

OPINIONS OF INDIVIDUAL JUSTICES
IN CHAMBERS

BRACY *et al.* v. ENVIRONMENTAL

AGENCY, et al. (1979)

No. A-78-17-1300. Decided March 29, 1979

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.

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that must be considered 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 actions. I write only to identify this as one of the many areas in which a permissive decree may create the unenviable impression that the Court has acted arbitrarily in denying a petition for certiorari.

No. 77-1820. *Ross v. Horner, Warden*. Non Cr. Cr. Certiorari denied. Reported below: 259 Ga. 390, 340 S. E. 2d 842.

Mr. Justice BREWSTER and Mr. Justice MARSHALL, dissenting.

Allowing to stand was that the death penalty is still unconstitutional under and goes unenforced as professed by the Eighth and Fourteenth Amendments. *Gregg v. Georgia*, 428 U.S. 153 (1976). The Court's decision to deny certiorari in this case, however, reflects a definite divergence from the Court's own holding in *Gregg* that the death penalty is unconstitutional under the Eighth Amendment. The Court's holding in *Gregg* was that the death penalty is unconstitutional under the Eighth Amendment, and that the death penalty is unconstitutional under the Fourteenth Amendment. The Court's holding in this case, however, is that the death penalty is unconstitutional under the Fourteenth Amendment, but not under the Eighth Amendment.

No. 77-1719. *Wainwright v. Williams*. Death Cr. Cr. Certiorari denied. Reported below: 434 U. S. 929.

No. 77-1832. *Prudential Insurance Company of America v. National Paint Council*. 37 A.2d, 916, p. 918.

No. 77-1858. *Arkansas Telephone Co. v. State*. 27 A.2d, 546, p. 550.

No. 77-2238. *McNally v. United States*. 406 U. S. 925.

No. 77-2661. *City of Corpus Christi*. 406 U. S. 927. Petition for certiorari denied.