

The Burger Court Opinion Writing Database

Cole v. Richardson

397 U.S. 238 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



January 22, 1970.

Dear Bill,

Re: No. 774 - Richardson v. Cole.

Please note that I agree with your dis-
sent in this case.

Sincerely yours,



H. L. B.

Mr. Justice Douglas

cc: Members of the Conference

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

SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: Douglas, J.

LUCRETIA PETEROS RICHARDSON v.
DR. JONATHAN O. COLE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

No. 774. Decided January —, 1970

MR. JUSTICE DOUGLAS, dissenting.

Appellant Richardson brought this action before a three-judge District Court to declare unconstitutional a Massachusetts loyalty oath statute, to enjoin her superiors at the Boston State Hospital from prohibiting her from discharging her duties at the Hospital, and to recover back pay. The District Court entered its opinion granting the declaratory and injunctive relief but denying the claim for back pay on June 26, 1969. On that same date, the court filed a document captioned "Judgment and Injunction" which ordered the declaratory and injunctive relief, but made no mention of the claim for back pay. Notice of appeal from the denial of back pay was filed by appellant in the District Court on August 25, 1969, and a timely appeal was docketed in this Court on October 24, 1969.

In *United States v. F. & M. Schaefer Brewing Co.*, 356 U. S. 227, the district judge filed an opinion on April 14, 1955, granting the plaintiff's motion for summary judgment in an action against the United States Government for money alleged to have been illegally assessed and collected as federal stamp taxes. The clerk of the court noted that fact in the civil docket on the same date. On May 24, 1955, the judge signed and filed a formal document captioned "Judgment," and the clerk noted that fact in the civil docket on the same date. The Government filed a notice of appeal within

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Douglas~~
Mr. Justice Marshall

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P1

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

October Term, 1969

Circulated: _____

LUCRETIA PETEROS RICHARDSON v.
DR. JONATHAN O. COLE

Recirculated: 1-23

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

No. 774. Decided January —, 1970

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
concurs, dissenting.

Appellant Richardson brought this action before a three-judge District Court to declare unconstitutional a Massachusetts loyalty oath statute, to enjoin her superiors at the Boston State Hospital from prohibiting her from discharging her duties at the Hospital, and to recover back pay. The District Court entered its opinion granting the declaratory and injunctive relief but denying the claim for back pay on June 26, 1969. On that same date, the court filed a document captioned "Judgment and Injunction" which ordered the declaratory and injunctive relief, but made no mention of the claim for back pay. Notice of appeal from the denial of back pay was filed by appellant in the District Court on August 25, 1969, and a timely appeal was docketed in this Court on October 24, 1969.

In *United States v. F. & M. Schaefer Brewing Co.*, 356 U. S. 227, the district judge filed an opinion on April 14, 1955, granting the plaintiff's motion for summary judgment in an action against the United States Government for money alleged to have been illegally assessed and collected as federal stamp taxes. The clerk of the court noted that fact in the civil docket on the same date. On May 24, 1955, the judge signed and filed a formal document captioned "Judgment," and the clerk noted that fact in the civil docket on the same date. The Government filed a notice of appeal within

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Revi 1/23/70

SUPREME COURT OF THE UNITED STATES

October Term, 1969

LUCRETIA PETEROS RICHARDSON *v.*
DR. JONATHAN O. COLE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

No. 774. Decided January 26, 1970

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
concurs, dissenting.

Appellant Richardson brought this action before a three-judge District Court to declare unconstitutional a Massachusetts loyalty oath statute, to enjoin her superiors at the Boston State Hospital from prohibiting her from discharging her duties at the Hospital, and to recover back pay. The District Court entered its opinion granting the declaratory and injunctive relief but denying the claim for back pay on June 26, 1969. On that same date, the court filed a document captioned "Judgment and Injunction" which ordered the declaratory and injunctive relief, but made no mention of the claim for back pay. Notice of appeal from the denial of back pay was filed by appellant in the District Court on August 25, 1969, and a timely appeal was docketed in this Court on October 24, 1969.

In *United States v. F. & M. Schaefer Brewing Co.*, 356 U. S. 227, the district judge filed an opinion on April 14, 1955, granting the plaintiff's motion for summary judgment in an action against the United States Government for money alleged to have been illegally assessed and collected as federal stamp taxes. The clerk of the court noted that fact in the civil docket on the same date. On May 24, 1955, the judge signed and filed a formal document captioned "Judgment," and the clerk noted that fact in the civil docket on the same date. The Government filed a notice of appeal within

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Minton
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

October Term, 1969

Argued:

LUCRETIA PETEROS RICHARDSON v.

DR. JONATHAN O. COLE

11/23/76

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

No. 774. Decided January 26, 1970

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
concurs, dissenting.

Appellant Richardson brought this action before a three-judge District Court to declare unconstitutional a Massachusetts loyalty oath statute, to enjoin her superiors at the Boston State Hospital from prohibiting her from discharging her duties at the Hospital, and to recover back pay. The District Court entered its opinion granting the declaratory and injunctive relief but denying the claim for back pay on June 26, 1969. On that same date, the court filed a document captioned "Judgment and Injunction" which ordered the declaratory and injunctive relief, but made no mention of the claim for back pay. Notice of appeal from the denial of back pay was filed by appellant in the District Court on August 25, 1969, and a timely appeal was docketed in this Court on October 24, 1969.

In *United States v. F. & M. Schaefer Brewing Co.*, 356 U. S. 227, the district judge filed an opinion on April 14, 1955, granting the plaintiff's motion for summary judgment in an action against the United States Government for money alleged to have been illegally assessed and collected as federal stamp taxes. The clerk of the court noted that fact in the civil docket on the same date. On May 24, 1955, the judge signed and filed a formal document captioned "Judgment," and the clerk noted that fact in the civil docket on the same date. The Government filed a notice of appeal within

Close thought

Re to
Circular memo
When will it be in

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

SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: Douglas, J.

LUCRETIA PETEROS RICHARDSON v. DR. JONATHAN O. COLE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

No. 774. Decided February —, 1970

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
concurs, dissenting.

Appellant Richardson brought this action before a three-judge District Court to declare unconstitutional a Massachusetts loyalty oath statute, to enjoin her superiors at the Boston State Hospital from prohibiting her from discharging her duties at the Hospital, and to recover back pay. The District Court entered its opinion granting the declaratory and injunctive relief but denying the claim for back pay on June 26, 1969. On that same date, the court filed a document captioned "Judgment and Injunction" which ordered the declaratory and injunctive relief, but made no mention of the claim for back pay. Appellees filed a notice of appeal from the grant of injunctive and declaratory relief in the District Court on July 30, 1969, and docketed a timely appeal in this Court on September 29, 1969. Notice of appeal from the denial of back pay was filed by appellant in the District Court on August 25, 1969, and a timely appeal was docketed in this Court on October 24, 1969.

In *United States v. F. & M. Schaefer Brewing Co.*, 356 U. S. 227, the district judge filed an opinion on April 14, 1955, granting the plaintiff's motion for summary judgment in an action against the United States Government for money alleged to have been illegally assessed and collected as federal stamp taxes. The clerk

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

October Term, 1969

COLE, SUPERINTENDENT, BOSTON STATE Hospital, J.

HOSPITAL, ET AL. v. RICHARDSON; and

RICHARDSON v. COLE, SUPERINTENDENT,

BOSTON STATE HOSPITAL, ET AL. Recirculated: 2-23

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

Nos. 679 and 774. Decided February —, 1970

MR. JUSTICE DOUGLAS, dissenting.

The plaintiff Richardson brought this action before a three-judge District Court to declare unconstitutional a Massachusetts loyalty oath statute, to enjoin her superiors at the Boston State Hospital from prohibiting her from discharging her duties at the Hospital, and to recover back pay. The District Court entered its opinion granting the declaratory and injunctive relief but denying the claim for back pay on June 26, 1969. 300 F. Supp. 1321. Appellants in No. 679 filed a notice of appeal from the grant of injunctive and declaratory relief in the District Court on July 30, 1969, and docketed a timely appeal in this Court on September 29, 1969. Notice of appeal from the denial of back pay was filed in No. 774 in the District Court on August 25, 1969, and a timely appeal was docketed in this Court on October 24, 1969.

On October 25, 1969, appellee in No. 679 filed a motion to affirm or dismiss on the grounds of mootness: "At the time this case was heard and argued in the district court the appellee's job at Boston State Hospital was still in existence, but at or before the time the appellants filed their present appeal such job had been discontinued."

In reply appellants in No. 679 deny that the case is moot and in support thereof submit an affidavit of Dr. Cole, Superintendent of the Boston State Hospital, which states:

"1. At all times subsequent to the decision of the United States District Court in the above-entitled

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

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SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: Harlan, J.

JAN 22 1970

Circulated:

COLE, SUPERINTENDENT, BOSTON STATE
HOSPITAL, ET AL. v. RICHARDSON; and

Recirculated:

RICHARDSON v. COLE, SUPERINTENDENT,
BOSTON STATE HOSPITAL, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

Nos. 679 and 774. Decided February —, 1970

MR. JUSTICE HARLAN, concurring.

While I must confess to some doubt as to whether this appeal is technically dismissible, I am content to acquiesce in the Court's action because of the manifest triviality of the impact of the oath under challenge.* While I suppose that the vagueness issue in this instance cannot be characterized as insubstantial—for as the opinion below aptly pointed out, almost any word or phrase may be rendered vague and ambiguous by dissection with a semantic scalpel—whether or not one considers that the District Court was correct in its decision, I do not think it a provident use of the time of this Court to review what perforce amounts to little more than an abstract exercise in semantics. Cf. Chase, *The Tyranny of Words* (1959); Empson, *Seven Types of Ambiguity* (1955). I think it can be fairly said that subscribing to the instant oath subjected appellant to no more than an amenity. The oath does not impinge on

*"I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the Government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method."

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

January 19, 1970

RE: NOS. 679 and 744 - Cole v. Richardson

Dear Chief:

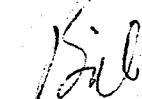
You asked me to try my hand at dismissing the appeals in Nos. 679 and 744 for mootness. The hitch has been that the three-judge court held "We cannot grant her request for back pay." This presented the question whether either appeal could be dismissed for mootness since the ordinary rule is that a viable claim for damages in the form of back pay saves a case from mootness. Powell v. McCormack, 395 U.S. 486; Bond v. Floyd, 385 U.S. 116; Liner v. Jafco, Inc., 375 U.S. 301; Textile Workers v. Lincoln Mills, 353 U.S. 448, 459.

But I question whether there is a "viable" claim for back pay surviving in this case. The judgment of the three-judge court has two paragraphs. Paragraph (a) declares the Massachusetts Oath Statute invalid for violation of the First Amendment. Paragraph (b) enjoins the state officials from preventing the plaintiff from discharging her duties at the Boston State Hospital. But there is no provision in the judgment enforcing the holding that the plaintiff was not entitled to back pay. I would suppose some sort of provision along the lines of a dismissal of her complaint insofar as she sought back pay would be requisite. I don't see how her appeal in No. 744 could be proper otherwise. I think the usual rule is that one appeals from a judgment and not from an opinion. If I am correct that the omission means she has no appeal then her appeal in No. 744 could be dismissed for want of a judgment.

- 2 -

As to No. 679, it was plaintiff herself who raised the issue of mootness of the State's appeal. Her motion to dismiss is in the alternative that either the judgment should be affirmed or the appeal dismissed "on the ground of mootness in view of the following facts: At the time this case was heard and argued in the district court the appellee's job at Boston State Hospital was still in existence, but at or before the time the appellants filed their present appeal such job had been discontinued." I see no reason why we can't accept this representation that the controversy between her and the hospital no longer exists. If we can and the back pay claim does not exist, I should think we could dismiss No. 679 for mootness and enter the usual rule which vacates the district court judgment and remand to that court with direction to enter a new judgment dismissing the complaint.

Sincerely,


W. J. B. Jr.

The Chief Justice

cc: The Conference

unclealed
1-26-70**SUPREME COURT OF THE UNITED STATES**

October Term, 1969

COLE, SUPERINTENDENT, BOSTON STATE
HOSPITAL, ET AL. *v.* RICHARDSON; and
RICHARDSON *v.* COLE, SUPERINTENDENT,
BOSTON STATE HOSPITAL, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

Nos. 679 and 774. Decided February —, 1970

PER CURIAM.

Mrs. Lucretia Richardson was discharged from her employment at the Boston State Hospital for refusal to take the loyalty oath required of public employees by Mass. Gen. Laws, c. 264, § 14. She brought suit in the United States District Court for the District of Massachusetts seeking a determination that the statute is unconstitutional, an injunction against its enforcement to bar her from resuming her employment at the hospital, and "damages . . . for her uncompensated employment" at the hospital. The three-judge court entered a judgment declaring the statute unconstitutional and enjoining its enforcement against Mrs. Richardson. Although the opinion of the court stated, "We cannot grant her request for back pay," the judgment contained no provision giving effect to that holding.

In No. 679 Dr. Cole and Dr. Greenblatt, the defendants in the action, appeal from the declaration of unconstitutionality and the grant of the injunction. However, after the entry of judgment below, the position which Mrs. Richardson had occupied at the hospital was discontinued. On this ground Mrs. Richardson moves to dismiss the appeal as moot. We grant her motion. Accordingly, the judgment below is vacated, and the case is remanded to the District Court with directions to

SUPREME COURT OF THE UNITED STATES

October Term, 1969

COLE, SUPERINTENDENT, BOSTON STATE
HOSPITAL, ET AL. v. RICHARDSON; and
RICHARDSON v. COLE, SUPERINTENDENT,
BOSTON STATE HOSPITAL, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

Nos. 679 and 774. Decided February —, 1970

PER CURIAM.

Mrs. Lucretia Richardson was discharged from her employment at the Boston State Hospital for refusal to take the loyalty oath required of public employees by Mass. Gen. Laws, c. 264, § 14. She brought suit in the United States District Court for the District of Massachusetts seeking a determination that the statute is unconstitutional, an injunction against its enforcement to bar her from resuming her employment at the hospital, and "damages . . . for her uncompensated employment" at the hospital. The three-judge court entered a judgment declaring the statute unconstitutional and enjoining its enforcement against Mrs. Richardson. Although the opinion of the court stated, "We cannot grant her request for back pay," the judgment contained no provision giving effect to that holding.

In No. 679 Dr. Cole and Dr. Greenblatt, the defendants in the action, appeal from the declaration of unconstitutionality and the grant of the injunction. However, after the entry of judgment below, the position which Mrs. Richardson had occupied at the hospital was discontinued. On this ground Mrs. Richardson moves to dismiss the appeal as moot. We grant her motion. Accordingly, the judgment below is vacated, and the case is remanded to the District Court with directions to

February 13, 1970

MEMORANDUM TO THE CONFERENCE

RE: Nos. 679 & 774 - Cole v. Richardson

On January 26 I circulated a proposed Per Curiam dismissing the State's appeal in No. 679 as moot and dismissing Mrs. Richardson's appeal in No. 774 for want of an appealable judgment.

The basis of mootness was the representation by Mrs. Richardson that the position which she had occupied at the hospital was discontinued. The State filed a Memorandum in Opposition to Mrs. Richardson's motion to dismiss its appeal. That memorandum includes an affidavit of the Superintendent of the Boston State Hospital stating that the project for which Mrs. Richardson was hired "is still on-going" and that "employment consonant with her abilities and qualifications has been and is periodically available should she wish to apply for such employment."

In the circumstances I do not think we can confidently dispose of the appeal in No. 679 on the ground of mootness. I would vote to affirm on the merits.

I could dispose of Mrs. Richardson's appeal in No. 774 on one of two grounds. The opinion of the three-judge court stated "we cannot grant her request for back pay", but the judgment contained no provision giving effect to that holding. I would, therefore, be willing to dismiss her appeal for want of an appealable judgment. Alternatively, I would be willing to construe the opinion as in effect denying her ancillary claim for damages as a matter of equitable discretion. This would mean that on the merits I could affirm. I prefer the former disposition.

W.J.B. Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 27, 1970

Nos. 679 & 774 - Cole v. Richardson

Dear Bill,

I am glad to join the Per Curiam you have circulated, disposing of these cases.

Sincerely yours,

P.B.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 16, 1970

Nos. 679 and 774 --
Cole v. Richardson

Dear Bill,

In response to your memorandum dated February 13, I agree with affirmance in No. 679, and could join either of your proposed alternatives in No. 774.

Sincerely yours,

P. S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 27, 1970

Re: Nos. 679 & 774 - Cole v.
Richardson

Dear Bill:

Please join me.

Sincerely,


B.R.W.

Mr. Justice Brennan

cc: The Conference

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

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SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

October Term, 1969

Circulated: 1-28-70

LUCRETIA PETEROS RICHARDSON v. JONATHAN O. COLE

Recirculated: _____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

No. 774. Decided February —, 1970

MR. JUSTICE MARSHALL, concurring.

I concur in the decision of the Court, dismissing the appeal. However, I do not rely on the lack of an appealable judgment and therefore reach the result by a somewhat different route than does the majority.

This Court has jurisdiction under 28 U. S. C. § 1253 over direct appeals from three-judge district court orders "granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding." In *Goldstein v. Cox*, — U. S. —, — (1970), we recently canvassed the language and history of § 1253, concluding that it gives us jurisdiction over appeals from "(1) final judgments granting or denying permanent injunctions, and (2) interlocutory orders granting or denying preliminary injunctions." The statute, which the Court has consistently held must be narrowly construed, seems clearly aimed at providing direct review on the merits of the injunction question to the losing party in the district court. See Currie, The Three-Judge District Court in Constitutional Litigation, 32 U. Chi. L. Rev. 1, 70-76 (1964). Accordingly, Mrs. Richardson could appeal to this Court only had the District Court denied her claim for an injunction. Indeed, I see no basis in the language or purpose of the statute ever to afford direct appellate review here on collateral matters to a party who has prevailed on the injunctive issue in the district court.

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

1, 2, 3
 SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

October Term, 1969

Circulated:

LUCRETIA PETEROS RICHARDSON v.
 JONATHAN O. COLE

Recirculated: 1-30-70

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
 THE DISTRICT OF MASSACHUSETTS

No. 774. Decided February —, 1970

MR. JUSTICE MARSHALL, concurring.

I concur in the decision of the Court, dismissing the appeal. However, I do not rely on the lack of an appealable judgment and therefore reach the result by a somewhat different route than does the majority.

This Court has jurisdiction under 28 U. S. C. § 1253 over direct appeals from three-judge district court orders "granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding." In *Goldstein v. Cox*, — U. S. —, — (1970), we recently canvassed the language and history of § 1253, concluding that it gives us jurisdiction over appeals from "(1) final judgments granting or denying permanent injunctions, and (2) interlocutory orders granting or denying preliminary injunctions." The statute, which this Court has consistently held must be narrowly construed, seems clearly aimed at providing direct review on the merits of the injunction question to the losing party in the district court. See Currie, The Three-Judge District Court in Constitutional Litigation, 32 U. Chi. L. Rev. 1, 70-76 (1964). Accordingly, Mrs. Richardson could appeal to this Court only had the District Court denied her claim for an injunction. Indeed, I see no basis in the language or purpose of the statute ever to afford direct mandatory appellate review here on collateral matters to a party who has prevailed on the injunctive issue in the district court. *Public Service*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1970

Re: Nos. 679 & 774 - Cole v. Richardson

Dear Bill:

I vote to affirm on the merits in
No. 679. I will more than likely stick to
my original concurring opinion in No. 774.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

SUPREME COURT OF THE UNITED STATES

October Term, 1969

COLE, SUPERINTENDENT, BOSTON STATE HOSPITAL,

et al., v. RICHARDSON; and

RICHARDSON v. COLE, SUPERINTENDENT, BOSTON

STATE HOSPITAL ET AL.

**Appeals from the United States District Court for the District
of Massachusetts.**

Nos. 679 and 774. Decided March , 1970.

**The appeals are noted, the judgment is vacated and
the cases are remanded to the United States District Court for
the District of Massachusetts to determine whether these cases
have become moot.**