

The Burger Court Opinion Writing Database

United States v. Loud Hawk

474 U.S. 302 (1986)

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

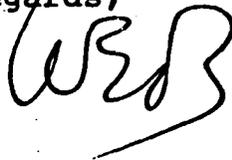
January 15, 1986

RE: No. 84-1361 - United States v. Loud Hawk

Dear Lewis:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WP', written over the typed word 'Regards,'.

Justice Powell

Copies to the Conference

22 JAN 16 1986

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

CHAMBERS OF
THE CHIEF JUSTICE

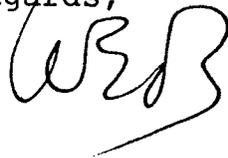
January 15, 1986

RE: No. 84-1361 - United States v. Loud Hawk

Dear Lewis:

I join.

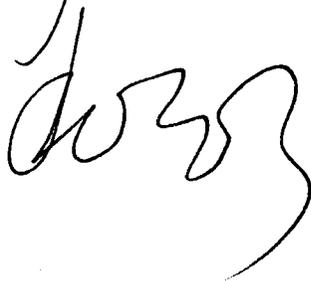
Regards,



Justice Powell

Copies to the Conference

Lewis
My early "join" got
mislaid in the
paper chase. Sorry
for the delay



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 15, 1985

JM

No. 84-1361

United States v. Loud Hawk

Dear Thurgood and John,

We three are in dissent in the
above. Would you, Thurgood, be willing
to do the dissent?

Sincerely,



Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 10, 1986

No. 84-1361

United States v. Kenneth Moses
Loud Hawk

Dear Thurgood,

Please join me in your dissent in
the above case.

Sincerely,



Justice Marshall

Copies to the Conference

82 JAN 10 6 35

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1985

84-1361 - United States v. Loud Hawk

Dear Lewis,

Although I agree with the result and may well join your proposed opinion, I shall await Thurgood's dissent before coming to rest.

Sincerely yours,



Justice Powell

Copies to the Conference

DEC 19 6 52:21

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CHAMBERS OF
JUSTICE BYRON R. WHITE

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

January 10, 1986

84-1361 - United States v. Loud Hawk

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

Copies to the Conference

50:01 10 10:05

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JAN 10 1986

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 16, 1985

Re: No. 84-1361-U.S. v. Hawk

Dear Lewis:

In due course I will circulate a dissent in
this case.

Sincerely,

JM.

T.M.

Justice Powell

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: **JAN 7 1986**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1361

UNITED STATES, PETITIONER *v.* KENNETH MOSES
 LOUD HAWK ET AL.

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

[January —, 1986]

JUSTICE MARSHALL, dissenting.

The Court holds today that the Speedy Trial Clause of the Sixth Amendment does not apply to a Government appeal from a district court's dismissal of an indictment, unless the defendant is incarcerated or otherwise under restraint during that appeal. The majority supports this result by equating the present case to *United States v. MacDonald*, 456 U. S. 1 (1982). That analysis, however, both ignores the considerable differences between this case and *MacDonald* and gives short shrift to the interests protected by the Speedy Trial Clause. I further disagree with the majority's application of *Barker v. Wingo*, 407 U. S. 514 (1972), to the remaining appellate delays in this case.

I

The majority concludes that when an appeal arises out of the district court's dismissal of an indictment, the lack of an outstanding indictment absolves the Government of its responsibility to provide a speedy trial. However, we have never conditioned Sixth Amendment rights solely on the presence of an outstanding indictment. Those rights attach to anyone who is "accused,"¹ and we have until now recognized that one may stand publicly accused without being

¹The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ."

19

and **STYLISTIC CHANGES THROUGHOUT**

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

From: **Justice Marshall**

Circulated: _____

Recirculated: **JAN 10 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1361

UNITED STATES, PETITIONER *v.* KENNETH MOSES
 LOUD HAWK ET AL.

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

[January —, 1986]

JUSTICE MARSHALL, with whom JUSTICE STEVENS joins,
 dissenting.

The Court holds today that the Speedy Trial Clause of the Sixth Amendment does not apply to a Government appeal from a district court's dismissal of an indictment, unless the defendant is incarcerated or otherwise under restraint during that appeal. The majority supports this result by equating the present case to *United States v. MacDonald*, 456 U. S. 1 (1982). That analysis, however, both ignores the considerable differences between this case and *MacDonald* and gives short shrift to the interests protected by the Speedy Trial Clause. I further disagree with the majority's application of *Barker v. Wingo*, 407 U. S. 514 (1972), to the remaining appellate delays in this case.

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55,7-9

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

From: Justice Marshall

Circulated: _____

Recirculated: **JAN 17 1986**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1361

UNITED STATES, PETITIONER *v.* KENNETH MOSES
LOUD HAWK ET AL.

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

[January —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN, JUSTICE BLACKMUN, and JUSTICE STEVENS join, dissenting.

The Court holds today that the Speedy Trial Clause of the Sixth Amendment does not apply to a Government appeal from a district court's dismissal of an indictment, unless the defendant is incarcerated or otherwise under restraint during that appeal. The majority supports this result by equating the present case to *United States v. MacDonald*, 456 U. S. 1 (1982). That analysis, however, both ignores the considerable differences between this case and *MacDonald* and gives short shrift to the interests protected by the Speedy Trial Clause. I further disagree with the majority's application of *Barker v. Wingo*, 407 U. S. 514 (1972), to the remaining appellate delays in this case.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 2, 1986

Re: No. 84-1361, United States v. Loud Hawk

Dear Lewis:

My views as expressed at conference differ with those set forth in the circulating opinion. I probably shall write separately, but, for now, I shall wait to see what Thurgood has to say in his dissent.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 15, 1986

Re: No. 84-1361, United States v. Loud Hawk

Dear Thurgood:

It is my understanding that you are willing to omit the last line of Part II (on page 9) of your opinion. With this change, I am glad to join your dissent.

Sincerely,



Justice Marshall

cc: The Conference

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12/11

Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: 12 17 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1361

UNITED STATES, PETITIONER *v.* KENNETH MOSES
LOUD HAWK ET AL.

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

[December —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

In this case we must decide, first, whether the Speedy Trial Clause of the Sixth Amendment¹ applies to time during which respondents were neither under indictment nor subjected to any official restraint, and, second, whether certain delays occasioned by interlocutory appeals were properly weighed in assessing respondents' right to a speedy trial. A divided panel of the Court of Appeals for the Ninth Circuit weighed most of the 90 months from the time of respondents' arrests and initial indictment in November 1975 until the District Court's dismissal of the indictment in May 1983 towards respondents' claims under the Speedy Trial Clause. We conclude that the time that no indictment was outstanding against respondents should not weigh towards respondents' speedy trial claims. We also find that in this case the delay attributable to interlocutory appeals by the Government and

¹The Speedy Trial Clause of the Sixth Amendment reads: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"

The more stringent provisions of the Speedy Trial Act, 18 U. S. C. § 3161 *et seq.*, have mooted much litigation about the requirements of the Speedy Trial Clause as applied to federal prosecutions. The time devoted to pretrial appeals, however, is automatically excluded under the Act, §§ 3161(d)(2) and (h)(1)(E). These respondents must therefore seek any relief under the Speedy Trial Clause.

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: JAN 20 1986

See p. 13

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* LOUD HAWK ET AL.

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

No. 84-1361. Argued November 12, 1985—Decided January 21, 1986

Respondents were arrested and indicted in November 1975 on counts of possessing firearms and dynamite. In March 1976, the Federal District Court granted respondents' motion to suppress evidence relating to the dynamite counts, and the Government promptly filed a notice of appeal and requested a continuance. The District Court denied this request and, when the Government answered "not ready" after the case was called for trial, dismissed the indictment. The Government appealed this dismissal, and the two appeals were consolidated. In August 1979, the Court of Appeals reversed the suppression order, ordered that the dynamite counts be reinstated, and held that the District Court erred in dismissing the firearms counts. In November 1979, respondents filed a petition for certiorari, which this Court denied. The Court of Appeals' mandate issued in March 1980, 46 months after the Government filed its notice of appeal from the dismissal of the indictment, during which time respondents were unconditionally released. On remand, the District Court ordered the Government to reindict on the firearms charges. In August 1980, the District Court granted a motion to dismiss on the ground of vindictive prosecution as to one respondent but denied it as to the other respondents, and both the Government and these respondents appealed. During these appeals, respondents remained free on their own recognizance. In July 1982, the Court of Appeals reversed the dismissal as to the one respondent and dismissed the appeals of the other respondents, and in October 1982 denied respondents' petitions for a rehearing. Respondents then filed a petition for certiorari, which this Court denied. The Court of Appeals' mandate issued in January 1983. In May 1983, the District Court again dismissed the indictment, ruling that respondents' Sixth Amendment right to a speedy trial had been violated. The Court of Appeals affirmed.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 10, 1986

84-1361 United States v. Loud Hawk

MEMORANDUM TO THE CONFERENCE:

I will be making some changes in my draft opinion in this case including a change in organization, and will circulate a new draft early next week.

L. F. P.
L.F.P., Jr.

SS

SO:MA OF ML 10 10 86

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01/13

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

From: **Justice Powell**

Circulated: _____

Recirculated: _____ JAN 14 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1361

UNITED STATES, PETITIONER *v.* KENNETH MOSES
 LOUD HAWK ET AL.

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

[January —, 1986]

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CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

December 13, 1985

Re: 84-1361 - United States v. Loud Hawk

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

cc: The Conference

DEC 13 10:10

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

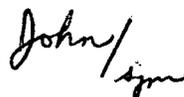
January 8, 1986

Re: 84-1361 - United States v. Loud Hawk

Dear Thurgood:

Please join me in your dissenting opinion.

Respectfully,



Justice Marshall

Copies to the Conference

20 10-1 10-21

20 10-1 10-21

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 16, 1985

RE: ¹³⁶¹ 84-1631 United States v. Loudhawk

Dear Lewis,

Your opinion in this case gets through a complex litigation history in a careful manner. I will certainly provide a fifth vote for it if you need it. For now, I will wait, however, simply because I had hoped the opinion would say all appellate time counts against the government, but not very much if it is not the prosecutor's fault. Such a formulation would at least give appellate courts some incentive to expedite criminal appeals. If others share that view, there may be some reason to modify Part III a bit to so hold.

Sincerely,



Justice Powell

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

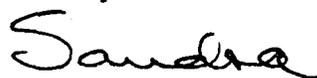
January 14, 1986

No. 84-1361 United States v. Loud Hawk

Dear Lewis,

Please join me in your second draft opinion
in this case.

Sincerely,



Justice Powell

Copies to the Conference

82 JAN 12 10:31

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