

# The Burger Court Opinion Writing Database

## *Morris v. Slappy*

461 U.S. 1 (1983)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER *v.*  
JOSEPH D. SLAPPY**

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

[February —, 1983]

THE CHIEF JUSTICE delivered the opinion of the Court:

The question presented is whether, there being no claim of ineffective assistance of counsel or of prejudice, it was error to hold that the state trial court violated respondent's Sixth Amendment right to counsel by denying respondent's motion for a continuance until the Deputy Public Defender initially assigned to defend him was available. We granted certiorari, — U. S. — (1982), and we reverse.

The issues raised arise out of two trials in the state court, the second trial having been held on two counts on which the first jury could not agree. Respondent was convicted of robbery, burglary, and false imprisonment in the first trial; he was convicted of rape and forcible oral copulation in the second. On review of all five counts, the California Court of Appeal, First Appellate District, affirmed the convictions, and the California Supreme Court denied review. Thereafter the United States District Court denied respondent's petition for a writ of habeas corpus. This denial was reversed by the United States Court of Appeals, which held that the Sixth Amendment guarantees a right to counsel with whom the accused has a "meaningful attorney-client relationship," and that the trial judge abused his discretion and violated this right by denying a motion for a continuance based on the substitution of appointed counsel six days before trial.

pp. 3, 6, 9, 12.

stylistic changes throughout.

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

From: **The Chief Justice**

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

Recirculated: **FEB 8 1983**

2d  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-1095

JOHN PAUL MORRIS, WARDEN, PETITIONER *v.*  
JOSEPH D. SLAPPY

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[February —, 1983]

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Pp. 1, 6, 10.

Stylistic changes throughout.

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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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[February —, 1983]

THE CHIEF JUSTICE delivered the opinion of the Court:

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OMISSION  


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

CHAMBERS OF  
THE CHIEF JUSTICE



March 9, 1983

Re: No. 81-1095, Morris v. Slappy

Dear Lewis and Sandra:

I enclose a revision of the opinion to meet your points.

While I am somewhat flexible, this is "about as far as I can go!"

Regards,

A handwritten signature, likely of Justice Powell, is written in cursive below the word "Regards,".

Justice Powell  
Justice O'Connor

Pp. 1, 5, 10-13

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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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[April —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented is whether it was error for the Court of Appeals to hold that the state trial court violated respondent's Sixth Amendment right to counsel by denying respondent's motion for a continuance until the Deputy Public Defender initially assigned to defend him was available. We granted certiorari, — U. S. — (1982), and we reverse.

The issues raised arise out of two trials in the state court, the second trial having been held on two counts on which the first jury could not agree. Respondent was convicted of robbery, burglary, and false imprisonment in the first trial; he was convicted of rape and forcible oral copulation in the second. On review of all five counts, the California Court of Appeal, First Appellate District, affirmed the convictions, and the California Supreme Court denied review. Thereafter the United States District Court denied respondent's petition for a writ of habeas corpus. This denial was reversed by the United States Court of Appeals, which held that the Sixth Amendment guarantees a right to counsel with whom the accused has a "meaningful attorney-client relationship," and that the trial judge abused his discretion and violated this right by denying a motion for a continuance based on the substitution of appointed counsel six days before trial.

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435 C. 60!

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

CHAMBERS OF  
THE CHIEF JUSTICE

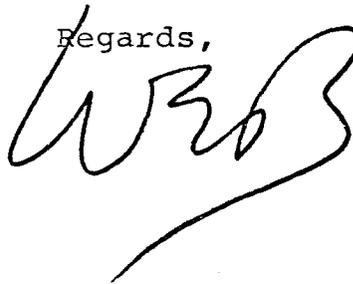
April 28, 1983

Re: Case held for No. 81-1095, Morris v. Slappy  
No. 82-5974, Hudson v. Rushen [Deny]

MEMORANDUM TO THE CONFERENCE:

The question presented is whether the TC denied petr's Sixth Amendment right to counsel by denying petr's motion for substitution of appointed counsel. Petr had claimed a "breach of confidence" had developed between him and his appointed counsel. The federal DC granted habeas relief, relying on the CA9's decision in Slappy v. Morris, 649 F. 2d 718 (1981). The CA9 reversed, distinguishing Slappy. In light of our reversal of the CA9's opinion in Slappy, I will vote to deny in this case.

Regards,



HAI

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 28, 1983

Re: Case Held for No. 81-1095, Morris v. Slappy  
No. 81-1357, Greger v. United States (DENY)

MEMORANDUM TO THE CONFERENCE:

The issue presented in Greger is whether a pretrial order disqualifying counsel for the defendant in a criminal case is appealable under the "collateral order" doctrine. Although the question is certworthy in the abstract, the issue in this case is now moot; petr was tried and convicted last September, and had the opportunity in his appeal from that conviction to argue that the pretrial disqualification order was error. See Supp. Memo. for the United States 2-3. Accordingly, I will vote to deny the petition for certiorari.

Regards,



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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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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[April —, 1983]

JUSTICE BRENNAN, concurring in the result.

The Court states that “[i]n its haste to create a novel Sixth Amendment right, the [Court of Appeals] wholly failed to take into account the interest of the victim of these crimes in not undergoing the ordeal of yet a third trial in this case.” *Ante*, at 12. Unfortunately, it could just as easily be said of the Court that in its haste to “deal with the novel idea that the Sixth Amendment guarantees an accused a ‘meaningful attorney-client relationship,’” *ibid.*, the Court reaches issues unnecessary to its judgment, mischaracterizes the Court of Appeals’ opinion, and disregards the crucial role of a defendant’s right to counsel in our system of criminal justice. For the reasons described below, I concur only in the Court’s reversal of the Court of Appeals’ judgment.

I

After reviewing the record of the proceedings in the state trial court, the Court of Appeals concluded that respondent moved for a continuance based on the unavailability of Harvey Goldfine, the deputy public defender originally appointed to represent him. 649 F. 2d 718, 719-720 (CA9 1981). The court, therefore, proceeded to consider whether the trial court had denied respondent’s Sixth Amendment right to counsel by refusing to grant his motion for a continuance until

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

STYLISTIC CHANGES & P4

From: Justice Brennan

Circulated: 4/7/83

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~~WLB  
P lead  
Concurrence~~

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[April —, 1983]

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2001

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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**

Circulated: 4/19/83

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

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[April —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
concurring in the result.

The Court states that “[i]n its haste to create a novel Sixth Amendment right, the [Court of Appeals] wholly failed to take into account the interest of the victim of these crimes in not undergoing the ordeal of yet a third trial in this case.” *Ante*, at 12. Unfortunately, it could just as easily be said of the Court that in its haste to “deal with the novel idea that the Sixth Amendment guarantees an accused a ‘meaningful attorney-client relationship,’” *ibid.*, the Court reaches issues unnecessary to its judgment, mischaracterizes the Court of Appeals’ opinion, and disregards the crucial role of a defendant’s right to counsel in our system of criminal justice. For the reasons described below, I concur only in the Court’s reversal of the Court of Appeals’ judgment.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 9, 1983

Re: 81-1095 - Morris v. Slappy

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice  
Copies to the Conference  
cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 11, 1983

Re: No. 81-1095 - Morris v. Slappy

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

*T.M.*  
T.M.

Justice Brennan

cc: The Conference

HAB

March 11, 1983

Re: No. 81-1095 - Morris v. Slappy

Dear Chief:

I have refrained from writing about this case because I could not go along with the original draft of February 4 and wanted to wait to see what changes would be made.

I am with you, of course, in the result. I am reluctant, however, (a) to reach out with comments about any issue that was reserved below; (b) to discuss any issue that is not necessary for the resolution of this case, such as the prejudice issue addressed in n. 6; and (c) to excoriate the Court of Appeals with such emphasis and so publicly. Their opinion certainly is a poor one, but I would prefer to reverse it more gently. Would you at all consider toning it down a bit?

Sincerely,

HAB

The Chief Justice

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

From: **Justice Blackmun**

Circulated: APR 11 1983

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[April —, 1983]

JUSTICE BLACKMUN, concurring in the judgment.

The narrow question before the Court is whether the state trial judge should have inquired about the probable length of attorney Goldfine's incapacitation in order to balance respondent's right to counsel against society's interest in the prompt and efficient administration of justice. I agree with the Court that the Court of Appeals erred in construing respondent's complaints on the first day of trial as indicating a desire to be represented by Goldfine. Absent a timely request by respondent to postpone the trial until Goldfine recovered from his illness, the state trial judge had no reason to inquire into the likely length of Goldfine's unavailability. For this reason, I concur in the Court's reversal of the judgment of the Court of Appeals.

I also agree with the Court that, "[h]ad the Court of Appeals examined the record more carefully, it would have had no occasion to consider, let alone announce, a new constitutional rule under the Sixth Amendment." *Ante*, at 12. It seems to me, however, that this Court, after examining the record carefully and finding it "dispositive," *ante*, at 2, similarly has "no occasion to consider" the Sixth Amendment issue. Accordingly, I find the Court's rather broad-ranging dicta about the right to counsel and the concerns of victims (deserving of sympathetic consideration as they may be) to be unnecessary in this case.

HAB

April 12, 1983

Re: No. 81-1095 - Morris v. Slappy

Dear John:

Thank you for your postscript. I shall make the change you suggest.

Sincerely,

HAB

Justice Stevens

pp. 1 + 2

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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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1095

**JOHN PAUL MORRIS, WARDEN, PETITIONER v.  
JOSEPH D. SLAPPY**

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

[April —, 1983]

JUSTICE BLACKMUN, with whom JUSTICE STEVENS joins,  
concurring in the judgment.

The narrow question before the Court is whether the state trial judge should have inquired about the probable length of attorney Goldfine's incapacitation in order to balance respondent's right to counsel against society's interest in the prompt and efficient administration of justice. I agree with the Court that the Court of Appeals erred in construing respondent's complaints on the first day of trial as indicating a desire to be represented by Goldfine. Absent a timely request by respondent to postpone the trial until Goldfine recovered from his illness, the state trial judge had no reason to inquire into the likely length of Goldfine's unavailability. For this reason, I concur in the Court's reversal of the judgment of the Court of Appeals.

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February 14, 1983

81-1095 Morris v. Slappy

Dear Chief:

The comments below apply to your third draft, the substance of which I agree with fully. I do have a question or two.

In Part II (p. 9-11), you address the "effective assistance of counsel" issue that so far we have refused to consider explicitly. We did not grant cert on this question, and respondent agrees this is not an issue. Br., 19. I doubt, therefore, that we should consider it. There is, of course, a serious conflict among the circuits as to the proper standard of counsel assistance. As presently written, Part II will afford little guidance, and possibly create confusion - though you do say that counsel's representation "satisfied any conceivable standard".

I would be inclined simply to say that - as respondent concedes - there is no question here of ineffective assistance of counsel by Hotchkiss. Indeed, the District Court found that he "presented an able defense despite [respondent's] lack of cooperation." Respondent's contention is that he had a constitutional right to the lawyer who first was designated to defend him.

I also have a question about n. 6, p. 12, in which your opinion states that "the Court of Appeals' holding that respondent need not show prejudice runs directly counter to our prior decisions". This is an issue on which cert was granted. But respondent argues that he was denied entirely the Sixth Amendment right to counsel, and that therefore prejudice need not be shown. Br. 21. You quote him on p. 6 as saying "my attorney is in the hospital and I don't legally have no attorney". Respondent persuaded CA9 that the Constitution entitled him to a "meaningful attorney-client

relationship" - whatever that is. In substance, CA9 apparently agreed with respondent that he had no counsel at all. If this were established, a showing of prejudice would be unnecessary.

Finally, I suppose an argument could be made that a remand rather than a final disposition is proper. I believe, however, that under all of the circumstances of this case, a final disposition is justified. This respondent, through litigation in state and federal courts, certainly has had all process that is due him.

Sincerely

The Chief Justice

lfp/ss

March 15, 1983

PERSONAL & CONFIDENTIAL

81-1095 Morris v. Slappy

Dear Chief:

Thank you for the opportunity to take a look at your proposed fourth draft.

You have substantially met the concerns I expressed in my letter of February 14. I do note a reference to "effective assistance of counsel" that you may wish to omit. In the first sentence of the second paragraph on page 10, your draft states:

"Nor is there any merit to the claim that the denial of a continuance prevented Hotchkiss from providing effective assistance of counsel."

You could end the sentence simply by saying that there is no merit to the claim that denial of a continuance prevented Hotchkiss from "preparing for trial".

I do have one further concern. Do you think some of your language critical of the CA9 panel is unnecessarily strong? Of course, some of the dissenting opinions written by Justices here over the years have accused other Justices of "distorting the record" and "misstating the law". But, despite my own inclination at times to use similar language, I try - as you do - to be more restrained. In the long run, I think use of such language is likely to be counter-productive.

Putting this differently, as one of your colleagues who admires your leadership in the federal system, I think it quite possible that other Court of Appeals judges may even be critical. Unlike another Justice on this Court, a Court of Appeals judge is not free to answer a personal criticism.

We have agreed on the wisdom of holding a letter reflecting outrage for a day or two before deciding to mail it. I share your view as to the sloppy judicial work by the panel. But thought perhaps you may want to take a look at the language near the bottom of page 10 and also in the first full paragraph on page 13. You could moderate this and your message would remain clear.

Sincerely,

LFR

The Chief Justice

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 5, 1983

81-1095 Morris v. Slappy

Dear Chief:

Please join me in your fourth draft.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 9, 1983

Re: No. 81-1095 Morris v. Slappy

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 11, 1983

Re: 81-1095 - Morris v. Slappy

Dear Harry:

Please join me in your separate writing.

Respectfully,



Justice Blackmun  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 11, 1983

Re: 81-1095 - Morris v. Slappy

Dear Harry:

Please join me in your separate writing.

Respectfully,



Justice Blackmun

To HAB only:

Would you consider changing the words "sympathetic consideration" in the last line to simply "sympathy"? The present phrasing might be read to indicate that we think sympathy for the victim is part of the constitutional analysis. This is just a suggestion.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 5, 1983

No. 81-1095 Morris, Warden v. Slappy

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference