

# The Burger Court Opinion Writing Database

## *Beck v. Alabama*

447 U.S. 625 (1980)

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

MEMBERS OF  
THE SUPREME COURT  
CHIEF JUSTICE

September 28, 1979

Re: 78-6621 - Beck v. Alabama

MEMORANDUM TO THE CONFERENCE:

I still vote to Deny. The very essence of the mitigation instruction embraces both "lesser" penalties and lesser offenses; it would be preposterous for a jury to even contemplate a lesser offense on evidence such as we have in this case. I'd wait for a case where it would not be irrational to consider a lesser offense.

If we go the route the petitioner asks we will invite compromise verdicts, rather than merely tolerate them as the system has traditionally done up to now.

Regards,

WSB

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 11, 1980

Re: 78-6621 - Beck v. Alabama

Dear John:

I join.

Regards,

A handwritten signature in dark ink, appearing to be "WJB", written over the typed word "Regards,".

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 18, 1980

RE: 78-6621 - Beck v. Alabama

MEMORANDUM TO THE CONFERENCE:

The printing of the dissent in the above could not be completed in time for a Thursday announcement.

Very likely, this case will be ready Friday.

Regards,

*W. J. B.*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 1, 1979

RE: No. 78-6621 Beck v. Alabama

Dear Potter:

I agree with your proposed question and the grant  
of certiorari limited to it.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 2, 1980

RE: No. 78-6621 Beck v. Alabama

Dear John:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", written in dark ink.

Mr. Justice Stevens

cc: The Conference

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

From: Mr. Justice Brennan

No. 78-6621

Circulated: 6-17-80

Gilbert Franklin Beck, Petitioner v. State of Alabama

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

On Writ of Certiorari to the Supreme Court of Alabama

MR. JUSTICE BRENNAN, concurring.

Although I join the Court's opinion, I continue to believe that the death penalty is, in all circumstances, contrary to the Eighth Amendment's prohibition against imposition of cruel and unusual punishments. Gregg v. Georgia, 428 U.S. 153, 227 (1976) (MR. JUSTICE BRENNAN, dissenting).

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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: JUN 13

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-6621

Gilbert Franklin Beck, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Alabama. } Alabama.

[June —, 1980]

MR. JUSTICE BRENNAN, concurring.

Although I join the Court's opinion, I continue to believe that the death penalty is, in all circumstances, contrary to the Eighth Amendment's prohibition against imposition of cruel and unusual punishments. *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (BRENNAN, J., dissenting).



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

CHAMBERS OF  
JUSTICE POTTER STEWART

MEMORANDUM TO THE CONFERENCE

Re: \*78-6621 - Beck v. Alabama

I would grant certiorari in this case, limited to the following question:

May a sentence of death constitutionally be imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, even though the evidence would have supported such a verdict?

P.S.  
P.S.

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

October 1, 1979

MEMORANDUM TO THE CONFERENCE

Re: No. 78-6621 - Beck v. Alabama

Lewis Powell has suggested that the word "when" be substituted for the phrase "even though" in the language of the proposed limited question in this case.

The question would then read:

May a sentence of death constitutionally be imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, and when the evidence would have supported such a verdict?

This minor change is entirely satisfactory to me, and I trust will also be satisfactory to those of you who have approved the original wording of the question.

P.S.  
P.S.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 4, 1980

Re: No. 78-6621, Beck v. Alabama

Dear John,

I am glad to join your opinion for  
the Court.

Sincerely yours,

PS:  
1.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1980

Re: 78-6621 - Beck v. Alabama

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Dear Bill,

Although I am giving the jurisdictional matter additional study, as presently advised I agree with your dissenting opinion.

Sincerely yours,



Mr. Justice Rehnquist  
Copies to the Conference  
cmc

17 JUN 1980

No. 78-6621

Gilbert Franklin Beck, Petitioner, v. State of Alabama.

On Writ of Certiorari to the Supreme Court of Alabama.

MR. JUSTICE MARSHALL, concurring in the judgment.

I continue to believe that the death penalty is, under all circumstances, cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. Furman v. Georgia, 408 U.S. 238, 314-374 (1972) (MARSHALL, J., concurring); Gregg v. Georgia, 428 U.S. 153, 231-241 (1976) (MARSHALL, J., dissenting); Godfrey v. Georgia, \_\_\_ U.S. \_\_\_, \_\_\_-\_\_\_ (1980) (MARSHALL, J., concurring in the judgment). In addition, I agree with the Court that Alabama's prohibition on giving lesser included offense instructions in capital cases is unconstitutional because it substantially increases the risk of error in the factfinding process. I do not, however, join in the Court's assumption that the death penalty may ever be imposed without violating the command of the Eighth Amendment that no "cruel and unusual punishments" be imposed. Lockett v. Ohio, 438 U.S. 586, 621 (1978) (MARSHALL, J., concurring in the judgment); Bell v. Ohio, 438 U.S. 637, 643-644 (1978) (MARSHALL, J., concurring in the judgment). I join in the judgment of the Court.

18 JUN 1980

*printed*  
1st/DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-6621

Gilbert Franklin Beck, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Alabama. } Alabama.

[June —, 1980]

MR. JUSTICE MARSHALL, concurring in the judgment.

I continue to believe that the death penalty is, under all circumstances, cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. *Furman v. Georgia*, 408 U. S. 238, 314-374 (1972) (MARSHALL, J., concurring); *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting); *Godfrey v. Georgia*, — U. S. —, — (1980) (MARSHALL, J., concurring in the judgment). In addition, I agree with the Court that Alabama's prohibition on giving lesser included offense instructions in capital cases is unconstitutional because it substantially increases the risk of error in the factfinding process. I do not, however, join in the Court's assumption that the death penalty may ever be imposed without violating the command of the Eighth Amendment that no "cruel and unusual punishments" be imposed. *Lockett v. Ohio*, 438 U. S. 586, 621 (1978) (MARSHALL, J., concurring in the judgment); *Bell v. Ohio*, 438 U. S. 637, 643-644 (1978) (MARSHALL, J., concurring in the judgment). I join in the judgment of the Court.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 4, 1979

Re: No. 78-6621 - Beck v. Alabama

Dear Potter:

Inasmuch as this is a capital case, it may make little difference, but I would be interested in knowing whether a lesser-included-offense instruction was ever requested by the defense. The papers we have are not very clear as to this.

Sincerely,



Mr. Justice Stewart  
cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

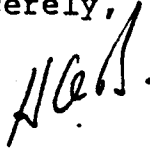
June 6, 1980

Re: No. 78-6621 - Beck v. Alabama

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

ST. POWELL, JR.

October 1, 1979

No. 78-6621 Beck v. Alabama

Dear Potter:

With the one modest change in verbiage that we discussed, your proposed question is fine with me.

Sincerely,

*L. Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.


June 3, 1980

78-6621 Beck v. Alabama

Dear John:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Mr. Justice Stevens

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 Powell  
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: JAN 2 1980

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

FIRST WANG DRAFT

Re: No. 78-6621 Beck v. State of Alabama

MR. JUSTICE REHNQUIST, dissenting

The opinion of the Court begins by stating that we granted certiorari to decide the question of whether a sentence of death may be constitutionally imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense where the evidence would have supported such a verdict. I find the Court's treatment of this issue highly unusual, since although this question was raised in the Alabama trial court and the Alabama intermediate court of appeals, it was not preserved in the Supreme Court of Alabama. That court began its opinion with this language:

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

STEVENS

October 1, 1979

Re: 78-6621 - Beck v. Alabama

Dear Potter:

Your proposed question is acceptable to me.  
I join you in voting to grant.

Respectfully,



Mr. Justice Stewart

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 Souter

78-6621 - Beck v. State of Alabama

From Mr. Justice Stevens

Circulated: JUN 2 '80

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

MR. JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide the following question:

"May a sentence of death constitutionally be imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, and when the evidence would have supported such a verdict?" \_\_\_\_\_ U.S. \_\_\_\_\_.

We now hold that the death penalty may not be imposed under these circumstances.

Petitioner was tried for the capital offense of "robbery or attempts thereof when the victim is intentionally killed by the defendant."<sup>1/</sup> Under the Alabama death penalty statute

<sup>1/</sup> There are fourteen capital offenses under the Alabama statute, Ala. Code § 13-11-2(a)(1)-(14):

"(1) Kidnapping for ransom or attempts thereof, when the victim is intentionally killed by the defendant;

"(2) Robbery or attempts thereof when the victim is intentionally killed by the defendant;

"(3) Rape when the victim is intentionally killed by the defendant; carnal knowledge of a girl under 12 years of age, or abuse of such girl in an attempt to have carnal knowledge, when the victim is intentionally killed by the defendant;

✓  
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

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Recirculated: JUN 4 '80

## SUPREME COURT OF THE UNITED STATES

No. 78-6621

Gilbert Franklin Beck, Petitioner, | On Writ of Certiorari to  
v. | the Supreme Court of  
State of Alabama. | Alabama.

[June —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide the following question:

"May a sentence of death constitutionally be imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, and when the evidence would have supported such as verdict?" — U. S.

We now hold that the death penalty may not be imposed under these circumstances.

Petitioner was tried for the capital offense of "[r]obbery or attempts thereof when the victim is intentionally killed by the defendant."<sup>1</sup> Under the Alabama death penalty statute

<sup>1</sup> There are fourteen capital offenses under the Alabama statute, Ala. Code § 13-11-2 (a) (1)-(14):

"(1) Kidnapping for ransom or attempts thereof, when the victim is intentionally killed by the defendant;

"(2) Robbery or attempts thereof when the victim is intentionally killed by the defendant;

"(3) Rape when the victim is intentionally killed by the defendant; carnal knowledge of a girl under 12 years of age, or abuse of such girl in an attempt to have carnal knowledge, when the victim is intentionally killed by the defendant;

"(4) Nighttime burglary of an occupied dwelling when any of the occupants is intentionally killed by the defendant;

"(5) The murder of any police officer, sheriff, deputy, state trooper or

5-7, 16-18

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

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

Recirculated: JUN 10 '80

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-6621

Gilbert Franklin Beck, Petitioner, On Writ of Certiorari to  
v. the Supreme Court of  
State of Alabama. Alabama.

[June —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide the following question:

"May a sentence of death constitutionally be imposed after a jury verdict of guilt of a capital offense, when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, and when the evidence would have supported such a verdict?" — U. S.

We now hold that the death penalty may not be imposed under these circumstances.

Petitioner was tried for the capital offense of "[r]obbery or attempts thereof when the victim is intentionally killed by the defendant."<sup>1</sup> Under the Alabama death penalty statute

<sup>1</sup> There are fourteen capital offenses under the Alabama statute, Ala. Code § 13-11-2 (a)(1)-(14):

"(1) Kidnapping for ransom or attempts thereof, when the victim is intentionally killed by the defendant;

"(2) Robbery or attempts thereof when the victim is intentionally killed by the defendant;

"(3) Rape when the victim is intentionally killed by the defendant; carnal knowledge of a girl under 12 years of age, or abuse of such girl in an attempt to have carnal knowledge, when the victim is intentionally killed by the defendant;

"(4) Nighttime burglary of an occupied dwelling when any of the occupants is intentionally killed by the defendant;

"(5) The murder of any police officer, sheriff, deputy, state trooper or

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 23, 1980

MEMORANDUM TO CONFERENCE

Cases Held for Beck v. Alabama, No. 78-6621:

There are nine Alabama death penalty cases being held for Beck. In all but one of those cases (Wilson v. Alabama, No. 79-5301) the petitioner has made the lesser included offense argument raised in Beck. In some of these cases, a lesser included offense instruction would clearly have been appropriate; in other cases, the issue is either not discussed in the petition or the State argues that a lesser included offense instruction could not have been given under state law. In response, at least one petitioner has argued that a defendant would always be entitled, as a matter of Alabama law, to lesser included offense instructions on non-capital first degree (premeditated) murder and on second-degree murder. Rather than attempting to resolve these state law issues, I would grant, vacate and remand all of these cases in light of Beck.

Another reason for GVR'ing all of the cases held for Beck, including the one that does not raise the lesser included offense issue, is that all of the petitions question the constitutionality of instructing the jury that the death penalty is the automatic consequence of a verdict of guilty. Our opinion in Beck casts considerable doubt on the constitutionality of this procedure. As we noted in Beck, by mixing questions of guilt and punishment, the statute perhaps inevitably skews the jury's decision with respect to guilt. It is not clear to me that simply providing lesser included offense instructions will be sufficient to cure this problem. Before voting to grant certiorari on this issue, however, I would like to give the Alabama courts an opportunity to reexamine their statute in light of Beck.

The following is a brief summary of the facts and contentions involved in each petition:

Williamson v. Alabama, No. 79-5026. Petitioner was convicted of the capital crime of intentional killing in the course of a kidnapping. Petitioner had an accomplice