

# The Burger Court Opinion Writing Database

*Evans v. Jeff D.*

475 U.S. 717 (1986)

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 1, 1985

Re: No. 84-1288 - John V. Evans v. Jeff D., et al.

Dear Bill:

7, Your dissent from denial of cert persuades me to join you --  
apart from the CA 9 "WE" Rule.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 6, 1985

84-1288 - Evans v. Jeff D.

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

Still deny  
- ZRP

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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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

JOHN V. EVANS ET AL. v. JEFF D. ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 84-1288. Decided May —, 1985

JUSTICE REHNQUIST, dissenting from denial of certiorari.

Respondents, a class of mentally and emotionally handicapped children institutionalized by the State of Idaho, sued petitioners, Idaho state officials, seeking various forms of relief under 42 U. S. C. § 1983. Two and a half years after the filing of the lawsuit settlement negotiations commenced, and petitioners offered respondents a substantial part of the injunctive relief they had sought on condition that respondents waive their claim under 42 U. S. C. § 1988 for attorney's fees. The parties agreed to this settlement conditioned on the District Court's approval of the waiver of attorney's fees.

The District Court approved the settlement in the face of respondents' claim that the waiver of attorney's fees should not be approved. The Court of Appeals for the Ninth Circuit reversed the judgment of the District Court, and held that "[t]he historical background of both Rule 23 and section 1988, as well as our experience since their enactment, compel the conclusion that a stipulated waiver of all attorney's fees obtained solely as a condition for obtaining relief for the class should not be accepted by the court." Pet. 25a.

I think that the Court of Appeals' holding on the merits is debatable, and seems to conflict with at least three cases from other courts of appeals which have held attorney's fees to have been waived by implication because of a settlement on the merits. *Young v. Powell*, 729 F. 2d 563 (CA8 1984); *Jennings v. Metropolitan Government of Nashville*, 715 F. 2d 1111 (CA6 1983); *Chicano Police Officer's Association v. Stover*, 624 F. 2d 127 (CA10 1980).

Still deny - No direct conflict appears to exist.

Lynda