

# The Burger Court Opinion Writing Database

*Lewis v. New Orleans*

415 U.S. 130 (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

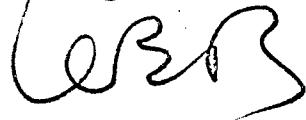
February 14, 1974

Re: 72-6156 - Lewis v. City of New Orleans

Dear Harry:

Please join me in your dissent.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 12, 1973

Dear Chief:

I gather that 72-6156, Lewis v. New Orleans  
is for me to assign.

I'll assign it to Bill Brennan.

WW  
William O. Douglas

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 9, 1974

Dear Bill:

Please join me in your opinion in  
72-6156, Lewis v. New Orleans.

WILLIAM O. DOUGLAS

Mr. Justice Brennan

cc: The Conference

*Cumulated*  
1-9-74

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6156

Mallie Lewis,  
Appellant,  
*v.*  
City of New Orleans. } On Appeal from the Supreme  
Court of Louisiana.

[January —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court:

Upon the Louisiana Supreme Court's reconsideration of this case in light of *Gooding v. Wilson*, 405 U. S. 518 (1972), pursuant to our remand, 408 U. S. 913 (1972), that court, three judges dissenting, again sustained appellant's conviction upon a charge of addressing spoken words to a New Orleans police officer in violation of New Orleans Ordinance 828 MCS, § 49-7, 263 La. 809, 269 So. 2d 450 (1972).<sup>1</sup> We noted probable jurisdiction,

<sup>1</sup> On January 3, 1970, appellant and her husband were in their pick-up truck following a police patrol car that was taking their young son to a police station after his arrest. An Officer Berner in another patrol car intercepted and stopped the truck. Berner left his car and according to his testimony, asked the husband for his driver's license. Words were exchanged between Berner and appellant and Berner arrested appellant on a charge of violating § 49-7. The parties respective versions of the words exchanged were in sharp contradiction. Berner testified that appellant left the truck and "started yelling and screaming that I had her son or did something to her son and she wanted to know where he was . . . . She said, 'you god damn m. f. police—I am going to [the Superintendent of Police] about this.' " App. p. 8. Appellant's husband testified that Berner's first words were "let me see your god damned license. I'll show you that you can't follow the police all

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 10, 1974

72-6156, Lewis v. New Orleans

Dear Bill,

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

Sincerely yours,

P.S.  
P.

Mr. Justice Brennan

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. 72-6156 - Lewis v. City of New Orleans

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 10, 1974

Re: No. 72-6156 -- Lewis v. City of New Orleans

Dear Bill:

Please join me in your opinion in this case.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6156

From: Blackmun, J.

Circulated: 1/31/74

Mallie Lewis,  
Appellant,  
v.  
City of New Orleans.

On Appeal from the Supreme  
Court of Louisiana.

Recirculated:

[February —, 1974]

MR. JUSTICE BLACKMUN, dissenting.

Mr. Justice Holmes aptly observed:

"All rights tend to declare themselves absolute to their logical extreme." *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355 (1908).

The extremes to which we allow ourselves to be manipulated by theory extended to the end of logic is exemplified by the Court's opinion in this case and in its blood brother of two years ago, *Gooding v. Wilson*, 405 U. S. 518 (1972). The "overbreadth" and "vagueness" doctrines, as they are now being applied by the Court, quietly and steadily have worked their way into First Amendment parlance much as substantive due process did for the "old Court" of the 20's and 30's. These doctrines are being invoked indiscriminately without regard to the nature of the speech in question, the possible effect the statute or ordinance has upon such speech, the importance of the speech in relation to the exposition of ideas, or the purported or asserted community interest in preventing that speech. And it is no happenstance that in each case the facts are relegated to footnote status, conveniently distant and in a less disturbing focus. This is the compulsion of a doctrine that reduces our function to parsing words in the context of imaginary events. The result is that we are not merely applying con-

pp. 116

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 72-6156

Circulated:

Recirculated: 2/8/74

Mallie Lewis,  
Appellant,  
v.  
City of New Orleans.

On Appeal from the Supreme  
Court of Louisiana.

[February —, 1974]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

Mr. Justice Holmes aptly observed:

"All rights tend to declare themselves absolute to their logical extreme." *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355 (1908).

The extremes to which we allow ourselves to be manipulated by theory extended to the end of logic is exemplified by the Court's opinion in this case and in its blood brother of two years ago, *Gooding v. Wilson*, 405 U. S. 518 (1972). The "overbreadth" and "vagueness" doctrines, as they are now being applied by the Court, quietly and steadily have worked their way into First Amendment parlance much as substantive due process did for the "old Court" of the 20's and 30's. These doctrines are being invoked indiscriminately without regard to the nature of the speech in question, the possible effect the statute or ordinance has upon such speech, the importance of the speech in relation to the exposition of ideas, or the purported or asserted community interest in preventing that speech. And it is no happenstance that in each case the facts are relegated to footnote status, conveniently distant and in a less disturbing focus. This is the compulsion of a doctrine that reduces our function to parsing words in the context of imaginary events. The result is that we are not merely applying con-

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 15, 1974

No. 72-6156 Lewis v. City of New Orleans

Dear Bill:

I now plan to do a brief concurring opinion, which I hope to circulate later this week.

Sincerely,



Mr. Justice Brennan

lfp/ss

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 Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6156

From: Powell, J.

JAN 30 1974

Circulated:

Recirculated:

Mallie Lewis,  
Appellant,  
v.  
City of New Orleans.

On Appeal from the Supreme  
Court of Louisiana.

[February —, 1974]

MR. JUSTICE POWELL, concurring in the result.

I previously concurred in the remand of this case, 408 U. S. 913 (1972), but only for reconsideration in light of *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942). Pursuant to the remand order, we now have the Louisiana Supreme Court's decision construing New Orleans Ordinance 828 MCS § 49-7. I agree with the Court's conclusion today that the Louisiana Supreme Court "did not refine or narrow the words [of the ordinance], but took them as they stood." *Ante*, at 2. In conclusory language, that court construed the ordinance to create a *per se* rule: Whenever "obscene or opprobrious language" is used "toward or with reference to any member of the city police while in the actual performance of his duties," such language constitutes "fighting words" and hence a violation without regard to the facts and circumstances of a particular case. As so construed, the ordinance is facially overbroad.

Quite apart from the ambiguity inherent in the term "opprobrious," words may or may not be "fighting words" depending upon the circumstances of their utterance. It is unlikely, for example, that the words said to have been used here would have precipitated a physical confrontation between the middle-aged woman who spoke them and the police officer in whose presence they were uttered. The words may well have conveyed anger and frustration without provoking a violent reaction.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 1, 1974

Re: Lewis v. City of New Orleans - No. 72-6156

Dear Harry:

Please join me in your dissent in this case.

Sincerely,

*WRW*

Mr. Justice Blackmun

cc: The Conference