

# The Burger Court Opinion Writing Database

*Murel v. Baltimore City Criminal Court*  
407 U.S. 355 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

May 8, 1972

Re: No. 70-5276 - Murel v. Baltimore City Criminal Court

MEMORANDUM TO THE CONFERENCE:

 There were four willing to DIG and I will add a fifth so that we can give it fairly summary treatment if Thurgood concludes this is feasible. I will leave that entirely to him.

Regards,

*WB*

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 15, 1972

No. 70-5276 -- Murel v. Baltimore City Criminal  
Courts

Dear Thurgood:

Please join me in your per curiam opinion  
in the above case.

Regards,

W. B.

Mr. Justice Marshall

Copies to Conference

5  
 The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

6/14/72  
 No. 70-5276

Albert Delanor Murel et al.,  
 Petitioners,  
 v.  
 Baltimore City Criminal  
 Court et al. } On Writ of Certiorari to  
 the United States Court  
 of Appeals for the Fourth  
 Circuit.

[May —, 1972]

Memorandum from MR. JUSTICE DOUGLAS.

Patuxent Institution is a special prison used by the State of Maryland for the incarceration of "defective delinquents." Individuals who have demonstrated "persistent aggravated anti-social or criminal behavior," who have "a propensity toward criminal activity," and who have "either such intellectual deficiency or emotional unbalance" as to present "an actual danger to society" may be confined at Patuxent. Md. Ann. Code, Art 31B, § 5 (1971). The initial determination that one is a defective delinquent is made judicially and, for those confined to Patuxent after such a determination, there is the right to seek judicial redetermination of their status at three-year intervals. *Id.*, § 6 *et seq.* One of the objectives of Patuxent supposedly is to provide treatment for the inmates so that they may be returned to society. *Director v. Daniels*, 243 Md. 16, 31-32, 221 A. 2d 397, 406 (1966). Should a defective delinquent not receive treatment or should the treatment prove inadequate to return him to society, the inmate might well remain in Patuxent for the remainder of his life. See *McNeil v. Director Patuxent Institution, ante*, at —.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 14, 1972

RE: No. 70-5276 - Murel v. Balto. City  
Criminal Court

Dear Thurgood:

I agree.

Sincerely,

*W. J. B.*

Mr. Justice Marshall

cc: The Conference

B  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

June 15, 1972

70-5276 - Murel v. Balto. City Crim. Court

Dear Thurgood,

I agree with your Per Curiam in this case, but hope that you might consider deleting footnote 2 on page 2.

Sincerely yours,

PS  
1/

Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Frankfurter  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Marshall, J.

**SUPREME COURT OF THE UNITED STATES**

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<sup>10</sup> See, for example, the discussion of the 1992 Constitutional Convention in the *Constitutional Convention of 1992: The Final Report* (1993).

No. 70-5276

Recirculated.

[June —, 1972]

PER CURIAM.

Petitioners were convicted of various state crimes and sentenced to fixed terms of imprisonment. They were then committed to Patuxent Institution in lieu of sentence for an indeterminate period, pursuant to the Maryland Defective Delinquency Law, Md. Code Ann., Art. 31B. They sought federal habeas corpus, challenging on constitutional grounds the criteria and procedures that led to their commitment, and the conditions of their confinement. They contend, *inter alia*, that the statutory standard for commitment is impermissibly vague, that they are entitled to put the government to the burden of proof beyond a reasonable doubt, that at the compulsory psychiatric examination prescribed by the statute they were entitled to have the assistance of counsel and to invoke the privilege against self-incrimination, and that they are being denied a constitutional right to treatment. The District Court denied relief *sub nom. Sas v. Maryland*, 295 F. Supp. 389 (1968), and the Court of Appeals affirmed *sub nom. Tippett v. Maryland*, 436 F. 2d 1153 (1971).<sup>1</sup> We granted certiorari, — U. S. —

<sup>1</sup> Petitioner Murel was originally committed as a defective delinquent in 1962, and Creswell in 1958; their separate petitions for

p 2

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 70-5276

Recirculated JUN 15 1972

Albert Delanor Murel et al.,  
 Petitioners,  
 v.  
 Baltimore City Criminal  
 Court et al. } On Writ of Certiorari to  
 Petitioners, the United States Court  
 of Appeals for the Fourth  
 Circuit.

[June —, 1972]

PER CURIAM.

Petitioners were convicted of various state crimes and sentenced to fixed terms of imprisonment. They were then committed to the Patuxent Institution in lieu of sentence, for an indeterminate period, pursuant to the Maryland Defective Delinquency Law, Md. Code Ann., Art. 31B. They sought federal habeas corpus, challenging on constitutional grounds the criteria and procedures that led to their commitment, and the conditions of their confinement. They contend, *inter alia*, that the statutory standard for commitment is impermissibly vague, that they are entitled to put the government to the burden of proof beyond a reasonable doubt, that at the compulsory psychiatric examination prescribed by the statute they were entitled to have the assistance of counsel and to invoke the privilege against self-incrimination, and that they are being denied a constitutional right to treatment. The District Court denied relief *sub nom. Sas v. Maryland*, 295 F. Supp. 389 (1968), and the Court of Appeals affirmed *sub nom. Tippett v. Maryland*, 436 F. 2d 1153 (1971).<sup>1</sup> We granted certiorari, 404 U. S. 999

<sup>1</sup> Petitioner Murel was originally committed as a defective delinquent in 1962, and Creswell in 1958; their separate petitions for

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

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

3<sup>rd</sup> alternate  
T 11 17 72  
6 6

March 14, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-5276 - Murel v. Baltimore City  
Criminal Court  
No. 71-5144 - McNeil v. Director,  
Patuxent Institution

A problem has arisen in connection with these cases. Mr. Rodak has discussed it with me and I think it best to bring it to the attention of the Conference.

Cert was granted in each of these cases on December 20. The thought at the time, I am sure, was that they be argued together, for the issues in the two somewhat overlap. Mr. Seaver, who scheduled the March arguments, has set Murel for the week of March 27. McNeil, however, was not set down for argument with Murel. Mr. Prettyman was appointed counsel for McNeil. He evidently has been ill. He applied for and was granted an extension of time, to April 15, to file his brief on the merits. It is probably because of this that the two cases became separated.

Mr. Rodak has now caught this dropped stitch and has been in touch with the parties. Counsel for Murel does not want his argument rescheduled. Counsel for McNeil is concerned about having Murel argued first and decided before McNeil is argued. Counsel for McNeil says that he could expedite his brief and have it filed by April 1. The state, which appears in both cases, is not eager about accelerating McNeil, but would do so if directed.

Wm Day Jr. 04/11 70-5276

is this the H/B # noted in 6, 8, 10  
and 12 or something near?

- 2 -

It seems to me that we have three alternatives:

1. We could put Murel over, let McNeil take its course, and schedule both cases together in the fall. The difficulty with this is that McNeil apparently has served his maximum time and is held because of his delinquency status.

2. We could reschedule Murel for April, expedite McNeil, and have the cases argued successively in April. There has been some comment that these cases are not easy. If this is so, this alternative would put another pair of substantial cases at the end of the term.

3. We could let Murel be argued as scheduled in March, hold the opinion, expedite McNeil, have McNeil heard in April, and have one opinion for both cases.

Perhaps this should be discussed at conference on March 17. Mr. Rodak needs a specific instruction.

H. A. B.

cc: Clerk of the Court

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 14, 1972

Re: No. 70-5276 - Murel v. Baltimore City  
Criminal Court

Dear Thurgood:

I am glad to join your proposed Per  
Curiam for this case.

Sincerely,

H.A.B.

Mr. Justice Marshall

cc: The Conference

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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

June 15, 1972

Re: No. 70-5276 Murel v. Baltimore

Dear Thurgood:

Please join me.

Sincerely,

*L Lewis*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 14, 1972

Re: No. 70-5276 - Murel v. Baltimore

Dear Thurgood:

Please join me.

Sincerely,

W.W.

Mr. Justice Marshall

Copies to the Conference