

The Burger Court Opinion Writing Database

United States v. Sharpe

470 U.S. 675 (1985)

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**

Circulated: _____

Recirculated: DEC 19 1984

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[December —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether an individual reasonably suspected of engaging in criminal activity may be detained for a period of 20 minutes, when the detention is necessary for law enforcement officers to conduct a limited investigation of the suspected criminal activity.

I

A

On the morning of June 9, 1978, Agent Cooke of the Drug Enforcement Administration (DEA) was on patrol in an unmarked vehicle on a coastal road near Sunset Beach, North Carolina, an area under surveillance for suspected drug trafficking. At approximately 6:30 a. m., Cooke noticed a blue pickup truck with an attached camper shell traveling on the highway in tandem with a blue Pontiac Bonneville. Respondent Savage was driving the pickup, and respondent Sharpe was driving the Pontiac. The Pontiac also carried a passenger, Davis, the charges against whom were later dropped. Observing that the truck was riding low in the rear and that the camper did not bounce or sway appreciably when the truck drove over bumps or around curves, Agent Cooke concluded that it was heavily loaded. A quilted material covered the rear and side windows of the camper.

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

CHAMBERS OF
THE CHIEF JUSTICE

January 2, 1985

Re: 83-529 - United States v. Sharpe

MEMORANDUM TO THE CONFERENCE:

I consider part II of my opinion in this case useful, but not essential to the opinion. To move the case along, I will delete it.

Regards,

A handwritten signature in black ink, appearing to be 'WR', with a long, sweeping underline that extends downwards and to the right.

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

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

CHANGES AS MARKED: pp. 6, 8-9, 11

From: **The Chief Justice**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: JAN 9 1985

CHANGES AS MARKED: *p. 6*

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

**UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE**

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

[January —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

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

CHANGES AS MARKED: p. 6

From: **The Chief Justice**

Circulated: _____

Recirculated: JAN 14 1985

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[January —, 1985]

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

CHANGES AS MARKED: p. 6

From: **The Chief Justice**

Circulated: _____

Recirculated: JAN 30 1985

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

CHANGES AS MARKED: 2, 7

fn's renumbered

From: **The Chief Justice**

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6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[March —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether an individual reasonably suspected of engaging in criminal activity may be detained for a period of 20 minutes, when the detention is necessary for law enforcement officers to conduct a limited investigation of the suspected criminal activity.

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

STYLISTIC CHANGES THROUGHOUT

CHANGES AS MARKED: PP. 11, 12

From: **The Chief Justice**

Circulated: _____

Recirculated: MAR 14 1985

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

CHANGES AS MARKED: p. 12

From: **The Chief Justice**

Circulated: _____

Recirculated: MAR 19 1985

8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[March 20, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether an individual reasonably suspected of engaging in criminal activity may be detained for a period of 20 minutes, when the detention is necessary for law enforcement officers to conduct a limited investigation of the suspected criminal activity.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 7, 1984

No. 83-529

United States v. Sharpe

Dear Thurgood,

You and I were the only two to
affirm in this case. Would you be
willing to take on the dissent?

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 20, 1985

No. 83-529

United States v. Sharpe and Savage

Dear Thurgood,

Notwithstanding that I find much to agree with in your concurring opinion, I adhere to my Conference vote to affirm the judgment of the Fourth Circuit. I'll circulate a dissent to this effect in the next several days.

Sincerely,

Justice Marshall

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**

Circulated: MAR 06 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[March —, 1985]

JUSTICE BRENNAN, dissenting.

The petitioner William Sharpe and his passenger were pulled over to the side of the highway, concededly without probable cause, and held for more than 30 minutes, much of that time in the back seat of a police cruiser, before they ultimately were arrested and informed of the charges against them. In the meantime, the petitioner Donald Savage was stopped one-half mile down the road, also according to the Court without probable cause. He was ordered out of his pickup truck at gunpoint, spread-eagled and frisked, and questioned by the detaining patrolman, Kenneth Thrasher, about a suspected shipment of marihuana in his vehicle. Although Savage repeatedly asked to be released, Thrasher held him for almost 15 minutes until DEA agent Luther Cooke, the officer who had stopped Sharpe back up the road, could arrive and sniff the vehicle's windows to determine whether he could smell the suspected marihuana. As Thrasher later conceded, Savage "was under custodial arrest" the entire time. 4 Court of Appeals Record, at 165 [hereinafter Ct. App. Record].

The Court today concludes that these lengthy detentions constituted reasonable investigative stops within the meaning of *Terry v. Ohio*, 392 U. S. 1 (1968). It explains that, although the length of an investigative stop made without probable cause may at some point become so excessive as to

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

STYLISED CHANGES THROUGHOUT.
SEE 3, 11-16

From: **Justice Brennan**

Circulated: _____

Recirculated: MAR 17 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[March —, 1985]

JUSTICE BRENNAN, dissenting.

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The Court today concludes that these lengthy detentions constituted reasonable investigative stops within the meaning of *Terry v. Ohio*, 392 U. S. 1 (1968). It explains that, although the length of an investigative stop made without probable cause may at some point become so excessive as to violate the Fourth Amendment, the primary inquiry must

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 20, 1984

Re: 83-529 -

United States v. Sharpe and Savage

Dear Chief,

I join all but Part II of your circulating draft, subject to the following: 1. I had thought that a Terry stop would be acceptable and commonplace to affirm or disaffirm a suspicion that the person stopped is the one involved in a crime occurring long ago. I thus have some trouble with footnote 3; 2. You do not explain why it was necessary for Thrasher to wait for Cooke. Why could not he have done what Cooke did?

Sincerely,



The Chief Justice
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 19, 1984

Re: No. 83-529-U.S. v. Sharpe and Savage

Dear Chief:

In due course I hope to circulate a dissent.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

From: **Justice Marshall**

Circulated: FEB 15 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[February —, 1985]

JUSTICE MARSHALL, concurring in the judgment.

I join the result in this case because, as the Court recognizes, it was only the evasive actions of the defendants that turned what otherwise would have been a permissibly brief *Terry* stop into the prolonged encounter at issue here. I write separately, however, because in my view the Court understates the importance of *Terry's* brevity requirement to the constitutionality of *Terry* stops.

I

Terry v. Ohio, 392 U. S. 1, 27 (1968), recognized a “narrowly drawn” exception to the probable cause requirement of the Fourth Amendment for certain seizures of the person that do not rise to the level of full arrests. Two justifications supported this “major development in Fourth Amendment jurisprudence.” *Pennsylvania v. Mimms*, 434 U. S. 115 (1977) (STEVENS, J., dissenting). First, a legitimate *Terry* stop—brief and narrowly circumscribed—was said to involve a “wholly different kind of intrusion upon individual freedom” than a traditional arrest. *Terry*, 392 U. S., at 26. Second, under some circumstances, the government’s interest in preventing imminent criminal activity could be substantial enough to outweigh the still-serious privacy interests implicated by a limited *Terry* stop. *Id.*, at 27. Thus, when the intrusion on the individual is minimal, and when law enforce-

1, 6, 7, 11, 13-14
previous n. 8 omitted

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

From: Justice Marshall

Circulated to: _____

Recirculated: MAR 19 1985

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[March 20, 1985]

JUSTICE MARSHALL, concurring in the judgment.

I join the result in this case because only the evasive actions of the defendants here turned what otherwise would have been a permissibly brief *Terry* stop into the prolonged encounter now at issue. I write separately, however, because in my view the Court understates the importance of *Terry's* brevity requirement to the constitutionality of *Terry* stops. | *omitted*

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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

Circulated: DEC 20 1984

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No. 83-529, United States v. Sharpe

JUSTICE BLACKMUN, concurring in part.

In view of respondents' fugitive status, see ante, at 5, n. 1, I would vacate the judgment of the Court of Appeals and remand the case to that court with directions to dismiss the appeal from the District Court's judgment to the Court of Appeals. See Molinaro v. New Jersey, 396 U.S. 366 (1970).

This Court, however, chooses to decide the case on the merits. I therefore join its opinion except for Part II thereof.

10: Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

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Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

**UNITED STATES, PETITIONER *v.*
WILLIAM HARRIS SHARPE AND
DONALD DAVIS SAVAGE**

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

[January —, 1985]

JUSTICE BLACKMUN, concurring in part.

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This Court, however, chooses to decide the case on the merits. I therefore join its opinion except for Part II thereof.

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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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2nd PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[January —, 1985]

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This Court, however, chooses to decide the case on the merits. I therefore join its opinion.

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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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4th
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

**UNITED STATES, PETITIONER v. WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE**

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

[January —, 1985]

JUSTICE BLACKMUN, concurring.

In view of respondents' fugitive status, see *ante*, at 5, n. 1, I would have vacated the judgment of the Court of Appeals and remanded the case to that court with directions to dismiss the respondents' appeal from the District Court's judgment to the Court of Appeals. See *Molinaro v. New Jersey*, 396 U. S. 366 (1970).

This Court, however, does not follow that path, and chooses to decide the case on the merits. I therefore also reach the merits and join the Court's opinion.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 26, 1984

83-529 United States v. Sharpe and Savage

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 2, 1985

Re: No. 83-529 United States v. Harris

Dear Chief,

Please join me in all but part II of your draft opinion. As presently advised, I do not think that our orders "granting, vacating, and remanding" are quite as precisely thought out as this section would imply.

Sincerely,



The Chief Justice

cc: The Conference

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

From: Justice Stevens

Circulated: JAN 2 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[January —, 1985]

JUSTICE STEVENS, dissenting.

Both respondents are fugitives.¹ Their status raises a procedural question that is of more significance than the merits of the somewhat fact-bound questions that the Government's petition for certiorari presented.² The procedural

¹ The Government's petition for the grant of a writ of certiorari was filed on September 27, 1983; it was granted on June 18, 1984. On May 11, 1984, respondent Sharpe's counsel wrote a letter to the Court. It stated that, "as of this date, Mr. Sharpe is in fugitive status as to charges in the Northern District of Georgia and the State of North Carolina." See Letter of Mark J. Kadish to Alexander Stevas, Clerk of the United States Supreme Court (May 11, 1984). Subsequently, on July 11, 1984, Judge Sol Blatt, Jr. of the United States District Court for the District of South Carolina entered two orders forfeiting the bonds of both respondents. See Motion to Proceed in Forma Pauperis of William Harris Sharpe and Donald David Savage, Exhibit B. The Solicitor General states that the United States Attorney's Office has advised the Department of Justice that, "to the best of its knowledge, respondents remain fugitives." Reply Brief of the United States 2.

² The Government's petition posed the following questions:

"1. Whether law enforcement officers may temporarily detain an individual reasonably suspected of criminal activity for the period—brief, but exceeding a few minutes—reasonably necessary to pursue a circumscribed investigation of the suspected criminal activity.

"2. Whether, assuming that the initial phase of either respondent's detention was unduly extended, the illegality mandates suppression of a large shipment of marijuana which, because of its distinct odor, was discovered

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

*Footnote 15-16 removed
new footnote 15*

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

UNITED STATES, PETITIONER *v.* WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE

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

[January —, 1985]

JUSTICE STEVENS, dissenting.

Both respondents are fugitives.¹ Their status raises a procedural question that is of more significance than the merits of the somewhat fact-bound questions that the Government's petition for certiorari presented.² The procedural

¹The Government's petition for the grant of a writ of certiorari was filed on September 27, 1983; it was granted on June 18, 1984. On May 11, 1984, respondent Sharpe's counsel wrote a letter to the Court. It stated that, "as of this date, Mr. Sharpe is in fugitive status as to charges in the Northern District of Georgia and the State of North Carolina." See Letter of Mark J. Kadish to Alexander Stevas, Clerk of the United States Supreme Court (May 11, 1984). Subsequently, on July 11, 1984, Judge Sol Blatt, Jr. of the United States District Court for the District of South Carolina entered two orders forfeiting the bonds of both respondents. See Motion to Proceed in Forma Pauperis of William Harris Sharpe and Donald David Savage, Exhibit B. The Solicitor General states that the United States Attorney's Office has advised the Department of Justice that, "to the best of its knowledge, respondents remain fugitives." Reply Brief of the United States 2.

²The Government's petition posed the following questions:

"1. Whether law enforcement officers may temporarily detain an individual reasonably suspected of criminal activity for the period—brief, but exceeding a few minutes—reasonably necessary to pursue a circumscribed investigation of the suspected criminal activity.

"2. Whether, assuming that the initial phase of either respondent's detention was unduly extended, the illegality mandates suppression of a large shipment of marijuana which, because of its distinct odor, was discovered

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JAN 17 1985

Footnotes changed & renumbered 11-17
B. 4, 5

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-529

**UNITED STATES, PETITIONER v. WILLIAM HARRIS
SHARPE AND DONALD DAVIS SAVAGE**

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

[January —, 1985]

JUSTICE STEVENS, dissenting.

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Justice Powell
Justice Rehnquist
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT,
SEE PAGES:

From: **Justice Stevens**

Circulated: _____

Recirculated: MAR 7 1985

4th DRAFT

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 19, 1984

Re: 83-529 United States v. Sharpe and Savage

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference