

ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-271

TITLE CARLOS CHARDON, ETC., ET AL., Petitioners
v.

JUAN FUMERO SOTO, ET AL.
PLACE Washington, D.C.

DATE March 23, 1983

PAGES 1 thru 48



ALDERSON REPORTING

(202) 628-9300
440 FIRST STREET, N.W.
WASHINGTON, D.C. 20001

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -x

3 CARLOS CHARDON, ETC., ET AL., :

4 Petitioners, :

5 v. : No. 82-271

6 JUAN FUMERO SOTO, ET AL. :

7 - - - - -x

8 Washington, D.C.

9 Wednesday, March 23, 1983

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 11:11 o'clock a.m.

13 APPEARANCES:

14 JOHN G. DE GOOYER, ESQ., Washington, D.C.; on behalf of
15 the Petitioners.

16 SHELDON NAHMOD, ESQ., Chicago, Illinois; on behalf of
17 the Respondents.

18

19

20

21

22

23

24

25

1	<u>C O N T E N T S</u>	
2	<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
3	JOHN G. DE GOOYER, ESQ.,	
4	on behalf of the Petitioners	3
5	SHELDON NAHMOD, ESQ.,	
6	on behalf of the Respondents	24
7	JOHN G. DE GOOYER, ESQ.,	
8	on behalf of the Petitioners - rebuttal	45
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Chardon against Soto.

4 Mr. DeGooyer, you may proceed whenever you are
5 ready.

6 ORAL ARGUMENT OF JOHN G. DE GOOYER, ESQ.,
7 ON BEHALF OF THE PETITIONERS

8 MR. DE GOOYER: Mr. Chief Justice, and may it
9 please the Court, nine years ago this Court, in American
10 Pipe and Construction Company versus Utah, held that the
11 statute of limitations is temporarily suspended in
12 federal class actions until the District Court
13 determines whether to certify the class.

14 The issue in the case before the Court this
15 morning is whether the rule of American Pipe applies to
16 federal class actions brought under the Civil Rights Act
17 of 1866. We think the answer to that is clearly yes.

18 A number of lower courts have held that it
19 applies, and only one court to our knowledge, and that
20 is the court below in the instant case, has held that it
21 does not.

22 The relevant facts are few and undisputed.
23 The Respondents are teachers in the Department of
24 Education of Puerto Rico. During the 1976-1977 school
25 year, they held temporary one-year administrative

1 positions in the department. Toward the end of that
2 year, they received formal notification that their
3 appointments would not be renewed.

4 Approximately one year later, in June of 1978,
5 a teacher who had received notification of
6 non-reappointment, Mr. Jose Ortiz Rivera, who is not a
7 respondent in this case, brought an action in the
8 Federal District Court in Puerto Rico as a class action
9 on behalf of himself and a class of persons who he
10 contended had been victims of discrimination on account
11 of their political beliefs.

12 Relief was sought under 42 United States Code
13 Section 1983, and pendent state claims were asserted.
14 The defendants were the petitioners in this case.

15 It is undisputed that as of the date Ortiz
16 Rivera filed his class action, the statute of
17 limitations had not yet run against the respondents.
18 Approximately two months after the lawsuit had been
19 filed, the District Court denied class certification on
20 the grounds that the class was not so numerous as to
21 make joinder impracticable.

22 It is undisputed that thereafter none of the
23 respondents took any action on their own behalf to press
24 their claims against the petitioners for five months,
25 until January of 1979, when they brought individual

1 lawsuits. The petitioners filed answers in each case,
2 and in each answer asserted as an affirmative defense
3 that the statute of limitations had run.

4 Eventually, the cases were consolidated for
5 trial, bifurcated on the issue of liability and
6 damages. The District Court reserved decision on the
7 limitations issue. The cases were tried in January of
8 1981, and verdicts were entered for the respondents.
9 Judgment was finally entered.

10 On appeal, the First Circuit found that the
11 respondents' actions had been timely filed. Although
12 the Court recognized that if the rule of American Pipe
13 and Construction Company were applied here, the statute
14 of limitations would have been suspended when Ortiz
15 Rivera filed his lawsuit, but that it would have resumed
16 running when class certification was denied, and that
17 the statute would have expired as to each respondent
18 before and indeed well before his individual action was
19 filed.

20 The court concluded, however, that it could
21 not apply American Pipe and Construction Company because
22 of this Court's decision in Board of Regents versus
23 Tomanio, and the court below specifically held on the
24 basis of that decision that the rule of American Pipe
25 and Construction does not apply to cases brought under

1 Section 1983 of Title 42.

2 Instead, the court felt constrained to look to
3 state law to find the tolling rule. Even though when
4 the court looked to state law, or Puerto Rico law, it
5 found, and I quote, "no discernible state rule"
6 applicable to class actions, it fashioned a rule. It
7 fashioned a rule by borrowing the aspect of American
8 Pipe and Construction Company, that aspect of the rule
9 that filing of a class suit tolls the running of the
10 statute of limitations, and then it found that when
11 class certification was denied, a Puerto Rico rule
12 applicable in other circumstances came into play.

13 Under that rule, the entire original statutory
14 period of limitations began to run anew. Each
15 respondent therefore had another year within which to
16 bring a lawsuit, even though at the time the class suit
17 had been filed most of them had about three weeks left
18 remaining in their statutory period.

19 QUESTION: And what was the ground? What was
20 the ground for rejecting American Pipe in terms of --

21 MR. DE GOOYER: The court below, Justice
22 White? It was that the -- this Court's decision in
23 Board of Regents versus Tomanio interpreting Section
24 1988 mandated state law and not federal law applied.

25 QUESTION: Well, partly wouldn't you also say,

1 Mr. DeGooyer, that the last paragraph of the Court
2 opinion in American Pipe and Construction, which at
3 least your opponents read to suggest made that the
4 suspension aspect of the ruling depend on the Clayton
5 Act rather than on a rule peculiar to federal class
6 action?

7 MR. DE GOOYER: Right. I disagree with that
8 entirely, Justice Rehnquist. I think that that --

9 QUESTION: You disagree with my statement or
10 with your opponent's -- what I think is your opponent's
11 view?

12 MR. DE GOOYER: I agree with your statement
13 that the opinion so reads. I disagree with the notion
14 that the American Pipe rule, the suspension aspect of
15 the American Pipe rule is in any way dependent upon the
16 Clayton Act. There are numerous lower court cases, and
17 of course they are not controlling, but there are
18 numerous cases cited in our brief where lower courts
19 have used the suspension rule in Title 7 cases, in
20 various kinds of cases, securities cases, but more
21 importantly to me, at least, was this Court's decision
22 in United Airlines versus McDonald.

23 That case was decided three and a half years
24 after American Pipe and Construction Company. In that
25 case, and it was a Title 7 case, the eight members of

1 the court that decided that case all sat on the American
2 Pipe court, which was unanimously decided. The issue in
3 the United Airlines case was whether or not American
4 Pipe and Construction Company had any application, and
5 while the majority and the minority disagreed as to the
6 scope of the rule, no one disputed the fact that the
7 rule would have applicability in a Title 7 case, and
8 indeed the minority so stated.

9 So, I don't have any problem with that at
10 all. I think there is no limitation there.

11 Contrary to what the First Circuit held, we
12 believe that the American Pipe rule controls this case,
13 that it is a uniform rule of federal procedure, that it
14 applies generally to all class actions, regardless of
15 subject matter and regardless of the statute of
16 limitations that is applicable.

17 And as I have just discussed, I think that the
18 Clayton Act in no way gave the rule its suspension
19 aspect. At the same time, we do not believe that the
20 rule is two rules, as the respondents contend. There is
21 no basis in the American Pipe opinion for that, in my
22 judgment, and no court has ever held that this is
23 actually two rules. Suspension by its very meaning
24 means stopping temporarily. This is consistent with
25 what the Court was doing in establishing the rule. It

1 was protecting the District Court from a flurry of
2 activity while it decided whether to certify the class.

3 As the Court said in American Pipe, Rule 23 is
4 eviscerated if people will be coming in, filing
5 protective motions to intervene while the Court is
6 deciding whether it is a class or not. Suspension fully
7 satisfies the needs of judicial efficiency and economy
8 while preserving the rights and obligations of the
9 parties as of the date the class suit was filed. The
10 analogy I use is, it is snapshot. There is a snapshot
11 taken at the date the lawsuit is filed. The rights and
12 the obligations of the parties are fixed at that point.
13 Certainly the statute of limitations is fixed at that
14 point. If class certification is denied, the statute
15 resumes running. Everybody stands where they were at
16 the time the suit was filed.

17 That is fair to both sides. And at the same
18 time, it fosters the court's and the defendant's
19 interests in response.

20 QUESTION: May I ask a question --

21 MR. DE GOOYER: Yes, Justice Stevens.

22 QUESTION: -- about something you said about
23 the Puerto Rico law? As I understood you, you said the
24 First Circuit fashioned the tolling rule --

25 MR. DE GOOYER: Yes, sir.

1 QUESTION: -- by applying -- by saying that
2 Puerto Rico would in effect apply a counterpart to the
3 American Pipe case, but is it not true that with respect
4 to the second question, namely, for how long the tolling
5 period is, that they relied on Puerto Rico law for
6 saying the statute starts to run all over again.

7 MR. DE GOOYER: Puerto Rico law in a different
8 context, Justice Stevens, if I may. The statute that is
9 being construed, the Puerto Rico statute that is
10 involved in Section 5303 of Title 31. That statute very
11 specifically refers to the three methods of tolling
12 under Puerto Rico law. There is no question that when
13 tolling has properly occurred in Puerto Rico, that the
14 statutory period begins running anew, but the
15 authorities in Puerto Rico law are absolutely crystal
16 clear that the tolling in Puerto Rico must be not only
17 strictly construed by restrictively construed, and I
18 refer to the case of Diaz versus -- Diaz de Deana that
19 we have cited in our brief.

20 Because the result is a running anew, even the
21 courts of Puerto Rico say that you must restrictively
22 interpret that rule of tolling.

23 QUESTION: So your position really, if I
24 understand you correctly, is not that they tolled it for
25 the wrong period, but there should have been no tolling

1 at all.

2 MR. DE GOOYER: That's correct. That's
3 correct. Yet the respondents maintain, as we just
4 discussed, that the rule of American Pipe itself is two
5 rules. That is, the federal rule is two rules, a
6 general tolling rule and a precise tolling effect rule.
7 They derive that, as Justice Rehnquist suggested, from
8 the language in the last paragraph of American Pipe,
9 where the Court was saying it remains to determine the
10 precise effect the commencement of the action had on the
11 statute of limitations.

12 I think in our brief we make clear at least
13 this is our view that that was the Court's recapping,
14 where we stood at the time the lawsuit was filed.
15 Eleven days left to run in the statute. The motions
16 came eight days after class certification was denied.
17 That was less than eleven days, therefore timely filed.

18 QUESTION: What if this hadn't been a class
19 action? When the suit was filed, there was a statute of
20 limitations claim presented by the defendants. Would
21 Puerto Rico law have applied as to whether or not the
22 statute of limitations had already run?

23 MR. DE GOOYER: Let me see if I understand the
24 hypothetical.

25 QUESTION: It is not a class action. It is

1 just, the plaintiff files in 1983 -- This was a 1983
2 case.

3 MR. DE GOOYER: It was indeed.

4 QUESTION: And the defendant moves to dismiss
5 on the grounds that the statute of limitations has
6 already run.

7 MR. DE GOOYER: Well, it either would have run
8 or it wouldn't have run. I don't quite understand the
9 question, Justice --

10 QUESTION: Well, but it would have been -- my
11 question is, what law would -- what statute of
12 limitations would apply?

13 MR. DE GOOYER: We would use the one-year
14 Puerto Rico statute of limitations, which we are in fact
15 using right now.

16 QUESTION: And if there was some claim of
17 tolling in the case, it would be Puerto Rico law, too?

18 MR. DE GOOYER: Yes, indeed.

19 QUESTION: And for how long it would have
20 tolled?

21 MR. DE GOOYER: One year.

22 QUESTION: Yes.

23 MR. DE GOOYER: And that is because Section
24 5305 specifically covers the situation.

25 QUESTION: I understand. I understand, but

1 now you say -- now you say that Puerto Rico law,
2 however, does not -- shouldn't govern because a class
3 action is involved here.

4 MR. DE GOOYER: I certainly do say that, and I
5 also say it is very easy to say in this case, because
6 there is no Puerto Rico law that covers this situation
7 as the First Circuit so said.

8 QUESTION: But those are really two quite
9 distinct positions.

10 MR. DE GOOYER: They are indeed two
11 questions.

12 QUESTION: I take it your underlying position
13 is that American Pipe is based on the Rule 23 class
14 actions --

15 MR. DE GOOYER: Absolutely.

16 QUESTION: -- and provides a federal rule of
17 tolling no matter what the substantive origin of the
18 claim.

19 MR. DE GOOYER: That is entirely correct.
20 That is our position entirely. And that satisfy's the
21 Rule's Enabling Act as far as we are concerned. I think
22 it is interesting to look at the reasons why the
23 respondents have looked at this rule of American Pipe as
24 two rules. They have carved up the general tolling part
25 of American Pipe and said, we will take the benefit of

1 that.

2 They have then said, we will go to the Puerto
3 Rico running a new rule, and we will take the benefit of
4 that, and by the way, that gives us a substantive right
5 to one year under Puerto Rico law, and the circularity
6 of this reasoning is fairly amazing, because now that
7 they've had the substantive right derived from American
8 Pipe, they turn around and say American Pipe cannot
9 abridge that right and therefore violates the Rules
10 Enabling Act.

11 They cite a number of cases in their brief
12 that refer to limitations, that allegedly give them a
13 substantive right to one year's worth of tolling, where
14 in fact those cases talk about the limitations of
15 actions being substantive in Puerto Rico. That indeed
16 is why the tolling statute in Puerto Rico is to be
17 restrictively construed, not merely strictly construed.

18 In any case, as Justice Rehnquist suggests, it
19 is our position that the rule of American Pipe clearly
20 regulates only procedure in the federal courts in class
21 actions. It preserves the status quo as of the filing
22 of the class action. It permits Rule 23 to operate as
23 intended. It is clearly within the Congressional power
24 delegated, and it would pass muster in my judgment if
25 this were an Erie case. It clearly passes muster in a

1 federal action, federal question case.

2 And indeed, Tomanio and state law never come
3 into play as far as we are concerned on the rule of
4 American Pipe.

5 Now, if we turn to Tomanio, however, I don't
6 think Tomanio applies. The case there is a wholly
7 different case from this case. In Tomanio, there was no
8 compelling federal reason, there was no compelling
9 reason at all for federal tolling. The question
10 presented there was, did the pendency of Mary Tomanio's
11 state claims toll the running of the statute as to her
12 constitutional claims.

13 New York law had no rule, had no statute. So
14 the lower courts fashioned the federal tolling rule to
15 preserve her constitutional claims, essentially in
16 furtherance of their view of federalism. This Court
17 found the absence of a tolling statute in New York to
18 mean that New York intended no tolling to occur, and
19 that therefore the interests of federalism were better
20 served by following the New York no tolling rule.

21 If that principle were applied to this case,
22 there would be no tolling at all. There is no Puerto
23 Rico rule. There is no Puerto Rico law that tolls.

24 QUESTION: Well, the First Circuit did hold
25 otherwise, didn't it?

1 MR. DE GOOYER: I don't -- well, let me say,
2 what the First Circuit did was this, Justice Rehnquist.
3 They took the federal rule of American Pipe, which they
4 acknowledged to be the federal rule. The respondents in
5 this case acknowledged that to be the federal rule.
6 They have even said it mandates general tolling. What
7 the First Circuit said was, there is no rule in Puerto
8 Rico. I will therefore fashion a rule. They fashioned
9 the rule, as I said earlier.

10 QUESTION: From state law?

11 MR. DE GOOYER: They fashioned a rule which
12 they believed to be state law, which has no foundation
13 in the law itself, and which --

14 QUESTION: But that is true -- federal courts
15 lots of times have to do that --

16 MR. DE GOOYER: I certainly --

17 QUESTION: -- in diversity cases, or in a case
18 like this, where they have to say, true, there isn't a
19 decided Puerto Rico case on the subject. We have got to
20 figure out what the Supreme Court of Puerto Rico would
21 do.

22 MR. DE GOOYER: There are indeed decided cases
23 that would indicate to the contrary, which we have cited
24 to the Court in our reply brief. We certainly
25 understand that in ordinary circumstances, the Court --

1 this Court will defer to a circuit court in its judgment
2 of what a state law may be, but the only way they have
3 derived the so-called state law here is to say by
4 analogy the federal court has a Rule 23. American Pipe
5 has interpreted Rule 23 to mean this. We acknowledge
6 that if Rule 23 and American Pipe apply, the federal
7 rule, the federal interpretation of this very Rule 23,
8 here is what happens: suspension, resumption, and
9 expiration.

10 They then go and by analogy move into rule --
11 the comparable rule in Puerto Rico of procedure, and
12 they say it is modeled exactly after the federal rule,
13 but we think that Puerto Rico will not follow the
14 federal rule even though it is patterned after that. It
15 will take the tolling portion of it and then apply the
16 running anew portion.

17 QUESTION: Well, I understand your position to
18 be that even if the Puerto Rico law was just as clear as
19 a bell, that you would -- that American Pipe, to the
20 contrary, American Pipe would still govern.

21 MR. DE GOOYER: Yes.

22 QUESTION: Even if there was a Puerto Rico
23 rule that said, after tolling, the period starts running
24 all over again, even if it was perfectly clear.

25 MR. DE GOOYER: Well, that's --

1 QUESTION: That American Pipe would still
2 determine otherwise in this case.

3 MR. DE GOOYER: Absolutely. I think --

4 QUESTION: And also you did not raise your
5 challenge to the Court of Appeals' interpretation of
6 Puerto Rican law in the questions presented, did you?

7 MR. DE GOOYER: I think what we -- what we
8 raised in the questions presented was whether the rule
9 of American Pipe and Construction Company, which is a
10 federal rule, applies, and indeed -- anything in this
11 Court's decision in Board of Regents versus Tomanio
12 would preclude application.

13 QUESTION: Sure, but you did not raise a
14 dispute with the Court of Appeals' interpretation of
15 Puerto Rican law.

16 MR. DE GOOYER: That is certainly correct. It
17 has been assumed that that would be the law, but it --

18 QUESTION: I have another difficulty --

19 MR. DE GOOYER: Yes, Justice Stevens.

20 QUESTION: -- with your argument, if I
21 understand it correctly. I understood you to say that
22 the Court of Appeals first found that there was no
23 Puerto Rican authority for tolling in the first
24 instance.

25 MR. DE GOOYER: That's correct.

1 QUESTION: And that they -- I don't see --
2 Page 16-A of the opinion says that the Puerto Rican law
3 provides there is tolling when an identical cause of
4 action is filed, and then they say the class action is
5 an identical cause of action, and therefore under Puerto
6 Rico law there is tolling. That is the way I read it
7 anyway. What language do you rely on for a different
8 reading?

9 MR. DE GOOYER: I have the opinion. If you
10 will forgive me for one moment, I will look.

11 (Pause.)

12 QUESTION: It says the substantive claims
13 asserted in the class action were identical to those in
14 the subsequent individual actions.

15 MR. DE GOOYER: Well, in the first point -- in
16 the first place, that -- the Puerto Rico rule of
17 identical actions does not cover the circumstance.
18 There is no case anywhere that covers the identity
19 question that the First Circuit drew on.

20 QUESTION: Well, but there is a Puerto Rican
21 law -- a rule that if it is an identical action, there
22 is a toll.

23 MR. DE GOOYER: By the same individual that
24 refiles, yes.

25 QUESTION: And then the question is whether a

1 class action comes within that rule. That's the
2 question, and --

3 MR. DE GOOYER: Well, indeed, as we have cited
4 in the Caguas Lumberyard case, there is authority to the
5 contrary that the filing of a purported class action by
6 a representative of the class does not involve any of
7 the other people as so-called parties to the action.
8 They are not advancing their action in court unless
9 those absent parties come in.

10 The way we read this is, you can't simply --

11 QUESTION: But you were telling me that the
12 Court of Appeals had said that Puerto Rican law was
13 silent on it.

14 MR. DE GOOYER: Well, let me find the --

15 QUESTION: Or in fact --

16 MR. DE GOOYER: If I could only find the
17 rule --

18 QUESTION: Which I didn't find in the
19 opinion.

20 MR. DE GOOYER: All right.

21 (Pause.)

22 MR. DE GOOYER: Well, I don't have the slip
23 opinion, Justice Stevens. What I have is the --

24 QUESTION: Well, I am relying on your cert
25 position. I hadn't found that argument in your brief.

1 That is why I was having trouble following it today.

2 MR. DE GOOYER: Well, in any case, it is
3 absolutely true that they said that Puerto Rico has no
4 discernible state rule. That is no -- There is no
5 dispute about that.

6 QUESTION: Well, they have the identity rule.

7 MR. DE GOOYER: Well, they have --

8 QUESTION: And you agree with that, don't you?

9 MR. DE GOOYER: I agree that Puerto Rico has
10 by judicial decision held that when an individual brings
11 a lawsuit and it is dismissed for procedural reasons and
12 he refiles a lawsuit that is identical to the first
13 lawsuit, then he satisfies the identity requirement.

14 QUESTION: All right.

15 MR. DE GOOYER: That is what the cases say.
16 Now, we have found the place that I was looking for, and
17 that is at least in the joint appendix at the top of
18 135-A, is where the Court says, "In the instant case,
19 though, there is no discernible state rule." That is
20 after the Court has said that it feels that it must look
21 to state law because of 1988. It looks to Section 1988
22 but finds no discernible state rule applicable to class
23 action.

24 As I was saying earlier, in the Tomanio
25 decision, there was no compelling federal reason for

1 tolling, or for federal tolling. Here, of course, there
2 is, and as we have already discussed, this is a class
3 action. We think that the Rule 23 special rules that
4 apply there have to be given effect. It is the federal
5 procedural policy underlying the rule, efficiency and
6 judicial economy, that even give rise to the tolling
7 here in the first place.

8 Even the respondents agree, as I have said
9 several times, that American Pipe mandates general
10 tolling. Under those circumstances, we needn't even go
11 into the 1988 choice of law analysis, but as we have
12 also argued in the brief, Section 1988 provides on its
13 face that state law applies unless it is deficient.
14 Then you go to federal law -- I mean, then you go to
15 state law. You apply federal law. If it's deficient,
16 you go to state law.

17 In this case, federal law is not deficient.
18 American Pipe provides the rule of decision, and we
19 think that a decision of this Court interpreting a
20 federal rule of civil procedure has sufficient stature
21 to qualify for the federal preference under Section
22 1988. And as I have said further in discussions with
23 Justice Stevens, even if we go down to state law, the
24 Court itself found at least in the tolling aspect no
25 discernible state rule, and there is no doubt about

1 that, and then it fashioned --

2 QUESTION: But I notice that in that part of
3 the opinion, that's the paragraph after they had decided
4 that the class action was identical, and where they were
5 rejecting the estoppel argument.

6 MR. DE GOOYER: Well, I --

7 QUESTION: In any event, you really are asking
8 us to make a fairly close examination of Puerto Rican
9 law, it seems to me.

10 MR. DE GOOYER: No, I think --

11 QUESTION: To second-guess the First Circuit
12 on it.

13 MR. DE GOOYER: No, I think that regardless of
14 what Puerto Rico law provides, that Rule 23 governs the
15 tolling here as a single rule of suspension and not a
16 two-part rule. The way I get to that, Justice Stevens,
17 is, if we had a jurisdiction with a law that said, under
18 no circumstances shall there be tolling at all, period,
19 under any circumstance, if we apply the two-part test,
20 we toll, then what do we do? We look to state law, and
21 it says no toll. What do we do?

22 QUESTION: You don't toll.

23 MR. DE GOOYER: Toll, no toll? Well, we've
24 tolled once. Then we no toll? I think that Rule 23
25 provides a single rule of suspension that is applicable

1 in federal courts for all the reasons that Rule 23
2 exists, and there should be no exception for Section
3 1983 cases, but an affirmance of this case drives a
4 wedge between Rule 23 and civil rights actions in the
5 federal courts when they are brought certainly as class
6 actions, but why not drive a wedge between a 1983
7 individual action and Rule 3?

8 Is Bomar versus Keyes in doubt? Why not drive
9 a wedge between Section 1983 cases and Rule 4? Service
10 of process. Mode of service. Why not drive it in
11 between Rule 6, computations of time? Or Rule 15 on
12 relation back of amendments? There is no basis for
13 that. The federal courts have their rules as
14 housekeeping rules to operate efficiently, to operate in
15 the interest of justice, and for all of these reasons,
16 and all the reasons that we have discussed, the judgment
17 below should be reversed.

18 CHIEF JUSTICE BURGER: Mr. Nahmod?

19 ORAL ARGUMENT OF SHELDON NAHMOD, ESQ.,

20 ON BEHALF OF THE RESPONDENTS

21 MR. NAHMOD: Mr. Chief Justice, may it please
22 the Court, as counsel for petitioners observed, we are
23 here dealing with 36 cases. Thirty-six plaintiffs, who
24 are the respondents here, were found by a Puerto Rico
25 jury to have lost their jobs for political reasons.

1 They belonged to the wrong political party.

2 The issue in the case, as set out earlier, is
3 the following. Does Puerto Rico tolling law, that is,
4 the Puerto Rico tolling law of renewal, govern the
5 denial of class certification for lack of numerosity, or
6 does some other rule when we are talking about Section
7 1983 federal class actions? Indeed, we are talking
8 about more than Section 1983. We are talking about
9 Section 1981, 1982, 1985, and 1986 as well.

10 There are two considerations that I was hoping
11 to mention at the outset. The first consideration is
12 that Puerto Rico has a very strong interest in having
13 its tolling rule apply. The Puerto Rico tolling rule of
14 renewal reflects Puerto Rico's judgment as to the proper
15 balance between repose on the one hand and fairness to
16 injured parties on the other. There is a related
17 interest in federalism. Puerto Rico has a Spanish civil
18 law based system. Louisiana has a comparable civil law
19 system, but it is based upon the French civil law.

20 A second threshold consideration is that there
21 was no unfair surprise to the defendants in these cases
22 because they knew about all of these plaintiffs' causes
23 of action. No unfair surprise, no lost witnesses, no
24 stale memory at issue in these 36 cases.

25 By way of background it is important, I think,

1 to start off with this Court's decision in Tomanio. As
2 a general matter, this Court in interpreting Section
3 1988 has held that where federal statutory law is
4 deficient, a federal court must look, must look at
5 relevant state law unless that relevant state law is
6 inconsistent.

7 QUESTION: The reason Puerto Rico's statute of
8 limitations is relevant to this case at all is because
9 of the absence of the federal statute of limitations.

10 MR. NAHMOD: Not really, Your Honor. That is
11 our second argument, that --

12 QUESTION: Well, isn't that right?

13 MR. NAHMOD: Yes, that's one.

14 QUESTION: One? Well, it's the only -- it's
15 the only reason, isn't it?

16 MR. NAHMOD: Maybe I didn't understand your
17 question, Your Honor.

18 QUESTION: Suppose that 1983 itself contained
19 a statute of limitations.

20 MR. NAHMOD: If Section 1983 itself contained
21 a statute of limitations, then we wouldn't be here
22 today.

23 QUESTION: Well, and I take it the submission
24 on the other side is that although there isn't a federal
25 statute of limitations, there is a federal rule about

1 tolling in class actions, and therefore, to that extent,
2 Puerto Rican law is irrelevant.

3 MR. NAHMOD: Your Honor --

4 QUESTION: That is the submission.

5 MR. NAHMOD: Yes, I understand that, Your
6 Honor.

7 QUESTION: And what is your answer to that?

8 MR. NAHMOD: They are basing their primary
9 reliance on this Court's decision in the American Pipe
10 case. In so doing, we submit that they misread it.

11 QUESTION: Well, the American Pipe did hold
12 that in a class action the filing of the action tolls
13 and for just as long -- up until the time the class
14 action is denied, and time then begins to run again.

15 MR. NAHMOD: Yes, that's correct, Your Honor.
16 The American Pipe decision can be broken down into two
17 important aspects, it seems to me. The first aspect is
18 what we call in our brief general tolling. That is,
19 when a federal class action is filed, whether it is a
20 23(b)(1), (b)(2), or (b)(3) class action, as American
21 Pipe was --

22 QUESTION: Well, what if Puerto Rican law said
23 that filing of the class action does not toll anything
24 for the unnamed members of the class?

25 MR. NAHMOD: If that were the case, Your

1 Honor, then we would -- there would be no tolling.

2 QUESTION: So you say that the first part of
3 American Pipe doesn't apply here either, as a federal
4 rule.

5 MR. NAHMOD: Your Honor, that depends upon
6 which one of our first two arguments one looks at. It
7 seems to us with respect to an interpretation of
8 American Pipe that this Court held in American Pipe that
9 one looks at the limitation scheme underlying the
10 particular substantive cause of action. In a section in
11 the American Pipe case itself, the substantive cause of
12 action was Section 5(b) of the Clayton Act. That
13 provision provided -- that provision set out a
14 suspension approach to tolling.

15 QUESTION: Well, that was just with respect to
16 when the government suit was filed, and then the Court
17 went on in the last paragraph and said a similar
18 concept. This is a court-crafted rule under Rule 23.

19 MR. NAHMOD: But it was based upon this
20 Court's --

21 QUESTION: Well, it said a similar concept.
22 It was just by analogy that they referred to the Clayton
23 Act.

24 MR. NAHMOD: Your Honor, when the Court in
25 American Pipe was trying to balance the Rule 23

1 interests on the one hand against the appropriate
2 interest in the statutes of limitation on the other,
3 this Court appropriately, in our opinion, looked to the
4 Congressional purpose underlying the particular
5 substantive cause of action.

6 There are numerous -- there are at least three
7 different approaches to tolling that this Court could
8 have used in the American Pipe case. One possible
9 approach to tolling is an extension approach.

10 QUESTION: But they just chose one of them.

11 MR. NAHMOD: And that is because the Clayton
12 Act itself provided for suspension. I think this Court
13 in American Pipe felt bound to look at what Congress had
14 said.

15 QUESTION: Well, that is just according to how
16 you read it. It was still a court decision as to what
17 should apply, what the effect of a class action should
18 be under Rule 23, and it looked around and said, well,
19 by analogy, a case is tolled, a statute is tolled when
20 the government files a suit.

21 MR. NAHMOD: Well, Your Honor, suppose --

22 QUESTION: We will just -- We will apply a
23 similar rule to this.

24 MR. NAHMOD: But, Your Honor, our position is,
25 suppose in American Pipe the Clayton Act limitations and

1 tolling schemes had provided for renewal of the period
2 of limitations. We submit that this Court in American
3 Pipe would have set out a tolling rule of renewal, but
4 this --

5 QUESTION: That is based almost entirely,
6 isn't it, on V of the opinion in that last paragraph?
7 It seems to me you can read the other parts, from I
8 through IV, and sense that the Court isn't relying much,
9 if at all, on the nature of the substantive cause of
10 action.

11 MR. NAHMOD: Your Honor, that is because -- I
12 understand what you are saying. That is because the
13 major portion of the American Pipe case dealt with the
14 general relationship between Rule 23 on the one hand and
15 statutes of limitation in general. This Court was
16 explaining why, even with a so-called spurious or Rule
17 23(b)(3) class action, this Court was explaining why the
18 statute of limitations would be tolled for all unnamed
19 members of a class once a class action was filed in
20 federal court.

21 That is the body, that is the major portion of
22 the Court's opinion. When it set out all of this in
23 general terms, it then went on to deal with the issue
24 that we are addressing here: what is the precise effect
25 of our general discussion in this particular case? And

1 the precise tolling effect had to be obtained by looking
2 at the Clayton Act itself, in the same way that we
3 suggest in this case, in these 36 cases, a federal court
4 would have to look at the limitation scheme governing
5 Section 1983 causes of action.

6 QUESTION: But the Clayton Act itself didn't
7 in hite verba provide for this kind of tolling, did it?

8 MR. NAHMOD: The Clayton Act on its terms, on
9 its own face, provided only for suspension. But I'm not
10 sure what you mean, Justice Rehnquist, when you say for
11 this particular kind of tolling. Can you explain that?

12 QUESTION: Well, it didn't mention class
13 actions. That's the point. It didn't say what the
14 effect of filing a class action would be.

15 MR. NAHMOD: But this Court --

16 QUESTION: The Clayton Act didn't.

17 MR. NAHMOD: I think that's right, but I think
18 this Court had to choose an appropriate rule which would
19 accommodate the interests that reflected Congressional
20 enactment of the statute of limitations for the Clayton
21 Act to begin with.

22 QUESTION: What would you suppose -- What
23 would you say if Rule 23 itself said that when a class
24 action is filed, it shall suspend the filing of -- the
25 running of a statute of limitations, but only for so

1 long, but only up until the time the action is --
2 MR. NAHMOD: Well, Your Honor, in that case,
3 we would have to skip both our first and second
4 arguments and get to a very difficult and broad issue
5 involving the validity of that as a practical --

6 QUESTION: The constitutionality.

7 MR. NAHMOD: Not constitutionality, no. We
8 have raised no constitutional issues here. We are
9 talking about the --

10 QUESTION: Validity?

11 MR. NAHMOD: -- validity as applied to these
12 Puerto Rico plaintiffs of the Rule 23 -- the Rules
13 Enabling Act issue. This will be a rules enabling Act
14 question.

15 QUESTION: Well, but the Rule 23 is a
16 Congressional enactment.

17 MR. NAHMOD: Yes, it is, Your Honor.

18 QUESTION: But it also provides in relevant
19 part that the rules must be procedural for one thing,
20 and secondly, they must not abridge substantive rights
21 under state law. That is our third argument. We need
22 get nowhere near the third argument, it seems to me,
23 Your Honor, if we read American Pipe narrowly. This was
24 our first argument for the proposition that this Court
25 held in American Pipe that one must look at the

1 limitation scheme for the particular substantive cause
2 of action, and when we have a Section 1983 class action,
3 as Justice White mentioned earlier, we don't have a
4 particular statute of limitations. Congress has left
5 that open.

6 QUESTION: May I ask you a question?

7 MR. NAHMOD: Of course.

8 QUESTION: Under your view of the Court of
9 Appeals opinion, what is the source of law that
10 determined the fact that there should be tolling? Was
11 it federal or state?

12 MR. NAHMOD: The Court of Appeals seemed to
13 rely solely on state law, both with respect to general
14 tolling effect and precise tolling effect.

15 QUESTION: What do you think the consequence
16 would have been if the federal Rule 23 read the way
17 Justice White says, that there always should be tolling
18 for just this period, and there were a Puerto Rican
19 statute that said there shall not be tolling in any
20 class action -- class action shall not toll? What would
21 be the right answer?

22 MR. NAHMOD: I understand, Your Honor. We are
23 talking about a Rule 23 interpretation now, general --

24 QUESTION: Well, I am asking, would there be
25 -- would there be tolling if you had a conflict between

1 the language of Rule 23, that talked about class actions
2 generally, and you had these individual actions in which
3 the plaintiffs would claim there was tolling on the
4 basis of Rule 23 but the defendants would say, no, but
5 we have a Puerto Rican statute that says we never toll.

6 MR. NAHMOD: In that situation, assuming Rule
7 23 as applied would be valid under the Rules Enabling
8 Act, that would be the end of it. We would concede
9 that. If I understand your question. If Rule 23 itself
10 provided that there were a tolling rule of suspension in
11 all class actions.

12 QUESTION: Well, don't you think -- you don't
13 -- suppose we read American Pipe as saying precisely
14 that.

15 MR. NAHMOD: Your Honor --

16 QUESTION: As interpreting Rule 23 as
17 containing such a provision.

18 MR. NAHMOD: Your Honor, that gets -- Your
19 Honor, we submit that American Pipe does not do that.
20 The American Pipe rule is a judicially created rule
21 reflecting --

22 QUESTION: Well, it is a construction --

23 MR. NAHMOD: Pardon?

24 QUESTION: It is a construction of some
25 federal law, isn't it?

1 MR. NAHMOD: It is not an interpretation of
2 Rule 23 as such, Your Honor.

3 QUESTION: Oh, it isn't?

4 MR. NAHMOD: It is a judicially created common
5 law procedural rule.

6 QUESTION: But it is certainly based on Rule
7 23.

8 MR. NAHMOD: It is based upon or related to
9 the interests protected by Rule 23, but Your Honor, Rule
10 23 on its face says nothing at all about tolling. The
11 advisory committee report --

12 QUESTION: Well, Rule 26 or whatever rule it
13 is that allows an imposition of sanctions for violation
14 of discovery may not say anything about dismissal, but
15 certainly the courts were free to find that dismissal
16 was an appropriate sanction. I think most courts in
17 saying that would say they were interpreting Rule 26.

18 MR. NAHMOD: Your Honor, there is a difference
19 in our opinion between a judicial decision interpreting
20 a rule and a judicial decision which sets out its own
21 rule simply by looking at interests set out in, say,
22 Rule 23. This Court said time and again in the American
23 Pipe case that it is a judicial -- judicially created
24 tolling rule that we are setting forth. This Court was
25 concerned in American Pipe with its power, its power to

1 toll statutes of limitations in federal court.

2 QUESTION: Well, however you put it, it is
3 nonetheless a federal law rule about the impact of a
4 class action on the statute of limitations.

5 MR. NAHMOD: But it is a judicially created --

6 QUESTION: It may be, but it still is a
7 federal rule.

8 MR. NAHMOD: But Your Honor, that brings us to
9 Section 1988, because Section 1988 sets out --

10 QUESTION: And suppose American Pipe had just
11 said that we -- in so many words that this is the impact
12 of a filing of a class action on the statute of
13 limitations in all kinds of actions, no matter what. We
14 just want to settle it.

15 MR. NAHMOD: And we would submit that because
16 of the mandate of Section 1988, that is improper to do,
17 in the same way that this Court rejected the propriety
18 of a judicially created rule of tolling in the Board of
19 Regents versus Tomanio case, in the same way this Court
20 rejected the propriety of a judicially created rule of
21 survivorship in Robertson v. Wegman. It is
22 inappropriate -- and this is our second argument -- it
23 is inappropriate with Section 1983 class actions.

24 QUESTION: But 1988 just says, the federal law
25 is in a sense non-existent. You concede that you

1 wouldn't have this kind of an argument if Section -- if
2 Rule 23 on its face announced the American Pipe type of
3 rule.

4 MR. NAHMOD: Well, Your Honor, the
5 concession --

6 QUESTION: Because then the federal law
7 wouldn't be deficient for purposes of 1988.

8 MR. NAHMOD: If the earlier concession was
9 limited, we would still argue, even if Rule 23 governed
10 this, that one would have to still look at the
11 underlying cause of action.

12 QUESTION: Well, I understand that.

13 MR. NAHMOD: For its limitation scheme.

14 QUESTION: But you are talking about really
15 fashioning a tolling rule in two different ways under
16 federal, aren't you? In Tomanio the question was, do
17 you fashion a federal rule solely for 1983 type cases
18 under 1988 rather than a federal rule all across the
19 board based on the Federal Rules of Civil Procedure.

20 MR. NAHMOD: Yes, Your Honor. We suggest that
21 when this Court spoke in the Tomanio case about Section
22 1988, it was basing its reading of Section 1988 on the
23 existence of a void in federal statutory law. We submit
24 that the judicial tolling rule of American Pipe if such
25 should be is not a federal statute. It is a judicially

1 created rule. It doesn't matter, it seems to us,
2 whether that --

3 QUESTION: So it can't supply the void, the
4 federal void for purposes of 1988?

5 MR. NAHMOD: Not at all, no. Section 1988 is
6 an independent -- is a federal statute which this Court
7 must follow in Section 1983 cases and other cases to
8 which it might be applicable. This Court does not have
9 the power, we submit, under Section 1988, to create a
10 federal procedural common law in this -- in this
11 respect, unless it is inconsistent, unless it is
12 inconsistent with the policy underlying Section 1983.
13 There has been no such claim by the petitioners in these
14 cases.

15 QUESTION: In your view, would the limitations
16 issue be any different if this litigation, which is an
17 individual litigation following the class action, had
18 been filed in the state court rather than the federal
19 court?

20 MR. NAHMOD: Yes, Your Honor. That is one of
21 our points. It seems to us that -- it seems to us that
22 if indeed the petitioners are correct in their argument,
23 then it would make a difference whether a Section 1983
24 class action were brought in federal court or if it were
25 brought in state court, because surely with respect to

1 what the state court would do, it would apply its own
2 tolling law of renewal.

3 QUESTION: Well, not if Justice White's
4 hypothesis is right, that as a matter of federal law
5 which applies and which dictates the consequence of any
6 class action --

7 MR. NAHMOD: But that is only -- that is only
8 procedural.

9 QUESTION: -- in any federal claim later
10 asserted, what difference would it make if the federal
11 claim --

12 MR. NAHMOD: Well, Your Honor, that would only
13 be, under Justice White's approach, a Rule 23
14 interpretation.

15 QUESTION: Well, that's right.

16 MR. NAHMOD: Certainly, a Rule 23
17 interpretation does not bind a Puerto Rico court or any
18 state court.

19 QUESTION: Well, the Puerto Rico court is
20 entertaining the federal claim, federal cause of action
21 under 1983.

22 MR. NAHMOD: A Rule -- we --

23 QUESTION: I mean, it seems to me that is the
24 logic of the contrary view.

25 MR. NAHMOD: We respectfully disagree, Your

1 Honor. In that case, this Court, through a Rule 23
2 interpretation, would be setting out what is a
3 substantive matter in the state courts.

4 QUESTION: Well, the substantive matter in a
5 1983 case. It is a federal claim, even though it is
6 heard in the state court.

7 MR. NAHMOD: But it is not a question of
8 substantive law in the same way as the question of when
9 a federal cause of action accrues this.

10 QUESTION: Well, it seems to me that is --
11 that argument is just as strong if the case is in the
12 federal court as it is in the state court.

13 MR. NAHMOD: How so, Your Honor?

14 QUESTION: Well --

15 MR. NAHMOD: If I may ask.

16 QUESTION: You don't have the right to
17 question.

18 MR. NAHMOD: I am sorry, Your Honor. I am
19 sorry. I am a teacher. I am unaccustomed -- I
20 apologize.

21 (General laughter.)

22 QUESTION: Well, if it is a rhetorical
23 question.

24 QUESTION: No, but your argument -- your
25 argument is that it is a procedural matter, and if it is

1 a procedural matter, under 1988, governed by state law,
2 it seems to me your argument is just as strong whether
3 the individual's action that follows the class action is
4 filed in federal court or in state court. I don't see
5 the distinction between --

6 MR. NAHMOD: Your Honor, our third argument is
7 relevant if this Court, first of all, rejects our narrow
8 reading of American Pipe, and secondly, it rejects our
9 Section 1988 argument with respect to a void in federal
10 statutory law, which we submit exists, because the
11 American Pipe rule is a judicially created rule of
12 tolling and does not apply, and is not federal statutory
13 law.

14 If the American Pipe case is a Rule 23
15 interpretation across the board, and it applies to all
16 federal class actions, including not just 1983 class
17 actions but diversity class actions, then we submit that
18 it would raise several -- some very serious problems
19 under the Rules Enabling Act, at least as applied to
20 these Puerto Rico plaintiffs, because the Rules Enabling
21 Act sets out a limitation on Congressional power and
22 this Court's power to promulgate rules of procedure.
23 Such rules must not abridge or modify substantive
24 rights.

25 The Puerto Rico Supreme Court has

1 characterized its limitation scheme as substantive.
2 Now, I grant you that is not enough, because whether
3 substantive rights are abridged by a federal rule is a
4 question of federal law, not a question predominantly of
5 state law, but yet this Court has in the past looked to
6 the importance of the particular limitations scheme or
7 the particular rule of the state and asked whether that
8 is substantive.

9 Now, the Court has done so on the Ragan case
10 and even more recently in the Walker case.

11 QUESTION: But that is Erie analysis, isn't
12 it? Ragan was basically an Erie type analysis.

13 MR. NAHMOD: Yes, but we are using -- that's
14 correct, Justice Rehnquist. We are using Ragan and
15 Walker for the proposition that one cannot separate
16 limitations and tolling provisions from one another.

17 QUESTION: What is the rule in diversity under
18 Erie where you want the case to come out the same way in
19 state courts -- in federal courts as it would in state
20 courts? That may have no application to a non-diversity
21 case.

22 MR. NAHMOD: It may have no application to a
23 non-diversity case, Your Honor, but as we have argued,
24 this is a Section 1983 case, and Congress has left
25 certain matters silent in Section 1983 cases. One of

1 those matters is a limitation scheme and its tolling
2 provisions.

3 So, there is only an analogy to the Rules of
4 Decision Act. We don't claim that the Rules of Decision
5 Act applies here. I think this Court suggested in the
6 Holmberg case in the forties that the Rules of Decision
7 Act does not generally apply to federal statutory causes
8 of action.

9 The Puerto Rico Supreme Court has
10 characterized its statutes of limitations as
11 substantive. Those statutes of limitations and tolling
12 provisions are not designed for procedural fairness as
13 such, but are rather designed to protect states of mind
14 and social utility. It is therefore our view that at
15 least as applied to these plaintiffs in these cases, the
16 rules -- Rule 23, given the very broad interpretation
17 that has been suggested, would violate the Rules
18 Enabling Act, and as such it could not validly be
19 applied to these Puerto Rico plaintiffs.

20 Your Honor, if I may say a few more things in
21 connection with some of the observations that were made
22 by the defendants, we did not simply wait for four or
23 five months after class certification was denied to file
24 these individual lawsuits. The plaintiffs here moved
25 for leave to join as parties plaintiffs, and that motion

1 was denied, and the motion for reconsideration was
2 denied as well.

3 If there are no other questions, I am
4 finished.

5 CHIEF JUSTICE BURGER: Very well. We will
6 resume at 1:00 o'clock at this point for the rebuttal.

7 (Whereupon, at 12:00 o'clock p.m., the Court
8 was recessed, to reconvene at 1:00 o'clock p.m. of the
9 same day.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 CHIEF JUSTICE BURGER: Mr. DeGooyer.

3 ORAL ARGUMENT OF JOHN G. DE GOOYER, ESQ.,

4 ON BEHALF OF THE PETITIONERS - REBUTTAL

5 MR. DE GOOYER: Mr. Chief Justice, thank you.

6 Simply two points. Particularly in response to the
7 questioning of Justice Stevens and Justice O'Connor, I
8 wish certainly to make clear that while we disagree and
9 have disagreed with the First Circuit's view of Puerto
10 Rico law, our position does not depend on a finding by
11 this Court that the First Circuit misconstrued Puerto
12 Rico law.

13 Our position is that Rule 23 controls either
14 as an overriding general federal rule of procedure or,
15 if necessary, as the federal choice under Section 1988.

16 Finally, it must be kept in mind that, as we
17 have suggested to the Court, that there is a purpose to
18 be served by the rule of American Pipe. Its purpose is
19 to promote judicial efficiency and economy by providing
20 not only that the running of the statutes of limitations
21 be tolled, but that the tolling end as soon as it has
22 served its purpose.

23 As this Court said in American Pipe, this rule
24 of suspension is the "rule most consistent with federal
25 class action procedure."

1 Thank you very much.

2 QUESTION: Counsel, could I ask you a question
3 on American Pipe?

4 MR. DE GOOYER: Yes, Justice Blackmun.

5 QUESTION: As I understand it, your position
6 is that American Pipe selected a suspension rule and
7 rejected a renewal rule, correct?

8 MR. DE GOOYER: I would certainly say it
9 selected a suspension rule, that's correct, for the
10 reasons I have stated, and if that necessarily implies
11 rejecting a renewal rule, that is correct, but I don't
12 know that we need reach that.

13 QUESTION: Well, my question isn't really
14 whether that is isn't dictum in American Pipe, because
15 under either rule those plaintiffs have been taken care
16 of.

17 MR. DE GOOYER: I am not certain I understand
18 your question, Justice Blackmun.

19 QUESTION: Well, the plaintiffs' claims there
20 were found to be timely under the suspension rule, but
21 wouldn't they have been timely under a renewal rule as
22 well, and therefore isn't the statement on which you
23 rely in American Pipe dictum?

24 MR. DE GOOYER: The suspension statement. Is
25 that what Your Honor means?

1 QUESTION: Yes.

2 MR. DE GOOYER: I am still not sure I
3 understand that question. Whether there was a renewal
4 by the filing of the class action? Is that what Your
5 Honor means?

6 QUESTION: Let me start over again. Your
7 position is that American Pipe selected a suspension
8 rule, and you hesitate a little by saying, well, maybe
9 it didn't reject a renewal rule, and my point is that
10 even if it did purport to select a suspension rule,
11 wouldn't that aspect of the decision be dictum?

12 MR. DE GOOYER: I think not. I think what the
13 Court was doing was interposing the power of equity to
14 freeze the rights of the parties under the statute of
15 limitations as of the time the class action suit was
16 filed to determine whether the class action should be
17 maintained, and when it concluded that it should not,
18 equity removed itself from the -- from the law and the
19 statute simply resumed to run. I don't --

20 QUESTION: In that case, the plaintiff's
21 claims would have been timely under either rule.

22 MR. DE GOOYER: The plaintiffs in this case?

23 QUESTION: No, in American Pipe. Therefore it
24 is dictum.

25 MR. DE GOOYER: I don't quite follow whether

ected
'83
/1

1 it's dictum, but I find that they accepted and adopted a
2 rule that found them timely. Yes, that's true, Justice
3 Blackmun.

4 CHIEF JUSTICE BURGER: Thank you, gentlemen.
5 The case is submitted.

6 (Whereupon, at 1:03 p.m., the case in the
7 above-entitled matter was submitted.)

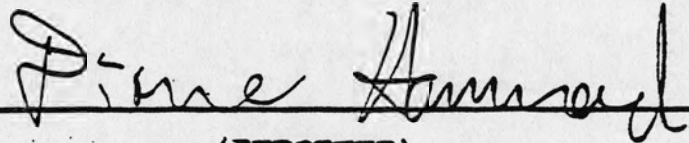
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of: CARLOS CHARDON, ETC., ET AL., Petitioners v. JUAN FUMERO SOTO, ET AL.

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

BY

A handwritten signature in cursive script, appearing to read "Peter H. Hamer", written over a horizontal line.

(REPORTER)

RECEIVED
SUPERIOR COURT, U.S.
MARSHALS OFFICE

983 MAR 30 AM 9 07