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In the
Supreme Court of the United States

WILLIE MAE WEBER,

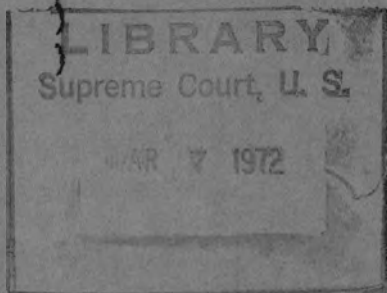
Petitioner,

vs.

No. 70-5112

AETNA CASUALTY & SURETY
COMPANY, et al.,

Respondents.



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v.

AETNA CASUALTY & SURETY
COMPANY, ET AL.,

Respondents.
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No. 70-5112

Washington, D. C.
February 28, 1972

The above-entitled matter came for argument
at 11:03 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

VANUE B. LACOUR, ESQ., For the Petitioner
1544 Harding Boulevard,
Baton Rouge, Louisiana 70807.

W. HENSON MOORE, ESQ., For the Respondents
710 Reymond Building,
Baton Rouge, Louisiana.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 70-5112, Weber against the Aetna Casualty.

MR. LACOUR: Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Mr. Lacour.

ORAL ARGUMENT OF VANUE B. LACOUR, ESQ.,

ON BEHALF OF THE PETITIONER

MR. LACOUR: May it please the Court:

This case is here on certiorari to the Supreme Court of the State of Louisiana. The sole issue before the Court is whether or not the denial of Workmen's Compensation to dependent illegitimate children of a single family unit solely because they are illegitimate deprives such illegitimate children of equal protection under the 14th Amendment.

I'll sketch the facts of the case briefly.

Henry Clyde Stokes was the father of four legitimate children born of a marriage with a lawfully wedded wife from whom he was separated. He became the paramour or common-law husband of Willie Mae Weber. He moved his four illegitimate children into the house with her and lived there as a family unit.

Q When you say "common-law"--

MR. LACOUR: I mean out-of-wedlock wife, if I may put it that way.

Q He could not be a common-law husband--

MR. LACOUR: There are no common-law marriages in Louisiana.

Q And his lawful wife is still living?

MR. LACOUR: His lawful wife was still living, but they were separated, not judicially separated or divorced.

While living with Willie Mae Weber, there was born one child of their illicit or out-of-wedlock relationship. Then while they were living, he was employed as a truck driver and was killed on the job in the course and scope of his employ. But there is no dispute but that he was covered by Workmen's Compensation under Louisiana law.

And some time after his death there was born to Willie Mae Weber another child, conceived out of the relationship with him prior to his death.

Q Is there any question, Mr. Lacour, about that second child, if that second child had been a legitimate child although a posthumous child? Would that child have been counted as a child under the Workmen's Compensation Act?

MR. LACOUR: Yes, it will have. If he is a posthumous child and an illegitimate child, even though it isn't involved in this case, Louisiana does draw a distinction between a posthumous illegitimate and a

posthumous legitimate. The posthumous legitimate child will take Workmen's Compensation but not a posthumous illegitimate, which is another discrimination not emphasized in the case, however, because there are larger discriminations here and we may not even get to this.

Q Is that partly related in a practical sense to the problems of proof?

MR. LACOUR: I suppose so. However, without being facetious, I suppose the proof of paternity--you prove it by outward manifestation of family membership in this instance in the posthumous child. The mother could see the child, she was pregnant; there is no doubt in the record, it is not in dispute but that Henry Clyde Stokes, the deceased employee, was the father of the child.

Q Has Louisiana in any case you know of ever given any special status to extrajudicial acknowledgements, that is, letters, affidavits, things of that kind, acknowledgements of paternity?

MR. LACOUR: Not of paternity, of maternity. Even though Louisiana law requires--well, it's unsettled in Louisiana as to whether or not what we call an informal acknowledgement of an illegitimate child lift that child from the abject lowest level of which--the Civil Court says it's known by the appellation basket, whereas the child acknowledged either formally by notarial act or some

formal act or informally, the mother because of maternity doesn't open that question of uncertainty as to parentage; informal acknowledgement of maternity is accepted whereas there is some reservation with respect to informal acknowledgement of paternity.

Q Mr. Lacour, in the amicus brief I think is a statement that these out of wedlock children could not have been acknowledged under--is it Article 204 of your code?

MR. LACOUR: 204 of the Louisiana Civil Code.

Q Do you agree with that?

MR. LACOUR: That is correct. That is correct. The provision for acknowledgement, for formal acknowledgement, has a restriction. The restriction is that a parent may not acknowledge a child, either informally or formally--we're dealing with formally here--if at the time of conception there was an impediment to the marriage of the parent of the illegitimate child. In this instance, it would have been a bigamous marriage at the moment of conception. The impediment was that Henry Clyde Stokes was lawfully married to another woman and therefore these children could not have been acknowledged.

Q And this is a distinction from last term's case of Labine v. Vincent?

MR. LACOUR: If we are going to focus our

attention upon what is argued as being the distinction between Labine and Levy, wherein Labine apparently is saying that there was an insurmountable barrier in Levy, whereas there is not an insurmountable barrier here in that the children could be acknowledged. Of course, you will see that there is an insurmountable barrier here when you look at what is said in the amicus brief and what the Louisiana Civil Court actually provided under 204. There is an insurmountable barrier here because these children couldn't even be acknowledged.

Q What is the purpose of that barrier in the code, do you think? I don't know of its being present in common-law states, anyway.

MR. LACOUR: As I recall, it's a carryover in the civil law. I guess it's something to discourage--which was rejected in Levy to discourage the illicit relationship we would produce or also to prohibit the bringing into this--up to the status of a child a child where the parents were actually married to each other. It also--the law, whether it's constitutional or not--an incestuous marriage would prevent the acknowledgement of a child. Also to the extent, the time when it was constitutional a miscegenous marriage, a miscegenous relationship, a difference in race would have been an impediment to the marriage. Consequently we had a long line of cases where mulatto children couldn't

be acknowledged.

Q Mr. Lacour, do you make a separate contention here that that rule of Louisiana law respecting legitimation, distinguishing between the case where there was an impediment in the marriage of their parents and there wasn't, that that itself is a violation of equal protection; or do you conceive that that is a rationally based statute?

MR. LACOUR: I conceive that that is a rational basis. What we are saying here, we take the position that the thrust of Levine v. Vincent is not to reject or overrule Levy, that Levy which held that under Article 2315, which is the Louisiana basic tort law--all of our law for negligence or other tort claims arise or get its source from Article 2315 of the Louisiana Civil Code, which provides that whoever is injured as a result of the actions of another, they are entitled to reparation. And then Louisiana through the years added wrongful death so as to give an action for death to survivors. As the Court knows, in Levy the claims for illegitimate children of the mother who died as a result of an alleged fall, and the denial of cause of action to those children was held to be violative of the equal protection clause.

What we are saying here, if Levy is still the law and Labine, it seems to me too faint to say that Levy is still the law. And what Labine is saying is that the

denial of inheritance rights is not the same kind of denial and deprivation. In a tort cause of action, the child, as Justice Douglas points out, is nurtured by the parent, is not a non-person; the child is loved and he loses the same things when he loses his parents as the legitimate child.

Under Louisiana law the Workmen's Compensation law is the replacement for the tort law. So, 2315 cannot be used against the employer here. I need to go into just a little more explanation of the facts, because there is a tie-in between Workmen's Compensation and the Louisiana Tort law. What happened further in this case was that the grandmother of the four legitimate children brought a tort action against a third party tort feason who was responsible for the accident in which the employee was killed. But you still have your cause of action against your third party for a tort, even though you have your Workmen's Compensation; but whatever Workmen's Compensation you recover from your third party tort feason, the beneficiary will owe it to the employer or its insurer under the right of subrogation.

So, the tort suit was settled. The maximum compensation payable in Louisiana in any instance at that time was \$14,000. The tort claim exceeded \$14,000. The four legitimate children then came back into the state

court and dismissed their claim for Workmen's Compensation on the basis that there was nothing for them to recover anyway because if they recovered, the right would belong to Aetna Casualty and the truck driving concern, the employer. Then the employer and its insurer moved to dismiss the suit on the ground that the Workmen's Compensation had been exhausted.

We have, of course, pleaded that the denial of Workmen's Compensation to the two illegitimate children would constitute the denial of equal protection. And the trial court held that they were entitled to Workmen's Compensation but only if there was any left after the four legitimate children had used it all up. So, from that we appealed on up. And what happens then is the Supreme Court of Louisiana, interpreting the Workmen's Compensation Law of Louisiana is saying that you have six children born of a man, who are his dependents, they are supported by him. They are members of a family unit which he is maintaining at the time of his life and at the time of his death, is a family unit consisting of six children. The out-of-wedlock wife or the mother of the two illegitimate is also the step-mother of the legitimate. So, everything is equal insofar as the nexus or the relationship between the father and the six children. The only difference between the four who got the Workmen's Compensation and the two who did not

is that the four were legitimate and the other two were illegitimate.

Q Assuming that the record supports that statement, Mr. Lacour, in this case, that would not necessarily be true with respect to all illegitimate children, would it, as a general proposition? They aren't always under cover and protection of the father.

MR. LACOUR: No. If they were acknowledged illegitimate children, would be beneficiaries under the Louisiana Workmen's Compensation Law, formally acknowledged illegitimate. If those children had been acknowledged, they would have been entitled to Workmen's Compensation, if I understand Mr. Chief Justice's question correctly.

I think I have just about covered the essential features of the case except perhaps to re-emphasize that we believe what we're arguing here is exactly what Labine-- that is, the Louisiana case involving inheritance, the reservation of Labine.

We believe also the insurmountable barrier is the distinction--if I am clearly pointing out what has happened in this case, there is no opportunity for the two illegitimate children to get any Workmen's Compensation unless by sheer accident. Because, if I may point out, the \$14,000 maximum Workmen's Compensation was never paid by the compensation carrier. It was paid by the third party

tortfeasor. The compensation--the employer and the insurer got credit for it because automatically they would get credit for it under the Louisiana Workmen's Compensation Law. Ordinarily Workmen's Compensation benefits are paid weekly and would have \$35 a week here for 400 weeks. Here it was not done that way. There is no money coming in so that if one of the legitimates should die short of reaching--one of the illegitimates would step in. That's what is meant under Louisiana law if it's not exhausted. Here it's all gone. And so the court just effectively closed the door against the two illegitimate and taking six children, living as one family unit, all equally supported by the father, no apparent difference in his treatment in what he would have wished for them to have. But because the two are illegitimate, the four get all of the Workmen's Compensation and the other two are left to go on whatever way they can.

Q Mr. Lacour, would your case be any different if 204 were not present, if the barrier of 204 were not there and he had just not acknowledged his children?

MR. LACOUR: Yes, it would have been; it would have been different, yes. Yes. There's 204--if there had not been an impediment, he could have acknowledged them. If he had acknowledged them under Louisiana Workmen's Compensation Law, they would have been entitled to--

Q What if he could have but didn't? Your case wouldn't be any different, would it?

MR. LACOUR: It wouldn't have been any different.

Q This was my question, if he could have but didn't.

MR. LACOUR: If he could have but didn't, then they would have been excluded from Workmen's Compensation. You understand, I think perhaps we need to clear this point--

Q Would you still be attacking their exclusion or not? If he could have acknowledged them but didn't and then he died, would these unacknowledged children be entitled to--

MR. LACOUR: We would still be arguing--yes, Mr. Justice, we would still be arguing that you are excluding them because they are illegitimate. And if they are in every way equally dependent upon the father, and it is established and undisputed in the record that they are his children, then the exclusion of them from participation in Workmen's Compensation along with the other children who had no more dependency upon the father than they had would still be an invidious, arbitrary, capricious--without any basis at all other than that they are illegitimate and the other four are legitimate.

Q Except that he had a way to acknowledge them

and didn't pursue that way.

MR. LACOUR: You would say then that that would probably be the argument under Labine v. Vincent, that he had a way, but I am not willing and my argument here is that that I think is more eye-catching than the real distinction of Labine. I don't think that that insurmountable barrier which was pointed out by the court there is as really the real reason as when you read underneath here, that inheritance does not involve the same kind of nexus in attacking the human relation between people that parent and children do, and that when you deny cause of action to a child whose parents' life has been snuffed out, you are denying reparation for a deprivation. But when you deny the parent the law of succession and the state says you go this way or that way, the state is not pinpointing and saying you lost something but you can't get any reparation because you're illegitimate. The state is just saying you don't fall in that class under whose rules you would get the right of inheritance. And I think the real distinction between Labine and Vincent is not the insurmountable barrier but the real invidiousness of telling one who has lost his parent you cannot get the reparation that one was entitled to from the loss of a parent merely because you're illegitimate.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lacour.

Mr. Moore.

ORAL ARGUMENT OF W. HENSON MOORE, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. MOORE: Mr. Chief Justice and may it please the Court:

The counsel in this case looked at this particular case before you as somewhere in a grey area either between Levy v. Louisiana, Labine v. Vincent or perhaps in the grey on either of the extremes of these two cases. It's the opinion of the respondents that there is no invidious discrimination in this case. I'd like to try to contrast this case with Levy and Labine.

First, in the Levy case you had a tort situation. The Louisiana law has drawn this distinction and has not extended Levy beyond tort. In the Labine decision this honorable Court noted that this was a distinction. Levy applied to tort.

Secondly, in the Levy case it was pointed out quite forcefully that a wrongdoer was about to go scott free. No one was going to recover. No tortfeasor was going to have to pay for the death of the mother in the Levy case. In the case at bar this time there is no wrongdoing. This is a Workmen's Compensation. There is no question of fault. There is no question of someone getting off free.

However, I might point out an interesting corollary. Under Louisiana's Workmen's Compensation Law the employer is entitled to recover Workmen's Compensation benefits he pays to an employee from the tort feisor, if there is a tort feisor who injured the employee. We now as respondents have lost that right because of one-year proscription in Louisiana law. This accident took place in 1967. Therefore--

Q But you have gotten a complete set-off, haven't you, from the recovery by the four legitimate children?

MR. MOORE: We got that, but I don't think it's clear at all that what should happen is this honorable Court should reverse this decision. It may well be we've got to turn right around and pay the two children Mr. Lacour represents their fair share and then try to recover that back from the tort feisor, which we can no longer do. We're barred by one-year proscription.

Q Isn't 65 percent of the wages the maximum, whether or not there are four children or six children?

MR. MOORE: That's correct. That's the maximum amount of wages paid under Louisiana law.

Q And the four recovered more than the maximum and you got a complete set-off; am I wrong?

MR. MOORE: A complete set-off as to those four,

Your Honor.

Q Isn't 65 percent the maximum?

MR. MOORE: That's right.

Q And whether there are four or six or twelve children.

MR. MOORE: What I am trying to say, Your Honor, is it's not clear at all whether or not I will still be liable to Mr. Lacour's clients for Workmen's Compensation. The set-off I got applied to the four people under Louisiana law at the time this case was decided who could recover compensation. Mr. Lacour's clients could not. So, it's not clear in our law. In other words, if you reverse this case, it may well be that I have to now pay his clients; and the set-off I have against the four legitimate children is no protection to me now as to these two children. And, therefore, the tort feisor--one year has gone by, and so this is an interesting corollary; if this case is reversed, the tort feisor would get off scot free as far as the liability for compensation of two more children.

The next point I would like to point out, and distinction, is the fact of this acknowledged or unacknowledged illegitimate children situation. Under the tort law of Louisiana prior to Levy, whether you acknowledged or unacknowledged made no difference. If you were

illegitimate, you could recover no tort benefits; only legitimate children could born in wedlock or adopted. This is not true in compensation law in Louisiana. If you are in fact an illegitimate unacknowledged, you're treated as another dependent under Subsection Eight of our list of ranking of dependents and how they recover the money. This applies in this case, that you are not excluding from Workmen's Compensation by law; you are ranked but not excluded.

Q In other words, had there been no legitimate children in this case, the illegitimate children that Mr. Lacour represents would have been entitled to some share of Workmen's Compensation?

MR. MOORE: That's correct, Your Honor.

Q But only as a lower preference, isn't it?

MR. MOORE: As a matter of ranking preference.

Under Section 1232 of our Louisiana's Workmen's Compensation Law which I quote verbatim in my brief, there are eight classifications or ranking of which dependent in which situation in which situation gets what percent of the allowable wages to be paid Workmen's Compensation benefits. The illegitimate unacknowledge children are treated as other dependents under the eighth ranking, meaning in order of preference. They are eight in the line of preference. But of those the eight, the first, second, fourth, fifth,

and seventh all have situations where there may be somebody in a higher ranking that does not use up the full 65 percent. The balance then goes down the line which comes to the eighth rank, illegitimate unacknowledged children.

In other words, I'll give you an example. Under Section Five--Subsection Five--it says if there are two children, meaning legitimates or acknowledged, these two children recover forty-six and one quarter percent of the wages. The difference between this forty-six and one quarter percent and sixty-five percent would go down the line to the next order of persons, all the way to the end. In this case the illegitimate children would recover the difference between forty-six and a quarter and sixty-five percent.

Q Or if the decedent had no illegitimate children, no widow, but had one parent--

MR. MOORE: That's right.

Q --then thirty-two and a half percent would go to the illegitimate children.

MR. MOORE: Correct. So, we are trying to point out here that there is no absolute barrier for illegitimate unacknowledged child to recover compensation as there was in the tort law of Louisiana dealing with 2315.

Now, in the case of Labine v. Vincent, the same thing is true. An illegitimate unacknowledged child has

absolutely no right to inheritance under Louisiana law. This again, as we just pointed out, is not true in our compensation law.

Let's take a situation of the acknowledged illegitimate child. How is it treated?

Q Right there, Mr. Moore; you conceive that these children could not have been acknowledged under 204?

MR. MOORE: At the time of the deceased's death, no, they could not; that is correct. Of course, the law goes on to point out that should these two persons subsequently contract a legal marriage, they then can adopt. And so the restriction there is not one for all time. It worked out that way in this case because obviously the man died before he had a chance to properly divorce his first wife and marry the woman with whom he was living.

In the case of the acknowledged illegitimate child, once again under Levy he had no right of recovery. As you point out in Labine v. Vincent, he does have a right of succession, a right to be in a succession, but he is not ranked equally with legitimate children. Even in Labine v. Vincent he comes in a preferential order. He comes down the line ahead of the State of Louisiana and several other miscellaneous persons--way down the line in order of succession. But an acknowledge illegitimate child is not treated equally with a legitimate child under Louisiana

succession law.

Now we come to Louisiana's Workmen's Compensation Law and we see that an acknowledged illegitimate child is treated equally with the adopted or children born to a legal marriage. Therefore, once again we can see that in looking for similarities Louisiana's Workmen's Compensation Law does not have anywhere near the barriers found in Levy and is indeed far better off than those this honorable Court pointed out in Labine v. Vincent.

Further, as I pointed out, in the case of whether a child could be acknowledged or not, if those two parents subsequently marry, they can then acknowledge a child. I'd like to also point out the discrimination here as to the illegitimate children is no different than discrimination or the ranking of all persons in the eight subcategories of dependents. In other words, the ascendants are ranked over the collateral relations, and the descendants are ranked over the ascendants. And so this is just a whole schematic lineup of rankings here. There is no invidious discrimination in any of them. The idea is to give a preferential order of how the support is to be parceled out.

A question was asked a moment ago as for the reason for this ranking or why this was done. And I'd like to point out that on page 76 of the appendix, the Louisiana Supreme Court summed it up as best as we can find

anywhere in print. The Louisiana Supreme Court said, "For ourselves, we find nothing invidious in the distinction made in the compensation statute which would protect such legally recognized family relationships, any more than the preference given legitimate dependent children (even illegitimate ones when they are duly acknowledged) over dependent parents."

What the court is saying here is that the Legislature of Louisiana has felt that this protects the existing family order by parceling out the compensation based upon, first of all, the question of dependency and, secondly, the question of the family relationship.

I'd like to point out too this honorable Court in the Levy decision noted the fairness of Louisiana's Workmen's Compensation Law in Footnote No. 7. So, I would like to point again to the fact that Louisiana's Workmen's Compensation Law does not have absolute invidious discrimination or an absolute barrier to recovery. It's just that this particular case it appears that this time the two illegitimate children will not recover anything.

If subsequently before the four weeks expires-- and I've got to assume by this time it has expired--if one or more of the legitimate children had died, then there wouldn't be this balance or overflow; it would go down the line to the illegitimates. And so even after the court

rendered its initial opinion in this case, it was still possible for the illegitimates to come into some Workmen's Compensation benefits. It was noted and preserved in the judgment of the trial court.

Q Mr. Moore, had these children been born out of wedlock but the impediment not been there to actual legitimation, had they been legitimated, they would have recovered as lawful children under the compensation law.

MR. MOORE: Correct, under the compensation law. That's not true--was not true under the tort law and it's not true still under our succession law in Labine v. Vincent. But it is true in the Workmen's Compensation Law.

Now, Your Honors, I'd like to point out in the language in Labine and Levy which leave to Louisiana's discretion or its power to do what it has done in setting up this Louisiana Workmen's Compensation Law. In Labine this honorable Court pointed out and I quote: "Levy did not say and cannot fairly be read to say that a state can never treat an illegitimate child differently from legitimate offspring."

And, further, the Court noted, and I quote: "The choices reflected by the intestate succession statutes are choices within the power of the state to make. The Federal Constitution does not give this Court the power to overturn the state's choice under the guise of constitutional

interpretation because the Justices of this Court can provide better rules."

Under Levy the majority opinion, and I quote: "In applying the equal protection clause to social and economic legislation we give great latitude to the legislature in making classifications."

I want to say, of course, Louisiana's Workmen's Compensation Law is very definitely social and economic legislation. And we ask this honorable Court to find that the State of Louisiana has had this latitude in making its classifications, that they are not invidious, and that the state can in this case treat illegitimate children somewhat differently in a ranking because it has not absolutely prevented them from recovery. And we ask you, therefore, to find that there is no invidious discrimination and to affirm the judgment of the Louisiana Supreme Court.

Q Mr. Moore, may I ask you a question. The classification that you have been discussing applies in the case of death. Is there a similar classification under Louisiana law that applies with respect to Workmen's Compensation benefits resulting from an injury?

MR. MOORE: No, sir, Your Honor, in the case of injury, the benefits are paid directly to the injured employee.

Q And regardless of his disability?

MR. MOORE: That's correct. We have partial disability and permanent disability--

Q If he were mentally disabled--

MR. MOORE: In that case, Your Honor, I'm not sure.

Q Probably to a commentee--

MR. MOORE: He'd have to have someone appointed as a tutor--not a tutor but an administrator of his estate; the money would be paid to that person.

Only if you indicate a death situation do you run into this classification of who are the beneficiaries of the compensation benefits.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Moore.

Do you have anything further, Mr. Lacour?

MR. LACOUR: Yes. May it please the Chief Justice and the members of the Court:

The argument is made here that the employer and its compensation insurer would perhaps be prejudiced by an unfavorable decision in that now proscription has run, has it not, and would be without their remedy of subrogation. But the record will show, however, that the circumstances in which the employer and its insurer find themselves now are really part of its own doing--I want the court to know that the illegitimate children were brought into the suit by what we call concurrences in Louisiana, by interpleader,

by the compensation carrier in order to assure itself that it would get everybody in the court and have it finally decided so it wouldn't be left multiple payments or just to avoid what normally has to be to avoid.

However, at this turn of events when it found itself entirely to the off-set and the legitimate children dismissed it--they had a spare opportunity to uphold the dismissal and they had to take a final litigation. So, any prejudice really that they suffer is not caused by any action on the part of the appellants here, nor would it result from any appointments by the court. It would really be the result of that choice made in the court of the law.

Allusion was made also to what the Court said in Levy and the fairness of the Louisiana courts. In my brief I footnote that point and when I first read it when Levy was first decided, I was mindful of the fact that it was not called to the attention of the Court that the fairness or the permission of the allowance of Workmen's Compensation to illegitimate children such as the Court found there was not because they were children, and I want to get it clearly understood and try to get it across that illegitimate children, when they come in under classification eight, to which Mr. Moore alluded, come in as other dependents. And anybody else who might be a member of the family--they're not because they're the children but had

been in our home, had been a maid or had been an uncle, living in the family. And he could show that dependency of that family and there were not enough legitimate children to use up the Workmen's Compensation, he could come in. So, these little children are thrown with this crowd that happen to be dependent and they are not respected as children who had that nexus that we were talking about, that the Court was talking about in Levy, and that is really Workmen's Compensation replaces 2315 here. And to disregard the children as they did on the claim, 2315 on the tort, is an invidious discrimination. You are taking from their kids the very same thing--denying to them the very same thing under the guise of Workmen's Compensation that is being denied them under Levy.

Q Under Subsection Eight a complete stranger--that is, a complete non-family member--could qualify as a dependent, as I understand it.

MR. LACOUR: Yes. If he had proof--

Q If he proves the fact of the payments--

MR. LACOUR: These children would have paid them--even though they are all acknowledged, incapable of being acknowledged, illegitimate--would have paid them whatever probably would have been left if there had not been enough people to use up all the--

Q Just on proving the fact of dependency, not

on proving the fact of being his illegitimate children.

MR. LACOUR: Yes. Not only proving the fact of being dependent, having a nexus to a family and receiving the same reparation for the loss of a parent as the legitimate children.

Q It's your claim that whatever Eight may or may not provide, the equal protection clause of the 14th Amendment entitles your clients to be treated as children.

MR. LACOUR: Right. Not only on a probable basis but in these particular facts under this particular case where there is one family unit, and there is no other reason to mistreat these two children here, as they were mistreated, in that they were illegitimate, judging this particular case as invidious as any case that now exists. And I don't see how we can escape seeing invidiousness in the treatment of the children and agree that the Supreme Court of Louisiana ought to be referred and the case remanded for appropriate relief. Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lacour. Thank you, Mr. Moore. The case is submitted.

[Whereupon at 11:39 o'clock a.m. the case was submitted.]