

# Daily Journal

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## 25<sup>TH</sup> ANNUAL CALIFORNIA LAWYER ATTORNEYS OF THE YEAR

### *Ramos v. Louisiana*

#### CRIMINAL JUSTICE REFORM, APPELLATE LITIGATION

The challenge for Fisher was to persuade the U.S. Supreme Court that its own longstanding precedent on the right to a unanimous jury verdict in serious criminal cases required a second look. He overcame the odds and prevailed, 6-3, attaining an ideologically splintered majority that included Justices Ruth Bader Ginsburg, Sonia M. Sotomayor, Brett M. Kavanaugh and Neil M. Gorsuch, who wrote the opinion.

Fisher saw a chance to strike a blow against racism. Both Louisiana and Oregon allowed split jury verdicts until Louisiana changed its law in 2019 for crimes committed before then; all other states have long required unanimity. The Louisiana law at issue and a similar Oregon statute had “racially biased origins,” Sotomayor wrote.

“The case was important because it was an opportunity to stamp out a scurrilous vestige of Jim Crow that had persisted far too long,” Fisher said. He added that it was particularly rewarding too “to establish a fundamental building block of our system, the basis and essence of a fair trial.”

The argument centered on the Sixth Amendment, which requires a unanimous jury to convict, and its application to the states through the

## Persuading the nation’s highest court to address systemic reforms in criminal matters

Fourteenth Amendment. The text, structure, history and function of the Jury Trial Clause all point to the same conclusion, Fisher contended: that unanimity is vital to the jury trial right guarantee. And because the Supreme Court has repeatedly rejected the notion of partial incorporation or watered-down versions of the Bill of Rights, the Fourteenth Amendment obligates to abide by the Sixth Amendment’s unanimity guarantee.

Despite the court’s having held in 1972 that the Sixth Amendment jury unanimity right does not apply to state trials, Gorsuch held otherwise, ruling that Evangelisto Ramos’ 2016 second-degree murder conviction in Louisiana for the stabbing death of Trinece Fedison was unconstitutionally flawed by a 10-2 guilty verdict. Ramos was serving life without parole; he remains detained and his case has been remanded to the Louisiana district attorney for a ruling on whether to recharge and retry him. That decision has been delayed by the Covid-19 courts slowdown, Fisher said.

Fisher, who has argued more than 40 cases before the high court, said the stare decisis doctrine of deferring to prior outcomes was a chief obstacle. “It’s a delicate and momentous request to ask the justices to overturn precedent.” In his favor, he added, were “a combination of overwhelming historical support for our position and the fact that the precedent we sought to overturn had itself been a splintered decision.” That precedent, *Apocaca v. Oregon*, was the result of a 4-4 tie with Justice



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Lewis F. Powell Jr. casting the fifth vote to exclude state courts from the Sixth Amendment unanimity rule.

Also in the mix were the vestiges of racism the challenged law reflected. Gorsuch noted that Louisiana’s law, enacted in 1898, silenced Black jurors who were often in a small minority in trials then.

Fisher’s Supreme Court cases focus on criminal procedure. They include *Riley v. California*, in which he persuaded the justices for the first time to apply the Fourth Amendment’s protections against unreasonable searches to digital information on smartphones. On Feb. 24, 2021, he argued for the plaintiff in *Lange v. California* that “hot pursuit” for misdemeanors does not allow police warrantless entry into a home. Since 2018 he has been a special counsel at O’Melveny & Myers LLP, with whom he and the Stanford Supreme Court clinic partnered in

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the *Ramos* case. Also involved as local counsel were G. Ben Cohen, Shanita Farris and Erica Navalance of The Promise of Justice Initiative in New Orleans, La.

The *Ramos* outcome has put thousands of split-verdict convictions that are on direct appeal up for reconsideration. A new case, *Edwards v. Vannoy*, will decide whether *Ramos* will apply retroactively to finalized cases.

*Ramos*, argued in early October 2019, wasn’t decided until late April 2020. “It took a long time to get that opinion,” Fisher said. “Not that you’re going to complain, but it was a little sweeter when it came.”

— John Roemer