

# The Burger Court Opinion Writing Database

## *United States v. Goodwin*

457 U.S. 368 (1982)

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

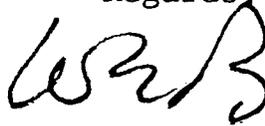
October 29, 1981

Re: No. 80-2195 - United States v. Goodwin

Dear John:

I join your October 27 per curiam.

Regards

A handwritten signature in black ink, appearing to be "WB", written in a cursive style.

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

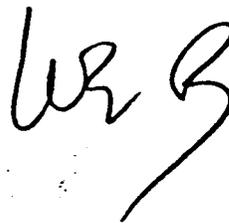
November 24, 1981

Re: No. 80-2195 - United States v. Goodwin

MEMORANDUM TO THE CONFERENCE:

John's memo. of November 23 promotes me to propose that this is a good case to experiment with what the circuits have been doing, i.e., advise counsel to file briefs indicating we may then decide the case "summarily" without oral argument. This has engendered "screams" from some segments of the Bar, but I want to do something to keep Bill from subleasing his summer place to a Congressman!

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

88

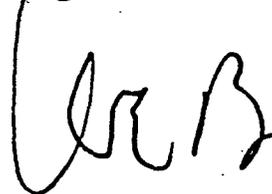
June 1, 1982

Re: No. 80-2195 - U.S. v. Goodwin

Dear John:

I will and do join you but I have three longhand pages of concurrence which I will evaluate when it comes back in print. I may -- as I often do -- conclude it is surplusage -- as are all too many of our concurring opinions!

Regards,



Justice Stevens

Copies to the Conference

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

From: **The Chief Justice**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2195

UNITED STATES *v.* LEARLEY REED GOODWIN

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

[June —, 1982]

CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion fully but I add some observations to emphasize some of the realities in the evolution of a criminal prosecution. Typically a criminal charge is initiated at the stage when the police and prosecutor's investigation is not complete. The quantum of evidence needed to secure an indictment is, of course, more than that necessary to make an arrest, but less than is required to sustain a verdict of guilt.

Once a Grand Jury has returned an indictment or a charge is brought on information, the prosecutor assigned to the case must proceed to assemble and organize the evidence. The investigation continues and the evidence it reveals is analyzed. In some cases the prosecutor may conclude the initial charge is excessive in relation to the evidence; in other cases the prosecutor may, as here, conclude the evidence warrants a more serious charge. These realities validate plea negotiations and the reduction of charges which may lead to a plea of guilty.

Courts must be cautious in dealing with the exercise of prosecutorial discretion to change charges, either to increase them in severity or to reduce them by accepting a plea to a lesser offense. Prosecutors, like police, sometimes must act under pressure and often on less than the optimum of information. The hierarchy of levels of evidence for an arrest by an officer, for an initial charge by a prosecutor, or for a

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 16, 1982

Re: No. 81-2195 - United States v. Goodwin

Dear John:

Belatedly and thank you for the "small changes"  
in your opinion which I joined and remain joined.

Regards,



Justice Stevens

Copies to the Conference

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

From: Justice Brennan

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1st Draft

SUPREME COURT OF THE UNITED STATES

UNITED STATES v. LEARLEY REED GOODWIN

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

No. 80-2195. Decided November \_\_, 1981

JUSTICE BRENNAN, dissenting.

In my view, Blackledge v. Perry, 417 U.S. 21 (1974), requires affirmance of the Court of Appeals, and the Court's reliance on Bordenkircher v. Hayes, 434 U.S. 357 (1978), summarily to reverse is misplaced.

Petitioner was originally charged with several petty offenses and misdemeanors--speeding, reckless driving, failing to

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To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor  
From: Justice Brennan  
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**SUPREME COURT OF THE UNITED STATES**

UNITED STATES v. LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

JUSTICE BRENNAN, dissenting.

In my view, *Blackledge v. Perry*, 417 U. S. 21 (1974), requires affirmance of the Court of Appeals, and the Court's reliance on *Bordenkircher v. Hayes*, 434 U. S. 357 (1978), summarily to reverse is misplaced.

Petitioner was originally charged with several petty offenses and misdemeanors—speeding, reckless driving, failing to give aid at the scene of an accident, fleeing from a police officer, and assault by striking a police officer<sup>1</sup>—arising from his conduct on the Baltimore-Washington Parkway. Because the charges were petty offenses or misdemeanors, they were scheduled for trial before a magistrate,<sup>2</sup> and the pros-

<sup>1</sup>"Speeding" and "reckless driving," in violation of 36 C.F.R. §§ 50.31, 50.32, are punishable by fines of not more than \$500, or imprisonment for not more than six months, or both, 36 C.F.R. § 50.5 (a). "Failing to give aid at the scene of an accident," in violation of 18 U. S. C. §§ 7, 13, Md. Transp. Code Ann. §§ 20-102, 20-104 (1977), is punishable by a fine of not more than \$1000, or imprisonment for not more than four months, or both, *id.*, § 27-101 (c) (12), (14). "Fleeing from a police officer," in violation of 18 U. S. C. §§ 7, 13, Md. Transp. Code Ann. §§ 21-904 (1977), is punishable by a fine of not more than \$500, *id.*, § 27-101 (b). "Assault by striking" a police officer, in violation of 18 U. S. C. § 113 (d), is punishable by a fine of not more than \$500, or imprisonment for not more than six months, or both. Assuming that petitioner was convicted on every count charged in the complaint, his maximum exposure was therefore fines of \$3,000 and 22 months in prison.

<sup>2</sup>Under 28 U. S. C. § 636 (a) (3) and 18 U. S. C. § 3401 (a), a United States Magistrate may be designated to conduct trials of persons accused of misdemeanors committed within the judicial district served by the Magistrate.

Brennan

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 4, 1982

RE: No. 80-2195 United States v. Goodwin

Dear Thurgood:

You and I are in dissent in the above. I'll be glad  
to undertake the dissent.

Sincerely,



Justice Marshall

85 80-2195

2  
011

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

From: Justice Brennan

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## SUPREME COURT OF THE UNITED STATES

No. 80-2195

UNITED STATES *v.* LEARLEY REED GOODWIN

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

[June —, 1982]

JUSTICE BRENNAN, dissenting.

In *Blackledge v. Perry*, 417 U. S. 21 (1974), this Court held that the Due Process Clause prohibits a prosecutor from responding to the defendant's invocation of his statutory right to a trial *de novo* by bringing more serious charges against him that arise out of the same conduct. In the case before us, the prosecutor responded to the defendant's invocation of his statutory *and constitutional* right to a trial *by jury* by raising petty offenses to felony charges based on the same conduct. Yet the Court holds, in the teeth of *Blackledge*, that here there is no denial of due process. In my view, *Blackledge* requires affirmance of the Court of Appeals, and the Court's attempt to distinguish that case from the present one is completely unpersuasive.

The salient facts of this case are quite simple. Petitioner was originally charged with several petty offenses and misdemeanors—speeding, reckless driving, failing to give aid at the scene of an accident, fleeing from a police officer, and assault by striking a police officer—arising from his conduct on the Baltimore-Washington Parkway. Assuming that petitioner had been convicted on every count charged in this original complaint, the maximum punishment to which he conceivably could have been exposed was fines of \$3,500 and twenty-eight months in prison.<sup>1</sup> Because all of the charges

<sup>1</sup>Two counts of "Speeding" and "reckless driving," in violation of 36

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

*Stylistic and technical  
 changes only.*

From: Justice Brennan

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Recirculated: 10 June 1982.

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2195

UNITED STATES *v.* LEARLEY REED GOODWIN

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

[June —, 1982]

JUSTICE BRENNAN, dissenting.

In *Blackledge v. Perry*, 417 U. S. 21 (1974), this Court held that the Due Process Clause prohibits a prosecutor from responding to the defendant's invocation of his statutory right to a trial *de novo* by bringing more serious charges against him that arise out of the same conduct. In the case before us, the prosecutor responded to the defendant's invocation of his statutory *and constitutional* right to a trial *by jury* by raising petty offenses to felony charges based on the same conduct. Yet the Court holds, in the teeth of *Blackledge*, that here there is no denial of due process. In my view, *Blackledge* requires affirmance of the Court of Appeals, and the Court's attempt to distinguish that case from the present one is completely unpersuasive.

The salient facts of this case are quite simple. Respondent was originally charged with several petty offenses and misdemeanors—speeding, reckless driving, failing to give aid at the scene of an accident, fleeing from a police officer, and assault by striking a police officer—arising from his conduct on the Baltimore-Washington Parkway. Assuming that respondent had been convicted on every count charged in this original complaint, the maximum punishment to which he conceivably could have been exposed was fines of \$3,500 and twenty-eight months in prison.<sup>1</sup> Because all of the charges

<sup>1</sup>Two counts of "speeding" and one count of "reckless driving," in viola-

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 27, 1981

Re: No. 80-2195 -- United States  
v. Goodwin

Dear John,

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 24, 1982

Re: 80-2195 - United States v. Goodwin

Dear John,

Please join me. I encourage you,  
however, to look with favor on Bill  
Rehnquist's suggestion.

Sincerely yours,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 29, 1981

Re: No. 80-2195 - United States v. Goodwin

Dear John:

In due time I shall circulate a dissent to  
your Per Curiam.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 12, 1981

Re: No. 80-2195 - United States v. Goodwin

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

12 NOV 1981

No. 80-2195 - United States v. Goodwin

JUSTICE MARSHALL, dissenting.

Although I join JUSTICE BRENNAN in believing that the majority's summary reversal of this case is contrary to our decision in Blackledge v. Perry, 417 U.S. 21 (1974), I write separately to emphasize my belief that this result is also inconsistent with the spirit of Bordenkircher v. Hayes, 434 U.S. 357 (1978). The majority concedes, as it must, that in Bordenkircher we expressly premised our holding on the fact that that case did not present "a situation ... where the prosecutor without notice brought an additional and more serious charge after plea negotiations relating only to the original indictment

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18 NOV 1981

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## SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

JUSTICE MARSHALL, dissenting.

Although I join JUSTICE BRENNAN in believing that the majority's summary reversal of this case is contrary to our decision in *Blackledge v. Perry*, 417 U. S. 21 (1974), I write separately to emphasize my belief that this result is also inconsistent with the spirit of *Bordenkircher v. Hayes*, 434 U. S. 357 (1978). The majority concedes, as it must, that in *Bordenkircher* we expressly premised our holding on the fact that that case did not present "a situation . . . where the prosecutor without notice brought an additional and more serious charge after plea negotiations relating only to the original indictment had ended with the defendant's insistence on pleading not guilty." *Id.*, at 360. This case presents precisely that situation. The majority seems to feel free to ignore the warning implicit in our statement in *Bordenkircher*, however, on the ground that in order to keep the "doors of negotiation open, . . . the prosecutor must remain free throughout the pre-trial process to amend the charging decision in either direction, so long as he stays within the permissible bounds of prosecutorial discretion." *Ante*, at 12. In my opinion, this conclusion ignores the careful balance we struck in *Bordenkircher* between the legitimate interests of the prosecutor and the constitutional right of the defendant to be free from prosecutorial vindictiveness.

In *Bordenkircher* we recognized that by "tolerating and encouraging the negotiation of pleas, this Court has necessarily accepted as constitutionally legitimate the simple reality that the prosecutor's interest at the bargaining table is to per-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1982

Re: No. 80-2195 - U.S. v. Learley Reed Goodwin

Dear Bill:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Justice Brennan

cc: The Conference

October 28, 1981

Re: No. 80-2195 - United States v. Goodwin

Dear John:

If you could see your way clear to eliminate the full paragraph at the bottom of page 13 of your proposed per curiam, I shall be glad to join it.

Sincerely,

HAB

Justice Stevens

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 29, 1981

Re: No. 80-2195 - United States v. Goodwin

Dear John:

Thanks for your letter of October 28. By stressing my difficulties further, I run the risk of being too "picky" about this one.

My difficulty centers in this: Your proposed change in the first sentence of the last paragraph on page 13 does tend to narrow the paragraph somewhat. The paragraph, however, still suggests that Blackledge is distinguishable because respondent asked nothing that would require a substantial increase in prosecutorial resources, that is, he merely sought a jury trial rather than a judge trial. But the record suggests that respondent not only stated a preference for a jury over a judge, but also declined to plea bargain. Thus, his invocation of rights did mean an increased expenditure of prosecutorial resources.

I could go along if the paragraph in question were changed to read somewhat along the following lines:

In addition, a realistic likelihood of vindictiveness cannot so readily be found when a defendant invokes his right to a jury trial for the first time. Unlike the situations presented in Pearce and Blackledge, no party is asked to do over something that "it thought it had done correctly the first time." In addition, as compared to the full trial de novo at issue in Blackledge, a first trial does not require substantially increased expenditures of prosecutorial resources before a conviction will become final, and does not raise the possibility that a convicted defendant will go free. Cf. 417 U.S., at 27. The prosecutor's "personal stake" in discouraging a defendant from exercising his constitutional rights is thus substantially reduced at the plea bargaining stage. We therefore conclude that the likelihood of vindictiveness present in cases such as this is not sufficient to justify the application of the prophylactic rule of Pearce.

Sincerely,

Justice Stevens

cc: The Conference



HA

November 20, 1981

Re: No. 80-2195 - United States v. Goodwin

Dear John:

I have been delayed in my response to your last letter. This is primarily because I have been dismayed by the amount of paper this case has produced.

You have a Court. Therefore, while I initially did my best to give you a joinder, I have decided to dissent on the ground that certiorari should be granted and the case given plenary treatment. My brief dissent will be around very shortly.

I do appreciate your patience and consideration.

Sincerely,

HAB

Justice Stevens

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

From: Justice Blackmun

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

JUSTICE BLACKMUN, dissenting.

I would grant certiorari and have this case submitted to the Court only after full briefing and oral argument.

That there is tension between *Blackledge v. Perry*, 417 U. S. 21 (1974), and *Bordenkircher v. Hayes*, 434 U. S. 357 (1978), is apparent from the Court's obvious struggle to draw a line of demarkation between the two cases, and from JUSTICE O'CONNOR'S concurrence and JUSTICE BRENNAN'S and JUSTICE MARSHALL'S respective dissents. See also the first dissenting opinion in *Bordenkircher*, 434 U. S., at 365.

I am concerned, too, with what appears to me to be a growing readiness this Term on the part of the Court to dispose of cases summarily because of our increasing caseload. Surely the result in this case takes the Court beyond *Bordenkircher* and does so with no less than 26 pages of opinion writing. A case that complicated and so fracturing the Court deserves detailed treatment and not peremptory disposition. Even the Solicitor General did not suggest summary reversal; he asked only that a writ of certiorari be granted. Pet. for Cert. 22; Reply Brief for the United States 7.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 9, 1982

Re: No. 80-2195 - United States v. Goodwin

Dear John:

I shall probably be with you in the judgment, but, for now, I am waiting to see what the dissent has to say.

Sincerely,



Justice Stevens

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JUN 11 1982

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided June —, 1982

JUSTICE BLACKMUN, concurring in the judgment.

Like JUSTICE BRENNAN, I believe that our precedents mandate the conclusion that “a realistic likelihood of ‘vindictiveness’” arises in this context. *Blackledge v. Perry*, 417 U. S. 21, 27 (1974). The Assistant United States Attorney responsible for increasing the charges against respondent was aware of the initial charging decision; he had the means available to discourage respondent from electing a jury trial in District Court; he had a substantial stake in dissuading respondent from exercising that option; and he was familiar with, and sensitive to, the institutional interests that favored a trial before the Magistrate.

Moreover, I find no support in our prior cases for any distinction between pretrial and post-trial vindictiveness. As I have said before, “[p]rosecutorial vindictiveness in any context is still prosecutorial vindictiveness. The Due Process Clause should protect an accused against it, however it asserts itself.” *Bordenkircher v. Hayes*, 434 U. S. 357, 368 (1978) (dissenting opinion). And, as JUSTICE BRENNAN points out, *Bordenkircher* does not dictate the result here. In fact, in *Bordenkircher* the Court expressly distinguished and left *unresolved* cases such as this one, “where the prosecutor without notice brought an additional and more serious charge after plea negotiations relating only to the original [charges] had ended with the defendant’s insistence on pleading not guilty.” *Id.*, at 360.

The Court’s ruling in *Bordenkircher* did not depend on a distinction between the pretrial and post-trial settings:

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 29, 1981

80-2195 United States v. Goodwin

Dear John:

I agree with your Per Curiam in the above case.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1982

80-2195 United States v. Goodwin

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

APR 25 1982

300

HAB

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 28, 1981

Re: No. 80-2195 United States v. Goodwin

Dear John:

Pursuant to our telephone conversation, I will be happy to join your Per Curiam if you make the minor changes on page 12 regarding the Oyler v. Boles, 368 U.S. 448, 456 limits on prosecutorial discretion. I spoke to Harry Blackmun on the telephone as to what he had in mind in requesting the deletion of the last paragraph on page 13; my first reaction was that it should remain in the opinion, but I am now perfectly willing to accept your judgment either way.

Sincerely,



Justice Stevens

Copy to Justice Blackmun

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

CHAMBERS OF  
 JUSTICE WILLIAM H. REHNQUIST

May 24, 1982

Re: No. 80-2195 United States v. Goodwin

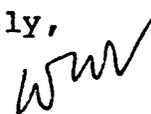
Dear John:

I will be more than happy to join your opinion in this case if you can allay my concerns about fn. 3 on page 3. It seems to me that the last sentence of that footnote lays down a rule with respect to "waiver" that is quite unnecessary to the decision of this case, since the Court of Appeals did not pass on the question and I gather it was not raised in this Court. My own reading of the transcript of the District Court's oral treatment of the issue, which you refer to in the footnote, suggests that the District Court was treating the issue as one arising from a failure to timely file a motion under Rule 12(b)(1) of the Fed. R. Crim. P., and whether such failure could be deemed "waived" pursuant to Rule 12(f).

Because I am uncertain as to the effect of the last sentence of the footnote as it presently stands, could you see your way clear to substitute something along the lines of the following for the present footnote:

3. The District Court considered the merits of respondent's motion even though it was not timely filed in accordance with Rule 12(b)(1) of the Federal Rules of Criminal Procedure. The District Court found sufficient "cause" for respondent's procedural default pursuant to Fed. R. Crim. Proc. 12(f). The Court of Appeals did not consider the propriety of the District Court's ruling in this regard and neither do we.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

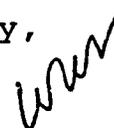
May 25, 1982

Re: No. 80-2195 United States v. Goodwin

Dear John:

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference

.85 MAR 52 110:12

1743

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

0\$2195I 10/26/81 rev. DICK

From: Justice Stevens  
 Circulated: OCT 27 '81

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

UNITED STATES *v.* LEARLEY REED GOODWIN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH DISTRICT

No. 80-2195. Decided October —, 1981

PER CURIAM.

After respondent requested a trial by jury on pending misdemeanor charges, he was indicted on a felony charge. Believing that the sequence of events gave rise to an impermissible appearance of prosecutorial retaliation against the defendant's exercise of a constitutional right, the United States Court of Appeals for the Fourth Circuit reversed respondent's felony conviction. 637 F. 2d 250. Because the Government's petition presents an important question concerning the scope of our holdings in *North Carolina v. Pearce*, 395 U. S. 711, and *Blackledge v. Perry*, 417 U. S. 21, certiorari is granted.

I

Respondent Goodwin was stopped for speeding by a United States Park Policeman on the Baltimore-Washington Parkway. Goodwin emerged from his car to talk to the policeman. After a brief discussion, the officer noticed a clear plastic bag underneath the armrest next to the driver's seat of Goodwin's car. The officer asked Goodwin to return to his car and to raise the armrest. Respondent did so, but as he raised the armrest he placed the car into gear and accelerated rapidly. As the car started forward, it struck the officer, and knocked him first onto the back of the car and then onto the highway. The policeman returned to his car, but Goodwin eluded the officer in a high speed chase.

The following day, the officer filed a complaint in the District Court charging respondent with several misdemeanor

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 28, 1981

Re: 80-2195 - United States v. Goodwin

Dear Harry:

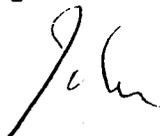
You have suggested that the last paragraph on page 13 should be eliminated entirely. I think the first sentence in the paragraph was too broad and, in the hope that that is the sentence that particularly troubled you, I propose to revise it to read simply:

"It is also significant that the defendant has done no more than request a jury trial instead of a bench trial."

I am reluctant to delete the entire paragraph because I think it is relevant to the analysis. If the change in the first sentence is not adequate to satisfy you, I will be glad to try further revisions.

In response to Bill Rehnquist's suggestion, I propose to delete footnote 8 on page 12 in its entirety, and also to delete the following language from the text: "so long as he stays within the permissible bounds of prosecutorial discretion." The reason for the deletion in the text is that those bounds have already been identified earlier on page 10 by the quotation from Oyler. As far as the footnote is concerned, I agree with Bill that it really is not necessary to the analysis and there may well be differing views within the Court as to what the situation would be after the trial started.

Respectfully,



Justice Blackmun

Copies to the Conference

*This memo  
was only between  
JPS + H + RB + W + HR*

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

OK  
OK

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 30, 1981

Re: 80-2195 - United States v. Goodwin

Dear Harry:

You make a good point in your letter for it is true that the defendant imposed burdens on the prosecutor's office in two ways:

First, his refusal to plead guilty meant that a trial would therefore be necessary; this, of course, is a significant matter.

Second, the jury demand meant that the trial would be somewhat more burdensome than a bench trial.

Bordenkircher decides that the first factor does not prevent the prosecutor from filing an additional charge. I had therefore thought that I should simply concentrate on the second factor, since that provided the basis for the Court of Appeals' holding. On reflection, however, I think you are quite correct and that the paragraph is incomplete if both points are not covered. I therefore would like to propose a rewrite. Do you think the paragraph rewritten in this way would be satisfactory?

In addition, a realistic likelihood of vindictiveness cannot be found so readily when a defendant in the midst of plea bargaining invokes his right to a jury trial. It is true that his invocation of this right will impose burdens on the prosecutor, both because plea bargaining has failed to avoid any trial at all, and because a jury trial is somewhat more burdensome than a bench trial. As the Court of Appeals recognized, however, Bordenkircher requires that the first factor be put to one side. Although the prosecutor in the instant case did not threaten respondent with additional charges before the felony indictment was obtained, as was true in

Bordenkircher, we believe that this merely decreases, rather than increases, the likelihood of a constitutional violation. If only the likelihood of vindictiveness created by the difference between a bench trial and a jury trial is considered--and that is all the Court of Appeals relied upon in this case--we do not believe the risk is constitutionally significant. Unlike the situations presented in Pearce and Blackledge, no party is asked to do over something that "it thought it had done correctly the first time." Moreover, as compared to the additional burden created by the full trial de novo at issue in Blackledge, the difference between a jury trial and a bench trial does not involve substantially increased expenditures of prosecutorial resources before a conviction will become final, and does not raise the possibility that a convicted defendant will go free. Cf. 417 U.S., at 27. The prosecutor's "personal stake" in discouraging a defendant from asserting his constitutional right to a trial by a jury is thus substantially reduced at the plea bargaining stage. We therefore conclude that the likelihood of vindictiveness present in cases such as this is not sufficient to justify the application of the prophylactic rule of Pearce.

In rethinking this case in light of your comments, I also propose to add an additional footnote in the paragraph immediately preceding that set forth above. After the sentence "Therefore, it is inappropriate to presume that additional charges that are obtained before trial were intended to penalize a defendant, even though some constitutional right may have been invoked by the defense before the additional charges were brought", I propose a new footnote 8 (the previous footnote 8 has been deleted at Bill Rehnquist's suggestion):

8/ Certainly, vindictiveness can be present, as Bordenkircher itself illustrates. We believe that it is inappropriate to presume vindictiveness, however, when changes in the charging decision are made before trial. We note that, unlike the

situation in Bordenkircher, where the prosecutor used an explicit threat of additional charges to persuade the defendant to waive his right to trial, the prosecutor in the instant case did not use the felony indictment to pressure respondent to reconsider his decision not to plead guilty. Absent the direct threat present in Bordenkircher, there is less evidence that additional charges were brought to penalize a defendant.

Because I assume that you may well want to make some further changes in this reformulation, I have not sent copies to the Conference. If we can work out something that is acceptable to both of us, then I will reply to your letter sending copies of our changes to everyone else.

I appreciate the fact that you have taken a good hard look at this opinion even though it is just a per curiam.

Respectfully,



Justice Blackmun

pp. 9, 10, 12, 13, 14, 15

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

## PER CURIAM.

After respondent requested a trial by jury on pending misdemeanor charges, he was indicted on a felony charge. Believing that the sequence of events gave rise to an impermissible appearance of prosecutorial retaliation against the defendant's exercise of a constitutional right, the United States Court of Appeals for the Fourth Circuit reversed respondent's felony conviction. 637 F. 2d 250. Because the Government's petition presents an important question concerning the scope of our holdings in *North Carolina v. Pearce*, 395 U. S. 711, and *Blackledge v. Perry*, 417 U. S. 21, certiorari is granted.

## I

Respondent Goodwin was stopped for speeding by a United States Park Policeman on the Baltimore-Washington Parkway. Goodwin emerged from his car to talk to the policeman. After a brief discussion, the officer noticed a clear plastic bag underneath the armrest next to the driver's seat of Goodwin's car. The officer asked Goodwin to return to his car and to raise the armrest. Respondent did so, but as he raised the armrest he placed the car into gear and accelerated rapidly. As the car started forward, it struck the officer, and knocked him first onto the back of the car and then onto the highway. The policeman returned to his car, but Goodwin eluded the officer in a high speed chase.

The following day, the officer filed a complaint in the District Court charging respondent with several misdemeanor

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 23, 1981

MEMORANDUM TO THE CONFERENCE

Re: 80-2195 - United States v. Goodwin

Although my work on this case has convinced me that our proposed disposition is correct, I must confess that I have several times been concerned about deciding a case as difficult as this one summarily. I think Harry is quite correct in suggesting that a majority of just five votes should not be sufficient to decide the case without full briefing and oral argument and therefore I have decided to change my vote to a "join-3" in order to enable the other writers in this case to have the case granted if they think that is the best course.

Respectfully,



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

From: **Justice Stevens**

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

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2195

UNITED STATES, PETITIONER *v.*  
 LEARLEY REED GOODWIN

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

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case involves presumptions. The question presented is whether a presumption that has been used to evaluate a judicial or prosecutorial response to a criminal defendant's exercise of a right to be retried after he has been convicted should also be applied to evaluate a prosecutor's pretrial response to a defendant's demand for a jury trial.

After the respondent requested a trial by jury on pending misdemeanor charges, he was indicted and convicted on a felony charge. Believing that the sequence of events gave rise to an impermissible appearance of prosecutorial retaliation against the defendant's exercise of a constitutional right, the United States Court of Appeals for the Fourth Circuit reversed the felony conviction. 637 F. 2d 250. Because this case presents an important question concerning the scope of our holdings in *North Carolina v. Pearce*, 395 U. S. 711, and *Blackledge v. Perry*, 417 U. S. 21, we granted the Government's petition for certiorari. — U. S. —.

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

From: **Justice Stevens**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2195

UNITED STATES, PETITIONER *v.*  
LEARLEY REED GOODWIN

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

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

1, 9-11, 13-15

From: **Justice Stevens**

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Recirculated: JUN 11 1982

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2195

UNITED STATES, PETITIONER *v.*  
 LEARLEY REED GOODWIN

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

[June —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case involves presumptions. The question presented is whether a presumption that has been used to evaluate a judicial or prosecutorial response to a criminal defendant's exercise of a right to be retried after he has been convicted should also be applied to evaluate a prosecutor's pretrial response to a defendant's demand for a jury trial.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 23, 1982

MEMORANDUM TO THE CONFERENCE:

Re: Cases held for United States v. Goodwin,  
No. 80-2195

1) Meachum v. Longval, No. 81-261

Respondent was indicted jointly with Richard Ellard and Kenneth Golden on two charges of armed robbery of a pharmacy, assault by means of a dangerous weapon, unlawfully carrying a sawed-off shotgun, and using a motor vehicle without authority. Ellard pleaded guilty to all charges and received sentences totalling 3 years. Golden was tried and acquitted on all charges. Respondent was tried and convicted on all charges. The same judge who sentenced Ellard sentenced respondent to concurrent terms of 32 to 40 years on the two armed robbery charges and to concurrent terms of 8 to 10 years on the other charges. The terms for the lesser offenses were to be served after the terms for armed robbery had been served.

An intermediate appellate court reduced respondent's sentence to concurrent terms of 30 to 40 years on the armed robbery charges and lesser terms on the other charges, all to be served concurrently with the terms for armed robbery. Respondent then appealed to the Massachusetts Supreme Judicial Court, claiming that the trial judge had abused its discretion in sentencing, that the sentences were unlawfully disparate when compared with Ellard's terms, and that the trial judge had unconstitutionally punished him for exercising his right to trial. Since his petition referred to matters outside the record, a Special Master was appointed. The Master found that there was a lobby conference at which the trial judge stated to respondent's counsel:

"Mr. Primason, the evidence in this case as it is coming in is very serious--robbery of a drug store,

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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No. 80-2195 UNITED STATES v. GOODWIN

JUSTICE O'CONNOR, concurring.

This case, like Blackledge v. Perry, 417 U.S. 21 (1972), and Bordenkircher v. Hayes, 434 U.S. 357 (1978), illustrates the problems of an "all-or-nothing" approach to protecting criminal defendants from prosecutorial vindictiveness. Because I believe that it is possible to accommodate more precisely both the defendant's rights and the legitimate interests of the State, I concur separately.

I

This Court reached opposite results in Blackledge and Bordenkircher when it reviewed claims that the prosecutor had brought additional charges against the defendant in retaliation for exercising his constitutional rights.

In Blackledge, the Court concluded that "the Due Process Clause is not offended by all possibilities of increased

Stylistic Changes Throughout

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

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From: Justice O'Connor

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## SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

JUSTICE O'CONNOR, concurring.

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### I

This Court reached opposite results in *Blackledge* and *Bordenkircher* when it reviewed claims that the prosecutor had brought additional charges against the defendant in retaliation for exercising his constitutional rights.

In *Blackledge*, the Court concluded that "the Due Process Clause is not offended by all possibilities of increased punishment upon retrial after appeal, but only by those that pose a realistic likelihood of 'vindictiveness.'" 417 U. S., at 27. Rather than requiring a showing of actual vindictiveness, the Court adopted a prophylactic rule forbidding the prosecutor from bringing new charges, thus leaving the defendant free to demand a *de novo* trial without fear that the prosecutor would retaliate.<sup>1</sup>

In *Bordenkircher*, by contrast, the Court held that a prosecutor does not violate due process by bringing more serious

<sup>1</sup>The *Blackledge* rule is not absolute since the prosecutor may bring more serious charges if "it was impossible to proceed on the more serious charge at the outset." *Id.*, at 29 n. 7.

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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**SUPREME COURT OF THE UNITED STATES**

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

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P3

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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## SUPREME COURT OF THE UNITED STATES

UNITED STATES *v.* LEARLEY REED GOODWIN

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

No. 80-2195. Decided November —, 1981

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 24, 1982

No. 80-2195 United States v. Goodwin

Dear John,

With the changes in your approach to this case since the original draft of a Per Curiam, I am now pleased to join it.

Sincerely,



Justice Stevens

Copies to the Conference

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