The Burger Court Opinion Writing Database

Schall v. Martin

467 U.S. 253 (1984)

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

January 21, 1984

'84 JAN 23 A10:04

Re: 82-1248;1278 - Schall; Abrams v. Martin ✓

MEMORANDUM TO THE CONFERENCE:

I conclude to vote to reverse on as narrow a ground as possible.

Regards,

WEB

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

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

CHAMBERS OF
THE CHIEF JUSTICE

March 13, 1984

RECEIVED
SUPREME COURT U.S.
JUSTICE MAIL ROOM
'84 MAR 13 P2:53

Re: 82-1248) - Schall v. Martin
82-1278) - Abrams, Attorney General of N.Y. v. Martin

Dear Bill:

I join.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

SUPR... JUST...

January 23, 1984

'84 JAN 23 A11:12

No. 82-1248

Schall v. Martin

No. 82-1278

Abrams v. Martin

Dear Thurgood and John,

We three are in dissent in the above. Would you, Thurgood, be willing to undertake the dissent?

Sincerely,

Bill

Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 14, 1984

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

'84 MAR 14 P2:26

No. 82-1248) Schall v. Martin
)
No. 82-1278) Abrams v. Martin

Dear Bill,

I will await the dissent.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

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

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 24, 1984

No. 82-1248) Schall v. Martin,
) et al.
)
) Abrams v. Martin,
No. 82-1278) et al.

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

Copies to the Conference

REPRODUCED 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

March 28, 1984

Re: 82-1248 and 82-1278 -

Schall v. Martin
Abrams v. Martin

Dear Bill,

I will join your third draft.

Sincerely,

Byron

Justice Rehnquist

Copies to: The Chief Justice
Justice Blackmun
Justice Powell
Justice O'Connor

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 12, 1984

Re: Nos. 82-1248 and 1278-Schall v. Martin and Abrams v. Martin

Dear Bill:

In due course I will circulate a dissent in this one.

Sincerely,

T.M.
T.M.

Justice Rehnquist

cc: The Conference

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

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: MAY 2 3 1984

Recirculated: _____

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82–1248 AND 82–1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82–1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82–1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1984]

JUSTICE MARSHALL, dissenting.

The New York Family Court Act governs the treatment of persons between 7 and 16 years of age who are alleged to have committed acts that, if committed by adults, would constitute crimes.[1] The Act contains two provisions that authorize the detention of juveniles arrested for offenses covered by the Act[2] for up to 17 days pending adjudication of

[1] N. Y. Jud. Law §§ 301.2(1), 302.1(1) (McKinney 1983) [hereinafter FCA]. Children over 13 accused of homicide and children over 14 accused of kidnapping, arson, rape, or a few other serious crimes are exempted from the coverage of the Act and instead are prosecuted as "juvenile offenders" in the adult criminal courts. N. Y. Penal Law § 10.00(18) (McKinney 1983–1984 Supp.). For the sake of simplicity, offenses covered by the Family Court Act, as well as the more serious offenses enumerated above, hereafter will be referred to generically as crimes.

[2] Ironically, juveniles arrested for very serious offenses, see n. 1, *supra*, are not subject to preventive detention under this or any other provision.

pp. 1, 5, 6, 10

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: JUN 1 1984

SUPREME COURT OF THE UNITED STATES

Nos. 82-1248 AND 82-1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82-1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82-1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 4, 1984]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE STEVENS join, dissenting.

The New York Family Court Act governs the treatment of persons between 7 and 16 years of age who are alleged to have committed acts that, if committed by adults, would constitute crimes.[1] The Act contains two provisions that authorize the detention of juveniles arrested for offenses covered by the Act[2] for up to 17 days pending adjudication of

[1] N. Y. Jud. Law [hereinafter "Family Court Act" or "FCA"] §§ 301.2(1), 302.1(1) (McKinney 1983). Children over 13 accused of homicide and children over 14 accused of kidnapping, arson, rape, or a few other serious crimes are exempted from the coverage of the Act and instead are prosecuted as "juvenile offenders" in the adult criminal courts. N. Y. Penal Law § 10.00(18) (McKinney 1983–1984 Supp.). For the sake of simplicity, offenses covered by the Family Court Act, as well as the more serious offenses enumerated above, hereafter will be referred to generically as crimes.

[2] Ironically, juveniles arrested for very serious offenses, see n. 1, *supra*, are not subject to preventive detention under this or any other provision.

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

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 26, 1984

Re: No. 82-1248 - Schall v. Martin
No. 82-1278 - Abrams v. Martin

Dear Bill:

I have spent a good bit of time on this case, for I think its posture is important. I agree with your result on the merits, but I am troubled about the opinion's unwillingness to recognize the relevance of the class-wide statistics to a facial attack on the statute.

In other words, I generally share Lewis' concerns when he says that the opinion does not address the respondents' principal argument and the grounds on which the courts below decided the case. I also agree that we should seriously consider meeting the statistics head-on and, even in the face of them, rule that the statute is valid.

I hope that you will consider Lewis' suggestions. I think it would be helpful indeed if we could develop an opinion in which most of us could join and thereby avoid a fractionated vote.

Sincerely,

Harry

Justice Rehnquist

cc: The Chief Justice
Justice Powell
Justice O'Connor

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1984

Re: No. 82-1248) Schall v. Martin
No. 82-1278) Abrams v. Martin

Dear Bill:

In a separate note, I today join your third draft circulated March 27.

You may regard this as trivial, but I would be "comforted" if you could see fit to make two small changes in your revised opinion. These center in your discussion of Gerstein. I agree that Gerstein is relevant in considering the constitutional adequacy of the procedures used this case. Still, Gerstein provides only an analogy. The distinction between Gerstein and this case is not between an adult proceeding and a juvenile proceeding, but between the risk of error at a probable cause determination and the risk of error in predicting future crime. It therefore seems to me that Gerstein does not answer the question of what due process rights a person subject to a preventive detention statute can assert. My suggestions therefore, are the following two:

1. In the third line of the paragraph beginning on page 21, insert before "for adults" the words "for a probable cause determination."

2. Make the sentence beginning on the last line of the text of page 23 read "these flexible procedures have been found constitutionally adequate under the Fourth Amendment, see Gerstein v. Pugh, and under the Due Process Clause, see Kent v. United States, 383 U.S. 541, 557 (1966)."

Sincerely,

Justice Rehnquist

cc: The Chief Justice
Justice White
Justice Powell
Justice O'Connor

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1984

Re: No. 82-1248) Schall v. Martin
No. 82-1278) Abrams v. Martin

Dear Bill:

Please join me in your third draft circulated March 27.

Sincerely,

Harry

Justice Rehnquist

cc: The Conference

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 19, 1984

82-1248 and 82-1274 Schall v. Martin

Dear Bill:

Over the weekend I read your opinion - all 31 pages. You have the right answer, and I agree with most of what you have written. I do have some questions.

Both of the courts below decided the case on the basis of the wide disparity, shown by statistics, between the number of juveniles detained for brief periods and those ultimately found to be detainable. It seems to me that your opinion does not address the principal argument of respondents and the grounds upon which the case was decided by both courts below.

If I understand your opinion correctly, you justify this implicitly by treating the case as if it were not a class action. On page 10 you suggest that the case presents a constitutional question of standing. See also p. 18, n. 19. This issue was not argued or addressed below, nor raised in the Jurisdictional Statement here. I am not sure that it must be viewed as a constitutional or jurisdictional question in this case. Perhaps I am wrong, but I have understood that for constitutional purpose once the class was duly certified, the class itself retained legal status without regard to what happened to the claims of the named representatives. This at any rate was the rule in the mootness cases.

In any event, unless the Court is willing to hold as a jurisdictional matter that the separate claims of the unnamed class members are not before the Court, I see no reason to address the issue at all.

Also, I would meet what may be described as the "statistical issue" head on, and hold the statute valid.

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Contrary to the view of CA2, the statistics do not show that the statute has a punitive rationale. It is generally similar to juvenile detention statutes in other states. In those states, as in New York, protection of the public is not the only or perhaps even the primary purpose. In my view, the statute reflects the compelling interest of the state in the welfare of juveniles. Further, there are no additional procedures that would change the operation of the statute significantly without unduly impinging on the achievement of legitimate state purposes.

I will understand, of course, if you prefer not to make substantial changes along the foregoing lines. I will then write a separate opinion, joining what I can of your opinion and the judgment.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

March 27, 1984

82-1248 and 82-1278 Schall v. Martin

Dear Bill:

I should have replied sooner to your letter of March 20. Although with the wedding activity in your family, you probably have not been concerned.

In considering further this case, I think it is necessary to view it - as plaintiffs do in their complaint - as a facial challenge to the statute. If I am right about this, the application of the statute to the named plaintiffs is irrelevant. I therefore suggest that the discussion of these plaintiffs in Parts II and III(C) in your second draft be omitted, or that reference to them be deemphasized, simply because this seems to weaken rather than strengthen a holding that the statute is facially valid.

In Part III(A) you do not mention the fact that on its face the statute provides different standards for "pretrial" detention on the one hand and final disposition on the other. CA2, relying on statistics that showed a disparity, thought this distinction was important because it suggested a punitive rationale. This is not a frivolous argument. Also as to Part III(B), the statistics are relevant not to the question whether the procedures provided are adequate to minimize erroneous detentions. I think the answer - as you suggest in Part III(C) - is the opinion of the New York Court of Appeals in Schupf. The broader answer, as we have agreed, is the careful process provided by the New York statute and the state's interest.

In your letter of March 20, you concluded by asking whether I would join you if the changes you suggested were made. Possibly I could, Bill, but - as indicated above - I am not sure that they would fully satisfy my concerns as to the importance of meeting the statistical arguments head on, and sustaining the facial validity of the statute without regard to the claims of the named plaintiffs.

Sincerely,

Justice Rehnquist

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 29, 1984

82-1248 and 82-1279 Schall v. Martin

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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SUPREME COURT, U.S.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1248 AND 82-1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82-1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82-1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March ——, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Section 320.5(3)(b) of the New York Family Court Act (FCA) authorizes pretrial detention of an accused juvenile delinquent based on a finding that there is a "serious risk" that the child "may before the return date commit an act which if committed by an adult would constitute a crime."[1]

[1] Section 320.5 of the Family Court Act provides, in relevant part:

"1. At the initial appearance, the court in its discretion may release the respondent or direct his detention.

. . . . .

3. The court shall not direct detention unless it finds and states the facts and reasons for so finding that unless the respondent is detained;

(a) there is a substantial probability that he will not appear in court on the return date; or

(b) there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime."

Appellees have only challenged pretrial detention under § 320.5(3)(b). Thus, the propriety of detention to ensure that a juvenile appears in court on the return date, pursuant to § 320.5(3)(a), is not before the Court.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: MAR 14 1984

pp 21, 22, 24

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82–1248 AND 82–1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82–1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82–1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March ——, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Section 320.5(3)(b) of the New York Family Court Act (FCA) authorizes pretrial detention of an accused juvenile delinquent based on a finding that there is a "serious risk" that the child "may before the return date commit an act which if committed by an adult would constitute a crime."[1]

[1] Section 320.5 of the Family Court Act provides, in relevant part:

"1. At the initial appearance, the court in its discretion may release the respondent or direct his detention.

. . . . .

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(b) there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime."

Appellees have only challenged pretrial detention under § 320.5(3)(b). Thus, the propriety of detention to ensure that a juvenile appears in court on the return date, pursuant to § 320.5(3)(a), is not before the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 20, 1984

Re: No. 82-1248) Schall v. Martin
82-1274) Abrams v. Martin

Dear Lewis:

Thanks for your letter of March 19th about my opinion in this case. It was one of those conference votes where the majority to "reverse" did not fully agree on one line of reasoning, and the drafter of the opinion was left to put something together as best he could.

I do not think that the opinion refuses to treat the case as a class action; certainly for mootness purposes the certification of a class keeps a claim alive, and the claim is alive here. The point I try to make in my opinion -- and I think it is a justifiable one -- is that even though a class was certified, the named plaintiffs must adequately represent that class; that is, a court's focus should not be on idiosyncrasies of unnamed members of the class not shared by the named plaintiffs. For example, respondent's counsel in oral argument tried to argue that the typical detainee was a "three card monte" player; it was pointed out to him that the named plaintiffs in this case had all been arrested for far more serious offenses. I think that some of the reasoning of the Court of Appeals in this case was extremely loose, and that part of the looseness stems from its failure to focus on these plaintiffs.

Having said this, I certainly have no objection to dealing with the statistics relied on by the Court of Appeals; indeed, I think that to do so would strengthen the opinion. I agree fully with your paragraph devoted to this issue, and I would be happy to incorporate it and expand upon it in my opinion.

In short, I am willing to tone down to some extent my emphasis on the failure of the Court of Appeals to address the situations of the named plaintiffs, rather than the abstract qualities of the class as a whole, and I am more than willing to fully treat the statistical argument. I do want to retain some of the language about the failure of the Court of Appeals to focus on the character of the named plainitffs, because I think this failure was part of the reason that the Court of Appeals went astray. If these sorts of changes would be sufficient to persuade you to join, I will be happy to try my hand at revising the draft.

Sincerely,

Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 27, 1984

Re: No. 82-1248 Schall v. Martin

Dear Chief, Byron, Harry, Lewis, and Sandra:

Some time ago I circulated the first draft of a proposed Court opinion in this case, and the Chief and Sandra joined it. Byron, Lewis, and Harry all of whom also voted to reverse at Conference (with, as I recall it, varying degrees of conviction) did not join. Last week Lewis wrote me saying that he agreed with the result, but that he did not agree with my emphasis on the "class action" aspect of the case, and was inclined to simply treat the merits of the constitutional claim and uphold the statute. I communicated the substance of Lewis' comments to Byron and Harry; Harry said he agreed with my account of Lewis' comments, and Byron indicated that while he did not think he had the same objections as Lewis did to the present draft, he would not be averse to seeing the revisions which Lewis suggested.

I have now pretty much gone back to the drawing boards and, by reinterpreting the opinion of the Court of Appeals in a way that I now feel is more faithful to the views of that court, have produced a draft which almost entirely dispenses with any treatment of the "class action" aspect of the case and simply upholds the statute on the merits. I had originally thought that the Court of Appeals reasoned that because the statute was applied punitively as to some juveniles, it was therefore invalid "on its face" as to all juveniles. I have now come to think that the Court of Appeals used the statistical evidence as to some of the juveniles as a basis for concluding that the purpose of the statute was not a legitimate nonpunitive one, and therefore that the statute was unconstitutional under the reasoning of Bell v. Wolfish, 441 U.S. 520 (1979) and Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963). While I still disagree with the result reached by the Court of Appeals, I no longer feel

I have reason to criticize the methodological approach taken by that court.

Reviewing my highly impressionistic Conference notes, it seems to me that both the Chief and Sandra were quite willing to deal with the case on its merits across the board, so they should not be dissatisfied with the revised opinion, and I am hopeful that the revisions will make the opinion more palatable to Byron, Harry, and Lewis. Obviously any one of you can disabuse me of these notions, but I want very much to have a Court opinion in this case if I possibly can.

I enclose a copy of the revised opinion. May I hear from each of you at your convenience as to your reactions to it?

Sincerely,

The Chief Justice
Justice White
Justice Blackmun
Justice Powell
Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 29, 1984

Re: No. 82-1248 and 82-1279 Schall v. Martin

MEMORANDUM TO THE CONFERENCE

Earlier this week I circulated a substantially changed version of my earlier drafts in this case to those who had voted to "reverse" at Conference, trying to find out if the revised version had more appeal than the old one. Lewis and Sandra have joined the new version and sent copies of their join letters to the Conference; Byron has joined but sent copies only to those who received earlier copies of the revised version. I now therefore withdraw the earlier draft, and enclose copies of the third draft for those who have not previously received them.

Sincerely,

wm

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: MAR 29 1984

Substantial Revisions:
pp. 3, 10, 15, 17-20, 24, 26, 27

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82–1248 AND 82–1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82–1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82–1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March ——, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Section 320.5(3)(b) of the New York Family Court Act authorizes pretrial detention of an accused juvenile delinquent based on a finding that there is a "serious risk" that the child "may before the return date commit an act which if committed by an adult would constitute a crime."[1] Appellees

[1] Section 320.5 of the Family Court Act (FCA) provides, in relevant part:

"1. At the initial appearance, the court in its discretion may release the respondent or direct his detention.

. . . . . .

3. The court shall not direct detention unless it finds and states the facts and reasons for so finding that unless the respondent is detained;

(a) there is a substantial probability that he will not appear in court on the return date; or

(b) there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime."

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 2, 1984

Re: No. 82-1248) Schall v. Martin
82-1278) Abrams v. Martin

Dear Harry:

I will be happy to make the changes which you suggest, and they will appear in my next circulation of this opinion.

Sincerely,

Justice Blackmun

cc: The Conference

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

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 4/8/84

P p. 21, 23, 24

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82–1248 AND 82–1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82–1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82–1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April ——, 1984]

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(b) there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime."

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RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 29 A10:14

18, 27

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: MAY 26 1984

Recirculated: _____

5th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82–1248 AND 82–1278

ELLEN SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE
82–1248 *v.*
GREGORY MARTIN ET AL.

ROBERT ABRAMS, ATTORNEY GENERAL OF NEW YORK
82–1278 *v.*
GREGORY MARTIN ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April ——, 1984]

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"1. At the initial appearance, the court in its discretion may release the respondent or direct his detention.

. . . . . .

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(a) there is a substantial probability that he will not appear in court on the return date; or

(b) there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 15, 1984

Re: 82-1248 - Schall v. Martin
82-1278 - Abrams v. Martin

Dear Bill:

This is a tough case, I will wait for Thurgood's dissent.

Respectfully,

Justice Rehnquist

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1984

Re: 82-1248 - Schall v. Martin
82-1278 - Abrams v. Martin

Dear Thurgood:

Please join me in your dissent.

Respectfully,

Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 13, 1984

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SUPREME COURT U.S.
JUSTICE

'84 MAR 13 A10:14

No. 82-1248 Schall v. Martin
No. 82-1278 Abrams v. Martin

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 28, 1984

No. 82-1248 Schall v. Martin
No. 82-1278 Abrams v. Martin

Dear Bill,

I am still with you on the 3rd Draft.

Sincerely,

Sandra

Justice Rehnquist

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