

# The Burger Court Opinion Writing Database

## *Flanagan v. United States*

465 U.S. 259 (1984)

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

January 31, 1984

Re: 82-374 - Flanagan v. United States

Dear Sandra:

I join.

Regards,

A handwritten signature in black ink, appearing to be "W. O'Connor", written in a cursive style.

Justice O'Connor

Copies to the Conference

①

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 30, 1984

No. 82-374

Flanagan v. McNamee

Dear Sandra,

I agree.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 16, 1984

Re: 82-374 - Flanagan v. United States

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Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 30, 1984

Re: No. 82-374 - Flanagan v. United States

Dear Sandra:

Please join me.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 30, 1984

Re: No. 82-374 - Flanagan v. United States

Dear Sandra:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

RECEIVED  
SUPREME COURT  
JUSTICE LEWIS F. POWELL, JR.

January 30, 1984

'84 JAN 30 P3:35

82-374 Flanagan v. United States

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 30, 1984

Re: No. 82-374 Flanagan v. United States

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

2

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

RECEIVED  
SUPREME COURT OF THE  
JUSTICE

January 27, 1984

'84 JAN 27 P3:26

Re: 82-374 - Flanagan v. United States

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

RECEIVED  
 SUPREME COURT  
 JUSTICE

From: **Justice O'Connor**

Circulated: 26

'84 JAN 26 P2:11

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-374

ROBERT FLANAGAN, JAMES KEWESHAN, JOSEPH  
 LANDIS AND THOMAS McNAMEE, PETITIONERS  
*v.* UNITED STATES

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

[January —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Firestone Tire & Rubber Co. v. Risjord*, 449 U. S. 368 (1981), the Court held that a pretrial denial of a motion to disqualify counsel in a civil case is not appealable prior to trial under 28 U. S. C. § 1291 as a final collateral order. The Court reserved the questions of the immediate appealability of pretrial denials of disqualification motions in criminal cases and of pretrial grants of disqualification motions in both criminal and civil cases. *Id.*, at 372, n. 8. We decide today that a District Court's pretrial disqualification of defense counsel in a criminal prosecution is not immediately appealable under 28 U. S. C. § 1291.

### I

Petitioners are four police officers who formed a "grand-pop" decoy squad in the Philadelphia Police Department. Petitioner Flanagan would pose as an aged derelict, a likely target for street criminals. When Flanagan gave the standard alarm, the other members of the decoy team would move in to make an arrest.

A federal grand jury in the Eastern District of Pennsylvania returned an indictment against petitioners in September 1981. The indictment alleged that petitioners had conspired to make arrests without probable cause and had unlawfully arrested and abused eight people. One count of the indict-

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

From: **Justice O'Connor**

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

Recirculated: 2/16/84

Stylistic Changes Throughout

rew n. 3

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-374

ROBERT FLANAGAN, JAMES KEWESHAN, JOSEPH  
 LANDIS AND THOMAS McNAMEE, PETITIONERS  
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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[February —, 1984]

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### I

Petitioners are four police officers who formed a "grandpop" decoy squad in the Philadelphia Police Department. Petitioner Flanagan would pose as an aged derelict, a likely target for street criminals. When Flanagan gave the standard alarm, the other members of the decoy team would move in to make an arrest.

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