

The Burger Court Opinion Writing Database

Henderson v. United States

476 U.S. 321 (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

MEMBERS OF
CHIEF JUSTICE

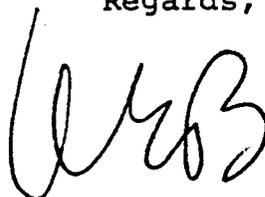
May 14, 1986

RE: 84-1744 - Henderson v. United States

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 8, 1986

No. 84-1744

Henderson v. United States

Dear Byron and Thurgood,

We three are in dissent in the
above. Would you, Byron, be willing to
take it on?

Sincerely,



Justice White

Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 5, 1986

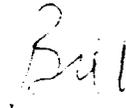
No. 84-1744

Henderson, et al. v. United States

Dear Byron,

Please join me in your dissent in
the above.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 14, 1986

84-1744 - Henderson v. United States

Dear Bill,

I shall undertake the dissent in this
case.

Sincerely yours,



Justice Brennan

Copy to Justice Marshall

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COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 1, 1986

84-1744 - Henderson v. United States

Dear Lewis,

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

Sincerely yours,



Justice Powell

Copies to the Conference

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

From: **Justice White**

MAY 5 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1744

**THOMAS J. HENDERSON, SCOTT O. THORNTON
AND RUTH FREEDMAN, PETITIONERS v.
UNITED STATES**

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

[May —, 1986]

JUSTICE WHITE, dissenting.

The purpose of the Speedy Trial Act of 1974, as amended in 1979, 18 U. S. C. § 3161 *et seq.*, is to quantify and make effective the Sixth Amendment right to a speedy trial. S. Rep. No. 96-212, p. 6 (1979); S. Rep. No. 93-1021, p. 1 (1974). To this end, the Act entitles a criminal defendant to dismissal of the charges pending against him if he is not brought to trial within 70 days of his initial appearance or indictment. 18 U. S. C. §§ 3161(c), 3162. In computing the running of this 70-day period, the Act permits certain periods of time to be excluded. These exclusions are designed to take account of specific and recurring periods of delay which often occur in criminal cases; they are not to be used either to undermine the time limits established by the Act, or to subvert the very purpose the Act was designed to fulfill. Nonetheless, this is precisely the result achieved by the majority's reasoning, as it allows trial judges indefinitely to delay disposing of pretrial motions. For this reason, I dissent.

As interpreted by the majority, § 3161(h)(1)(F) (subsection (F)) excludes the entire period between the filing of the pre-trial motion and the date on which the motion is finally taken under advisement. For motions requiring a hearing, all time is excluded from the date the motion is filed through the conclusion of the hearing. *Ante*, at 7. There is no requirement

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

From: **Justice White**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1744

THOMAS J. HENDERSON, SCOTT O. THORNTON
AND RUTH FREEDMAN, PETITIONERS *v.*
UNITED STATES

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

[May —, 1986]

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

From: Justice White

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SUPREME COURT OF THE UNITED STATES

No. 84-1744

THOMAS J. HENDERSON, SCOTT O. THORNTON
AND RUTH FREEDMAN, PETITIONERS *v.*
UNITED STATES

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

[May 19, 1986]

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

The purpose of the Speedy Trial Act of 1974, as amended in 1979, 18 U. S. C. § 3161 *et seq.*, is to quantify and make effective the Sixth Amendment right to a speedy trial. S. Rep. No. 96-212, p. 6 (1979); S. Rep. No. 93-1021, p. 1 (1974). To this end, the Act entitles a criminal defendant to dismissal of the charges pending against him if he is not brought to trial within 70 days of his initial appearance or indictment. 18 U. S. C. §§ 3161(c), 3162. In computing the running of this 70-day period, the Act permits certain periods of time to be excluded. These exclusions are designed to take account of specific and recurring periods of delay which often occur in criminal cases; they are not to be used either to undermine the time limits established by the Act, or to subvert the very purpose the Act was designed to fulfill. Nonetheless, this is precisely the result achieved by the majority's reasoning, as it allows trial judges indefinitely to delay disposing of pretrial motions. For this reason, I dissent.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 1, 1986

Re: No. 84-1744-Henderson, Thornton and Freedman v.
United States

Dear Lewis:

I await the dissent.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 5, 1986

Re: No. 84-1744-Henderson v. United States

Dear Byron:

Please join me in your dissent.

Sincerely,

Jm.

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 5, 1986

Re: No. 84-1744, Henderson v. United States

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1986

Re: No. 84-1744, Henderson v. United States

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

H.A.S.

Justice White

cc: The Conference

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

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

From: **Justice Powell**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1744

THOMAS J. HENDERSON, SCOTT O. THORNTON
AND RUTH FREEDMAN, PETITIONERS *v.*
UNITED STATES

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

[May —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

The Speedy Trial Act, 18 U. S. C. § 3161 *et seq.* (1982 ed. and Supp. II), as amended in 1979 and in 1984, commands that a defendant be tried within 70 days of the latest of either the filing of an indictment or information, or the first appearance before a judge or magistrate. Section 3161(h)(1)(F) excludes from this time "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." This case requires us to decide the narrow questions whether that exclusion is limited to reasonably necessary delays, and whether it applies to delays occasioned by the filing of posthearing briefs on motions.

I

A jury convicted petitioners of charges arising out of manufacture, possession, and distribution of controlled substances.¹ The evidence at trial showed that in February and

¹The jury convicted all three petitioners of conspiracy to manufacture and possess with intent to distribute methamphetamine and phenyl-2-propanone, see 21 U. S. C. § 846; petitioners Thornton and Freedman of manufacture and possession with intent to distribute of methamphetamine, see *id.* § 842(a)(1); and petitioner Henderson of traveling interstate with intent to promote the manufacture and possession of methamphetamine, see 18 U. S. C. § 1952(a)(3).

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

May 8, 1986

84-1744, Henderson v. United States

Dear John:

Thank you for the helpful comments in your May 7 letter. I agree that the opinion would be strengthened by a reference to the implementation of Circuit or District Court rules pursuant to §3166(f), and that such rules would help assure a speedy disposition of pretrial motions. I have added language to the full paragraph on page 6 towards this end. I also agree that Byron's footnote 2 deserves a response, and have added a footnote along the lines of your suggestion.

The language of your reference to implementation of Circuit or District Court rules suggests that the phrase "or other prompt disposition" modifies "hearing" in subsection (F). Although my opinion does not expressly take a position on this matter, it is my view that the phrase "or other prompt disposition" does not modify "hearing." I am concerned about an incompatibility with the paragraph on page 7 of the 1st draft that starts: "Subsection (F), written in the disjunctive, excludes time in two situations." I therefore would prefer simply to encourage implementation of local rules without implying that "other prompt disposition" modifies "hearing."

I hope the changes I will make in my second draft will be acceptable to you.

Sincerely,

Justice Stevens

lfp/ss

05/08

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

From: **Justice Powell**

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pp. 6, 7, 8

Recirculated: May 9, 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1744

**THOMAS J. HENDERSON, SCOTT O. THORNTON
AND RUTH FREEDMAN, PETITIONERS v.
UNITED STATES**

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

[May —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

The Speedy Trial Act, 18 U. S. C. § 3161 *et seq.* (1982 ed. and Supp. II), as amended in 1979 and in 1984, commands that a defendant be tried within 70 days of the latest of either the filing of an indictment or information, or the first appearance before a judge or magistrate. Section 3161(h)(1)(F) excludes from this time "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." This case requires us to decide the narrow questions whether that exclusion is limited to reasonably necessary delays, and whether it applies to delays occasioned by the filing of posthearing briefs on motions.

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

From Justice Powell

PP. 2, 11

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MAY 16

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 84-1744

THOMAS J. HENDERSON, SCOTT O. THORNTON
AND RUTH FREEDMAN, PETITIONERS *v.*
UNITED STATES

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

[May 19, 1986]

JUSTICE POWELL delivered the opinion of the Court.

The Speedy Trial Act, 18 U. S. C. § 3161 *et seq.* (1982 ed. and Supp. II), as amended in 1979 and in 1984, commands that a defendant be tried within 70 days of the latest of either the filing of an indictment or information, or the first appearance before a judge or magistrate. Section 3161(h)(1)(F) excludes from this time "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." This case requires us to decide the narrow questions whether that exclusion is limited to reasonably necessary delays, and whether it applies to delays occasioned by the filing of posthearing briefs on motions.

I

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¹The jury convicted all three petitioners of conspiracy to manufacture and possess with intent to distribute methamphetamine and phenyl-2-propanone, see 21 U. S. C. § 846; petitioners Thornton and Freedman of manufacture and possession with intent to distribute of methamphetamine, see § 842(a)(1); and petitioner Henderson of traveling interstate with intent to promote the manufacture and possession of methamphetamine, see 18 U. S. C. § 1952(a)(3).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1986

MEMORANDUM TO THE CONFERENCE

GVR
Case held for 84-1744, Henderson v. U.S. (1 of 4)
No. 85-1105, Carter v. United States

In Carter, CA1 excluded time from the filing of a motion to suppress until the hearing on that motion, and thirty additional days thereafter. Petition A7-A8. This holding is in accord with Henderson.

CA1 also, however, excluded time consumed in connection with other motions, on which no hearing was held, up to the time when the District Court declared that it took the matters "under advisement." The point at which a motion is under advisement is not subject to the District Court's interpretation, but instead is "the time the District Court has all papers it reasonably expects." Op. 7. I therefore recommend grant, vacate, and remand.

I note that this petition and its curvelined cases, 85-1118 and 85-1120, also raise a Fourth Amendment question. As this may be mooted by the disposition under Henderson, my vote is to GVR.

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1986

MEMORANDUM TO THE CONFERENCE

LWR
Case held for 84-1744, Henderson v. U.S. (2 of 4)
No. 85-1118, Murray v. United States

Petr Murray seeks review of the same opinion from
CA1 as petr Carter. For the reasons stated in the hold memo
for 85-1105, Carter v. United States, I recommend that the
Court grant, vacate, and remand in light of Henderson.

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1986

MEMORANDUM TO THE CONFERENCE

Case held for 84-1744, Henderson v. U.S. (3 of 4)

LRK
No. 85-1120, Rooney v. United States

Petr Rooney seeks review of the same opinion from
CA1 as petr Carter. For the reasons outlined in the hold
memo for 85-1105, Carter v. United States, I recommend that
the Court grant, vacate, and remand in light of Henderson.

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1986

MEMORANDUM TO THE CONFERENCE

Case held for 84-1744, Henderson v. U.S. (4 of 4)

No. 85-5040, Isaac v. United States

gvr

Petr Isaac contends that the failure of the District Court to decide a pretrial motion to suppress for 158 days after filing violated his rights under the Speedy Trial Clause. Before trial, the court entered an order excluding this period under subsection (F) and subsection (J). The order made no mention of a hearing or when the motions were actually "under advisement" by the District Court.

The Solicitor General contends, in opposition to the petition, that petr's claim was waived by his failure to assert a claim under the Speedy Trial Act at trial. The Court of Appeals, however, specifically reached the question of whether the 158 days "was properly excludable." I therefore recommend that the Court grant, vacate, and remand in light of Henderson.

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



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 2, 1986

Re: 84-1744 - Henderson v. United States

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1986

Re: 84-1744 - Henderson, et al. v. United
States

Dear Lewis:

After a good deal of uncertainty, most of it attributable to trying to figure out the meaning of the words "or other prompt disposition" in § 3161(h)(1)(F), I have finally come to the conclusion that your interpretation of the statute is the correct one. However, I have two suggestions that I would like to propose for your consideration.

First, although I think the statutory language "other prompt disposition" implies that Congress thought that the disposition of a motion that required a hearing had to be "prompt," I agree that the Senate Report indicates that Congress made a deliberate decision to rely on Circuit guidelines promulgated pursuant to subsection (f) of § 3166 to provide the assurance that such motions would be decided promptly. I believe your opinion might be strengthened if you would add this thought, perhaps by inserting the following sentence at the end of the runover paragraph on page 8: "Rather, when read in the light of the explanation in the Senate Committee Report, the phrase merely indicates that Congress expected the implementation of Circuit plans developed pursuant to § 3166(f) to provide the assurance that there would be a 'prompt disposition' of such pretrial motions."

My second suggestion is that I believe the second paragraph in footnote 2 on page 5 of Byron's dissent merits a reply. I would suggest that the proper answer to that argument is that the interpretation of the local rule is a matter on which we should defer to the Court of Appeals for the Ninth

Circuit. It found no violation of the rule. In responding to this argument, you might admonish the circuit courts to include in these rules specific timetables giving substance to the obligations of prosecutors and defense counsel under the Speedy Trial Act.

Since I am now persuaded that you have come to the correct conclusion, I plan to join your opinion.

I should add that I still feel a little guilty about not accepting the assignment in this case, but frankly I did not fully understand it until after I studied both your opinion and Byron's against the statute and the legislative history.

Respectfully,

A handwritten signature in dark ink, appearing to be 'J.P.', written in a cursive style.

Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 9, 1986

84-1744

Re: Henderson, et al. v. United States

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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


CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 1, 1986

No. 84-1744 Henderson v. United States

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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