

# The Burger Court Opinion Writing Database

## *Estelle v. Williams*

425 U.S. 501 (1976)

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



To: Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Fort  
 Mr. Justice  
 Mr. Justice  
 Mr. Justice  
 Mr. Justice  
 Mr. Justice  
 Mr. Justice  
 Mr. Justice

DEC 1 1975

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-676

W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[December —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether an accused who is compelled to wear identifiable prison clothing at his trial by a jury is denied due process or equal protection of the laws.

In November 1970, respondent Williams was convicted in state court in Harris County, Tex., for assault with intent to commit murder with malice. The crime occurred during an altercation between respondent and his former landlord on the latter's property. The evidence showed that respondent returned to the apartment complex where he had formerly resided to visit a female tenant. While there, respondent and his former landlord became involved in a quarrel. Heated words were exchanged, and a fight ensued. Respondent struck the landlord with a knife in the neck, chest, and abdomen, severely wounding him.

Unable to post bond, respondent was held in custody while awaiting trial. When he learned that he was to go on trial, respondent asked an officer at the jail for his civilian clothes. This request was denied. As a

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

CHAMBERS OF  
THE CHIEF JUSTICE

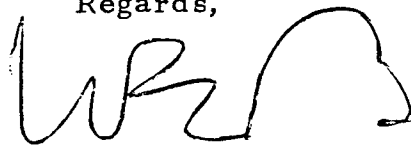
December 3, 1975

Re: 74-676 - Estelle v. Williams

MEMORANDUM TO THE CONFERENCE:

The attached page 11 in the above case should be substituted in place of the original draft page (circulated December 1) to reflect a revised paragraph.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

March 5, 1976

Re: 74-676 - Estelle v. Williams

Dear Bill:

The final draft of the revised opinion in the  
above is "sidetracked" due to opinions for Monday. It  
will be around Tuesday or Wednesday.

Regards,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 9, 1976

Re: 74-676 - Estelle v. Williams

*Wait for  
WSB*

MEMORANDUM TO THE CONFERENCE:

Enclosed is the second draft of opinion in the  
above, revised in part to deal with some of Bill Brennan's  
points.

Regards,

*WSB*

Pg. 4, 7, 8, 11

To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Chief Justice Burger

From: The Chief Justice

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

Recirculated: MAR 9 1976

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-676

W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[March —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether an accused who is compelled to wear identifiable prison clothing at his trial by a jury is denied due process or equal protection of the laws.

In November 1970, respondent Williams was convicted in state court in Harris County, Tex., for assault with intent to commit murder with malice. The crime occurred during an altercation between respondent and his former landlord on the latter's property. The evidence showed that respondent returned to the apartment complex where he had formerly resided to visit a female tenant. While there, respondent and his former landlord became involved in a quarrel. Heated words were exchanged, and a fight ensued. Respondent struck the landlord with a knife in the neck, chest, and abdomen, severely wounding him.

Unable to post bond, respondent was held in custody while awaiting trial. When he learned that he was to go on trial, respondent asked an officer at the jail for his civilian clothes. This request was denied. As a

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 15, 1976

PERSONAL

Re: 74-676 - Estelle v. Williams

Dear Lewis:

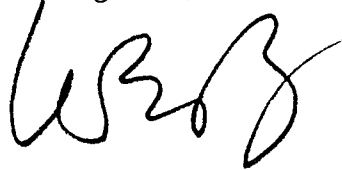
I think you will agree that it is important to have a solid Court in this case and, accordingly, I am prepared to make changes to accommodate your view in the hope it would lead to abandoning your concurring opinion.

I enclose a marked up draft of changes I would "offer" to solidify the situation. Even though you join my opinion it is my view that a separate opinion weakens the total impact.

I will not submit this to Potter at this stage since, if you do not agree, the matter ends there.

I await your verdict.

Regards,



Mr. Justice Powell

P.S. These changes will need some "honing" which I will undertake, if you agree in principle.

✓

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

✓

CHAMBERS OF  
THE CHIEF JUSTICE

April 27, 1976

Re: 74-676 - Estelle v. Williams

Dear Lewis:

Your concurring opinion prompts me to insert at page 11 the following as new footnote 9:

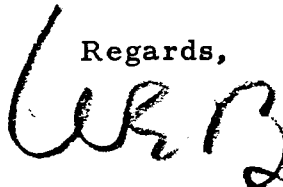
9/

"It is not necessary, if indeed it were possible, for us to decide whether this was a defense tactic or simply indifference. In either case, respondent's silence precludes any suggestion of compulsion."

Also on page 12, line 1, after "clothes," insert the following:

"for whatever reason."

Regards,



Mr. Justice Powell

Copies to the Conference



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

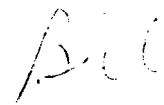
December 2, 1975

RE: No. 74-676 Estelle v. Williams

Dear Chief:

In due course I shall circulate a dissent in the  
above.

Sincerely,



The Chief Justice

cc: The Conference

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

Circulated: 1/15/76

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-676

W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	---

[January —, 1976]

MR. JUSTICE BRENNAN, dissenting.

I dissent. The Court's statement that "The defend-  
 ant's clothing is so likely to be a continuing influence  
 throughout the trial that . . . an unacceptable risk is  
 presented of impermissible factors" affecting the jurors'  
 judgment, thus presenting the possibility of an unjustified  
 verdict of guilt, *ante*, p. 4, concedes that respondent's  
 trial in identifiable prison garb<sup>1</sup> constituted a denial of  
 due process of law. The judgment setting aside respon-  
 dent's conviction is nevertheless reversed on the ground  
 that respondent was not *compelled* by the State to wear  
 the prison garb. The Court does not—for on this record  
 plainly the Court could not—rest the reversal on a find-  
 ing that respondent knowingly, voluntarily, and intelli-  
 gently consented to be tried in such attire, and thus had  
 waived his due process right. *Johnson v. Zerbst*, 304  
 U. S. 458 (1938). Rather, for the first time, the Court  
 confines due process protections by *defining* a right that

<sup>1</sup> Respondent appeared at trial wearing a white T-shirt with  
 "Harris County Jail" stencilled across the back, oversized white  
 dungarees that had "Harris County Jail" stencilled down the legs,  
 and shower thongs. Both of the principal witnesses for the State  
 at respondent's trial referred to him as the person sitting in the  
 "uniform." Record on Appeal in Tex. Ct. of Crim. App., at 108,  
 112.

STYLISTIC CHANGES

pp. 1-2, 7-15, 19-21

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

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

Recirculated: 4/22/76

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-676

W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	---

[January —, 1976]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL concurs, dissenting.

I dissent. The Court's statement that "The defendant's clothing is so likely to be a continuing influence throughout the trial that . . . an unacceptable risk is presented of impermissible factors" affecting the jurors' judgment, thus presenting the possibility of an unjustified verdict of guilt, *ante*, at 4, concedes that respondent's trial in identifiable prison garb<sup>1</sup> constituted a denial of due process of law. The judgment setting aside respondent's conviction is nevertheless reversed on the ground that respondent was not *compelled* by the State to wear the prison garb. The Court does not—for on this record plainly the Court could not—rest the reversal on a finding that respondent knowingly, voluntarily, and intelligently consented to be tried in such attire, and thus had waived his due process right. *Johnson v. Zerbst*, 304 U. S. 458 (1938). Rather, for the first time, the Court

<sup>1</sup> Respondent appeared at trial wearing a white T-shirt with "Harris County Jail" stenciled across the back, oversized white dungarees that had "Harris County Jail" stenciled down the legs, and shower thongs. Both of the principal witnesses for the State at respondent's trial referred to him as the person sitting in the "uniform." Record on Appeal in Tex. Ct. of Crim. App., at 108, 112.

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

For Mr. Justice Brennan

Concurred in

Reconsidered 4/30/76

5th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-676

W. J. Estelle, Jr., Director,  
 Texas Department of Cor-  
 rections, Petitioner,  
 v.  
 Harry Lee Williams.

On Writ of Certiorari to the  
 United States Court of  
 Appeals for the Fifth  
 Circuit.

[May —, 1976]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MAR-  
 SHALL concurs, dissenting.

I dissent. The Court's statement that "The defend-  
 ant's clothing is so likely to be a continuing influence  
 throughout the trial that . . . an unacceptable risk is  
 presented of impermissible factors" affecting the jurors'  
 judgment, thus presenting the possibility of an unjustified  
 verdict of guilt, *ante*, at 4, concedes that respondent's  
 trial in identifiable prison garb<sup>1</sup> constituted a denial of  
 due process of law. The judgment setting aside respond-  
 ent's conviction is nevertheless reversed on the ground  
 that respondent was not *compelled* by the State to wear  
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 ing that respondent knowingly, voluntarily, and intelli-  
 gently consented to be tried in such attire, and thus had  
 waived his due process right. *Johnson v. Zerbst*, 304  
 U. S. 458 (1938). Rather, for the first time, the Court

<sup>1</sup> Respondent appeared at trial wearing a white T-shirt with  
 "Harris County Jail" stenciled across the back, oversized white  
 dungarees that had "Harris County Jail" stenciled down the legs,  
 and shower thongs. Both of the principal witnesses for the State  
 at respondent's trial referred to him as the person sitting in the  
 "uniform." Record on Appeal in Tex. Ct. of Crim. App., at 108,  
 112.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 2, 1975

Re: No. 74-676, Estelle v. Williams

Dear Chief,

I am glad to join your opinion for the Court in  
this case.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

✓  
April 8, 1976

No. 74-676, Estelle v. Williams

Dear Lewis,

I should appreciate your adding  
my name to your concurring opinion in this  
case.

Sincerely yours,

P.S.  
✓

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 2, 1975

Re: No. 74-676 - Estelle v. Williams

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 12, 1976

Re: No. 74-676 — Estelle v. Williams

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Dear Chief:

I am still with you in this case.

Sincerely,



The Chief Justice

Copies to the Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 15, 1976

Re: No. 74-676 -- W. J. Estelle, Jr. v. Harry Lee Williams

Dear Bill:

Please join me in your dissenting opinion.

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

December 3, 1975

Re: No. 74-676 - Estelle v. Williams

Dear Chief:

I am glad to join your circulation of December 1 with  
page 11 revised as circulated today.

Sincerely,

*Harry*

The Chief Justice

cc: The Conference

*Recd 12/4*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 3, 1975

No. 74-676 Estelle v. Williams

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell  
 APR 7 1976

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

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-676

W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	---

[April —, 1976]

MR. JUSTICE POWELL, concurring.

I concur in the opinion of the Court. As the Court's opinion and the dissenting opinion take such divergent views of the case, I write separately to identify specifically the considerations I deem controlling.

Respondent, Harry Lee Williams, was tried while clad in prison issue. Despite what I view as largely semantic differences over the relevance of "compulsion" in this case, the Court opinion and the dissenting opinion essentially agree that a defendant has a constitutional right not to be so tried. The disagreement is over the significance to be attributed to Williams' failure to object at trial.

As relevant to this case, there are two situations in which a conviction should be left standing despite the claimed infringement of a constitutional right. The first situation arises when it can be shown that the substantive right in question was consensually relinquished. The other situation arises when a defendant has made an "inexcusable procedural default" in failing to object at a time when a substantive right could have been protected. Hart, Foreword: The Time Chart of the Justices, 73 Harv. L. Rev. 84, 118 (1959); see ABA Project on Minimum Standards for Criminal Justice, Standards

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Powell

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

No. 74-676

Recirculated: APR 8 1976

W. J. Estelle, Jr., Director,  
Texas Department of Cor-  
rections, Petitioner,  
v.  
Harry Lee Williams. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Fifth  
Circuit.

[April —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART  
joins, concurring.

I concur in the opinion of the Court. As the Court's  
opinion and the dissenting opinion take such divergent  
views of the case, I write separately to identify specifi-  
cally the considerations I deem controlling.

Respondent, Harry Lee Williams, was tried while clad  
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right in question was consensually relinquished. The  
other situation arises when a defendant has made an  
"inexcusable procedural default" in failing to object at  
a time when a substantive right could have been pro-  
tected. Hart, Foreword: The Time Chart of the Justices,  
73 Harv. L. Rev. 84, 118 (1959); see ABA Project on  
Minimum Standards for Criminal Justice, Standards

April 22, 1976

No. 74-676 Estelle v. Williams

Dear Chief:

I have considered carefully the suggested "integration" of portions of my concurring opinion with your opinion for the Court, and I just do not believe they fit together.

As my concurrence suggests, although I am willing to join your opinion, I would have preferred to predicate our holding solely on the ground that respondent Williams committed an inexcusable procedural default. But if this were to be the basis of a Court decision, this line of analysis should be developed somewhat more fully. My brief concurrence serves the purpose merely of indicating that there is a different approach.

I have discussed this with Potter who had previously joined my concurring opinion. He shares my view that it is best to leave it "as is".

You have a solid Court, and I see no reason why Estelle should not "come down".

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Stewart

p. 3

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

From: Mr. Justice Powell

Circular: \_\_\_\_\_

Recirculated APR 26 1976

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-676

<p>W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.</p>
--	---	---

[April —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, concurring.

I concur in the opinion of the Court. As the Court's opinion and the dissenting opinion take such divergent views of the case, I write separately to identify specifically the considerations I deem controlling.

Respondent, Harry Lee Williams, was tried while clad in prison issue. Despite what I view as largely semantic differences over the relevance of "compulsion" in this case, the Court opinion and the dissenting opinion essentially agree that a defendant has a constitutional right not to be so tried. The disagreement is over the significance to be attributed to Williams' failure to object at trial.

As relevant to this case, there are two situations in which a conviction should be left standing despite the claimed infringement of a constitutional right. The first situation arises when it can be shown that the substantive right in question was consensually relinquished. The other situation arises when a defendant has made an "inexcusable procedural default" in failing to object at a time when a substantive right could have been protected. Hart, Foreword: The Time Chart of the Justices, 73 Harv. L. Rev. 84, 118 (1959); see ABA Project on Minimum Standards for Criminal Justice, Standards

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 27, 1976

No. 74-676 Estelle v. Williams

Dear Chief:

In light of your comments to me this morning, I am making the changes in Estelle that are indicated on the attached "marked-up" copy of my concurring opinion.

Potter has agreed to these changes, and I am sending a marked-up copy to Bill Brennan.

It will therefore be necessary to carry this case (and also, I assume, Henderson) over until next week.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference



Stylistic Changes Throughout.

p. 1

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

From: Mr. Justice Powell

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

Recirculated: APR 29 1976

5th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-676

<p>W. J. Estelle, Jr., Director, Texas Department of Cor- rections, Petitioner, v. Harry Lee Williams.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.</p>
--	---	---

[May —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, concurring.

I concur in the opinion of the Court. As the Court's opinion and the dissenting opinion take such divergent views of the case, I write separately to identify specifically the considerations I deem controlling.

Respondent, Harry Lee Williams, was tried while clad in prison issue. Despite differences over the relevance of "compulsion" in this case, the Court opinion and the dissenting opinion essentially agree that a defendant has a constitutional right not to be so tried. The disagreement is over the significance to be attributed to Williams' failure to object at trial.

/ omission

As relevant to this case, there are two situations in which a conviction should be left standing despite the claimed infringement of a constitutional right. The first situation arises when it can be shown that the substantive right in question was consensually relinquished. The other situation arises when a defendant has made an "inexcusable procedural default" in failing to object at a time when a substantive right could have been protected. Hart, Foreword: The Time Chart of the Justices, 73 Harv. L. Rev. 84, 118 (1959); see ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Post-Conviction Remedies, at 35-37.

/ omission

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 4, 1975

Re: No. 74-676 - Estelle v. Williams

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 15, 1976

Re: No. 74-676 - Estelle v. Williams

Dear Chief:

I am still with you in this case.

Sincerely,

*WHR*

The Chief Justice

Copies to the Conference