

OPINION OF INDIVIDUAL JUSTICE
IN CHAMBERS

GRUBBS *v.* DELO, SUPERINTENDENT, POTOSI
CORRECTIONAL CENTER

ON APPLICATION FOR STAY OF EXECUTION OF SENTENCE OF
DEATH

No. A-324. Decided October 20, 1992

Applicant's request to stay his execution is granted pending further order by the Circuit Justice or by the full Court. Since there is insufficient time to consider the application's merits, and with an execution so irrevocable, it is best to err on the applicant's side.

JUSTICE BLACKMUN, Circuit Justice.

This application for a stay of execution reaches me, as Circuit Justice, at approximately 11 p.m. eastern daylight time this Tuesday, October 20, 1992. Applicant's execution by the State of Missouri is scheduled two hours later, at 1 a.m. e.d.t., Wednesday, October 21. This afternoon, Judge Carol Jackson of the Eastern District of Missouri granted a stay. This evening, a panel of the United States Court of Appeals for the Eighth Circuit, by a 2-to-1 vote, with Judge Bright in dissent, vacated the District Court's stay. Then the Court of Appeals, by a vote of 9 to 1, still later this evening, denied a suggestion for rehearing en banc, and denied a motion for stay of execution.

The present application thus comes to me with the judges below apparently divided 9 to 3. The State, before me, relies on its brief filed with the Court of Appeals.

In this situation, there just is not sufficient time for me adequately to consider the merits of the stay application. (There is no suggestion of undue delay or procedural unfairness on the part of the applicant.) With an execution so

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irrevocable, I therefore choose to err, if at all, on the side of the applicant. I have granted the stay pending further order by me as Circuit Justice or by the full Court.