

# The Burger Court Opinion Writing Database

## *Baxter v. Palmigiano*

425 U.S. 308 (1976)

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 4, 1976

Re: (74-1187 - Baxter v. Palmigiano  
(74-1194 - Enomoto v. Clutchette)

Dear Byron:

I join your proposed opinion circulated  
February 19, 1976.

Regards,

*WRS*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 4, 1976

RE: Nos. 74-1187 & 74-1194 Baxter v. Palmigiano  
& Enomoto v. Clutchette

Dear Byron:

I shall be circulating a dissent in the above  
in due course.

Sincerely,

*Brennan*

Mr. Justice White

cc: The Conference

The Chief Justice  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

Brennan

3/29/76

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 74-1187 AND 74-1194

Joseph Baxter et al.,  
 Petitioners,  
 74-1187 v.  
 Nicholas A. Palmigiano.

On Writ of Certiorari to the  
 United States Court of Ap-  
 peals for the First Circuit.

Jerry J. Enomoto et al.,  
 Petitioners,  
 74-1194 v.  
 John Wesley Clutchette  
 et al.

On Writ of Certiorari to the  
 United States Court of Ap-  
 peals for the Ninth Circuit.

[March —, 1976]

MR. JUSTICE BRENNAN, concurring in part and dis-  
 senting in part.

I agree that consideration of the procedural safeguards  
 necessary where an inmate is deprived only of privileges  
 is premature on this record, and thus I join Part V of the  
 Court's opinion, which leaves open whether an inmate  
 may be deprived of privileges in the absence of due  
 process safeguards.

Parts II and IV of the Court's opinion simply reaffirm  
 last Term's *Wolff v. McDonnell*, 418 U. S. 539 (1974).  
 I continue to believe that *Wolff* approved procedural safe-  
 guards short of the minimum requirements of the Due  
 Process Clause, and I dissent from Parts II and IV for  
 the reasons stated by my Brother MARSHALL, *id.*, at 580.

Part III of the Court's opinion, however, confronts an  
 issue not present in *Wolff*<sup>1</sup> and in my view reaches an

<sup>1</sup> I agree that No. 74-1194 is not moot, since the intervening  
 plaintiff (Ferrell) has a personal stake in the outcome of this litiga-  
 tion. But the citation of *Indianapolis School Comm'rs v. Jacobs*,

✓  
2, 8-10, 13-14

To: The Chief Justice ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

File No. \_\_\_\_\_

Refiled: 4/1/76

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 74-1187 AND 74-1194

Joseph Baxter et al., Petitioners, 74-1187 v. Nicholas A. Palmigiano.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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Jerry J. Enomoto et al., Petitioners, 74-1194 v. John Wesley Clutchette et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[March —, 1976]

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senting in part.

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9.13

To: The Chief Justice  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Brennan  
 Mr. Justice Stevens

From: Mr. Justice Brennan

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

Recirculated: 4/5/76

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 74-1187 AND 74-1194

Joseph Baxter et al., Petitioners, 74-1187 v. Nicholas A. Palmigiano.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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Jerry J. Enomoto et al., Petitioners, 74-1194 v. John Wesley Clutchette et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[March —, 1976]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I agree that consideration of the procedural safeguards necessary where an inmate is deprived only of privileges is premature on this record, and thus I join Part V of the Court's opinion, which leaves open whether an inmate may be deprived of privileges in the absence of due process safeguards.

Parts II and IV of the Court's opinion simply reaffirm last Term's *Wolff v. McDonnell*, 418 U. S. 539 (1974). I continue to believe that *Wolff* approved procedural safeguards short of the minimum requirements of the Due Process Clause, and I dissent from Parts II and IV for the reasons stated by my Brother MARSHALL, *id.*, at 580.

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<sup>1</sup> I agree that No. 74-1194 is not moot, since the intervening plaintiff (Ferrell) has a personal stake in the outcome of this litigation. But the citation of *Indianapolis School Comm'rs v. Jacobs*,

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 9, 1976

Nos. 74-1187 & 74-1194  
Baxter v. Palmigiano

Dear Byron,

I am glad to join your opinion for the Court in these cases. I would be considerably happier if the paragraph beginning on the bottom line of p. 6 were deleted. The discussion of Miranda would then end with the conclusion that any invocation of its exclusionary rule of evidence is premature in these cases.

Sincerely yours,

P.S.  
✓

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 1-31-76

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

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos 74-1187 AND 74-1194

Joseph Baxter et al.,  
Petitioners,  
74-1187 v.  
Nicholas A. Palmigiano.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the First Circuit.

Jerry J. Enomoto et al.,  
Petitioners,  
74-1194 v.  
John Wesley Clutchette  
et al.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Ninth Circuit.

[February --, 1976]

MR. JUSTICE WHITE delivered the opinion of the  
Court.

These cases present questions as to procedures required  
at prison disciplinary hearings and as to the reach of our  
recent decision in *Wolff v. McDonnell*, 418 U. S. 539  
(1974).

I

A. No. 74-1194

Respondents are inmates of the California penal insti-  
tution at San Quentin. They filed an action under 42  
U. S. C. § 1983 seeking declaratory and injunctive relief  
and alleging that the procedures used in disciplinary  
proceedings at San Quentin violated their rights to Due  
Process and Equal Protection of the laws under the Four-  
teenth Amendment of the Constitution.<sup>1</sup> After an evi-

<sup>1</sup> Respondents John Wesley Clutchette and George L. Jackson  
brought their suit "in their own behalf" and, pursuant to Rule 23 (b),



STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 5, 6, 7, 9, 10, 14

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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

Recirculated: 2-19-76

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 74-1187 AND 74-1194

Joseph Baxter et al., Petitioners, 74-1187 v. Nicholas A. Palmigiano.	} On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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Jerry J. Enomoto et al., Petitioners, 74-1194 v. John Wesley Clutchette et al.	} On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
--	--

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

These cases present questions as to procedures required at prison disciplinary hearings and as to the reach of our recent decision in *Wolff v. McDonnell*, 418 U. S. 539 (1974).

## I

### A. No. 74-1194

Respondents are inmates of the California penal institution at San Quentin. They filed an action under 42 U. S. C. § 1983 seeking declaratory and injunctive relief and alleging that the procedures used in disciplinary proceedings at San Quentin violated their rights to Due Process and Equal Protection of the laws under the Fourteenth Amendment of the Constitution.<sup>1</sup> After an evi-

<sup>1</sup> Respondents John Wesley Clutchette and George L. Jackson brought their suit "in their own behalf, and, pursuant to Rule 23 (b)

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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

Recirculated: 3-30-76

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 74-1187 AND 74-1194

Joseph Baxter et al., Petitioners, 74-1187 v. Nicholas A. Palmigiano.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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Jerry J. Enomoto et al., Petitioners, 74-1194 v. John Wesley Clutchette et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
--	---	--

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

These cases present questions as to procedures required at prison disciplinary hearings and as to the reach of our recent decision in *Wolff v. McDonnell*, 418 U. S. 539 (1974).

### I

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<sup>1</sup> Respondents John Wesley Clutchette and George L. Jackson brought their suit "in their own behalf, and, pursuant to Rule 23 (b)

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

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

Recirculated: 4-2-76

5th DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 74-1187 AND 74-1194

Joseph Baxter et al., Petitioners, 74-1187 v. Nicholas A. Palmigiano.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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Jerry J. Enomoto et al., Petitioners, 74-1194 v. John Wesley Clutchette et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
--	---	--

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

These cases present questions as to procedures required at prison disciplinary hearings and as to the reach of our recent decision in *Wolff v. McDonnell*, 418 U. S. 539 (1974).

## I

### A. No. 74-1194

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<sup>1</sup> Respondents John Wesley Clutchette and George L. Jackson brought their suit "in their own behalf, and, pursuant to Rule 23 (b)

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 21, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for Nos. 74-1187, 74-1194, Baxter v.  
Palmigiano, Enomoto v. Clutchette

There is one case held for Baxter and Enomoto:  
No. 75-35, Lash v. Aikens. Petitioner warden seeks review  
of two aspects of CA7's judgment:

(1) That written reasons be given by a prison disciplinary board when it refuses an inmate's request for cross-examination of adverse witnesses. CA7 relied heavily on CA9's decision in Clutchette in so holding:

"As the Ninth Circuit found in Clutchette, the only way the soundness of the discretion exercised can be subject to scrutiny is a requirement that any refusal to allow cross-examination be accompanied by a written record of the reasons for the refusal."

514 F. 2d 55, 60.

(2) That an inmate in segregation be allowed the assistance of a lay inmate in preparing his case. CA7 concluded that an inmate in segregation awaiting a disciplinary hearing may "[be] unable to collect information. This will make his task of explaining his actions and defending himself all the more difficult. In these situations the inmate should be entitled to assistance in preparing and presenting his case." 514 F. 2d, at 59. CA7 rested this conclusion on an analogy to our statement in Wolff that where an illiterate inmate or complex issues are involved, the inmate "should be free to seek the aid of a fellow inmate, or . . . to have adequate substitute aid" from staff or from a staff-designated inmate. 418 U.S., at 570.

The requirement of written reasons for denying cross-examination was expressly rejected in Part IV of Baxter, slip opinion at pp. 12-14. In Part II of Baxter, we held that attorneys--retained or appointed--were not required in prison disciplinary hearings. We did not, as there was no need to, elaborate on the circumstances where the aid of a fellow inmate was necessary. CA7's holding on the latter issue does not seem inconsistent with Wolff, and the petitioner in Lash has not convincingly demonstrated that it is. Since the holding on the former issue is inconsistent with Baxter, I will vote to grant, vacate and remand for further consideration in light of Baxter.

  
B.R.W.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 1, 1976 c

Re: No. 74-1187 -- Baxter v. Palmigiano  
No. 74-1194 -- Enomoto v. Clutchette

Dear Bill:

Please join me in your opinion in this case.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 24, 1976

Re: No. 74-1187 - Baxter v. Palmigiano  
No. 74-1194 - Enomoto v. Clutchette

Dear Byron:

Please join me. I, too, would have preferred your initial draft over the revision suggested by Potter and agreed to by Lewis.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 24, 1976

Re: No. 74-1187 - Baxter v. Palmigiano  
No. 74-1194 - Enomoto v. Clutchette

Dear Byron:

Please join me. I, too, would have preferred your initial draft over the revision suggested by Potter and agreed to by Lewis.

Sincerely,



Mr. Justice White

cc: The Conference

[ note to Justice White only ]

Dear Byron:

My joinder, of course, includes all except Part II of the opinion.

H. A. B.



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 17, 1976

No. 74-1187 Baxter v. Palmigiano  
No. 74-1194 Enomoto v. Clutchette

Dear Byron:

I have the same reservation indicated by Potter (his letter of February 9), with respect to the paragraph beginning at the bottom of page 6 of your opinion.

It seems unnecessary in this case to decide whether interrogation in a prison proceeding is sufficiently analogous to stationhouse interrogation to invoke Miranda. I am rather inclined to agree with you that the issue should be whether statements sought to be excluded in a subsequent criminal trial were compelled self incrimination, but I would prefer not to attempt to resolve this question on the records before us in these cases.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 23, 1976

No. 74-1187 Baxter v. Palmigiano  
No. 74-1194 Enomoto v. Clutchette

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 4, 1976

Re: Nos. 74-1187 and 74-1194 - Baxter v. Palmigiano,  
et al.

Dear Byron:

Please join me.

Sincerely,

*Wm*

Mr. Justice White

Copies to the Conference

✓

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 17, 1976

Re: Nos. 74-1187 and 74-1194 - Baxter v. Palmigiano

Dear Byron:

I have read the correspondence between you, Potter, and Lewis with respect to the paragraph beginning at the bottom of page 6 of your opinion in this case. I will stay with you either way, but I prefer your initial draft to the revision suggested by Potter and agreed to by Lewis.

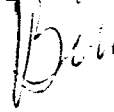
It seems to me that the Court of Appeals for the First Circuit said, probably by way of dicta, that because interrogation in a prison proceeding was analogous to station house interrogation, prison officials should not only give Miranda warnings but furnish counsel at disciplinary hearings. The Court of Appeals for the Ninth Circuit, as you indicate on page 6 of your draft opinion, said pretty much the same thing.

I do not deny the force of Lewis' and Potter's observations that since we are not here reviewing a criminal prosecution in which statements made at a disciplinary proceeding without counsel or without Miranda warning were admitted in evidence, decision of the issue is premature. Yet I do think that both the federal District Courts within the Ninth and First Circuits, and all state courts in those circuits, are bound to feel that the existing opinions of the Courts

- 2 -

of Appeals saying that Miranda is applicable for practical purposes virtually require them to comply with the rulings of those Courts of Appeals. As a practical matter, state law enforcement authorities will not willingly risk throwing away possibly valuable testimony at a criminal prosecution by reason of failure to comply with Miranda in a prison disciplinary proceeding; they will therefore comply with Miranda. Even though this Court says the decisions of those Courts of Appeals are premature, if the suggestion of Potter and Lewis is followed, those decisions on that point will remain unreversed by this Court. I think in the peculiar circumstances of this case, since both those Courts of Appeals have spoken to the issue, we are well justified in speaking to it also. I of course fully agree with your treatment of the issue on the merits.

Sincerely,



Mr. Justice White

Copies to the Conference.