

# The Burger Court Opinion Writing Database

*Vitek v. Jones*

436 U.S. 407 (1978)

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



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

77-888, Vitek, et al. v. Miller, et al.

PER CURIAM

From: The Chief Justice

Circulated: MAY 8 1978

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

This appeal presents a challenge under the Due Process Clause of the Fourteenth Amendment to a state statute which authorizes the transfer of a state prisoner, without his consent, to a state mental hospital upon a finding by a physician or psychologist that the prisoner suffers from a mental disease or defect and that he cannot be given proper treatment within the facility in which he is confined.<sup>1/</sup>

<sup>1/</sup>Neb. Rev. Stat. §83-180 provides in relevant part:

". . . [W]hen a physician or psychologist designated by the [Director of Correctional Services] finds that a person committed to the [Department of Correctional Services] suffers from a mental disease or defect, the chief executive officer may order such person to be segregated from other persons in the facility. If the physician or psychologist is of the opinion that the person cannot be given proper treatment in that facility the director may arrange for his transfer for examination, study, and treatment to any medical-correctional facility, or to another institution in the Department of Public Institutions where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the Department when, prior to the expiration of his sentence, treatment in such facility is no longer necessary."

*CS*  
*I agree with*  
*your per curiam*  
*MA*

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

From: The Chief Justice

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

Recirculated: MAY 15 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-888

Joseph Vitek, Etc., et al. }  
Appellants, } On Appeal from the United States  
v. } District Court for the District of  
Charles Miller et al. } Nebraska.

[May —, 1978]

PER CURIAM.

This appeal presents a challenge under the Due Process Clause of the Fourteenth Amendment to a state statute which authorizes the transfer of a state prisoner, without his consent, to a state mental hospital upon a finding by a physician or psychologist that the prisoner suffers from a mental disease or defect and that he cannot be given proper treatment within the facility in which he is confined.<sup>1</sup>

Appellee Larry D. Jones<sup>2</sup> was convicted of the crime of

<sup>1</sup> Neb. Rev. Stat. § 83-180 provides in relevant part:

“ . . . [W]hen a physician or psychologist designated by the [Director of Correctional Services] finds that a person committed to the [Department of Correctional Services] suffers from a mental disease or defect, the chief executive officer may order such person to be segregated from other persons in the facility. If the physician or psychologist is of the opinion that the person cannot be given proper treatment in that facility, the director may arrange for his transfer for examination, study, and treatment to any medical-correctional facility, or to another institution in the Department of Public Institutions where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the Department when, prior to the expiration of his sentence, treatment in such facility is no longer necessary.”

<sup>2</sup> This lawsuit was initially brought by a single plaintiff, Charles Miller. On August 18, 1976, plaintiff's suit was certified as a class action. After

Brenn 77

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 9, 1978

RE: No. 77-888 Vitek, et al v. Miller, et al.

Dear Chief:

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

Sincerely,

*Bill*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 9, 1978

No. 77-888 -- Vitek v. Miller

Dear Chief,

I agree with your proposed Per Curiam.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

PRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 9, 1978

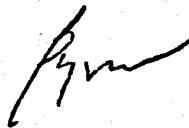
Re: 77-888 - Vitek v. Miller

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Dear Chief,

Please join me in your suggested  
per curiam.

Sincerely yours,



The Chief Justice  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 9, 1978

Re: No. 77-888, Vitek v. Miller

Dear Chief:

I agree with your Per Curiam.

Sincerely,

*JM*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 9, 1978

Re: No. 77-888 - Vitek v. Miller

Dear Chief:

Please join me in the proposed per curiam.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 9, 1978

No. 77-888 Vitek, et al. v. Miller, et al.

Dear Chief:

I agree with your Per Curiam.

Sincerely,

*Lewis*

The Chief Justice

Copies to the Conference

LFP/lab

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 8, 1978

Re: No. 77-888 - Vitek v. Miller

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 JOHN PAUL STEVENS

May 10, 1978

Re: 77-888 - Vitek v. Miller

Dear Chief:

In due course I shall circulate a brief dissent.

Respectfully,



The Chief Justice

Copies to the Conference

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

From: Mr. Justice Stevens

**MAY 15 1978**

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

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-888

Joseph Vitek, Etc., et al.,  
Appellants,  
v.  
Charles Miller et al. } On Appeal from the United States  
District Court for the District of  
Nebraska.

[May —, 1978]

MR. JUSTICE STEVENS, dissenting.

The question whether a person convicted of a crime has a constitutional right to a hearing before being involuntarily placed in a mental institution is an important one. In this case the three-judge District Court answered that question in the affirmative and entered an injunction protecting appellee against the risk of an arbitrary transfer. As long as he remains in appellants' custody, he will continue to encounter that risk unless the District Court's injunction remains in effect. Recognizing this, the District Court explicitly provided that appellants "are enjoined from transferring . . . Larry D. Jones, at any time before his complete discharge from the custody of the State of Nebraska,"<sup>1</sup> without following the mandated procedures.

It is undisputed that Jones remains in the custody of the State of Nebraska.<sup>2</sup> At the moment, he is on limited parole, and, as a condition of that parole, is receiving in-patient psychiatric services in Danville, Illinois. I have previously expressed my disagreement with this Court's conclusion that a parole release moots a controversy between a prisoner and the State over proper parole procedures, see *Scott v. Kentucky Parole Board*, 429 U. S. 60 (STEVENS, J., dissenting), and what

<sup>1</sup> Appendix to Jurisdictional Statement, at 2.

<sup>2</sup> Jones' tentative discharge date is not until March 1982. Appellant's Brief on the Question of Mootness, at 2.