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Wainwright v. Greenfield
474 U.S. 284 (1986)

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MEMORANDUM TO THE CONFERENCE

A-745, Wainwright v. Greenfield _ _84-1480_

At Greenfield's trial, evidence of his post-
arrest request for a lawyer and subsequent silence was in-
troduced by the state to rebut his insanity defense. The
jury found Greenfield guilty, and his conviction was af-
firmed by the Florida Supreme Court.

The DC for the M.D. of Fla. denied Greenfield's
habeas petition. CA11 reversed, holding that evidence of
Greenfield's post-arrest silence was inadmissible, even for
the limited purpose of showing that petitioner was sane at
the time he committed the crime. Because Miranda warnings
had been given, CA11 reasoned that the use of petitioner's
post-arrest silence violated the Due Process Clause of the
Fourteenth Amendment, as interpreted in Doyle v. Ohio, 426
U.S. 610 (1976). CA11 ordered that petitioner be retried
within a reasonable time, which the DC determined on remand
to be 120 days.

The 120-day period will expire on June 13, 1985.
On April 3, 1985, in my capacity as Circuit Justice, I en-
tered a stay of CA11's judgment. CA11's decision is in
clear conflict with a decision from CA7, Sulie v. Duckworth,
689 F.2d 128 (1982), and arguably in conflict with a CA10
decision. As the issue also is important, I thought it
likely that the Court would grant cert., thereby deferring a
retrial until we have acted. The stay order provided that
it would remain in effect "pending ... further order of the
undersigned or of the Court."

Greenfield's cert. petition has been placed on the
list for the May 9 Conference. If the Court decides to hear
the case, its order granting cert. will automatically lift
the stay and compel a second trial. In order to prevent
what may be an unnecessary retrial, I have entered a second
stay, that will automatically expire if cert is denied.

                         L.F.P.

LFP/vde