The Burger Court Opinion Writing Database

Rhodes v. Chapman

452 U.S. 337 (1981)

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

May 13, 1981

Re: 80-332 - Rhodes v. Chapman

Dear Lewis:

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 13, 1981

Re: 80-332 - Rhodes v. Chapman

Dear Lewis:

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

P.P.S. Kagan trying to "scrub" the pg 8!

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

CHAMBERS OF
THE CHIEF JUSTICE

May 15, 1981

Re: 80-332, Rhodes v. Chapman

Dear Lewis:

I thank you for "scrubbing" the erroneous statement of the Gregg plurality.

I can "live with" your Trop quote, which I find has been cited in only four Court opinions. With Hugo Black, in future I will resist this pleasing but extravagant rhetoric which has too much "rubber" in it to suit my taste and is reminiscent of the late unlamented (nonsense) language of Roth about "redeeming social importance".

This game of rhetoric -- to which we are all prey at times -- is something that causes us trouble. For my part, I am always receptive to the use of the "Vanderbilt blue pencil."

Regards,

WEB

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 23, 1981

Re: Rhodes v. Chapman, No. 80-332

Dear Lewis:

Although I agree with your conclusion that the District Court was in error in this case, I am concerned that your opinion might be viewed as discouraging other District Courts from conducting the rigorous examination of prison conditions that I believe the Eighth Amendment requires. I think I can best reveal my concerns by writing separately, and will do so in due course.

Sincerely,

/Bill

Justice Powell
Copies to 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: JUN 1 1981

Recirculated: _____

Rhodes v. Chapman

No. 80-332

JUSTICE BRENNAN, concurring in the judgment.

Today's decision reaffirms that "[c]ourts do have a responsibility to scrutinize claims of cruel and unusual confinement." Ante, at 12. With that I agree. I also agree that the District Court's findings in this case do not support a judgment that the practice of double-celling in the Southern Ohio Correctional Facility is in violation of the Eighth Amendment. I write separately, however, to emphasize that today's decision should in no way be construed as a retreat from careful judicial scrutiny of prison conditions, and to discuss the factors courts should consider in undertaking such scrutiny.

I

Although this Court has never before considered what prison conditions constitute "cruel and unusual punishment" within the meaning of the Eighth Amendment, see ante, at 6, such questions have been addressed recurringly by the lower courts. In fact, individual prisons or entire prison systems in at least 23 States have been declared unconstitutional under the Eighth Amendment,[1]

[1]Among the States in which prisons or prison systems have been placed under court order because of conditions of confinement in violation of the Eighth Amendment are: Alabama, see Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976), aff'd as modified, 559 F.2d 283 (CA5 1977), rev'd in part of other grounds, 438 U.S. 781 (1978) (per curiam); Arizona, see Harris v. Caldwell, _____; Arkansas, see Finney v. Mabry, 458 F. Supp. 720

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1 - 3

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: JUN 12 1981

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1981]

JUSTICE BRENNAN, with whom JUSTICE BLACKMUN and JUSTICE STEVENS join, concurring in the judgment.

Today's decision reaffirms that "[c]ourts do have a responsibility to scrutinize claims of cruel and unusual confinement." *Ante,* at 13. With that I agree. I also agree that the District Court's findings in this case do not support a judgment that the practice of double-celling in the Southern Ohio Correctional Facility is in violation of the Eighth Amendment. I write separately, however, to emphasize that today's decision should in no way be construed as a retreat from careful judicial scrutiny of prison conditions, and to discuss the factors courts should consider in undertaking such scrutiny.

I

Although this Court has never before considered what prison conditions constitute "cruel and unusual punishment" within the meaning of the Eighth Amendment, see *ante,* at 6, such questions have been addressed repeatedly by the lower courts. In fact, individual prisons or entire prison systems in at least 24 States have been declared unconstitutional under the Eighth and Fourteenth Amendments,[1] with litiga-

[1] Among the States in which prisons or prison systems have been placed under court order because of conditions of confinement challenged under the Eighth and Fourteenth Amendments are: Alabama, see *Pugh* v. *Locke,*

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 22, 1982

Re: No. 80-382, Rhodes v. Chapman

Dear Lewis,

Assuming your willingness to make the verbal changes we disccused on the telephone, I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 28, 1981

Re: No. 80-332, Rhodes v. Chapman

Dear Lewis,

This will confirm that I join your opinion for the Court.

Sincerely yours,

P.S.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 23, 1981

Re: 80-332 - Rhodes v. Chapman

Dear Lewis,

Please join me.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

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

80-332

Rhodes v. Chapman

From: Mr. Justice Marshall

Circulated: 27 APR 1981

Recirculated: _____

JUSTICE MARSHALL, dissenting.

From reading the Court's opinion in this case, one would surely conclude that the Southern Ohio Correctional Facility (SOCF) is a safe, spacious prison that happens to include many two-inmate cells because the State has determined that that is the best way to run the prison. But the facility described by the majority is not the one involved in this case. SOCF is overcrowded, unhealthful, and dangerous. None of those conditions results from a considered policy judgment on the part of the State. Until the Court's opinion today, absolutely no one--certainly not the "state legislatures" or "prison officials" to whom the majority suggests, see ante, at 12, that we defer in analyzing constitutional questions--had suggested that forcing long-term inmates to share tiny cells designed to hold only one individual might be a good thing. On the contrary, as the District Court noted, "everybody" is in agreement that double celling is undesirable.[1] No one argued at trial and no one has contended here that double celling was a legislative policy judgment. No one has asserted that prison officials imposed it

[1]"The experts were all in agreement--as is everybody--that single celling is desirable." 434 F. Supp. 1007, 1016 (S.D. Ohio 1977).

pp 2, 4, 5, 6, 8

15 MAY 1981

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1981]

JUSTICE MARSHALL, dissenting.

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[1] "The experts were all in agreement—as is everybody—that single celling is desirable." 434 F. Supp. 1007, 1016 (S. D. Ohio 1977).

Stylistic changes throughout, and see p. 8

3 JUN 1981

2nd PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No, 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1981]

JUSTICE MARSHALL, dissenting.

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[1] "The experts were all in agreement—as is everybody—that single celling is desirable," 434 F. Supp. 1007, 1016 (S. D. Ohio 1977).

— Stylistic changes only

9 JUN 1981

~~3rd DRAFT~~

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1981]

JUSTICE MARSHALL, dissenting.

From reading the Court's opinion in this case, one would surely conclude that the Southern Ohio Correctional Facility (SOCF) is a safe, spacious prison that happens to include many two-inmate cells because the State has determined that that is the best way to run the prison. But the facility described by the majority is not the one involved in this case. SOCF is overcrowded, unhealthful, and dangerous. None of those conditions results from a considered policy judgment on the part of the State. Until the Court's opinion today, absolutely no one—certainly not the "state legislatures" or "prison officials" to whom the majority suggests, see *ante*, at 14, that we defer in analyzing constitutional questions—had suggested that forcing long-term inmates to share tiny cells designed to hold only one individual might be a good thing. On the contrary, as the District Court noted, "everybody" is in agreement that double celling is undesirable.[1] No one argued at trial and no one has contended here that double celling was a legislative policy judgment. No one has asserted that prison officials imposed it as a disciplinary or a security matter. And no one has claimed that the practice has anything whatsoever to do with "punish[ing] justly," "deter[ring] future crime," or "return[ing] imprisoned per-

[1] "The experts were all in agreement—as is everybody—that single celling is desirable." 434 F. Supp. 1007, 1016 (S. D. Ohio 1977).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 18, 1981

Re: No. 80-332 - Rhodes v. Chapman

Dear Lewis:

As you surmise, I am waiting to see what Bill Brennan has to say.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 3, 1981

Re: No. 80-332 - Rhodes v. Chapman

Dear Bill:

Please join me in your separate concurring opinion.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

From: Mr. Justice Blackmun

Circulated: JUN 3 1981

Recirculated: _____

No. 80-332 - Rhodes v. Chapman

JUSTICE BLACKMUN, concurring in the judgment.

Despite the perhaps technically correct observation, ante, at 6, that the Court is "consider[ing] here for the first time the limitation that the Eighth Amendment ... imposes upon the conditions in which a State may confine those convicted of crimes," it obviously is not writing upon a clean slate. See Hutto v. Finney, 437 U.S. 678, 685-688 (1978); cf. Bell v. Wolfish, 441 U.S. 520 (1979). Already, concerns about prison conditions and their constitutional significance have been expressed by the Court. 10

Jackson v. Bishop, 404 F.2d 571 (CA8 1968), cited by both JUSTICE BRENNAN, and by JUSTICE MARSHALL in dissent here, was, I believe, one of the first cases in which a federal court examined state penitentiary practices and held them to be violative of the Eighth Amendment's proscription of "cruel and unusual punish-

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JUN 4 1981

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1981]

JUSTICE BLACKMUN, concurring in the judgment.

Despite the perhaps technically correct observation, *ante*, at 6, that the Court is "consider[ing] here for the first time the limitation that the Eighth Amendment . . . imposes upon the conditions in which a State may confine those convicted of crimes," it obviously is not writing upon a clean slate. See *Hutto* v. *Finney*, 437 U. S. 678, 685–688 (1978); cf. *Bell* v. *Wolfish*, 441 U. S. 520 (1979). Already, concerns about prison conditions and their constitutional significance have been expressed by the Court.

Jackson v. *Bishop*, 404 F. 2d 571 (CA8 1968), cited by both JUSTICE BRENNAN, and by JUSTICE MARSHALL in dissent here, was, I believe, one of the first cases in which a federal court examined state penitentiary practices and held them to be violative of the Eighth Amendment's proscription of "cruel and unusual punishments." I sat on that appeal, and I was privileged to write the opinion for a unanimous panel of the court. My voting in at least one prison case since then further discloses my concern about the conditions that sometimes are imposed upon confined human beings. See, *e. g.*, *United States* v. *Bailey*, 444 U. S. 394, 419, 424 (1980) (dissenting opinion).

I perceive, as JUSTICE BRENNAN obviously does in view of his separate writing, a possibility that the Court's opinion in this case today might have been regarded, because of some of its language, as a signal to prison administrators that the

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

4-21-81

From: Mr. Justice Powell

Circulated: APR 21 1981

1st DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the housing of two inmates in a single cell at the Southern Ohio Correctional Facility is cruel and unusual punishment prohibited by the Eighth Amendment.

I

Respondents Kelly Chapman and Richard Jaworski are inmates at the Southern Ohio Correctional Facility (SOCF), a maximum-security state prison in Lucasville, Ohio. They were housed in the same cell when they brought this action in the District Court for the Southern District of Ohio on behalf of themselves and all inmates similarly situated at SOCF. Asserting a cause of action under 42 U. S. C. § 1983, they contended that "double celling" at SOCF violated the Eighth Amendment. The gravamen of their complaint was that double celling confined cellmates too closely. It also was blamed for overcrowding at SOCF, said to have overwhelmed the prison's facilities and staff.[1] As relief, respond-

[1] As a result of the judgment in respondents' favor, double celling has been substantially eliminated at SOCF. But the increases in Ohio's statewide prison population, which prompted double celling at SOCF, have continued. Furthermore, because SOCF is Ohio's only maximum-security prison, the transfer of some of SOCF's inmates into lesser security prisons has created special problems for the recipient prisons. Tr. of Oral Arg.

pgs. 1, 5-7, 9, 12
fns renumbered

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 23 1981

4-23-81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the housing of two inmates in a single cell at the Southern Ohio Correctional Facility is cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.

I

Respondents Kelly Chapman and Richard Jaworski are inmates at the Southern Ohio Correctional Facility (SOCF), a maximum-security state prison in Lucasville, Ohio. They were housed in the same cell when they brought this action in the District Court for the Southern District of Ohio on behalf of themselves and all inmates similarly situated at SOCF. Asserting a cause of action under 42 U. S. C. § 1983, they contended that "double celling" at SOCF violated the Constitution. The gravamen of their complaint was that double celling confined cellmates too closely. It also was blamed for overcrowding at SOCF, said to have overwhelmed the prison's facilities and staff.[1] As relief, respondents

[1] As a result of the judgment in respondents' favor, double celling has been substantially eliminated at SOCF. But the increases in Ohio's statewide prison population, which prompted double celling at SOCF, have continued. Furthermore, because SOCF is Ohio's only maximum-security prison, the transfer of some of SOCF's inmates into lesser security prisons has created special problems for the recipient prisons. Tr. of Oral Arg.

April 24, 1981

RE: 80-0332 Rhodes v. Chapman

Dear John:

Thank you for your letter.

The reference to respondents argument that double celling creates a dangerous potential for violence is addressed only in Note 14, p. 10.

Your letter, as I understand it, makes two points. First, that it is theoretically possibly in a truly "barbarous concentration camp" to intimidate inmates to the point where they would not riot. If we had such a concentration camp before us, it would of course violate the eighth amendment for this and other reasons.

Your second point is that we should "hesitate to send out a signal" to prison inmates that a few riots would improve their chances to litigate successfully. I was addressing only the facts of this case, in which there is no evidence of violence reaching riot proportions.

Would it be helpful to your concerns if I changed the fourth and fifth sentences in the footnote to read as follows:

> "But respondents contention does not lead to the conclusion that double celling at SOCF is cruel and unusual, whatever may be the situation in a different case. The District Court's findings of fact lend no support to respondents claim in this case."

I assume that you are not suggesting that the possibility of rioting (which I suppose exists at every prison), justifies a per se rule against doubling celling.

Sincerely,

LFP

Justice Stevens

pgs 5, 10-13

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

5-4-81

From: Mr. Justice Powell

Circulated: _____

Recirculated: MAY 4 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, v. Kelly Chapman et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the housing of two inmates in a single cell at the Southern Ohio Correctional Facility is cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.

I

Respondents Kelly Chapman and Richard Jaworski are inmates at the Southern Ohio Correctional Facility (SOCF), a maximum-security state prison in Lucasville, Ohio. They were housed in the same cell when they brought this action in the District Court for the Southern District of Ohio on behalf of themselves and all inmates similarly situated at SOCF. Asserting a cause of action under 42 U. S. C. § 1983, they contended that "double celling" at SOCF violated the Constitution. The gravamen of their complaint was that double celling confined cellmates too closely. It also was blamed for overcrowding at SOCF, said to have overwhelmed the prison's facilities and staff.[1] As relief, respondents

[1] As a result of the judgment in respondents' favor, double celling has been substantially eliminated at SOCF. But the increases in Ohio's statewide prison population, which prompted double celling at SOCF, have continued. Furthermore, because SOCF is Ohio's only maximum-security prison, the transfer of some of SOCF's inmates into lesser security prisons has created special problems for the recipient prisons. Tr. of Oral Arg.

May 14, 1981

80-332 Rhodes v. Chapman

Dear Chief:

I have done the "scrubbing" with respect to one of the points you mentioned, and will recirculate.

As to Trop v. Dulles, I do not feel justified in making a change. I had a clerk run Trop down on Lexis. It has been cited in at least 303 federal cases, and the precise phrase "evolving standards of decency" has been quoted in 156 of these cases. The last opinions for the Court to quote the phrase are Ingraham v. Wright and Estelle v. Gamble, cases that I believe both you and I joined.

If we can pick up one more vote in Rhodes, giving us a 6-3 majority, I think my decision will help settle the law with respect to the "prison conditions" cases.

Sincerely,

The Chief Justice

lfp/ss

11,12

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

5-18-81

From: Mr. Justice Powell

Circulated: _____

4th DRAFT

Recirculated: MAY 18 1981

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the housing of two inmates in a single cell at the Southern Ohio Correctional Facility is cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.

I

Respondents Kelly Chapman and Richard Jaworski are inmates at the Southern Ohio Correctional Facility (SOCF), a maximum-security state prison in Lucasville, Ohio. They were housed in the same cell when they brought this action in the District Court for the Southern District of Ohio on behalf of themselves and all inmates similarly situated at SOCF. Asserting a cause of action under 42 U. S. C. § 1983, they contended that "double celling" at SOCF violated the Constitution. The gravamen of their complaint was that double celling confined cellmates too closely. It also was blamed for overcrowding at SOCF, said to have overwhelmed the prison's facilities and staff.[1] As relief, respondents

[1] As a result of the judgment in respondents' favor, double celling has been substantially eliminated at SOCF. But the increases in Ohio's statewide prison population, which prompted double celling at SOCF, have continued. Furthermore, because SOCF is Ohio's only maximum-security prison, the transfer of some of SOCF's inmates into lesser security prisons has created special problems for the recipient prisons. Tr. of Oral Arg.

9, 10

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

5-26-81

From: Mr. Justice Powell

Circulated: _____

5th DRAFT

Recirculated: MAY 26 1981

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

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[1] As a result of the judgment in respondents' favor, double celling has been substantially eliminated at SOCF. But the increases in Ohio's statewide prison population, which prompted double celling at SOCF, have continued. Furthermore, because SOCF is Ohio's only maximum-security prison, the transfer of some of SOCF's inmates into lesser security prisons has created special problems for the recipient prisons. Tr. of Oral Arg.

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: _____

6-2-81

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-332

James A. Rhodes et al., Petitioners, *v.* Kelly Chapman et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 22, 1981

Re: No. 80-382 Rhodes, et al. v. Chapman, et al.

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 23, 1981

Re: 80-332 - Rhodes v. Chapman

Dear Lewis:

It seems to me that there may be a danger in relying on the absence of evidence of rioting to support the conclusion that confinement of two persons in a small cell is not cruel and unusual punishment. It is at least theoretically possible that prisoners in a truly barbarous concentration camp might be too intimidated to riot. Moreover, I would hesitate to send out a signal to a community of prison litigants that a few good riots would improve their litigation posture. In all events, I shall wait to see what Bill Brennan writes before coming to rest.

Respectfully,

John

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 1, 1981

Re: 80-332 - Rhodes v. Chapman

Dear Bill:

Please join me in your separate concurring opinion.

Respectfully,

Justice Brennan

Copies to the Conference