

The Burger Court Opinion Writing Database

Swain v. Alabama

408 U.S. 936 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
JUSTICE HUGO L. BLACK

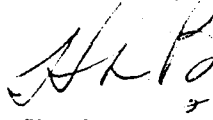
May 27, 1971

Dear Bill,

Re: No. 5327 - Swain v. Alabama

I would limit only so as to consider the
8th Amendment death question.

Sincerely,



H. L. B.

Mr. Justice Brennan

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

June 8, 1971

Re: No. 5327 -- Swain v. Alabama

Dear Bill and Byron,

In connection with your search for appropriate vehicles for the Eighth Amendment issue, I wish to call your attention to two features of this case, which figured prominently in yesterday's discussion. First, the Alabama statute disqualifying women as jurors was declared unconstitutional (prospectively only) in White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1966), and it was formally repealed by the Alabama legislature later the same year. The two States which were left with such statutes, Mississippi and South Carolina, have since repealed them. Miss. Code Ann. § 1762 (1968 Supp.); S.C. Code Ann. § 38-52 (1970 Supp.). It appears, therefore, that this is no longer a live issue except retroactively.

As to the other issue, the peremptory challenges of Negroes, the Alabama court held that since petitioner had litigated the matter and lost on direct appeal, he could not relitigate it on state collateral review. Inasmuch as 28 U.S.C. § 2244(c) (Supp. V, 1970) apparently would require the same result on federal habeas corpus, I should think this state ground plainly sufficient to prevent our reaching the merits of petitioner's underlying contention.

I offer these observations for whatever they may be worth to you.

Sincerely,



Mr. Justice Brennan
Mr. Justice White

June 14, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5337 - Swain v. Alabama

Dear Brethren:

This is a copy of the memorandum which I had originally circulated only to Brethren Brennan and White, and which the Conference asked me to circulate to all of the Brethren.

Sincerely,

J. M. H.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1971

Memorandum to The Conference

RE: No. 5327 - Swain v. Alabama

I suggest the following Order in the
above case:

"The petition for certiorari is granted
limited to Questions Presented 1, 2 and 6."

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 27, 1971

Re: No. 5327 - Swain v. Alabama

Dear Bill,

The Order you have prepared in
this case seems to me correctly to reflect
our Conference decision.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

Copies to the Conference

May 28, 1971

Re: No. 5327 - Swain v. Alabama

Dear Bill:

Your suggested order granting
certiorari is fine with me.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1971

Re: No. 5327 - Swain v. Alabama

Dear Bill:

I agree with your suggested
Order in this case.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference