

# The Burger Court Opinion Writing Database

*United States v. Inadi*

475 U.S. 387 (1986)

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



4

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

January 28, 1986

CHAMBERS OF  
THE CHIEF JUSTICE

Re: No. 84-1580 - United States v. Inadi

Dear Lewis:

I join.

Regards,



Justice Powell

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 17, 1985

No. 84-1580

United States v. Inadi

Dear Thurgood,

You and I are in dissent in the  
above. Would you be willing to take on  
the dissent?

Sincerely,

*Bill*

Justice Marshall

~~I will be happy to be  
dissenting with you  
2000  
2000~~

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 28, 1986

No. 84-1580

United States v. Inadi

Dear Thurgood,

Please join me in your dissenting  
opinion in the above case.

Sincerely,



Justice Marshall

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1986

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 27, 1986

84-1580 - United States v. Inadi

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

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20 JAN 31 1986

202 541 2000  
202 541 2000

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 27, 1986

84-1580 - United States v. Inadi

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

P.S.: I could get along without your  
footnote 12.

) *I'll change it*

*Will be away until  
Friday of this week*

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 17, 1985

Re: No. 84-1580-United States v. Inadi

Dear Bill:

I will be happy to try the dissent in this one.

Sincerely,

*T.M.*

T.M.

Justice Brennan

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 24, 1986

Re: No. 84-1580-U.S. v. Inadi

Dear Lewis:

In due course, I shall circulate a dissent in  
this case.

Sincerely,

*JM.*

T.M.

Justice Powell

cc: The Conference

Justice White  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Marshall**

Circulated: **FEB 14 1986**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1580

UNITED STATES, PETITIONER *v.* JOSEPH INADI

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

[February —, 1986]

JUSTICE MARSHALL, dissenting.

With respect to the case before us, the majority takes but a small step. In *Ohio v. Roberts*, 448 U. S. 56 (1980), the Court held: "When a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate 'indicia of reliability.'" *Id.*, at 66 (quoting *Dutton v. Evans*, 400 U. S. 74, 89 (1970) (plurality opinion)). The majority now assures us that "[t]he reliability of the out-of-court statements is not at issue in this case." *Ante*, at —, n. 3. Respondent is thus free to return to the Court of Appeals and argue that the co-conspirator declarations admitted against him lack the "indicia of reliability" demanded by the Confrontation Clause.<sup>1</sup>

<sup>1</sup>Today's decision does nothing to resolve the conflict among the lower courts as to whether declarations of co-conspirators who are not present in court for cross-examination must be shown to have particularized "indicia of reliability" before they can be admitted for substantive purposes against a criminal defendant. Compare *United States v. DeLuna*, 763 F. 2d 897 (CA8 1985) (particularized inquiry into reliability of co-conspirator statements demanded in addition to unavailability requirement); *United States v. Ordonez*, 722 F. 2d 530, 535 (CA9 1983) (particularized assessment of reliability needed for every statement admitted under co-conspirator hearsay exemption); *United States v. Perez*, 702 F. 2d 33 (CA2) (same), cert. denied, 462 U. S. 1108 (1983), with *Boone v. Marshall*, 760 F. 2d 117, 119 (CA6 1985) (declaration admitted under co-conspirator exemption "automatically satisfies the Sixth Amendment's requirements"); *United States*

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

STYLISTIC CHANGES THROUGHOUT

From: **Justice Marshall**

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Recirculated: **FEB 26 1986**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1580

UNITED STATES, PETITIONER *v.* JOSEPH INADI

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

[February —, 1986]

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

From: **Justice Marshall**

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Recirculated: **FEB 28 1986**

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1580

UNITED STATES, PETITIONER *v.* JOSEPH INADI

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

[March —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,  
dissenting.

With respect to the case before us, the majority takes but a small step. In *Ohio v. Roberts*, 448 U. S. 56 (1980), the Court held: “[W]hen a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate ‘indicia of reliability.’” *Id.*, at 66 (quoting *Dutton v. Evans*, 400 U. S. 74, 89 (1970) (plurality opinion)). The majority now assures us that “[t]he reliability of the out-of-court statements is not at issue in this case.” *Ante*, at —, n. 3. Respondent is thus free to return to the Court of Appeals and argue that the co-conspirator declarations admitted against him lack the “indicia of reliability” demanded by the Confrontation Clause.<sup>1</sup>

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 31, 1986

Re: No. 84-1580, United States v. Inadi

Dear Lewis:

For now, I shall await further writing in this case.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 4, 1986

Re: No. 84-1580, United States v. Inadi

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

13:19 4-9AM '86

2025 MAR 11 10:21 AM

01/23

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

From: **Justice Powell**

Circulated: JAN 23 1986

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*LFP*  
*In the case I shall advise*  
*of any developments.*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1580

UNITED STATES, PETITIONER *v.* JOSEPH INADI  
 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the Confrontation Clause requires the government to show that a non-testifying co-conspirator is unavailable to testify, as a condition for admission of that co-conspirator's out-of-court statements.

I

Following a jury trial in the Eastern District of Pennsylvania, respondent Joseph Inadi was convicted of conspiring to manufacture and distribute methamphetamine, and related offenses. He was sentenced to three years' imprisonment to be followed by a seven-year parole term. The evidence at trial showed that in September 1979, respondent was approached by unindicted co-conspirator Michael McKeon, who was seeking a distribution outlet for methamphetamine. Respondent's role was to supply cash and chemicals for the manufacture of methamphetamine and to be responsible for its distribution. McKeon and another unindicted co-conspirator, William Levan, were to manufacture the substance.

In the course of manufacturing and selling methamphetamine, McKeon, Levan, and respondent met with another unindicted co-conspirator, John Lazaro, at an empty house in Cape May, New Jersey. There they extracted additional methamphetamine from the liquid residue of previous batches. In the early morning hours of May 23, 1980, two Cape May police officers, pursuant to a warrant, secretly en-

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

Stylistic Changes Throughout  
 (technical changes only)

From: Justice Powell

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1580

UNITED STATES, PETITIONER *v.* JOSEPH INADI

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

[March —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

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In the course of manufacturing and selling methamphetamine, McKeon, Levan, and respondent met with another unindicted co-conspirator, John Lazaro, at an empty house in Cape May, New Jersey. There they extracted additional methamphetamine from the liquid residue of previous batches. In the early morning hours of May 23, 1980, two Cape May police officers, pursuant to a warrant, secretly en-

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 18, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for United States v. Inadi, No. 84-1580

No. 85-705 Molt v. United States

Petitioner, among 40 others, was charged with conducting a drug smuggling operation. At trial five co-defendants testified against petitioner, recounting many conversations among other conspirators. These statements came within the exception of Federal Rule of Evidence 801(d)(2)(E). Petitioner argued that the admission of these statements violated the Confrontation Clause. No showing of unavailability was made, and there was no cross-examination. The CA7 affirmed the conviction, reasoning that there was no Confrontation Clause violation.

The reasoning of the CA7 does not appear to be precisely the same as the opinion in Inadi, but the result is the same. I recommend denial.

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

REPRODUCED FROM THE COLLECTIONS OF THE FEDERAL BUREAU OF INVESTIGATION, DIVISION OF COMMUNICATIONS AND RECORDS MANAGEMENT, U.S. DEPARTMENT OF JUSTICE

March 18, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for United States v. Inadi, No. 84-1580

No. 85-1 Ohio v. Adkins

No. 85-393 Ohio v. Counts

In two separate trial arising out of the same facts, petitioners were convicted of aggravated robbery, kidnapping, and aggravated murder. During separate police interrogation, petitioner Adkins maintained that Counts had executed the robbery, kidnapping, and murder. Petitioner Counts essentially confessed to the robbery but maintained that Adkins had executed the kidnapping and murder. The statements were in agreement as to other details of the crimes. When they were brought into the same room, both men adhered to their prior statements. During Adkins trial, police testified as to Counts' accusations at the joint confrontation. During Counts' trial, police testified as to Adkins' accusations at the joint confrontation. Neither petitioner was cross-examined at the other's trial. The Ohio Court of Appeals reversed the convictions. The court reasoned that cross-examination at trial is generally required, citing Ohio v. Roberts, 448 U.S. 56 (1980). The court recognized a possible exception when the testimony is otherwise admissible under state law, but found that these statements did not fall under any such exception. No showing of unavailability was made, nor was there an additional showing that the evidence was reliable despite being hearsay. The Ohio Supreme Court denied discretionary review.

The reasoning of Inadi depends in part on the fact that the statements were made in furtherance of and in the course of a conspiracy, thereby satisfying the requirements of Federal Rule of Evidence 801(d)(2)(E). In this case, the statements were subsequent to the "conspiracy", during police questioning. In addition, the petitioners were not prosecuted for a conspiracy at all. For these reasons, Inadi does not control this case. To the extent that the confessions were interlocking, a hold for Lee v. Illinois, No. 84-6807 might be appropriate. In these cases, however, the confessions were not even "interlocking" under the formulation in Parker v. Randolph, 442 U.S. 62 (1979) (plurality opinion)--the case that Lee interprets, see slip op. at

14-16. Therefore, I recommend that the petitions in these cases be denied.

L.F.P., Jr.

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CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

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

January 27, 1986

Re: No. 84-1580 United States v. Inadi

Dear Lewis,

Please join me.

Sincerely,

*wh*

Justice Powell

cc: The Conference

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JAN 28 1986  
U.S. SUPREME COURT



CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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

March 3, 1986

Re: 84-1580 - United States v. Inadi

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 27, 1986

No. 84-1580 United States v. Inadi

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

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