

# The Burger Court Opinion Writing Database

*LaVallee v. Delle Rose*

410 U.S. 690 (1973)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

March 1, 1973

1324

Re: No. 72-905 - LaVallee v. Rose

Dear Bill:

Please join me.

Regards,

W.R.B.

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 6, 1973

*W.O.D.*

Dear Thurgood:

Please join me in your dissent in  
72-905, LaVallee v. Rose.

*W.O.D.*  
William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 6, 1973

*Copy*

RE: No. 72-905 LaVallee v. Rose

Dear Thurgood:

Please join me in your dissenting  
opinion in the above.

Sincerely,

*Brennan*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 5, 1973

72-905 - LaVallee v. Rose

Dear Thurgood,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

PS  
P

Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 6, 1973

72-905, LaVallee v. Rose

Dear Thurgood,

While I agree with the substance of your opinion, I am reluctant to join it because of its final sentence. If four of us subscribe to that sentence, it would follow that certiorari would be granted and the case set for argument. Since I have no doubt that, after argument, the result in this case would be no different, I think an argument would be a waste of time.

Sincerely yours,

C. S.

Mr. Justice Marshall

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 5, 1973

Re: No. 72-905 - LaVallee v. Rose

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

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W.M.  
noted  
W.H.K.  
X

1st DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Steiner  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: MAR 1-1

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

## SUPREME COURT OF THE UNITED STATES

J. EDWIN LAVALLEE, SUPERINTENDENT OF  
CLINTON CORRECTIONAL FACILITY v. PASQUALE DELLE ROSE

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

No. 72-905. Decided March —, 1973

MR. JUSTICE MARSHALL, dissenting.

I cannot accept the Court's holding that both the District Court and the Court of Appeals improperly concluded that the voluntariness of respondent's confessions was not adequately resolved by the state trial court, thereby relieving respondent of the obligation to establish "by convincing evidence that the factual determination of the State court was erroneous," 28 U. S. C. § 2254 (d)(1). The Court does not deny that the state trial court judge, after summarizing the record evidence and respondent's testimony on the question of voluntariness, utterly failed to explain the basis for his conclusion that "considering the totality of the circumstances . . . the respective confessions to the police and district attorney were, in all respects, voluntary and legally admissible in evidence at the trial. . . ." Despite this absence of any reasoned explanation for the state court's action, the Court now assures us that "it can scarcely be doubted from its written opinion that respondent's factual contentions were resolved against him." *Ante*, at —. I could not disagree more, and therefore I must respectfully dissent.

Foremost, the Court's certainty as to the basis for the state court's action rests upon the fact that it is clear the state court "applied" the correct legal standard in evaluating the voluntariness of respondent's confes-

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2, 3, 4, 5, 6

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

J. EDWIN LAVALLEE, SUPERINTENDENT OF  
CLINTON CORRECTIONAL FACILITY v.  
PASQUALE DELLE ROSE

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

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

Recirculated: MAR 6 -

No. 72-905. Decided March —, 1973

MR. JUSTICE MARSHALL, dissenting.

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3rd DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

J. EDWIN LAVALLEE, SUPERINTENDENT ~~Recirculated:~~

CLINTON CORRECTIONAL FACILITY *v.*

PASQUALE DELLE ROSE

Recirculated: MAR 8

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

No. 72-905. Decided March —, 1973

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE STEWART concur, dissenting.

I cannot accept the Court's holding that both the District Court and the Court of Appeals improperly concluded that the voluntariness of respondent's confessions was not adequately resolved by the state trial court, thereby relieving respondent of the obligation to establish "by convincing evidence that the factual determination of the State court was erroneous," 28 U. S. C. § 2254 (d)(1). The Court does not deny that the state trial court judge, after summarizing the record evidence and respondent's testimony on the question of voluntariness, utterly failed to explain the basis for his conclusion that "considering the totality of the circumstances . . . the respective confessions to the police and district attorney were, in all respects, voluntary and legally admissible in evidence at the trial. . ." Despite this absence of any reasoned explanation for the state court's action, the Court now assures us that "it can scarcely be doubted from its written opinion that respondent's factual contentions were resolved against him." *Ante*, at —. I could not disagree more, and therefore I must respectfully dissent.

Foremost, the Court's certainty as to the basis for the state court's action rests upon the fact that it is clear the state court "applied" the correct legal standard in evaluating the voluntariness of respondent's confes-

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 6, 1973

Re: No. 72-905 - LaVallee v. Rose

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 7, 1973

*L. F. Powell, Jr.*

Re: No. 72-905 LaVallee v. Rose

Dear Bill:

Please join me.

Sincerely,

*L. F. Powell, Jr.*

Mr. Justice Rehnquist

cc: The Conference

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15: *George W. Bush*  
16: *Barbara Bush*  
17: *George W. Bush*  
18: *Barbara Bush*  
19: *George W. Bush*  
20: *Barbara Bush*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

J. EDWIN LAVALLEE, SUPERINTENDENT OF  
CLINTON CORRECTIONAL FACILITY *v.* PASQUALE DELLE ROSE

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

No. 72-905. Decided March —, 1973

PER CURIAM.

The State of New York petitions for certiorari to review the adverse determination of the Court of Appeals in this federal habeas corpus proceeding directing the release\* of respondent Pasquale Delle Rose. Rose was serving a life sentence for the premeditated murder of his wife in 1963. At his trial, occurring before *Jackson v. Denno*, respondent was convicted by a jury which chose to credit his two confessions over his protestation of accidental involvement, and which presumably found them to be voluntary. On appeal, the New York appellate court directed the trial court to hold a special ~~meeting~~ *hearing* to determine the voluntariness of his confessions in accordance with *People v. Huntley*, 15 N. Y. 2d 72 (1965), the State's procedural response to this Court's decision in *Jackson v. Denno*, 378 U. S. 368 (1964).

On remand to the trial court, the State rested on the trial record, and the respondent, in addition to relying on the record, testified in his own behalf. After extensively summarizing the trial evidence and respondent's explanations of certain of his confession statements, the court concluded:

"On all evidence, both at the trial and at the hearing, and after considering the totality of the circumstances, including the omission to warn de-

\*Respondent was ordered released unless retried within 60 days without the use of his confessions.

To the Chief Justice  
Mr. Justice Douglas  
Mr. Justice Breyer  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

2nd DRAFT

SUPREME COURT OF THE UNITED STATES: Rehnquist, J.

J. EDWIN LAVALLEE, SUPERINTENDENT OF  
CLINTON CORRECTIONAL FACILITY *v.* PASQUALE DELLE ROSE

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

No. 72-905. Decided March —, 1973

PER CURIAM.

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\*Respondent was ordered released unless retried within 60 days without the use of his confessions.

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