

# The Burger Court Opinion Writing Database

## *Ake v. Oklahoma*

470 U.S. 68 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
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7/11

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 28, 1984

No. 83-5424

Glen Burton Ake v. Oklahoma

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference

Open a case  
file  
This case was  
granted on 3/2/84

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

File

From: Justice Marshall

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1st DRAFT

# SUPREME COURT OF THE UNITED STATES

GLEN BURTON AKE, PETITIONER *v.* OKLAHOMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
CRIMINAL APPEALS OF OKLAHOMA

No. 83-5424. Decided February —, 1984

JUSTICE MARSHALL, dissenting.

This case poses an important federal constitutional issue: whether, under any circumstances, a defendant has a constitutional right to the assistance of a psychiatrist in the preparation of his defense. Affirming the petitioner's conviction and death sentence, the Oklahoma Court of Criminal Appeals held that the federal constitution imposes no such obligation. This holding appears to violate the petitioner's right to effective assistance of counsel, a Sixth Amendment protection applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Gideon v. Wainwright*, 372 U. S. 335 (1963). The holding also appears to violate the petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment. The Court has previously indicated a willingness to consider this issue which continues to generate conflict between various state and federal courts. That this is a capital case adds special urgency to the need to review the issue posed by the petitioner. I would therefore vote to grant and respectfully dissent from the Court's denial of certiorari.

conflict

## I

In the winter of 1979, in Canadian County, Oklahoma, the petitioner, Glen Burton Ake, Jr., was charged with murdering a couple and wounding the couple's two children. *Ake v. State*, 663 P. 2d 1 (Okla. Crim. App. 1983). At his arraignment the petitioner was ejected for disruptive behavior. Subsequently, the judge who presided at the arraignment ordered, *sua sponte*, that Ake be given a psychiatric evaluation