The Burger Court Opinion Writing Database

Bishop v. Wood

426 U.S. 341 (1976)

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

May 5, 1976

Re: 74-1303 - Bishop v. Wood, et al

Dear John:

Please join me in your circulation of May 3.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 21, 1976

RE: No. 74-1303 Bishop v. Wood

Dear Byron:

Please join me in your dissent in the above. I may add a brief word on the "liberty" question if I find time.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 26, 1976

RE: No. 74-1303 Bishop v. Wood, etc. et al.

Dear Byron and Harry:

Although I am joining your dissents in the above I shall shortly circulate a brief addition addressing the "liberty" interest.

Sincerely,

Bill

Mr. Justice White
Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 26, 1976

White's
Joins dissent
on 5/21

RE: No. 74-1303 Bishop v. Wood, etc. et al.

Dear Harry:

Please join me in your dissenting opinion in the above.

Sincerely,

WJB

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Brennan

Circulated: 6/3/76

Recirculated: _____

74-1303 Bishop v. Wood

MR. JUSTICE BRENNAN, dissenting.

Petitioner was discharged as a policeman on the grounds of insubordination, "causing low morale," and "conduct unsuited to an officer." Ante, at 1. It is difficult to imagine a greater "badge of infamy" that could be imposed on one following petitioner's calling; in a profession in which prospective employees are invariably investigated, petitioner's job prospects will be severely constricted by the governmental action in this case. Although our case law would appear to require that petitioner thus be accorded an opportunity "to clear his name" of this calumny, see, e.g., Board of Regents v. Roth, 408 U.S. 564, 573 & n. 12 (1972), Arnett v. Kennedy, 416 U.S. 134, 157 (1974), (opinion of Rehnquist, J.), the Court condones this governmental action and holds that petitioner was deprived of no liberty interest thereby.

Paul v. Davis, ___ U.S. ___, a decision overtly hostile to the basic constitutional safeguards of the Due Process Clauses of the Fifth and Fourteenth Amendments that I had hoped would be a "short-lived aberration," id., at _____ (Brennan, J., dissenting), held that the "interest in reputation asserted in [Paul] is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 6/8/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June —, 1976]

MR. JUSTICE BRENNAN, dissenting.

Petitioner was discharged as a policeman on the grounds of insubordination, "causing low morale," and "conduct unsuited to an officer." *Ante*, at 1. It is difficult to imagine a greater "badge of infamy" that could be imposed on one following petitioner's calling; in a profession in which prospective employees are invariably investigated, petitioner's job prospects will be severely constricted by the governmental action in this case. Although our case law would appear to require that petitioner thus be accorded an opportunity "to clear his name" of this calumny, see, *e. g., Board of Regents* v. *Roth*, 408 U. S. 564, 573 and n. 12 (1972), *Arnett* v. *Kennedy*, 416 U. S. 134, 157 (1974) (opinion of REHNQUIST, J.), the Court condones this governmental action and holds that petitioner was deprived of no liberty interest thereby.

Paul v. *Davis*, — U. S. —, a decision overtly hostile to the basic constitutional safeguards of the Due Process Clauses of the Fifth and Fourteenth Amendments that I had hoped would be a "short-lived aberration," *id.*, at — (BRENNAN, J., dissenting), held that the "interest in reputation asserted in [*Paul*] is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." *Id.*, at —. Accordingly, it found

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1976

No. 74-1303 - Bishop v. Wood

Dear John,

I am glad to join your opinion for the Court in this case. Should not the word "affected" in the next to the last line of footnote 13 be "unaffected"?

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1976

Re: No. 74-1303, Bishop v. Wood

Dear John,

The proposed new footnote set out in your memorandum of today is wholly acceptable to me.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copy to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 4, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1303 - Bishop v. Wood

I have looked at this case again and now change my vote to an unsure reversal.

B.R.W.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 3, 1976

Re: Bishop v. Wood, No. 74-1303

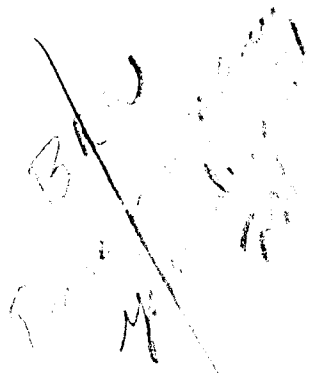
Dear John:

In due course I shall circulate a dissent in this case.

Sincerely,

Mr. Justice Stevens

Copies to Conference



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

From: Mr. Justice White

Circulated: 5-19-76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1976]

MR. JUSTICE WHITE, dissenting.

I dissent because the decision of the majority rests solely upon a proposition which was squarely addressed and in my view correctly rejected by six Members of this Court in *Arnett* v. *Kennedy,* 416 U. S. 134 (1974).

Petitioner Bishop was a permanent employee of the Police Department of the City of Marion, N. C. The city ordinance applicable to him provides:

> "*Dismissal.* A permanent employee whose work is not satisfactory over a period of time shall be notified in what way his work is deficient and what he must do if his work is to be satisfactory. If a permanent employee fails to perform work up to the standard of the classification held, or continues to be negligent, inefficient, or unfit to perform his duties, he may be dismissed by the City Manager."

This language plainly conditions petitioner's dismissal on cause—*i. e.,* failure to perform up to standard, negligence, inefficiency, or unfitness to perform the job. The majority does not read the above-quoted language in any other way and neither did the courts below. Instead, in concluding that petitioner had no "property interest" in his job and that he held his position "at the will and pleasure of the city," the majority and the courts below rely on the *procedures* created by the ordinance for de-

pp 1 – 3

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

From: Mr. Justice White

Circulated: _____

Recirculated: 5-26-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1976]

MR. JUSTICE WHITE, dissenting.

I dissent because the decision of the majority rests solely upon a proposition which was squarely addressed and in my view correctly rejected by six Members of this Court in *Arnett* v. *Kennedy*, 416 U. S. 134 (1974).

Petitioner Bishop was a permanent employee of the Police Department of the City of Marion, N. C. The city ordinance applicable to him provides:

> "*Dismissal.* A permanent employee whose work is not satisfactory over a period of time shall be notified in what way his work is deficient and what he must do if his work is to be satisfactory. *If* a permanent employee fails to perform work up to the standard of the classification held, or continues to be negligent, inefficient, or unfit to perform his duties, he may be dismissed by the City Manager. Any discharged employee shall be given written notice of his discharge setting forth the effective date and reasons for his discharge if he shall request such a notice." (Emphasis added.)

The second sentence of this ordinance plainly conditions petitioner's dismissal on cause—*i. e.*, failure to perform up to standard, negligence, inefficiency, or unfitness to perform the job. The District Court below did not otherwise construe this portion of the ordinance. In the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1303 - Bishop v. Wood

I am adding a footnote at an appropriate place on page two of my dissent in this case, as follows:

> "The Court accepts the District Court's conclusion that the city employee holds his position at the will and pleasure of the city. If the Court believes that the District Court's conclusion did not rest on the procedural limitations in the ordinance, then the Court must construe the District Court's opinion--and the ordinance--as permitting, but not limiting, discharges to those based on the causes specified in the ordinance. In this view, discharges for other reasons or for no reason at all could be made. Termination of employment would in effect be within the complete discretion of the city; and for this reason the employee would have no property interest in his employment which would call for the protections of the Due Process Clause. As indicated in the text, I think this construction of the ordinance and of the District Court's opinion is in error."

B.R.W.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 24, 1976

Re: No. 74-1303 -- Carl D. Bishop v. W. H. Wood

Dear Byron:

Please join me in your dissent.

Sincerely,

T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1976

Re: No. 74-1303 -- Carl D. Bishop v. W. H. Wood

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 21, 1976

Re: No. 74-1303 - Bishop v. Wood

Dear Byron:

Please join me in your dissent. I shall probably add a word of my own.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 5/24/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June —, 1976]

MR. JUSTICE BLACKMUN, dissenting.

I join MR. JUSTICE WHITE's dissent for I agree that the Court appears to be adopting a legal principle which specifically was rejected by a majority of the Justices of this Court in *Arnett* v. *Kennedy*, 416 U. S. 134 (1974).

I also feel, however, that *Still* v. *Lance*, 279 N. C. 254, 182 S. E. 2d 403 (1971), the only North Carolina case cited by the Court and by the District Court, is by no means the authoritative holding on state law that the Court, *ante*, p. 4 and n. 8, seems to think it is. In *Still* the Supreme Court of North Carolina considered a statute that contained no "for cause" standard for failure to renew a teacher's contract at the *end* of a school year. In holding that this provision did not create a continued expectation of employment, the North Carolina court noted that it "does not limit the right of the employer board to terminate the employment of a teacher at the end of a school year to a specified cause or circumstance." *Id.*, at 260, 182 S. E. 2d, at 407. This provision, the court observed, stood in sharp contrast with another provision of the statute relating to termination of employment *during* the school year and providing that when "it shall have been determined that the services of an employee are not *acceptable* for the remainder of a current school year" (emphasis added), *ibid.*, notice and hearing were required.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1976

No. 74-1303 Bishop v. Wood

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1976

No. 74-1303 Bishop v. Wood

Dear John:

I approve entirely of adding the footnote proposed in your letter of June 4.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 5, 1976

Re: No. 74-1303 - Bishop v. Wood

Dear John:

Please join me.

Sincerely,

WHR

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1976

Re: No. 74-1303 - Bishop v. Wood

Dear John:

The proposed new footnote in your memorandum of today is acceptable to me.

Sincerely,

WHR

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: 5/3/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Acting on the recommendation of the Chief of Police, the City Manager of Marion, N. C., terminated petitioner's employment as a policeman without affording him a hearing to determine the sufficiency of the cause for his discharge. Petitioner brought suit contending that since a city ordinance classified him as a "permanent employee," he had a constitutional right to a pretermination hearing.[1] During pretrial discovery petitioner was advised that his dismissal was based on a failure to follow certain orders, poor attendance at police training classes, causing low morale, and conduct unsuited to an officer. Petitioner and several other police officers filed affidavits essentially denying the truth of these charges. The District Court granted defendants' motion for summary judgment.[2] The Court of Appeals affirmed [3] and we granted certiorari, 423 U. S. 890.

[1] 377 F. Supp. 501 (WDNC 1973).

[2] He relied on 42 U. S. C. § 1983, invoking federal jurisdiction under 28 U. S. C. § 1343 (3). He sought reinstatement and back pay. The defendants were the then city manager, chief of police, and the city of Marion. Since the city is not a "person" within

[Footnote 3 is on p. 2]

STYLISTIC CHANGES THROUGHOUT.
~~SEE PAGES:~~

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

From: Mr. Justice Stevens

Circulated: 5/12/76

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Acting on the recommendation of the Chief of Police, the City Manager of Marion, North Carolina, terminated petitioner's employment as a policeman without affording him a hearing to determine the sufficiency of the cause for his discharge. Petitioner brought suit contending that since a city ordinance classified him as a "permanent employee," he had a constitutional right to a pretermination hearing.[1] During pretrial discovery petitioner was advised that his dismissal was based on a failure to follow certain orders, poor attendance at police training classes, causing low morale, and conduct unsuited to an officer. Petitioner and several other police officers filed affidavits essentially denying the truth of these charges. The District Court granted defendants' motion for sum-

[1] He relied on 42 U. S. C. § 1983, invoking federal jurisdiction under 28 U. S. C. § 1343 (3). He sought reinstatement and back pay. The defendants were the then city manager, chief of police, and the city of Marion. Since the city is not a "person" within the meaning of the statute, it was not a proper defendant. *Monroe* v. *Pape*, 365 U. S. 167, 187–192.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 20, 1976

Re: 74-1303 - Bishop v. Wood

MEMORANDUM TO THE CONFERENCE

After rereading Arnett in the light of Byron's dissent, I am persuaded that there is an important difference between the District Court's interpretation of the ordinance in this case and the interpretation of the Civil Service Regulations in the plurality opinion in Arnett.

The District Court here held as a matter of state law that the employee held his position at the will and pleasure of the city; if that is a correct interpretation of state law, he had no property interest in his job. On the other hand, in Arnett the plurality opinion assumed that the employee had a property interest which was qualified by the statutory procedural protections. Since I did not intend in the draft opinion to imply that a qualified property interest is entitled to no constitutional protection, I have made certain changes--primarily, a complete rewriting of footnote 8--to make it clear that the interpretation which Byron's dissent places on the opinion is not correct (even though it may well have been a fair response to footnote 8 in the original draft).

Respectfully,

JPS

pp. 3-4

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: 5/20/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Acting on the recommendation of the Chief of Police, the City Manager of Marion, North Carolina, terminated petitioner's employment as a policeman without affording him a hearing to determine the sufficiency of the cause for his discharge. Petitioner brought suit contending that since a city ordinance classified him as a "permanent employee," he had a constitutional right to a pretermination hearing.[1] During pretrial discovery petitioner was advised that his dismissal was based on a failure to follow certain orders, poor attendance at police training classes, causing low morale, and conduct unsuited to an officer. Petitioner and several other police officers filed affidavits essentially denying the truth of these charges. The District Court granted defendants' motion for sum-

[1] He relied on 42 U. S. C. § 1983, invoking federal jurisdiction under 28 U. S. C. § 1343 (3). He sought reinstatement and back pay. The defendants were the then city manager, chief of police, and the city of Marion. Since the city is not a "person" within the meaning of the statute, it was not a proper defendant. *Monroe* v. *Pape*, 365 U. S. 167, 187–192.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1976

Re: 74-1303 - Bishop v. Wood

MEMORANDUM TO THE CONFERENCE

If acceptable to the Members of the Court who have joined my opinion, I propose to add the following footnote at the end of the first sentence of the full paragraph on page 8:

> "The cumulative impression created by the three dissenting opinions is that this holding represents a significant retreat from settled practice in the federal courts. The fact of the matter, however, is that the instances in which the federal judiciary has required a state agency to reinstate a discharged employee for failure to provide a pretermination hearing are extremely rare. The reason is clear. For unless we were to adopt Mr. Justice Brennan's remarkably innovative suggestion that we develop a federal common law of property rights, or his equally far reaching view that almost every discharge implicates a constitutionally protected liberty interest, the ultimate control of state personnel relationships is, and will remain, with the states; they may grant or withhold tenure at their unfettered discretion. In this case, whether we accept or reject the construction of the ordinance adopted by the two lower courts, the power to change or clarify that ordinance will remain in the hands of the City Council of the City of Marion."

Sincerely,

Pg. 8

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

From: Mr. Justice Stevens

Circulated: 6/18/76

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1303

Carl D. Bishop, Petitioner, *v.* W. H. Wood, etc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Acting on the recommendation of the Chief of Police, the City Manager of Marion, North Carolina, terminated petitioner's employment as a policeman without affording him a hearing to determine the sufficiency of the cause for his discharge. Petitioner brought suit contending that since a city ordinance classified him as a "permanent employee," he had a constitutional right to a pretermination hearing.[1] During pretrial discovery petitioner was advised that his dismissal was based on a failure to follow certain orders, poor attendance at police training classes, causing low morale, and conduct unsuited to an officer. Petitioner and several other police officers filed affidavits essentially denying the truth of these charges. The District Court granted defendants' motion for sum-

[1] He relied on 42 U. S. C. § 1983, invoking federal jurisdiction under 28 U. S. C. § 1343 (3). He sought reinstatement and back pay. The defendants were the then city manager, chief of police, and the city of Marion. Since the city is not a "person" within the meaning of the statute, it was not a proper defendant. *Monroe* v. *Pape*, 365 U. S. 167, 187–192.

Gail

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 16, 1976

Re: Case Heretofore Held for Decision in 74-1303 - Bishop v. Wood

MEMORANDUM TO THE CONFERENCE

I could join 3 — Phil agrees.

No. 75-812 CFX - Cawley v. Velger

Plaintiff-respondent in this case was a patrolman employed by the New York Police Department. Before his probationary period was up, he was discharged by a letter which said the Police Department had "decided not to retain you as an employee of the Police Department, your capacity having been unsatisfactory to the Police Commissioner." After his discharge, Velger obtained employment with the Penn Central police, but was discharged after that department (with petitioner's permission) had checked his NYPD personnel file and had "gleaned" that Velger "had been dismissed because while still a trainee he had put a revolver to his head in an apparent suicide attempt." Velger was not made aware of the accusation.

His later attempts to secure employment included taking over one hundred civil service examinations. He passed 97% and scored many high grades. He also applied for security police positions in the private sector. In many cases he proceeded far enough through the hiring process to make it clear that it was the information in the NYPD file which was preventing his being hired.

The District Court held that Velger had no property interest in his job and that he had not been "stigmatized." The Second Circuit (Justice Clark, and Judges Hays and Mansfield) agreed that there was no property interest but reversed on the second point. (stigmatized)

This case presents a question which was not reached in Bishop because in that case there had been no dissemination of the arguably erroneous grounds for discharge. Here,

respondent had a choice either (1) to have the adverse information made available to prospective employers (even though it might have been unavailable to him) which might result in a "stigma," or (2) to accept the adverse consequence of having his prospective employer know that he was unwilling to make the file available, which might also amount to a "stigma."

The question whether there is a protected liberty interest in this situation, and if so what protections due process requires, is substantial and not answered by Bishop. I will therefore vote to grant the petition.

Sincerely,

John