

# The Burger Court Opinion Writing Database

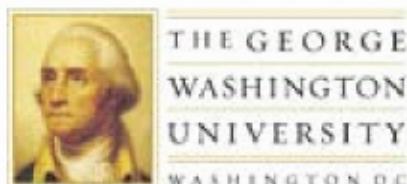
*Younger v. Gilmore*

404 U.S. 15 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



BT  
JL  
All others  
have joined

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 1, 1971

Ready  
Friday Conference  
11/5

8-0

Re: No. 70-9 - Younger v. Gilmore

Dear Thurgood:

I have grave doubts about the utility of law books in prisons without lawyers and I seriously doubt the federal authority to order what the three-judge court has ordered. However, since this is in a sense "experimental," I think the less said by me the better, so I will say nothing and concur in your disposition.

What is needed, as a matter of sound policy, but not as a constitutional matter, is to have a "circuit riding" legal aid system. In the long run I believe it would reduce prisoner petitions and contribute to prisoner morale.

Regards,

WB

Mr. Justice Marshall

cc: The Conference

October 7, 1971

Dear Chief:

In No. 70-9, the request is made for the appointment of John E. Wahl as lawyer for the indigent.

I have just talked with Judge Wollenberg in San Francisco. He knows Mr. Wahl and says he is a man of good character and enjoys a good reputation.

W. O. D.

The Chief Justice

W.M. Dork  
Oct 71

70-9

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

October 19, 1971

Dear Thurgood:

In No. 70-9 - Lynch v. Gilmore,  
I agree with your per curiam of  
October 18.

C O V

William O. Douglas

Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 26, 1971

*Thurgood Marshall*  
*Oct 26 1971*  
*10 am*  
*with T. M.*  
*Oct 26 1971*

MEMORANDUM TO THE CONFERENCE

Re: No. 70-9 - Thomas C. Lynch, et al., v.  
Robert O. Gilmore, Jr., et al.

Here is a revised suggested disposal  
of the subject case:

PER CURIAM. On this appeal we postponed the  
question of jurisdiction pending the hearing  
of the case on the merits. 401 U.S. 906 (1971).

Having heard the case on its merits we find  
that this Court does have jurisdiction  
(Alabama Teachers v. Alabama Public School  
and College Authority, 393 U.S. 400 (1969))  
and affirm the judgment of the District Court  
of the Northern District of California. John-  
son v. Avery, 393 U.S. 483 (1969).

*T.M.*

T.M.

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 70-9

Circulated:

Recirculated: NOV 5 1971

Evelle J. Younger et al.,  
 Appellants,  
 v.  
 Robert O. Gilmore, Jr.,  
 et al.

On Appeal from the United  
 States District Court for  
 the Northern District of  
 California.

[November 8, 1971]

## PER CURIAM.

On this appeal we postponed the question of jurisdiction pending the hearing of the case on the merits. 401 U. S. 906 (1971).

Having heard the case on its merits, we find that this Court does have jurisdiction (*Alabama Teachers v. Alabama Public School and College Authority*, 393 U. S. 400 (1969)) and affirm the judgment of the District Court of the Northern District of California. *Johnson v. Avery*, 393 U. S. 483 (1969).

Agree  
 CWD

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. October 19, 1971

RE: No. 70-9 - Thomas C. Lynch, et al. v.  
Robert O. Gilmore, Jr.

Dear Thurgood:

I agree with your suggested disposal  
of the above case.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. October 27, 1971

RE: No. 70-9 - Lynch v. Gilmore

Dear Thurgood:

I agree with the Per Curiam you  
have prepared in the above case.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

October 18, 1971

No. 70-9 -- Lynch v. Gilmore

Dear Thurgood,

I think the approach you suggest to this case is a very wise one. My only additional thought is that it might be well to specify in a few sentences the basis for our original doubt about jurisdiction and for our ultimate conclusion that jurisdiction exists.

Sincerely yours,

P.S.  
P.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 27, 1971

No. 70-9, Lynch v. Gilmore

Dear Thurgood,

I am glad to join your Per Curiam  
in this case, as recirculated yesterday.

Sincerely yours,

P.S.  
J.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 27, 1971

Re: No. 70-9 - Lynch v. Gilmore

Dear Thurgood:

Please join me.

Sincerely,

*Byron*

Mr. Justice Marshall

Copy to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 18, 1971

MEMORANDUM TO THE CONFERENCE

Re: 70-9 - Thomas C. Lynch, et al., v.  
Robert O. Gilmore, Jr., et al.

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above case.

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of the case on the merits. 401 U.S. 906 (1971).

Having heard the case on its merits we find  
that this Court does have jurisdiction and  
affirm the judgment of the District Court of  
the Northern District of California. Johnson v.  
Avery, 393 U.S. 483 (1969).

  
T.M.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 26, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 70-9 - Thomas C. Lynch, et al., v.  
Robert O. Gilmore, Jr., et al.

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of the subject case:

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and College Authority, 393 U.S. 400 (1969))  
and affirm the judgment of the District Court  
of the Northern District of California. John-  
son v. Avery, 393 U.S. 483 (1969).



T.M.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 25, 1971

Re: No. 70-9 - Younger v. Gilmore

Dear Thurgood:

I am ready to agree with your suggested disposal of this case. I share, however, the suggestion Potter made in the second sentence of his letter of October 18 to you.

Sincerely,

*H.A.B.*  
—

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 28, 1971

Re: No. 70-9 - Younger v. Gilmore

Dear Thurgood:

I join your Per Curiam as recirculated on  
October 18.

Sincerely,



Mr. Justice Marshall