

# The Burger Court Opinion Writing Database

## *Lassiter v. Department of Social Services of Durham County*

452 U.S. 18 (1981)

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 21, 1981

RE: 79-6423 - Lassiter v. Dept. of Social Services of  
Durham County, N.C.

Dear Potter:

I join.

Regards,



Attached is a small "snapper"  
concurring statement.

Justice Stewart

Copies to the Conference

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

From: The Chief Justice

Circulated: MAY 21 1981

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May 21, 1981

Re: No. 79-6423 -- Lassiter v. Department of Social Services

CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion and add only a few words to emphasize a factor I believe is misconceived by the dissenters. The purpose of the termination proceeding at issue here was not "punitive." Post, at 14. On the contrary, its purpose was protective of the child's best interests. Given the record in this case, which involves the parental rights of a mother under lengthy sentence for murder who showed little interest in her son, the writ ~~here~~ might well have been a "candidate" for dismissal as improvidently granted. See ante, at 13-14. However, I am content to join the narrow holding of the Court, leaving the appointment of counsel in termination proceedings to be determined by the state courts on a case-by-case basis.

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Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

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1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-6423

Abby Gail Lassiter, Petitioner,	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
v.		
Department of Social Services of Durham County,		
North Carolina.		

[June — , 1981]

CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion and add only a few words to emphasize a factor I believe is misconceived by the dissenters. The purpose of the termination proceeding at issue here was not "punitive." *Post*, at 14. On the contrary, its purpose was *protective* of the child's best interests. Given the record in this case, which involves the parental rights of a mother under lengthy sentence for murder who showed little interest in her son, the writ might well have been a "candidate" for dismissal as improvidently granted. See *ante*, at 13-14. However, I am content to join the narrow holding of the Court, leaving the appointment of counsel in termination proceedings to be determined by the state courts on a case-by-case basis.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 10, 1981

RE: No. 79-6423 Lassiter v. Dept. of Social  
Services of Durham Co. N.C.

Dear Harry:

Thurgood, John and I are also in dissent  
in the above. I would be happy if you would  
undertake the dissent.

Sincerely,



Mr. Justice Blackmun

cc:

Mr. Justice Marshall

Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 10, 1981

RE: No. 79-6423 Lassiter v. Department of Social Services

Dear Potter:

I shall await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stewart", is written below the typed name.

Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

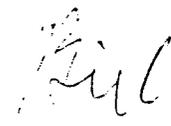
May 14, 1981

RE: No. 79-6423 Lassiter v. Department of Social  
Services of Durham County, N.C.

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

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

Mr. 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  
APR 9 1981

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**SUPREME COURT OF THE UNITED STATES**

No. 79-6423

Abby Gail Lassiter, Petitioner,  
v.  
Department of Social Services  
of Durham County,  
North Carolina. } On Writ of Certiorari to the  
Court of Appeals of North  
Carolina.

[April —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

I

In the late Spring of 1975, after hearing evidence that the petitioner, Abby Gail Lassiter, had not provided her infant son William with proper medical care, the District Court of Durham County, N. C., adjudicated him a neglected child and transferred him to the custody of the Durham County Department of Social Services, the respondent here. A year later, Ms. Lassiter was charged with first-degree murder, was convicted of second-degree murder, and began a sentence of 25 to 40 years of imprisonment.<sup>1</sup> In 1978 the Department

<sup>1</sup>The North Carolina Court of Appeals, in reviewing the petitioner's conviction, indicated that the murder occurred during an altercation between Ms. Lassiter, her mother, and the deceased:

"Defendant's mother told [the deceased] to 'come on.' They began to struggle and deceased fell or was knocked to the floor. Defendant's mother was beating deceased with a broom. While deceased was still on the floor and being beaten with the broom, defendant entered the apartment. She went into the kitchen and got a butcher knife. She took the knife and began stabbing the deceased who was still prostrate. The body of deceased had seven stab wounds. . . ." — N. C. —; — S. E. 2d —.

After her conviction was affirmed on appeal, Ms. Lassiter sought to at-

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 13, 1981

Re: 79-6423 - Lassiter v.  
Department of Social Services  
of Durham County, NC

Dear Potter,

I shall await the dissent in this  
case.

Sincerely yours,



Mr. Justice Stewart  
Copies to the Conference  
cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 13, 1981

Re: 79-6423 - Lassiter v. Dept. of  
Social Services of Durham County, NC

Dear Potter:

Please join me.

Sincerely yours,



Justice Stewart

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 10, 1981

Re: No. 79-6423 - Lassiter v. Dept. of Social  
Services of Durham County, N.C.

Dear Potter:

I await the dissent.

Sincerely,



T.M.

Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 13, 1981

Re: No. 79-6423 - Lassiter v. Dept. of Social  
Services of Durham County, N.C.

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 10, 1981

Re: No. 79-6423 - Lassiter v. Department of Social Services

Dear Bill:

I shall be glad to undertake the dissent in this case.

Sincerely,

*Harry*  
—

Mr. Justice Brennan

cc: Mr. Justice Marshall ✓  
Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 9, 1981

Re: No. 79-6423 - Lassiter v. Dept. of Social Services

Dear Potter:

I shall get out a dissent in this case in due course.

Sincerely,



Mr. Justice Stewart

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

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**SUPREME COURT OF THE UNITED STATES**

No. 79-6423

Abby Gail Lassiter, Petitioner,	} On Writ of Certiorari to the Court of Appeals of North Carolina.
<i>v.</i>	
Department of Social Services	
of Durham County, North Carolina.	

[May —, 1981]

JUSTICE BLACKMUN, dissenting.

The Court today denies an indigent mother the representation of counsel in a judicial proceeding initiated by the State of North Carolina to terminate her parental rights with respect to her youngest child. The Court most appropriately recognizes that the mother's interest is a "commanding one," *ante*, at 8, and it finds no countervailing state interest of even remotely comparable significance, see *ante*, at 8-9, 12. Nonetheless, the Court avoids what seems to me the obvious conclusion that due process requires the presence of counsel for a parent threatened with judicial termination of parental rights, and, instead, revives an ad hoc approach thoroughly discredited nearly 20 years ago in *Gideon v. Wainwright*, 372 U. S. 335 (1963). Because I believe that the unique importance of a parent's interest in the care and custody of his or her child cannot constitutionally be extinguished through formal judicial proceedings without the benefit of counsel, I dissent.

I

This Court is not unfamiliar with the problem of determining under what circumstances legal representation is mandated by the Constitution. In *Betts v. Brady*, 316 U. S. 455 (1942), it reviewed at length both the tradition behind the Sixth Amendment right to counsel in criminal trials and the

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Pp. 1, 14, 15, 17, 19  
and footnotes 20-26 renumbered

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

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-6423

Abby Gail Lassiter, Petitioner,  
v.  
Department of Social Services  
of Durham County,  
North Carolina. } On Writ of Certiorari to the  
Court of Appeals of North  
Carolina.

[May —, 1981]

with whom JUSTICE BRENNAN and  
JUSTICE MARSHALL join,

JUSTICE BLACKMUN, dissenting.

The Court today denies an indigent mother the representation of counsel in a judicial proceeding initiated by the State of North Carolina to terminate her parental rights with respect to her youngest child. The Court most appropriately recognizes that the mother's interest is a "commanding one," *ante*, at 8, and it finds no countervailing state interest of even remotely comparable significance, see *ante*, at 8-9, 12. Nonetheless, the Court avoids what seems to me the obvious conclusion that due process requires the presence of counsel for a parent threatened with judicial termination of parental rights, and, instead, revives an ad hoc approach thoroughly discredited nearly 20 years ago in *Gideon v. Wainwright*, 372 U. S. 335 (1963). Because I believe that the unique importance of a parent's interest in the care and custody of his or her child cannot constitutionally be extinguished through formal judicial proceedings without the benefit of counsel, I dissent.

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pp. 4, 6, 22, 24

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

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-6423

Abby Gail Lassiter, Petitioner, v. Department of Social Services of Durham County, North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
--	---	--

[May —, 1981]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

The Court today denies an indigent mother the representation of counsel in a judicial proceeding initiated by the State of North Carolina to terminate her parental rights with respect to her youngest child. The Court most appropriately recognizes that the mother's interest is a "commanding one," *ante*, at 8, and it finds no countervailing state interest of even remotely comparable significance, see *ante*, at 8-9, 12. Nonetheless, the Court avoids what seems to me the obvious conclusion that due process requires the presence of counsel for a parent threatened with judicial termination of parental rights, and, instead, revives an ad hoc approach thoroughly discredited nearly 20 years ago in *Gideon v. Wainwright*, 372 U. S. 335 (1963). Because I believe that the unique importance of a parent's interest in the care and custody of his or her child cannot constitutionally be extinguished through formal judicial proceedings without the benefit of counsel, I dissent.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 11, 1981

79-6423 Lassiter v. Dept. of Social Services

Dear Potter:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "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

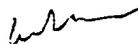
April 10, 1981

Re: No. 79-6423 Lassiter v. Dept. of Social  
Services of Durham County

Dear Potter:

Please join me in your opinion of the Court.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

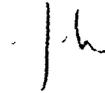
April 10, 1981

Re: 79-6423 - Lassiter v. Dept. of Social  
Services of Durham County, N.C.

Dear Potter:

I shall wait for Harry's dissent.

Respectfully,



Justice Stewart

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: MAY 15 '81

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79-6423 - Lassiter v. Department of Social Services  
of Durham County, North Carolina

JUSTICE STEVENS, dissenting.

A woman's misconduct may cause the State to take formal steps to deprive her of her liberty. The State may incarcerate her for a fixed term and also may permanently deprive her of her freedom to associate with her child. The former is a pure deprivation of liberty; the latter is a deprivation of both liberty and property, because statutory rights of inheritance as well as the natural relationship may be destroyed. Although both deprivations are serious, often the deprivation of parental rights will be the more grievous of the two. The plain language of the Fourteenth Amendment commands that both deprivations must be accompanied by due process of law.<sup>1</sup>

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<sup>1</sup> The Fourteenth Amendment provides in part:  
"No State shall ... deprive any person of life,  
liberty, or property, without due process of law ...."

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

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**SUPREME COURT OF THE UNITED STATES**

Reinstated: MAY 18 1981

No. 79-6423

Abby Gail Lassiter, Petitioner,  
v.  
Department of Social Services  
of Durham County,  
North Carolina.

On Writ of Certiorari to the  
Court of Appeals of North  
Carolina.

[May —, 1981]

JUSTICE STEVENS. dissenting.

A woman's misconduct may cause the State to take formal steps to deprive her of her liberty. The State may incarcerate her for a fixed term and also may permanently deprive her of her freedom to associate with her child. The former is a pure deprivation of liberty; the latter is a deprivation of both liberty and property, because statutory rights of inheritance as well as the natural relationship may be destroyed. Although both deprivations are serious, often the deprivation of parental rights will be the more grievous of the two. The plain language of the Fourteenth Amendment commands that both deprivations must be accompanied by due process of law.\*

Without so stating explicitly, the Court appears to treat this case as though it merely involved the deprivation of an interest in property that is less worthy of protection than a person's liberty. The analysis employed in *Mathews v. Eldridge*, 424 U. S. 319, in which the Court balanced the costs and benefits of different procedural mechanisms for allocating a finite quantity of material resources among competing claimants, is an appropriate method of determining what

\*The Fourteenth Amendment provides in part:  
"No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."

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