

# The Burger Court Opinion Writing Database

## *United States v. Quinn*

475 U.S. 791 (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

March 14, 1986

RE: No. 84-1717 -- United States v. Quinn

MEMORANDUM TO THE CONFERENCE:

In developing a dissent in this case, I came across several cases that may bear on some of the reasons advanced for a "DIG". We granted certiorari to consider whether the Court of Appeals for the Ninth Circuit had correctly concluded that an absentee owner of a vessel, which was used by others in a criminal scheme, has a Fourth Amendment "expectation of privacy" giving him standing to challenge the search of the boat, which revealed drugs. Respondent in his brief to this Court argued that he had standing to challenge the search of the vessel because it was a product of the initial seizure of the vessel, which he, as owner, had standing to challenge. This argument, if it were properly before the Court, might "muddy the waters" on the issue we agreed to review. But, whatever the merits of the argument, it cannot be raised here.

It is true that a respondent is generally free to urge in support of a judgment "any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it." United States v. American Ry. Exp. Co., 265 U.S. 425, 435 (1924). The basis for such a rule is readily apparent: A prevailing party should not be constrained to suffer defeat on appeal merely because he won his case on the "wrong" ground. The prevailing party might have urged the proper ground for decision to the trial court, and should not be required to cross-appeal from a judgment in its favor to preserve its power to argue this ground on appeal. However, the freedom to urge alternative grounds is subject to other independent restrictions, serving different purposes. Here, respondent did not press the seizure issue in the District Court or in the Court of Appeals. Under Fed. R. Crim. P. 12(f), failure to raise defenses or objections "at the time set by the court ... shall constitute waiver thereof ...." Can respondent escape the waiver provisions of Rule 12(f) merely because he prevailed on an entirely separate issue in the Court of Appeals?

Even in the absence of Rule 12(f), respondent would probably not be free to press the seizure-of-the-vessel issue. The Court of Appeals' holding was that respondent had a legitimate expectation of privacy that gave him "standing to contest the search of his fishing vessel." To adopt respondent's alternative ground, the Court must hold that respondent had standing to contest not only the search but also the initial seizure of the vessel.

The rule that new grounds may be urged in support of a judgment is subject to the qualification that their acceptance must not "expand the relief" granted below, United States v. New York Tel. Co., 434 U.S. 159, 166 n.8 (1977), or "alter the nature of the judgment issued by the Court of Appeals," Wise v. Lipscomb, 437 U.S. 535, 547 (1978) (opinion of WHITE, J.). A holding that respondent has standing to challenge the seizure would confer broader relief on respondent than that which he obtained in the Court of Appeals. Conceivably, such a holding might permit respondent to suppress the testimony of the officers involved in the seizure.

Also, in his conditional guilty plea agreement, respondent preserved only "his right to appeal the District Court's decision that he had no standing to contest the search of the Sea Otter" and promised to limit his appeal "to that one issue." J.A. at 21. At oral argument, counsel for respondent conceded that the agreement "referred only to search." Tr. of Oral Arg. 29. If government is entitled to the benefit of its total bargain, respondent may not raise new issues in contravention of that agreement.

As the government argued in the petition for certiorari, "the question presented in this case is one of considerable significance that frequently arises in criminal prosecutions. ... [I]t is commonly the situation that a defendant -- and often the leader of the illegal scheme -- will purchase a conveyance for his confederates to use in a joint criminal enterprise." Pet. for Cert. at 20. Moreover, the conflict created in the Courts of Appeals by this decision is just as real today as it was when the Court granted certiorari, and we should not duck it. Compare, e.g., United States v. Dyar, 574 F.2d 1385, 1390 (CA5 1978); United States v. Dall, 608 F.2d 910, 915 (CA1 1979). Since granting certiorari, we have invested time in "gearing up" and hearing oral argument. In my judgment, we should reach the merits unless there is a serious flaw in the foregoing.

Regards,

*WRB*

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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. 84-1717

UNITED STATES, PETITIONER *v.*  
MICHAEL ROBERT QUINN

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

[April —, 1986]

CHIEF JUSTICE BURGER, dissenting.

We granted certiorari to decide the following question:

“Whether a defendant has a Fourth Amendment expectation of privacy that entitled him to challenge the search of a boat, which he had never personally used prior to the search and which had been out of his custody and control for two months at the time of the search, on the grounds that he was the owner of the boat and was a co-venturer in a criminal enterprise involving the use of the boat by others to smuggle marijuana in which he had a possessory interest.”

The question presented is one of considerable significance. It frequently arises in criminal prosecutions because drug smugglers often purchase vessels or airplanes for others to use in criminal enterprises. Given the massive infusion of dangerous drugs into this country by water and air we have an obligation to decide the issue presented. The drug problem presents as great a danger to the United States as any foreign power or fiscal problem.

I

Here are the uncontested facts: Having solicited one Hunt to assist in a drug smuggling scheme, respondent Quinn purchased a 54 foot vessel—the *Sea Otter*—and gave possession

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

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From: **The Chief Justice**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1717

UNITED STATES, PETITIONER *v.*  
 MICHAEL ROBERT QUINN

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

[April —, 1986]

CHIEF JUSTICE BURGER, with whom JUSTICE BLACKMUN  
 joins, dissenting.

We granted certiorari to decide the following question:

“Whether a defendant has a Fourth Amendment expectation of privacy that entitled him to challenge the search of a boat, which he had never personally used prior to the search and which had been out of his custody and control for two months at the time of the search, on the grounds that he was the owner of the boat and was a co-venturer in a criminal enterprise involving the use of the boat by others to smuggle marijuana in which he had a possessory interest.”

The question presented is one of considerable significance. It frequently arises in criminal prosecutions because drug smugglers often purchase vessels or airplanes for others to use in criminal enterprises. Given the massive infusion of dangerous drugs into this country by water and air we have an obligation to decide the issue presented. The drug problem presents as great a danger to the United States as any foreign power or fiscal problem.

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Here are the uncontested facts: Having solicited one Hunt to assist in a drug smuggling scheme, respondent Quinn pur-

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 10, 1986

No. 84-1717

United States v. Quinn

Dear Sandra,

Please join me in your Per Curiam  
in the above case.

Sincerely,

*Beel*

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 10, 1986

Re: No. 84-1717-U.S. v. Quinn

Dear Sandra:

I agree with your Per Curiam.

Sincerely,

*T.M.*  
T.M.

Justice O'Connor  
cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 11, 1986

Re: No. 84-1717, United States v. Quinn

Dear Sandra:

If all join in the proposed DIG, I shall not dissent. My notes disclose, however, that the Chief Justice at conference indicated he might write in dissent. I therefore shall await his pleasure.

Sincerely,



Justice O'Connor

cc: The Conference

92 MAR 11 10:20

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 19, 1986

Re: No. 84-1717, United States v. Quinn

Dear Sandra:

In the absence of any writing in this case, would you please note the following at the end of the brief per curiam opinion:

"JUSTICE BLACKMUN dissents."

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 17, 1986

Re: No. 84-1717, United States v. Quinn

Dear Sandra:

Inasmuch as the Chief has written in dissent, and I am joining him, please disregard my note of March 19.

Sincerely,



Justice O'Connor

cc: The Conference

APR 17 1986

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 17, 1986

Re: No. 84-1717, United States v. Quinn

Dear Chief:

Please join me in your dissent.

Sincerely,



The Chief Justice

cc: The Conference

APR 17 1986

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April 4, 1986

84-1717 United States v. Quinn

Dear Sandra:

In reviewing my various derelictions, I find that I have not written you in the above case. I now send you my vote to join your Per Curiam that would DIG the case.

Sincerely,

Justice O'Connor

lfp/ss



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 4, 1986

84-1717 United States v. Quinn

Dear Sandra:

I agree with your Per Curiam.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Powell".

Justice O'Connor

lfp/ss

cc: The Conference

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APR 11 1986

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 10, 1986

Re: 84-1717 - United States v. Quinn

Dear Sandra:

I agree with the proposed order dismissing the writ of certiorari as improvidently granted.

Sincerely,



Justice O'Connor

cc: The Conference

88 MAR 10 61:55

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 10, 1986

Re: 84-1717 - United States v. Quinn

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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*Handwritten notes and signatures:*  
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9/25  
J. 2/17  
[Signature]

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**SUPREME COURT OF THE UNITED STATES**

No. 84-1717

UNITED STATES, PETITIONER *v.*  
MICHAEL ROBERT QUINN

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

[March —, 1986]

PER CURIAM.

The writ of certiorari is dismissed as improvidently  
granted.

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J. MARSHALL  
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