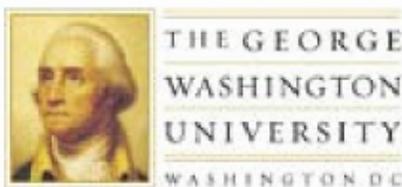


# The Burger Court Opinion Writing Database

*Jim McNeff, Inc. v. Todd*

461 U.S. 260 (1983)

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  
JUSTICE SANDRA DAY O'CONNOR

June 25, 1982

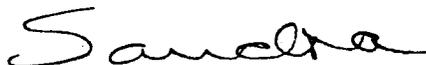
Re: No. 81-2150, McNeff, Inc. v. Todd  
No. 81-1946, Clark v. Paddach

MEMORANDUM TO THE CONFERENCE

On June 24, the Conference voted to grant No. 81-2150, McNeff, Inc. v. Todd, and to hold No. 81-1946, Clark v. Paddach, for McNeff. The cases were relisted for me to take another look at them to be sure we took the "better" case. Our action appears to me to be appropriate. McNeff, the first case decided by CA9 and the only one decided with a full opinion, will provide a fuller basis for evaluating CA9's approach. Although the facts in Clark differ in minor respects, it does not appear necessary to consider both cases. Consideration of McNeff alone should clarify whether these factual differences (such as the fact that the employees in McNeff signed union membership cards) affect the enforceability of prehire agreements.

McNeff includes a second issue, the enforceability of prehire agreements obtained through coercion. CA9 prevented petitioner from raising this argument, holding that an employer may raise such a claim only by repudiating the disputed agreement. Although the Court would not need to reach this issue if it disagreed with CA9 on the first point, I favor permitting the parties to brief this issue. CA9's holding appears inconsistent with the spirit of our recent decision in No. 80-1345, Kaiser Steel Corp. v. Mullins. Accordingly, if the Court did reach this issue, it could clarify or reinforce the holding of Kaiser Steel.

Sincerely,



Sandra D. O'Connor