] *Murray* v. *Kunzig*, — U. S. App. D. C. —, 462 F. 2d 871 (1972). For a discussion of the Court of Appeals' jurisdiction, and the jurisdiction of this Court, see pp. 24–25, *infra*.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

MEMORANDUM

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

Attached is a revised draft of the opinion in Sampson. The long footnote at the end, No. 68, which was previously suggested by Potter, has been changed so as to no longer refer to Thurgood's concurring opinion, since Thurgood is now dissenting on the basis of appealability. The other principal changes comprise a textual discussion of the appealability question which Thurgood raised in his earlier memorandum.

Sincerely,

wlr

Copy to: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell