

# The Burger Court Opinion Writing Database

## *Procunier v. Atchley*

400 U.S. 446 (1971)

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 26, 1970

1970 OT - #44

MEMORANDUM TO THE CONFERENCE

Re: No. 642 - Atchley v. Wilson

I contemplate filing a dissent in the above case.  
Two joined me, as I recall, in voting to grant review.

I will try to get it out this week. \*

W.E.B.

W.E.B.

\* Copy attached.

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

No. 642 (1969 Term) - Atchley v. Wilson

Chief Justice BURGER, dissenting:

From: The Chief Justice

Circulated: 1-26-70

Recirculated: \_\_\_\_\_

Respondent was convicted of first degree murder in January 1959 and was sentenced to death. The California Supreme Court affirmed in a unanimous opinion written by Justice Roger Traynor. 53 Cal. 2d 160, 346 P.2d 764 (1959). A writ of certiorari was granted by this Court, but subsequently dismissed as having been improvidently granted. 366 U.S. 207 (1961). 1 / Respondent then sought federal habeas corpus. This was denied without a hearing, and the denial affirmed on the ground that there was no lack of due process. 338 F.2d 1014 (9th Cir. 1964).

The instant proceedings have their genesis in Respondent's second resort to federal habeas corpus. He claimed that a confession introduced at this original trial was improperly allowed into evidence at his original trial since it was coerced and that under the intervening case of Jackson v. Denno, 378 U.S. 368 (1964), the trial court had not reliably determined the voluntariness of the confession. The District Judge, while stating that he was not "presently able to [state] say that the confession was involuntary.", concluded that "the trial court did not reliably determine whether [Respondent's] confession

No. 642 (1969 Term) - Atchley v. Wilson

Chief Justice BURGER, dissenting:

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan ✓  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

Respondent was convicted of first degree murder in January 1959 and was sentenced to death. The California Supreme Court affirmed in a unanimous opinion written by Justice Roger Traynor. 53 Cal.2d 160, 346 P.2d 764 (1959). A writ of certiorari was granted by this Court, but subsequently dismissed as having been improvidently granted. 366 U.S. 207 (1961). <sup>1/</sup> Respondent then sought federal habeas corpus. This was denied without a hearing, and the denial affirmed on the ground that there was no lack of due process. 388 F.2d 1014 (9th Cir. 1964).

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: 2/3/70

The instant proceedings have their genesis in respondent's second resort to federal habeas corpus. He claimed that a confession introduced at this original trial was improperly allowed into evidence at his original trial since it was coerced and that under the intervening case of Jackson v. Denno, 378 U.S. 368 (1964), the trial court had not reliably determined the voluntariness of the confession. The District Judge, while stating that he was not "presently able to say that the confession was involuntary," concluded that "the [state] trial court did not reliably determine whether [respondent's] confession was voluntary or involuntary." Accordingly, the State was ordered to afford respondent a new hearing on voluntariness or to release respondent. The United States

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brandeis  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

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# SUPREME COURT OF THE UNITED STATES

From: Black, J.

October Term, 1969

Circulated: 2-13-70

LAWRENCE E. WILSON, WARDEN v.  
VERNON ATCHLEY

Recirculated: \_\_\_\_\_

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 642. Decided February —, 1970

MR. JUSTICE BLACK, dissenting.

I heartily join the dissent of THE CHIEF JUSTICE to the Court's action which will have the effect of requiring the state court to provide a new evidentiary hearing on a "factual issue [the voluntariness of a confession] which was decided by a trial court, a unanimous state supreme court, examined by this Court and re-examined by a United States district court and a court of appeals," thereby allowing the habeas corpus petitioner to "reap the benefit of memories which have dimmed and facts which have become stale over the course of 11 years." ~~thereby allowing the habeas corpus petitioner to reap~~ Ante, at —. This case presents a striking instance of the abuse and misuse of the Great Writ that has resulted in large measure from a misreading of our opinion in *Fay v. Noia*, 372 U. S. 391 (1963). For the reasons stated in my dissenting opinion in *Kaufman v. United States*, 394 U. S. 217, 231 (1969), I do not think that *Fay v. Noia* supports the strained and unnecessary application of habeas corpus presented in this case. In the numerous hearings held in this case there has never been any showing of facts which cast a single doubt on the jury's finding that the defendant was guilty of the murder of his wife. *Fay v. Noia*, properly understood, does not authorize continued collateral attacks on judgments years after conviction without some kind of allegation that a gross injustice occurred at the defendant's trial

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1970

MEMORANDUM TO THE CONFERENCE

No. 642 - Wilson v. Atchley

Since three members of the Court appear to feel quite strongly that certiorari should be granted in this case, I have decided to make a fourth.

P.S.  
✓

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
✓ Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Fortas  
Mr. Justice Marshall

From: White, J.

Circulated: JAN 29 1970

Recirculated: \_\_\_\_\_

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## SUPREME COURT OF THE UNITED STATES

October Term, 1969

LAWRENCE E. WILSON, WARDEN v.  
VERNON ATCHLEY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 642. Decided February —, 1970

MR. JUSTICE WHITE, dissenting from the denial of certiorari.

Having a substantial doubt that the District Court and the Court of Appeals correctly assessed the adequacy of the state court hearing on the voluntariness of petitioner's confession, I would grant the petition for certiorari.