

# The Burger Court Opinion Writing Database

## *Wingo v. Wedding*

418 U.S. 461 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

April 22, 1974

Re: No. 73-846 - Wingo v. Wedding

MEMORANDUM TO THE CONFERENCE:

When Lewis' memo on the above came in I had a draft memo on my desk essentially to the same effect.

This case was miserably argued and poorly briefed and I should have been alerted months ago to proposing that the Solicitor General come in with a brief and oral argument.

It is a very crucial case and it is in very muddy condition for me -- partly due also to a less than adequate opinion by the Court of Appeals. It is another one of those directives to the District Court: here - is - a - problem - work - it - out.

To be sure, there is a problem just as in Procunier - Saxbe but it is one in which the primary parties are making progress. The grievance procedures adopted by the Federal Bureau of Prisons April 1 after a 10-month pilot program is an example.

I heartily agree we should ask the Solicitor General for an amicus brief to be filed in ten days. That is pressure but they are largely over their crises on argued cases and other matters.

If we agree on this Wednesday the Clerk can call the Solicitor General forthwith. He already has a lot of material in the area.

Regards,

W.B.B.

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 29, 1974



Re: No. 73-846 - Wingo v. Wedding

Dear Bill:

I cannot vote to affirm in this case so you should  
assign. Let me know who gets it so I can proceed with other  
assignments.

Regards,

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 1, 1974

Re: No. 73-846 - Wingo v. Wedding

Dear Bill:

I will write a dissent in this case. I am waiting for some figures from the Administrative Office and this may delay me some.

Regards,

WFB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 29, 1974

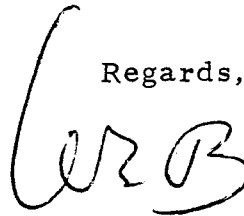
Re: 73-846 - Wingo v. Wedding

Dear Bill:

I will try to have a dissent along in a week

or so.

Regards,

A handwritten signature in cursive script, appearing to read "WRB", written in dark ink.

Mr. Justice Brennan

Copies to the Conference

To: Mr. Justice Douglas  
Mr. Justice Brennan

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 19, 1974

Re: 73-846 - Wingo v. Wedding

MEMORANDUM TO THE CONFERENCE:

Enclosed is my proposed dissent in the above  
case.

It will not likely be printed this week.

Regards,

WJ B

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

io  
t  
1.  
v  
b

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

No. 73-846, Wingo v. Wedding

From: The Chief Justice

MR. CHIEF JUSTICE BURGER, dissenting.

Circulated: JUN 19 1974

Recirculated: our prior cases

The Court today reads two separate statutes and our prior cases to reach a result contrary to the purposes underlying the enactment of the federal Magistrates Act of 1968, 28 U.S.C. § 631 et seq., and to the conclusion of every other Court of Appeals which has had occasion to consider the matter.

The federal Magistrates Act was both "designed to create an upgraded lower tier of judicial officer," S. Rep. No. 371, 90th Cong., 1st Sess., 11 (1967), and "intended . . . to cull from the ever-growing workload of the U.S. district courts matters that are more desirably performed by a lower tier of judicial officers." H. Rep. No. 1629, 90th Cong., 2d Sess., 12 (1968). The Court's holding that federal magistrates may not conduct evidentiary hearings in federal habeas corpus cases is both inconsistent with the new status of magistrates and deputy magistrates, <sup>2/</sup> and serves to defeat the objective of

<sup>1/</sup>

Two Circuits have ruled that federal magistrates may conduct evidentiary hearings in federal habeas corpus cases, O'Shea v. United States, 491 F.2d 774, 778 (CA 1 1974); Noorlander v. Ciccone, 489 F.2d 642, 648 (CA 8 1973); cf. Campbell v. U.S. District Court (CA 9, Apr. 19, 1974) (No. 73-3022), slip op. at 10, while two Circuits have assumed magistrates have that power, Gonzalez v. Zelker, 477 F.2d 797, 798 (CA 2 1973); Parnell Wainwright, 464 F.2d 735, 736 (CA 5 1972).

<sup>2/</sup>

The Court makes clear, ante, at 11 n. 18, that it sees the function of the magistrate in dealing with habeas corpus petitions as being no more than that previously performed by law clerks. As Chief Judge Levin (ED Mich.) testified before the Senate Judiciary Committee's Subcommittee on Improvement in Judicial Machinery, which under the chairmanship of Senator Tydings began

(continued on next page)

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

SUPREME COURT OF THE UNITED STATES

No. 73-846

Circulated: \_\_\_\_\_

Recirculated: JUN 21 1974

John W. Wingo, Warden, } On Writ of Certiorari to the  
Petitioner. } United States Court of  
v. } Appeals for the Sixth Cir-  
Carl James Wedding. } cuit.

[June —, 1974]

MR. CHIEF JUSTICE BURGER, dissenting.

The Court today reads two separate statutes and our prior cases to reach a result contrary to the purposes underlying the enactment of the federal Magistrates Act of 1968, 28 U. S. C. § 631 *et seq.*, and to the conclusion of every other Court of Appeals which has had occasion to consider the matter.<sup>1</sup>

The federal Magistrates Act was both "designed to create an upgraded lower tier of judicial officer," S. Rep. No. 371, 90th Cong., 1st Sess., 11 (1967), and "intended . . . to cull from the ever-growing workload of the U. S. district courts matters that are more desirably performed by a lower tier of judicial officers." H. R. Rep. No. 1629, 90th Cong., 2d Sess., 12 (1968). The Court's holding that federal magistrates may not conduct evidentiary hearings in federal habeas corpus cases is both inconsistent with the new status of magistrates and deputy

<sup>1</sup> Two Circuits have ruled that federal magistrates may conduct evidentiary hearings in federal habeas corpus cases, *O'Shea v. United States*, 491 F. 2d 774, 778 (CA1 1974); *Noorlander v. Ciccone*, 489 F. 2d 642, 648 (CA8 1973); cf. *Campbell v. U. S. District Court* (CA9, Apr. 19, 1974) (No. 73-3022), slip op., at 10, while two Circuits have assumed magistrates have that power, *Gonzalez v. Zelker*, 477 F. 2d 797, 798 (CA2 1973); *Parnell v. Wainwright*, 464 F. 2d 735, 736 (CA5 1972).



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


CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 23, 1974

Dear Chief:

I have the memo from Lewis and the one from you in 73-846  
Wingo v. Wedding. If anyone wants a brief from the S. G. I  
certainly would not object.

But the problem is so simple and uncomplicated (to me) that  
I see no need for it.

  
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

April 25, 1974

Dear Chief:

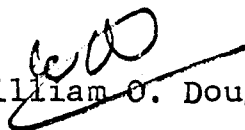
I was sorry to hear that your temperature is still running high but I am glad of course that you are following doctor's orders and not trying to get back before Monday.

Tomorrow's Conference is in good control and we'll send you a report late tomorrow afternoon. We will discuss all of the cases argued this week including the hour and a half case that was argued this morning.

As respects Wingo, covered in my previous memo, the case involving a magistrate and his role, if any, in the habeas corpus cases. I had suggested at Conference that Harry Blackmun take it and so reported to you. But today, after talking with Harry and Bill Brennan I sensed that Harry felt loaded down having eight already uncirculated. So after further discussion we assigned Wingo to Bill Brennan.

I look forward to seeing you on Monday.

73-846

  
William O. Douglas

The Chief Justice

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

✓

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 29, 1974

Dear Chief:

Re: 73-846 Wingo v. Wedding.

I have assigned this to Bill Brennan.

W O  
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

May 28, 1974

Dear Bill:

Please join me in your opinion in  
73-846, Wingo v. Wedding.

For some unknown reason your opinion  
though circulated May 23rd did not reach  
my desk until this A.M.

  
William O. Douglas

Mr. Justice Brennan

cc: The Conference

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-846

John W. Wingo, Warden, Petitioner, v. Carl James Wedding.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Cir- cuit.
--	---	---

[May —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question here is whether Federal Magistrates are authorized to conduct evidentiary hearings in federal habeas corpus cases. In 1968, Congress enacted the Federal Magistrates Act, 28 U. S. C. §§ 631-639, to upgrade and expand the former United States commissioner system. The Act authorizes magistrates to exercise all powers formerly exercised by United States Commissioners,<sup>1</sup> and also, as a means of relieving the caseload burden of the Federal District Judges empowers Magis-

---

<sup>1</sup> Commissioners had been empowered by the Federal Rules of Criminal Procedure to give oaths (Rule 3); issue arrest warrants (Rule 4); conduct preliminary examinations of arrestees (Rule 5); issue subpoenas (Rule 17); issue warrants of removal to another district (Rule 40); and release defendants on bail (Rule 46). In addition, commissioners were authorized to try persons accused of petty offenses (defined by 18 U. S. C. § 1(3) as crimes for which the penalty does not exceed imprisonment for six months or a fine of not more than \$500 or both) committed within the confines of federal enclaves, 62 Stat. 830. In civil cases commissioners were limited to administering oaths and taking bail, acknowledgments, affidavits and depositions. 62 Stat. 917.

Circulated  
5-29-74

pp. 6, 12

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-846

John W. Wingo, Warden,	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Cir- cuit.
Petitioner,		
v.		
Carl James Wedding.		

[May —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question here is whether Federal Magistrates are authorized to conduct evidentiary hearings in federal habeas corpus cases. In 1968, Congress enacted the Federal Magistrates Act, 28 U. S. C. §§ 631-639, to upgrade and expand the former United States commissioner system. The Act authorizes magistrates to exercise all powers formerly exercised by United States Commissioners,<sup>1</sup> and also, as a means of relieving the caseload burden of the Federal District Judges empowers Magis-

<sup>1</sup> Commissioners had been empowered by the Federal Rules of Criminal Procedure to give oaths (Rule 3); issue arrest warrants (Rule 4); conduct preliminary examinations of arrestees (Rule 5); issue subpoenas (Rule 17); issue warrants of removal to another district (Rule 40); and release defendants on bail (Rule 46). In addition, commissioners were authorized to try persons accused of petty offenses (defined by 18 U. S. C. § 1 (3) as crimes for which the penalty does not exceed imprisonment for six months or a fine of not more than \$500 or both) committed within the confines of federal enclaves, 62 Stat. 830. In civil cases commissioners were limited to administering oaths and taking bail, acknowledgments, affidavits and depositions. 62 Stat. 917.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 23, 1974

73-846 - Wingo v. Wedding

Dear Chief,

I wholly agree with Lewis Powell that this case was miserably briefed and argued. But I wonder how much help the Executive Branch of the Federal Government could provide. The case is of considerable importance to the Federal Judiciary, but the issue is straightforward, and I think the primary impact of our decision will be felt by the several States rather than the Federal Government.

Sincerely yours,

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 24, 1974

Re: No. 73-846, Wingo v. Wedding

Dear Bill,

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

Sincerely yours,

? S.  
/

Mr. Justice Brennan

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 20, 1974

Re: No. 73-846 - Wingo v. Wedding

Dear Chief:

Please join me in your dissent in this  
case.

Sincerely,



The Chief Justice

Copies to Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

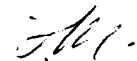
May 28, 1974

Re: No. 73-846 -- Wingo v. Wedding

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 28, 1974

Dear Bill:

Re: No. 73-846 - Wingo v. Wedding

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 22, 1974

No. 73-846 Wingo v. Wedding

Dear Chief:

This is a case of considerable importance to the administration of justice, and especially the federal district courts. It involves interpretation of an Act of Congress.

I have seen few cases more miserably presented than this one. The only thing inferior to the State's brief was the oral "argument" of the Assistant Attorney General of Kentucky.

What would you and the other members of the Conference think of requesting the SG to file a brief within ten days? I suppose we would then give respondent a limited time (say five days) to reply to the SG. If these requests were made promptly, the briefs should be in hand in time to assist us in the final disposition of the case.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 25, 1974

No. 73-846 Wingo v. Wedding

Dear Bill:

I am certainly with you in your interpretation of the statutes and the result reached. Also, I am in accord with the greater part of your fine opinion. But there is language, particularly in the last paragraph, which troubles me. This is the emphasis on the importance of the District Judge "personally hearing the witnesses and observing their demeanor".

I believe at least a majority of us at the Conference agreed that there was no constitutional prohibition against the enactment by the Congress of legislation vesting authority in a magistrate to conduct evidentiary hearings in habeas corpus cases. Thus, I believe that legislation along the lines of local Rule 16 could be adopted, allowing a full-time magistrate to hold an evidentiary hearing but leaving the responsibility for the decision to the District Judge after hearing a recording of the testimony and reviewing recommendations of the magistrate. Indeed, in view of the enormous burden of work on District Judges in some jurisdictions, it is likely that such a procedure, bringing to bear the judgment of both a magistrate and a District Judge, would afford greater safeguards against error than continuing to impose the full burden exclusively on the judge himself. Such a regime would be in accord with the time-honored practice of referring factual matters for initial review and findings to special masters, commissioners, trial examiners and the like.

I agree that in jury and bench trials in criminal cases there is a distinct advantage in observing the witnesses and having an opportunity personally to question them. Yet, here we deal with collateral proceedings where already there has been a trial on the merits and appellate review.

I would hope that our opinion does not discourage Congress from enacting remedial legislation (perhaps by amendment of the Federal Magistrates Act) which in the end ultimately may contribute to a better administration of the criminal justice system.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1974

No. 73-846, Wingo v. Wedding

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 30, 1974

Re: No. 73-846 - Wingo v. Wedding

Dear Bill:

Please join me in the opinion for the Court you have prepared in this case.

Sincerely,



Mr. Justice Brennan

Copies for the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS