

# The Burger Court Opinion Writing Database

## *Moran v. Burbine*

475 U.S. 412 (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

RECEIVED  
January 29, 1986

Re: No. 84-1485 - Moran v. Burbine

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

P.P.S. The final sentence of the penultimate paragraph gives me some problems. I'd be happier to let the preceding sentence carry the weight.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 15, 1985

No. 84-1485

Moran v. Burbine

Dear Thurgood and John,

We three are in dissent in the  
above. Would you be willing, John, to  
do the dissent?

Sincerely,



Justice Marshall  
Justice Stevens

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

January 6, 1986

No. 84-1485

Moran v. Burbine

Dear Sandra,

I shall await the dissent in the  
above.

Sincerely,



Justice O'Connor

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84-1485

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 3, 1986

No. 84-1485

Moran v. Burbine

Dear John,

Please join me in your dissent in  
the above case.

Sincerely,



Justice Stevens

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82 14-3



CHAMBERS OF  
JUSTICE BYRON R. WHITE

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

January 3, 1986

84-1485 - Moran v. Burbine

Dear Sandra,

Please join me.

Sincerely yours,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 7, 1986

Re: No. 84-1485-Moran v. Burbine

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 3, 1986

Re: No. 84-1485-Moran v. Burbine

Dear John:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Justice Stevens

cc: The Conference

6  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 5, 1986

Re: No. 84-1485, Moran, Superintendent v. Burbine

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

80 10-2 1000

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

January 6, 1986

84-1485 Moran v. Burbine

Dear Sandra,

I have read your fine opinion in this case, and I will join it. I write to suggest possible changes in part III, the section that discusses Burbine's Sixth Amendment claim.

In part III, your opinion analyzes the argument that "the Sixth Amendment protects the integrity of the attorney-client relationship" regardless of whether adversary proceedings have commenced. (p. 13) I have not thought this question is presented on the record before us. As you recognize in the footnote on page 13, the Rhode Island Supreme Court expressly found that no attorney-client relationship existed between Burbine and Munson. In my view, the State's concession at argument cannot alter that finding, which is part of the record in this case. The question, then, is whether the Sixth Amendment protects against police interference in incipient relationships between an attorney-volunteer and a "client" whom the attorney has never met. That question is easily answered in the negative.

I have two alternative suggestions. My preference is that part III be considerably shortened, with the conclusion resting largely on the absence of any relationship between Burbine and Munson. Alternatively, I would suggest that you acknowledge the state-court finding that there was no attorney-client relationship and then go on to state that even were such a relationship present the Sixth Amendment would not offer the protection Burbine seeks, for the reasons you persuasively express on pages 14-16. I would omit the second paragraph of the footnote on page 13.

My join is not conditioned on your adopting either suggestion. As I said, you have written a fine opinion.

Sincerely,

Justice O'Connor

lfp/ss

4

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 9, 1986

84-1485 Moran v. Burbine

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 9, 1986

84-1485 Moran v. Burbine

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

I appreciate your adding the footnote suggested in your letter of January 7.

L.F.P., Jr.



CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

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

January 8, 1986

Re: No. 84-1485 Moran v. Burbine

Dear Sandra,

Please join me.

Sincerely,

Justice O'Connor

cc: The Conference

84-1485-2

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 15, 1985

Re: 84-1485 - Moran v. Burbine

Dear Bill:

I'll be happy to do the dissent.

Respectfully,



Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 3, 1986

Re: 84-1485 - Moran v. Burbine

Dear Sandra:

I will be writing a dissent in this case.

Respectfully,

*John P.*

Justice O'Connor

Copies to the Conference

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32 15 34 13 100

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

From: Justice Stevens

Circulated: FEB 28 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1485

JOHN MORAN, SUPERINTENDENT, RHODE ISLAND  
DEPARTMENT OF CORRECTIONS, PETITIONER  
v. BRIAN K. BURBINE

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

[March —, 1986]

JUSTICE STEVENS, dissenting.

This case poses fundamental questions about our system of justice. As this Court has long recognized, and reaffirmed only weeks ago, "ours is an accusatorial and not an inquisitorial system." *Miller v. Fenton*, — U. S. —, — (1985).<sup>1</sup> The Court's opinion today represents a startling departure from that basic insight.

<sup>1</sup>Justice Frankfurter succinctly explained the character of that distinction in his opinion in *Watts v. Indiana*, 338 U. S. 49, 54 (1949):

"Ours is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent whereby an accused was interrogated in secret for hours on end. See Ploscowe, *The Development of Present-Day Criminal Procedures in Europe and America*, 48 Harv. L. Rev. 433, 457-58, 467-473 (1935). Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. 'The law will not suffer a prisoner to be made the deluded instrument of his own conviction.' 2 Hawkins, *Pleas of the Crown*, c. 46, § 34 (8th ed. 1824). The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from confessions extorted through whatever form of police pressures, the right to a prompt hearing before a magistrate, the right to assistance of counsel, to be supplied by government when circumstances make it necessary, the duty to advise an accused of his constitutional

STYLISTIC CHANGES THROUGHOUT  
SEE PAGES 1, 6, 7, 8, 23, 29, 31

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

From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: MAR 7 1986

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1485

JOHN MORAN, SUPERINTENDENT, RHODE ISLAND  
DEPARTMENT OF CORRECTIONS, PETITIONER  
v. BRIAN K. BURBINE

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

[March —, 1986]

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

This case poses fundamental questions about our system of justice. As this Court has long recognized, and reaffirmed only weeks ago, "ours is an accusatorial and not an inquisitorial system." *Miller v. Fenton*, 474 U. S. —, — (1985).<sup>1</sup> The Court's opinion today represents a startling departure from that basic insight.

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"Ours is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent whereby an accused was interrogated in secret for hours on end. See Ploscowe, *The Development of Present-Day Criminal Procedures in Europe and America*, 48 Harv. L. Rev. 433, 457-58, 467-473 (1935). Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. 'The law will not suffer a prisoner to be made the deluded instrument of his own conviction.' 2 Hawkins, *Pleas of the Crown*, c. 46, § 34 (8th ed. 1824). The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from confessions extorted through whatever form of police pressures, the right to a prompt hearing before a magistrate, the right to assistance of counsel, to be supplied by government when circumstances

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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~~500~~  
~~I see the record~~  
~~to~~

1st DRAFT

1/2/86

**SUPREME COURT OF THE UNITED STATES**

No. 84-1485

JOHN MORAN, SUPERINTENDENT, RHODE ISLAND  
DEPARTMENT OF CORRECTIONS, PETITIONER  
v. BRIAN K. BURBINE

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

[January —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

After being informed of his rights pursuant to *Miranda v. Arizona*, 384 U. S. 436 (1966), and after executing a series of written waivers, respondent confessed to the murder of a young woman. At no point during the course of the interrogation, which occurred prior to arraignment, did he request an attorney. While he was in police custody, his sister attempted to retain a lawyer to represent him. The attorney telephoned the police station and received assurances that respondent would not be questioned further until the next day. In fact, the interrogation session that yielded the inculpatory statements began later that evening. The question presented is whether either the conduct of the police or respondent's ignorance of the attorney's efforts to reach him taints the validity of the waivers and therefore requires exclusion of the confessions.

I

On the morning of March 3, 1977, Mary Jo Hickey was found unconscious in a factory parking lot in Providence, Rhode Island. Suffering from injuries to her skull apparently inflicted by a metal pipe found at the scene, she was rushed to a nearby hospital. Three weeks later she died from her wounds.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 7, 1985

No. 84-1485 Moran v. Burbine

Dear Lewis,

Thank you for your letter indicating that you could join the above opinion and suggesting some possible modifications in the Sixth Amendment analysis. You express some concern that the state court's finding that no attorney client relationship existed might make it inappropriate to decide the Sixth Amendment issue on the assumption that such a relationship did exist. You also suggest that the issue is not "concedable." I assume that this suggestion is premised on the view that the existence of an attorney/client relationship is either a question of fact or of state law.

The question you pose is a difficult one, and one which I wrestled with in the course of drafting the opinion. Before determining what adjustments to undertake to meet your concerns, I thought it might be useful to set out the considerations that led me to conclude the Sixth Amendment issue was properly presented.

As your letter indicates, we are in agreement that the Sixth Amendment does not protect the integrity of an attorney's dealings with his or her client, at least prior to the initiation of adversary judicial proceedings. We are presented then with a somewhat counterintuitive hypothetical: If the Sixth Amendment did protect the relationship, what law--state or federal--would define whether such a relationship existed? For the present, at least, I have concluded that the Sixth Amendment itself would decide whether on any particular set of facts the kind of relationship the Sixth Amendment might protect existed. By way of analogy, it is established that the Sixth Amendment right to counsel only attaches upon the initiation "adversary judicial proceedings." It seems to me that

*Bill - what do  
you think?  
Apart from the  
concedable explanation,  
I think I  
could live  
with the note  
- though not  
ideal.*

*W.P.*

federal law would define whether a particular charging event was the kind of circumstance that triggered the Sixth Amendment right, regardless of how the state characterized it. Similarly, whether a certain constellation of historical facts--e.g. a phone call by an assistant public defender concerning another crime or a permanent retainer agreement--is sufficient to trigger Sixth Amendment concerns, would have a federal definition.

I note also that respondent's argument, although a bit difficult to follow, does not focus on whether an attorney/client relationship existed as a formal matter of state law. He argues instead that, on these facts, the Sixth Amendment right to counsel has been violated. On Page 28 of his brief, for example, he states: "Brian Burbine's Sixth Amendment Right to Counsel had accrued at the time of his interrogations because he had an attorney who had contacted the police, and affirmatively attempted to intercede on his behalf." Part III reflects an effort to respond to this erroneous contention, a task that, in my view, the opinion should undertake to completely dispose of the case.

I would like to accommodate your concerns, perhaps by deleting the second paragraph of the footnote and briefly outlining some of the thoughts contained in this letter. I would prefer, however, not to change the opinion in a manner that would suggest that the Sixth Amendment analysis was merely dictum. Perhaps the footnote could say something along the lines of the following:

Notwithstanding the Rhode Island Supreme Court's finding that, as a matter of state law, no attorney/client relationship existed between respondent and Ms. Munson, the Sixth Amendment issue is properly before us. State v. Burbine, 451 A.2d 22, 29 (1982). Petitioner now concedes that such a relationship exists and invites us to decide the Sixth Amendment question based on that concession. Of course, a litigant's concession cannot be used to circumvent the rule that this Court may not disregard a state court's interpretation of state law. Respondent's argument, however, does not focus on whether an attorney/client relationship actually existed as a formal matter of state law. He argues instead that, on the particular facts of this case, the Sixth Amendment right to counsel has been

violated. We address respondent's argument because, in any event, the type of circumstances that give rise to a Sixth Amendment right would have a federal definition.

If something along these lines would meet your concerns, I would be willing to circulate the change.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra".

Justice Powell

Stylistic Changes Throughout

PP. 12, 13, 14

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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Recirculated: \_\_\_\_\_ 135

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1485

JOHN MORAN, SUPERINTENDENT, RHODE ISLAND  
DEPARTMENT OF CORRECTIONS, PETITIONER  
v. BRIAN K. BURBINE

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

[January —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

After being informed of his rights pursuant to *Miranda v. Arizona*, 384 U. S. 436 (1966), and after executing a series of written waivers, respondent confessed to the murder of a young woman. At no point during the course of the interrogation, which occurred prior to arraignment, did he request an attorney. While he was in police custody, his sister attempted to retain a lawyer to represent him. The attorney telephoned the police station and received assurances that respondent would not be questioned further until the next day. In fact, the interrogation session that yielded the inculpatory statements began later that evening. The question presented is whether either the conduct of the police or respondent's ignorance of the attorney's efforts to reach him taints the validity of the waivers and therefore requires exclusion of the confessions.

I

On the morning of March 3, 1977, Mary Jo Hickey was found unconscious in a factory parking lot in Providence, Rhode Island. Suffering from injuries to her skull apparently inflicted by a metal pipe found at the scene, she was rushed to a nearby hospital. Three weeks later she died from her wounds.

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Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1485

JOHN MORAN, SUPERINTENDENT, RHODE ISLAND  
DEPARTMENT OF CORRECTIONS, PETITIONER  
v. BRIAN K. BURBINE

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

[March —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

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PP. 3, 8, 9, 13, 14, 18, 19

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Stylistic Changes Throughout

TP. 18, 19

To: The Chief Justice  
Justice Brennan  
Justice White  
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Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1485

JOHN MORAN, SUPERINTENDENT, RHODE ISLAND  
DEPARTMENT OF CORRECTIONS, PETITIONER  
*v.* BRIAN K. BURBINE

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

[March —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

After being informed of his rights pursuant to *Miranda v. Arizona*, 384 U. S. 436 (1966), and after executing a series of written waivers, respondent confessed to the murder of a young woman. At no point during the course of the interrogation, which occurred prior to arraignment, did he request an attorney. While he was in police custody, his sister attempted to retain a lawyer to represent him. The attorney telephoned the police station and received assurances that respondent would not be questioned further until the next day. In fact, the interrogation session that yielded the inculpatory statements began later that evening. The question presented is whether either the conduct of the police or respondent's ignorance of the attorney's efforts to reach him taints the validity of the waivers and therefore requires exclusion of the confessions.

I

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 17, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 84-1485 Moran v. Burbine

No. 85-587, Texas v. Dunn

Respondent shot and killed his father and was convicted of murder. The day after the shooting, the police asked respondent to stop by the station for questioning. He arrived at 6:00 p.m.. After being given Miranda warnings, he submitted to a lineup, which was completed by 7:00 p.m. After again informing respondent of his rights, the police began a lengthy interrogation session. At approximately 10:30 p.m., respondent confessed to the murder. The police immediately began typing out a statement for respondent to sign. He did so at 12:17 a.m.. At the same time, he initialed a copy of the Miranda warnings printed at the top of the statement.

At 10:00 p.m., respondent's wife contacted an attorney and requested that he go to the police station to look for her husband. At 10:15, the attorney telephoned the police, informed them that he would arrive within a few minutes, and asked that they not question respondent until he arrived. The decision below leaves unclear whether the police officer who took the call indicated that he would honor the request. The attorney and a colleague arrived shortly before 11:00 p.m.. The police issued them a "jail pass" to see respondent. Upon arriving in the jail area of the station, the attorneys were told that respondent was not there. One of them then telephoned respondent's wife to ask if she had heard of his whereabouts. The other returned to the main part of the station where he was informed that respondent was in an adjacent interrogation room. After the second lawyer arrived, they demanded to see respondent. When the request was refused, they asked that the police inform their client of their presence. The police again refused. One of the attorneys then asked that respondent be given his business card. After consulting with an Assistant District Attorney, the officer declined to do so. The attorneys then attempted, without success, to send a telegram to the interrogating officers, the police chief, and to respondent. At trial, one of the police officers indicated that he had declined the attorney's request because respondent "had been advised of his rights ... and was talking freely and willingly." He further testified that he feared that if the attorney were permitted to enter, respondent would break off his statement.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 17, 1986.

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 84-1485, Moran v. Burbine

 No. 85-23 Maryland v. Lodowski,  
No. 85-5213 Lodowski v. Maryland

While investigating the same murders at issue in Maryland v. Elfadl, No. 85-24, the police received information implicating respondent in the crime. On the evening of June 17, 1983 the police informed him that he was under arrest and began a lengthy interrogation session that lasted into the next day. The interrogation, which was preceded by Miranda warnings and execution of a waiver form, yielded two inculpatory statements, one oral and one written. The latter was signed at approximately 11:00 a.m. on June 18th. That same morning, at about 6:15 a.m., respondent's mother learned that her son was a suspect and immediately set out to retain counsel. At 7:15 she engaged two lawyers, who arrived at the police station at 8:10. They identified themselves and immediately asked to see respondent. The request was refused. For the next four hours the lawyers made repeated, unsuccessful efforts to see respondent. The police were entirely forthcoming about the basis for refusing counsels' requests. They took the position that because respondent had waived his right to counsel and had not asked for a lawyer, they were under no obligation to permit counsel to interrupt the interrogation. At no time was respondent made aware that counsel had been retained and were attempting to see him. Respondent was not presented to the Commissioner for formal charging until noon.

On the basis of the confession, the trial court convicted respondent of first degree murder and sentenced him to death. The Maryland Court of Appeals reversed the conviction, concluding that the police's conduct had vitiated respondent's otherwise valid waivers of his Fifth Amendment rights. (The Court of Appeals also indicated that it would have vacated the death penalty on other grounds even had it not reversed the conviction because of the alleged Miranda violation.)

Moran holds that the failure to inform a suspect of events occurring out of his presence does not vitiate an otherwise valid waiver. Thus the court below erred in requiring suppression on those grounds. Nor could there be a Sixth Amendment violation, since the events described above occurred prior to the first adversary judicial proceeding. Finally, in my judgment, the police conduct here was not sufficiently egregious to implicate the Due Process Clause. Accordingly, I recommend that the Court grant the petition, vacate the judgment below, and remand for further consideration in light of Moran.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 17, 1986 .

*Deny*  
*both*  
*Marie*

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 84-1485 Moran v. Burbine

*W*  
No. 85-24 Maryland v. Elfadl  
No. 85-5214 Elfadl v. Maryland

Respondent was convicted of murdering an off-duty policeman and a grocery store employee during the course of a robbery. The day after the crime was committed, the police brought respondent to the station for questioning. He agreed to a polygraph test, and then was permitted to leave. The following Wednesday, respondent contacted an attorney and made an appointment for 2:00 p.m. the next day. On his way to his Thursday appointment, respondent stopped at the police station to pick up some belongings left there earlier in the week. The police immediately advised him of his Miranda rights, and he executed a written waiver. The interrogation continued through the night and into the next day. On Friday morning, at around 5:30 a.m., he made an exculpatory statement, which was signed around noon that same day. (the first statement) Shortly thereafter, after again signing a waiver form, he orally admitted his complicity in the crime. (the second statement) At 3:25 p.m., he was brought before a District Court Commissioner for presentment. The form prepared by the Commissioner "indicated that respondent wished to have the services of an attorney." Petn Appx. 9. Not long thereafter, after executing another waiver, respondent began to dictate a twelve page statement, presumably including the inculpatory admissions elicited during the early hours of Friday. (the third statement) The statement was not signed until 6:05 p.m..

At approximately 3:00 p.m. on Friday, respondent's wife retained an attorney (apparently not the same person with whom respondent had the 2:00 appointment). At 3:30 p.m., the attorney called the police station, asked to speak with his client and requested that the interrogation cease. The desk sergeant denied the request, stating that respondent was in the middle of an interview and that he did not intend to interrupt it. The lawyer arrived at the station at 4:20 p.m., and again sought to see his client. He also asked that respondent be given his card. The police denied both requests.

The Maryland Court of Special Appeals, concluding that the third statement should have been suppressed, reversed the conviction. (The court rejected the State's argument that the error was harmless, and petitioner does not now contest that determination.) The third statement was inadmissible, the court found, because it was taken in violation of respondent's Sixth Amendment right to counsel. As of the presentment before the Commissioner, the court held, judicial proceedings against respondent had begun

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 17, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 84-1485 Moran v. Burbine

No. 85-1074, Florida v. Haliburton

Respondent broke into an apartment and stabbed the occupant to death. Several days later, at around 6:30 a.m., he was arrested, advised of his Miranda rights, and brought to the police station for questioning. Sometime during the day, respondent's sister retained an attorney who immediately telephoned the police to request that the questioning cease. At about 4:00 p.m., he arrived at the station and asked to see respondent. When the police refused the request, the attorney obtained a court order requiring the police to permit him to talk to respondent. Just before the attorney was admitted to the interrogation room, respondent gave an incriminating statement to the police. The statement was admitted into evidence at trial and respondent was convicted of capital murder and burglary.

Relying on the dissenting opinion in State v. Burbine, 451 A.2d 22 (1982), the Florida Supreme Court reversed the conviction. It held that, while the police need not honor an attorney's request that questioning cease, they are obliged to inform the suspect that an attorney retained in his behalf wishes to speak with him. Failure to do so, the Court concluded, vitiated the otherwise valid waiver.

The opinion for the Court in Moran v. Burbine rejects the argument that failure to inform a suspect of an attorney's efforts to see him undermines an otherwise valid waiver. Accordingly, I recommend that the Court vote to grant the petition, vacate and remand for reconsideration in light of Moran.

Sincerely,



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 17, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 84-1485 Moran v. Burbine

No. 85-5375, Blanks v. Georgia

*M. V. Valle*  
*Sandra*  
*Scott*

Petitioner was convicted of murdering an elderly couple during the course of a robbery and sentenced to death. Immediately after his arrest, the police gave him Miranda warnings and placed him in the back of a squad car. He indicated that he understood his rights, but wished to talk about the crime. The following morning, the police brought petitioner to the headquarters of the Georgia Bureau of Investigation for further questioning. Prior to the interview, the agents again read petitioner his Miranda rights, and he executed a written waiver. The ensuing interrogation lasted approximately two hours. About five minutes into the session, petitioner's father arrived with an attorney and demanded to see petitioner. The police refused and declined to inform petitioner that an attorney was attempting to see him. A half hour later, the attorney repeated the request, and the police again refused. At no time during or before the interview did petitioner request a lawyer. When the interview was completed, he did request a lawyer and questioning immediately ceased. Relying on the Rhode Island Supreme Court's decision in State v. Burbine, 451 A.2d 22 (1982), the Georgia Supreme Court rejected the contention that the police conduct vitiated the validity of the waiver or otherwise violated petitioner's constitutional rights.

The decision of the Georgia Supreme Court is consistent with Court's opinion in Moran v. Burbine. Accordingly, I recommend that the Court vote to deny the petition for certiorari.

Sincerely,

*Sandra*