Recent Criminal Decisions of the United States Supreme Court:

The 1999-2000 Term

Charles H. Whitebread

The 1999-2000 United States Supreme Court Term was indeed an exciting one. The Court took the opportunity to address search and seizure rights, the *Miranda* warnings, and several other significant criminal procedure topics.[1] With discussion during the presidential campaign of the type of justices each candidate might appoint, and the prevalence of split decisions, the national importance of the Supreme Court's holdings has come to the forefront of public discussion.

FOURTH AMENDMENT

In *Florida v. J.L.*,[2] a unanimous Court led by Justice Ginsburg held that an anonymous tip lacks the sufficient indicia of reliability to establish the reasonable suspicion necessary to conduct a search under *Terry v. Ohio*.[3] Although "there are situations in which an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop,'" the Court found this was not the case here. The Court found *Alabama v. White*[4] to be instructive. In *White*, an anonymous informant gave specific details of time, clothing, vehicle description, and destination that led to a *Terry* search of a woman transporting cocaine. The Court, however, noted a crucial difference between *White* and the instant case. In *White*, the suspicion necessary to conduct a *Terry* search existed only after the police, acting on a tip, conducted surveillance on the defendant and determined that the anonymous tipster, based on the particularity of his statement, had specific knowledge of a drug deal in progress. Justice Ginsburg stated that "[t]he anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility." As the instant tip lacked the indicia of reliability necessary to establish reasonable suspicion under *Terry*, and since the Court was unwilling to adopt a firearms exception to its standard search analysis, the Court affirmed the decision of the Florida Supreme Court, finding the search to be in violation of J.L.'s Fourth Amendment rights.

Chief Justice Rehnquist, writing for the Court in *Bond v. United States*,[5] held that a law enforcement officer's manipulation of a bus passenger's carry-on luggage violated the passenger's Fourth Amendment right against unreasonable searches and seizures. Relying on *California v. Ciraolo*,[6] the government urged the Court to liken the agent's conduct to a brief, visual observation. In *Ciraolo*, the Court upheld the Fourth Amendment validity of a visual search of a private backyard from a police airplane flying overhead. The Court was unconvinced by the government's comparison. Rehnquist distinguished *Ciraolo* "because [it] involved only visual, as opposed to tactile, observation." The Court further stated that "[a]lthough [the agent] did not 'frisk' petitioner's person, he did conduct a probing tactile examination of petitioner's carry-on luggage." In explaining the significance of carry-on luggage, Rehnquist said, "[T]ravelers are particularly concerned about their carry-on luggage; they generally use it to transport personal items that, for whatever reason, they prefer to keep close at hand." Passengers "[do] not expect that [those on the vehicle] will, as a matter of course, feel the bag in an exploratory manner."

The Court once again employed its *Terry* analysis in upholding a Fourth Amendment search of a suspect who, in a high-crime area, fled, unprovoked, upon seeing approaching police officers. In *Illinois v. Wardlow*,[7] the Chief Justice, writing for a divided Court, explained that "[i]n *Terry*, we held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." Rehnquist, applying the *Terry* standard of "reasonable suspicion," stated that "[i]n this case . . . it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion but his unprovoked flight upon noticing the police." The Court, upholding the constitution-

Footnotes

1. For a more in-depth review of the decisions of the past Term, *see* CHARLES H. WHITEBREAD, RECENT DECISIONS OF THE UNITED STATES SUPREME COURT, 1999-2000 (Amer. Acad. of Jud. Educ. 2000).
2. 529 U.S. 266 (2000).
3. 392 U.S. 1 (1968).
4. 496 U.S. 325 (1990).
5. 529 U.S. 334 (2000).
6. 476 U.S. 207 (1986).
7. 528 U.S. 119 (2000).

ality of the search, stated that "[i]t was in this context that Officer Nolan decided to investigate Wardlow after observing him flee." The Court noted that "[h]eadlong flight—wherever it occurs—is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." Thus, the Court concluded that "Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and . . . in investigating further" and, therefore, reversed the judgment of the Illinois Supreme Court and remanded the case for further proceedings consistent with its opinion.

FIFTH AMENDMENT

In *Dickerson v. United States*,[8] the Supreme Court held that *Miranda v. Arizona*[9] and the cases that followed govern admissibility of statements made during custodial interrogation in both state and federal courts. The Court thus found that 18 U.S.C. § 3501, a statute enacted in the wake of *Miranda* that made the admissibility of confessions obtained through the custodial interrogation process turn on whether or not they were voluntarily made, is unconstitutional. Although "Congress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution," the Chief Justice, writing for a seven-member majority, concluded that "Congress may not legislatively supercede our decisions interpreting and applying the Constitution." The Court of Appeals in the instant case had "concluded that the protections announced in *Miranda* are not constitutionally required." The Court disagreed, noting several factors that point to a conclusion that *Miranda* is a constitutional decision. The Court first explained that *Miranda* applied the rule to proceedings in state court. Second, the Court looked to the *Miranda* opinion. The Court stated that "[t]he *Miranda* opinion itself begins by stating that the Court granted certiorari 'to explore some facets of the problems . . . of applying the privilege against self-incrimination to in-custody interrogation, and to give concrete constitutional guidelines for law enforcement agencies and courts to follow.'" Chief Justice Rehnquist explained that "[i]n fact, the majority opinion is replete with statements indicating that the majority thought it was announcing a constitutional rule." The Court did not see § 3501 as meeting the "constitutional minimum" with respect to protecting a suspect's right against self-incrimination. Despite additional remedies that are now available to deal with police misconduct that did not exist at the time of the *Miranda* decision, those remedies, in combination with § 3501, are not "an adequate substitute for the warnings required by *Miranda*." The Court explained that "[section] 3501 explicitly eschews a requirement of pre-interrogation warnings in favor of an approach that looks to the administration of such warnings as only one factor in determining the voluntariness of a suspect's confession." The majority reasoned that the *Miranda* Court "concluded that something more than the totality test was necessary." Since "[section] 3501 reinstates the totality test as sufficient," the statute "cannot be sustained if *Miranda* is to remain the law."

The Court [noted] several factors that point to a conclusion that *Miranda* is a constitutional decision.

In *United States v. Hubbell*,[10] the Court held that an indictment must be overturned where the Government makes "derivative use" of a testimonial component of the defendant's act of producing documents under a subpoena. The Court explained that "we have no doubt that the constitutional privilege against self-incrimination protects the target of a grand jury investigation from being compelled to answer questions designed to elicit information about the existence of sources of potentially incriminating evidence."

Justice Ginsburg, writing for the Court in *United States v. Martinez-Salazar*,[11] held that a defendant's exercise of peremptory challenges pursuant to Rule 24(b) is not denied or impaired when the defendant chooses to use a peremptory challenge to remove a juror who should have been removed for cause. The Court stated that "[a]fter objecting to the District Court's denial of his for-cause challenge, [Martinez-Salazar] had the option of letting [the juror] sit on the petit jury and, upon conviction, pursuing a Sixth Amendment challenge on appeal." The Court emphasized the fact that respondent had a choice in the matter, noting, "The District Court did not demand—and Rule 24(b) did not require—that Martinez-Salazar use a peremptory challenge curatively."

SIXTH AMENDMENT

Justice O'Connor, writing for the Court in *Roe v. Flores-Ortega*,[12] held that an attorney's failure to file a notice of appeal without the consent of the defendant was not per se deficient or ineffective assistance of counsel. Although "a lawyer who disregards a defendant's specific instructions to file a notice of appeal acts in a professionally unreasonable manner," the Court explained that the question in the instant case was whether counsel was deficient "for not filing a notice of appeal when the defendant has not clearly conveyed his wishes one way or the other." Furthermore, "[i]n making this determination, courts must take into account all the information counsel knew or should have known." Justice O'Connor reasoned that "[o]nly by considering all relevant factors in a given case can a court properly determine whether a rational defendant would have desired an appeal or that the particular defendant sufficiently demonstrated to counsel an interest in an appeal."

The Court, in *Portuondo v. Agard*,[13] held that a prosecutor's closing arguments bringing to the attention of the jury the fact that a criminal defendant has had the opportunity to listen to all other witnesses and to, thus, tailor his testimony accordingly, did not violate his rights under the Fifth, Sixth, and

8. 530 U.S. 428 (2000).
9. 384 U.S. 436 (1966).
10. 530 U.S. 27 (2000).
11. 528 U.S. 304 (2000).
12. 528 U.S. 470 (2000).
13. 529 U.S. 61 (2000).

[A]ny fact that increases the penalty for a crime beyond the prescribed statutory maximum . . . must be submitted to a jury and proved beyond a reasonable doubt . . . .

Fourteenth Amendments. Relying on the Court's rationale in *Griffin v. California*,[14] Agard contended that the closing comments of the prosecutor in his case unlawfully burdened his Sixth Amendment right to be present at trial and to confront the witnesses against him, as well as his Fifth and Sixth Amendment rights to testify on his own behalf. The Court was unconvinced, stating that "[t]he process by which criminal defendants were brought to justice in 1791 [when the Bill of Rights was adopted] largely obviated the need for comments of the type the prosecutor made here."

EIGHTH AMENDMENT

In *Weeks v. Angelone*,[15] the Court held that a defendant whose trial jury is directed to a paragraph of a constitutionally sufficient instruction on the effects of mitigating evidence has not had his constitutional rights violated. The Court explained that the trial judge gave the same instruction "upheld in *Buchanan v. Angelone*[16] as being sufficient to allow the jury to consider mitigating evidence." The Court further noted that "he gave a specific instruction on mitigating evidence—an instruction that was not given in *Buchanan*—in which he told the jury that '[y]ou must consider a mitigating circumstance if you find there is evidence to support it.'" The Court concluded that "so far as the adequacy of the jury instructions is concerned, their sufficiency here follows a fortiori from *Buchanan*."

DUE PROCESS

Justice Stevens, writing for a divided Court in *Apprendi v. New Jersey*,[17] held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt, as mandated by the Constitution. The Court explained that "[a]t stake in this case are constitutional protections of surpassing importance: the proscription of any deprivation of liberty without 'due process of law,' Amdt. 14, and the guarantee that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury,' Amdt. 6." The Court, citing *United States v. Gaudin*,[18] stated that "[t]aken together, these rights indisputably entitle a criminal defendant to 'a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.'" The Court based its conclusion on several factors. First, the Court noted that "the historical foundation for our recognition of these principles extends down centuries into the common law." Second, "[a]ny possible distinction between an 'element' of a felony offense and a 'sentencing factor' was unknown to the practice of criminal indictment, trial by jury, and judgment by court as it existed during the years surrounding our Nation's founding." Third, citing *In re Winship*,[19] the Court explained that "the 'reasonable doubt' requirement 'has a vital role in our criminal procedure for cogent reasons.'" The Court concluded that "[s]ince *Winship*, we have made clear beyond peradventure that *Winship*'s due process and associated jury protections extend, to some degree, 'to determinations that [go] not to a defendant's guilt or innocence, but simply to the length of his sentence.'"

FEDERAL HABEAS CORPUS

In *Williams (Terry) v. Taylor*,[20] the Court held that § 2254(d)(1) of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) provides for ultimate federal jurisdiction in determining constitutional issues associated with state habeas cases. Referring to the appeals court decision below, the Court stated that "[a]s the Fourth Circuit would have it, a state court judgment is 'unreasonable' in the face of federal law only if all reasonable jurists would agree that the state court was unreasonable." Explaining that "reasonable lawyers and lawgivers regularly disagree with one another," the Court stated that a restriction on habeas corpus relief, based on the unanimous agreement of jurists, was unrealistic. The Court based its analysis of § 2254(d)(1) on basic concepts of federal jurisdiction. Justice Stevens, citing *Marbury v. Madison*,[21] noted that "[w]hen federal judges exercise their federal-question jurisdiction under the 'judicial power' of Article III of the Constitution, it is 'emphatically the province and duty' of those judges to 'say what the law is.'" According to the Court, the AEDPA codified *Teague v. Lane*[22] in which reliance on "new rules" created after a conviction was prohibited. To this end, a court may deny relief "that is contingent upon a rule of law not clearly established at the time the state conviction became final." As to the requirement that the relevant law be "determined by the Supreme Court of the United States," Stevens stated that "[i]f this Court has not broken sufficient legal ground to establish an asked-for constitutional principle, the lower federal courts cannot themselves establish such a principle with clarity sufficient to satisfy the AEDPA bar." The Court, in Part III of the opinion, addressed the application of *Strickland v. Washington*[23] to Williams. Finding that the Virginia Supreme Court's decision rejecting Williams' ineffective assistance claim was both "contrary to" and an "unreasonable application of" doctrine well-established in *Strickland*, the Court believed that Williams was eligible for habeas relief.

14. 380 U.S. 609 (1965).
15. 528 U.S. 225 (2000).
16. 522 U.S. 269 (1998).
17. 530 U.S. 466 (2000).
18. 515 U.S. 506 (1995).
19. 397 U.S. 358 (1970).
20. 529 U.S. 362 (2000).
21. 1 Cranch 137 (1803).
22. 489 U. S. 288 (1989).
23. 466 U. S. 668 (1984).

The Court, in *Ramdass v. Angelone*,[24] held that the Court's decision in *Simmons v. South Carolina*,[25] which provides for a jury instruction about a defendant's ineligibility for parole, does not apply unless the defendant was actually ineligible for parole at the time of sentencing. Ramdass contended that he was entitled to federal habeas relief pursuant to 28 U.S.C. § 2254(d)(1) (1994 ed., Supp. III) because the Virginia Supreme Court's decision either "improperly applied," or was "contrary to," the Court's opinion in *Simmons*. In rejecting petitioner's argument, the Court stated that "[t]he Virginia Supreme Court's ruling in the case before us was neither contrary to *Simmons* nor an unreasonable application of its rationale." Justice Kennedy explained that "[i]n this case, a *Simmons* instruction would not have been accurate under the law; for the authoritative determination of the Virginia Supreme Court is that petitioner was not ineligible for parole when the jury considered his sentence."

Justice Scalia, writing for the Court in *Edwards v. Carpenter*,[26] held that "the Sixth Circuit erred in failing to recognize that a procedurally defaulted ineffective-assistance-of-counsel claim can serve as cause to excuse the procedural default of another habeas claim only if the habeas petitioner can satisfy the 'cause and prejudice' standard with respect to the ineffective-assistance claim itself." Citing *Coleman v. Thompson*,[27] Justice Scalia noted that "[t]he procedural default doctrine and its attendant 'cause and prejudice' standard are 'grounded in concerns of comity and federalism.'" Furthermore, citing *Murray v. Carrier*,[28] the Court explained that the doctrine is to be "appl[ied] alike whether the default in question occurred at trial, on appeal, or on state collateral attack."

The Court, in *Williams (Michael Wayne) v. Taylor*,[29] held that under 28 U.S.C. § 2254(e)(2), as amended by the Antiterrorism and Effective Death Penalty Act (AEDPA), a failure to develop a claim's factual basis in state court proceedings is not established unless there is a lack of diligence, or some greater fault attributable to the prisoner or his counsel. The Court, however, first dealt with the applicability of the AEDPA and found that it was applicable, as Williams did not file his federal habeas petition until after the effective date of the AEDPA. The Court went on to state that because Williams conceded that his case did not comply with 28 U.S.C. § 2254(e)(2)(B), "he may only receive an evidentiary hearing if his claims fall outside the opening clause." The conditional opening clause asks whether a factual basis was developed in the state court. "Here the answer is no," explained Justice Kennedy. Rejecting the argument of the Commonwealth that the opening clause provides for a no-fault approach to developing a factual claim in the state court, the Court embraced a more "ordinary, contemporary, [and] common" interpretation of the phrase "failed to." The Court explained that "[t]o say a person has failed in a duty implies he did not take the necessary steps to fulfill it. . . . [and] [h]e is, as a consequence, at fault and bears responsibility for the failure." The Court reasoned that Congress, had it intended to effect a no-fault standard, would have easily been able to do so by using the phrase "did not" in place of "has failed to." The Court supported its interpretation of the statute with *Keeney v. Tamayo-Reyes*,[30] stating that "[s]ection 2254(e)(2)'s initial inquiry into whether 'the applicant has failed to develop the factual basis of a claim in State court proceedings' echoes *Keeney*'s language regarding 'the state prisoner's failure to develop material facts in state court.'" The Court found that Williams was diligent in developing the facts associated with his juror bias and prosecutorial misconduct claims. Williams's claim of juror bias rested on questioning of potential jurors during voir dire. Bonnie Stinnett, who would eventually become the jury foreperson, remained silent when asked whether she was related to any of the individuals on the witness list, or had ever been represented by any of the counsel present at the trial. Stinnett had previously been married to the Commonwealth's lead witness for a period of 17 years, and had been represented by a member of the prosecution during her divorce. By her own literal interpretation, Stinnett did not see herself as "related to" the witness in question since she had not been married to him for over 16 years. Regardless, "Stinnett's failure to divulge material information in response to the second question was misleading as a matter of fact because, under any interpretation, [the prosecutor] had acted as counsel to her and [her ex-husband/lead witness] in their divorce." Justice Kennedy concluded that "[c]oupled with [the prosecutor]'s own reticence, these omissions as a whole disclose the need for an evidentiary hearing."

Congress, had it intended to effect a no-fault standard, would have easily been able to do so . . . .

In *Slack v. McDaniel*,[31] the Court held that an appeal of the dismissal of a habeas corpus petition undertaken after April 24, 1996 is governed by the certificate of appealability (COA) requirements contained in 28 U.S.C. § 2253(c). The Court held that "when the district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claim, a COA should issue . . . if the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Furthermore, a habeas petition dismissed without reaching the merits for failure to exhaust state remedies is not a "second or successive" petition. The Court's analysis began with a determination that post-AEDPA law governed the right

24. 530 U.S. 156 (2000).
25. 512 U.S. 154 (1994).
26. 529 U.S. 446 (2000).
27. 501 U.S. 722 (1991).
28. 477 U.S. 478 (1986).
29. 529 U.S. 420 (2000).
30. 504 U.S. 1 (1992).
31. 529 U.S. 473 (2000).

[D]efense counsel may effectively waive a defendant's right to trial within 180 days . . . by agreeing to a trial date beyond that time limit.

to appeal in the instant case. Citing its holding in *Lindh v. Murphy*,[32] the Court explained that § 2253 applies to appellate proceedings initiated after the effective date of the AEDPA. Justice Kennedy stated that "[w]hile an appeal is a continuation of the litigation started in the trial court, it is a distinct step. . . . [and] [w]hen Congress instructs us (as *Lindh* says it has) that application of a statute is triggered by the commencement of a case, the relevant case for a statute directed to appeals is the one initiated in the appellate court." The Court stated that the Court of Appeals "should have treated the notice of appeal as an application for a COA." To determine whether the Court of Appeals should have granted Slack's application for a COA, the Court looked to the requirements concerning habeas applicants in § 2253(c) of the AEDPA. The state contended that only constitutional rulings, and not procedural rulings, could be appealed, citing the statute's requirement that a COA may issue only upon the "substantial showing of the denial of a constitutional right." Kennedy, in rejecting the state's assertion, concluded that "[t]he writ of habeas corpus plays a vital role in protecting constitutional rights," and found that Congress "expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal."

RICO

The Court, in *Beck v. Prupis*,[33] held that a person may not bring suit under 18 U.S.C. § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act (RICO) predicated on a violation of § 1962(d) for injuries caused by an overt act that is not an act of racketeering or otherwise unlawful under the statute. The Court began its analysis by looking at the "combined effect of two provisions of RICO that, read in conjunction, provide a civil cause of action for conspiracy." Section 1964(c) provides a civil cause of action to anyone "injured . . . by reason of a violation of section 1962," while § 1962(d) makes it unlawful for a person "to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." Justice Thomas turned to the "well-established common law of civil conspiracy" in order to determine what it means to be injured by reason of a conspiracy. The Court stated that "[b]y the time of RICO's enactment in 1970, it was widely accepted that a plaintiff could bring suit for civil conspiracy only if he had been injured by an act that was itself tortious." The Court concluded that "when Congress established in RICO a civil cause of action for a person 'injured … by reason of' a 'conspir[acy],' it meant to adopt these well-established common-law civil conspiracy issues." Since "[Prupis]' alleged overt act in furtherance of their conspiracy [was] not independently wrongful under any substantive provision of the statute," Beck's claim was rendered invalid.

In *Rotella v. Wood*,[34] the Court held that civil suits under the Racketeer Influenced and Corrupt Organizations Act (RICO) are subject to a 4-year statute of limitations that begins running from the time of the discovery of the injury to the plaintiff. The 4-year statute of limitations with respect to RICO civil actions was established by the United States Supreme Court in *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*[35] The District Court held that the 4-year period started to run from the time that petitioner discovered his injury, which petitioner concedes was 1986. As such, petitioner's 1997 RICO suit would fall well beyond the bounds of the statute of limitations. The Fifth Circuit Court of Appeals affirmed, rejecting petitioner's argument that the statute of limitations should not run until the plaintiff not only became aware of the injury, but also the pattern of racketeering activity. The United States Supreme Court explained that "[a] pattern discovery rule would allow proof of a defendant's acts even more remote from time of trial and, hence, litigation even more at odds with the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." For these reasons, the Court affirmed the Fifth Circuit.

OTHER CRIMINAL STATUTORY INTERPRETATION

In *Johnson v. United States*,[36] the Court held that sanctions imposed upon revocation of supervised release are part of the initial offense. The Sixth Circuit treated the revocation of supervised release as "impos[ing] punishment for defendant's new offenses for violating the conditions of their supervised release." The Court disagreed and held that revocation of supervised release should be treated "as part of the penalty for the initial offense." The Court explained that "[w]here the acts of violation are criminal in their own right, they may be the basis for separate prosecution, which would raise an issue of double jeopardy if the revocation of supervised release were also punishment for the same offense." Justice Souter thus concluded that post-revocation penalties are attributable to the original conviction.

In *New York v. Hill*,[37] a unanimous Court, led by Justice Scalia, held that defense counsel may effectively waive a defendant's right to trial within 180 days as prescribed in the Interstate Agreement on Detainers (IAD), Article III(a), by agreeing to a trial date beyond that time limit. Although the IAD fails to address the consequences associated with a criminal defendant's assent to trial outside the 180-day time limit, the Court, citing *United States v. Mezzanatto*,[38] presumed the availability of such a waiver "in the context of a broad array of

32. 521 U.S. 320 (1997).
33. 529 U.S. 494 (2000).
34. 528 U.S. 549 (2000).
35. 483 U.S. 143 (1987).
36. 529 U.S. 694 (2000).
37. 528 U.S. 110 (2000).
38. 513 U.S. 196 (1995).

constitutional and statutory provisions." Justice Scalia stated that "[w]hat suffices for waiver depends on the nature of the right at issue." The Court indicated that the defendant's right to counsel, or to plead not guilty, were examples of the types of rights that can only be waived by a defendant personally. Other rights, opines the Court, may be waived by the action of defense counsel. "Scheduling matters are plainly among those for which agreement by counsel generally controls." Defense counsel is generally in the best position to determine the benefit or detriment to a defendant associated with a delay in trial commencement. Although respondent argued that the IAD speedy-trial language explicitly limits the types of delays that are allowable, the Court disagreed. "[T]he specification in that provision that the 'prisoner or his counsel' must be present suggests that it is directed primarily, if not indeed exclusively, to prosecution requests that have not been explicitly agreed to by the defense." Additionally, the Court rejected Hill's argument that the societal benefits attached to IAD's time limits removed them from the scope of defendant waiver. The interest in resolving outstanding charges in the most expedient way, the main societal benefit from the contested IAD provision, is not "so central to the IAD that it is part of the unalterable 'statutory policy.'" Thus, a defendant's waiver in such an instance does not also waive the rights of society at large.

CONCLUSION

As can be seen from the cases addressed during this term, the ideological balance of the Supreme Court will be of increasing importance in coming years. Even though this Court defies traditional labels in so many cases, no new president should be too confident of what any new appointee might do in the criminal justice cases to come.

Charles H. Whitebread (A.B., Princeton University, 1965; LL.B., Yale Law School, 1968) is the George T. and Harriet E. Pfleger Professor of Law at the University of Southern California Law School, where he has taught since 1981. Before that, he taught at the University of Virginia School of Law from 1968 to 1981. His oral presentations at the annual educational conference of the American Judges Association exploring recent Supreme Court decisions have been well received for many years. He is found on the Web at http://www-rcf.usc.edu/~cwhitebr/. *Professor Whitebread gratefully acknowledges the help of his research assistant, Christian Wiseman.*