

OPINIONS OF INDIVIDUAL JUSTICES IN  
CHAMBERS

BRACY ET AL. v. UNITED STATES

ON PETITION FOR WRIT

No. A-728 (7-1350). Decided March 28, 1978.

Application for stay of Court of Appeals' judgment ordering applicant  
to produce documents and allowing rehearing, pending a petition for  
certiorari, which it is denied that the judgment should be dissolved.

It is so ordered that the petition for stay be denied. The Court of Appeals' judgment is affirmed. The petition for certiorari is denied. The writ of habeas corpus is denied.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1018 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

Justice in the United States District Court for the Southern District of California. The Court of Appeals for the Ninth Circuit.

On February 28, 1978, the Court of Appeals for the Ninth Circuit granted the petition for a stay of its mandate fully pending consideration of the petition for rehearing, and not pending their petition for certiorari. The Court of Appeals denied rehearing and denied the petition, and applicants now request that I stay the enforcement of the judgment of the Court of Appeals pending submission of that petition for certiorari.

The chief contention raised by applicants in their petition for rehearing is that a witness committed perjury before the grand jury which indicted them. The witness admitted his perjury at trial, and applicants moved to dismiss the indictment, contending that the prosecutor should have immediately

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that must be answered before addressing the merits of petitioner's federal claim. In making this observation, I do not presume to explain the reasons for the Court's action. I write only to identify this as one of the many cases in which a persuasive dissent may create the unwarranted impression that the Court has acted arbitrarily in denying a petition for certiorari.

No. 77-1650. *Jones v. Harris, Warden*. Sup. Ct. Certiorari denied. Reported below: 350 Ga. 366 240 S. E. 2d 850.

Mr. JUSTICE BRENNAN and Mr. JUSTICE MARSHALL, dissenting.

Adhering to our view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2305, 49 L.Ed.2d 829 (1975), we dissent from the Court's denial of certiorari in this case. The Georgia Supreme Court's decision in this case is a clear and unambiguous application of the principles announced in *Gregg*. The Georgia Supreme Court held that the death penalty was not imposed in this case because the defendant was not a "capital felon" as required by the Georgia Constitution. The Georgia Supreme Court's decision is a clear and unambiguous application of the principles announced in *Gregg*.

No. 76-1719. *Washington National Insurance Co. v. United States*, 434 U.S. 901.

No. 77-853. *Shirley Ross Cunningham and Thomas Cook v. National Park Service et al.*, ante, p. 934.

No. 77-1656. *Schramm Transmision Corp. et al. v. Service Attorney General of Florida et al.*, ante, p. 930.

No. 77-1758. *Madden v. United States*, ante, p. 935, and

No. 77-1665. *Cox v. United States*, ante, p. 937. Petitions for rehearing denied.