

# The Burger Court Opinion Writing Database

## *Belcher v. Stengel*

429 U.S. 118 (1976)

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



To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Black  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Burger

From: The Solicitor General  
 Circulated: NOV 24 1976

Recirculated: \_\_\_\_\_

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-823

Raymond Belcher, Petitioner, v. Casey D. Stengel et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
--	---	--

[November —, 1976]

MR. CHIEF JUSTICE BURGER, concurring.

I join the opinion of the Court. I note, however, several additional factors which came to light during plenary consideration of the case and which were not disclosed in the petition for certiorari. The three factors mentioned by the Court, p. 2, *ante*, as tending to prove that the police officer acted in the course of his duties, are determinations made after the incident in question.

There are, however, at least three contemporaneous factors, in addition to possession of the gun, which colored the officer's conduct as official: (1) The officer testified that he had formed an intention that he would arrest at least two of the men when he stood up to intervene in the altercation; (2) he intervened by using a can of mace issued to him by the police department; (3) he was acting pursuant to a police regulation which required his intervention in any disturbance of the peace, whether he was on or off duty.

These factors seem to me important because of the possible negative inference otherwise created that the only objective fact at the time of the incident evidencing state action was the presence of the state required gun. While, of course, subsequent determinations by state officials, such as mentioned by the Court, are important evidence of state action, they could not transform something into state action that otherwise would be deemed to be private conduct. Thus,

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

CHAMBERS OF  
JUSTICE WM J. BRENNAN, JR.

November 12, 1976

RE: No. 75-823 Belcher v. Stengel

Dear Potter:

I agree with the Per Curiam you have prepared in  
the above.

Sincerely,

*Paul*

Mr. Justice Stewart

cc: The Conference

✓ ✓  
~~Am. F.T.~~  
 To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Stewart

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

Recirculated: \_\_\_\_\_

PER CURIAM

NO. 75-823, BELCHER v. STENGEL

This case grew out of a barroom affray in Columbus, Ohio, in the course of which the petitioner, an off-duty Columbus police officer, shot and killed two people and permanently disabled a third. The injured victim and the representatives of the deceased victims, who are the respondents here, brought an action against the petitioner in a federal district court under 42 U.S.C. § 1983. <sup>1/</sup> A jury awarded them monetary damages, and the judgment based upon that verdict was affirmed by the United States Court of Appeals for the Sixth Circuit.

522 F.2d 438.

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

From: Mr. Justice Stewart

Circulated: NOV 15 1976

Circulated:

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-823

Raymond Belcher, Petitioner, v. Casey D. Stengel et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
--	---	--

[November —, 1976]

PER CURIAM.

This case grew out of a barroom affray in Columbus, Ohio, in the course of which the petitioner, an off-duty Columbus police officer, shot and killed two people and permanently disabled a third.<sup>1</sup> The injured victim and the representatives of the deceased victims, who are the respondents here, brought an action against the petitioner in a federal district court under 42 U. S. C. § 1983.<sup>1</sup> A jury awarded them monetary damages, and the judgment based upon that verdict was affirmed by the United States Court of Appeals for the Sixth Circuit. 522 F. 2d 438.

The Petition for Certiorari, which we granted on April 5, 1976, 425 U. S. 910, presented a single question:

“Does the fact that an off-duty police officer, out of uniform, is required by police department regulation to carry a weapon at all times, establish that any use of that weapon against the person of another, even

<sup>1</sup> Section 1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 15, 1976

Re: No. 75-823 - Belcher v. Stengel

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 12, 1976

Re: No. 75-823, Belcher v. Stengel

Dear Potter:

Please join me.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 12, 1976

Re: No. 75-823 - Belcher v. Stengel

Dear Potter:

I agree with your per curiam.

Sincerely,



Mr. Justice Stewart

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 15, 1976

No. 75-823 Belcher v. Stengel

Dear Potter:

I agree with your Per Curiam in the above case.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST


November 11, 1976

Re: No. 75-823 - Belcher v. Stengel

Dear Potter:

Please join me in the per curiam you have prepared  
for this case.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 12, 1976

Re: 75-823 - Belcher v. Stengel

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference