

The Burger Court Opinion Writing Database

United States v. Kordel

397 U.S. 1 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

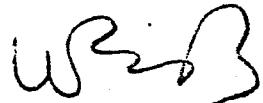
CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1970

Re: No. 87 - U. S. v. Kordel

Dear Potter:

I join in your February 6 circulated opinion.



W. E. B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 19, 1970

Re: No. 87 - U. S. v. Kordel

Dear Potter:

I agree with your proposal in Memo of

February 17, 1970.

WERB

W.E.B.

Mr. Justice Stewart

cc: The Conference

February seventh
1970

Dear Potter:

In No. 87 -- United States v. Kordel, I voted the other way. But I have decided not to note my dissent nor to write in dissent, but to acquiesce in the opinion as you have written it.

If, however, someone else writes in dissent, I will reconsider the whole question at that time. But unless you hear from me, you can count me as being with you.

William O. Douglas

Mr. Justice Stewart

~~DOCKET NO.~~
of the United States
D. C. 20543

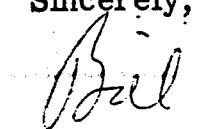
~~DOCKET NO.~~
February 10, 1970

RE: ~~No. 31-101~~ United States v. Kordel

Dear ~~Mr. Stewart~~,

~~Mr. Stewart~~ is ~~not~~ available. Please join
me.

Sincerely,



W.J.B. Jr.

Mr. ~~Stewart~~ Stewart

cc: ~~Mr. Stewart~~ re

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 18, 1970

RE: No. 87 - United States v. Kordel

Dear Potter:

I agree with your recommendation in the above that the corporation's application for rehearing be denied without comment on the Order List following announcement of the opinion in the above.

Sincerely,


W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

No. 87.—OCTOBER TERM, 1969

From: Stewart FEB. 6 1970

United States, Petitioner,
v.
Lelord Kordel and Alfred Feldten.

Circulated: _____
On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.
Recirculated: _____

[February —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents are the president and vice president, respectively, of Detroit Vital Foods, Inc. They were convicted in the United States District Court for the Eastern District of Michigan, along with the corporation, for violations of the Federal Food, Drug, and Cosmetic Act.¹ The Court of Appeals for the Sixth Circuit reversed the respondents' convictions on the ground that the Government's use of interrogatories to obtain evidence from the respondents in a nearly contemporaneous civil condemnation proceeding operated to violate their Fifth Amendment privilege against compulsory self-incrimination.² We granted certiorari to consider the constitutional questions raised by the Government's invocation of simultaneous civil and criminal proceedings in the enforcement of federal law.³

In March 1960 the Division of Regulatory Management of the Food and Drug Administration (hereafter

¹ 21 U. S. C. § 301 *et seq.*

² *United States v. Detroit Vital Foods, Inc.*, 407 F. 2d 570. The Court of Appeals initially reversed the judgments of conviction of all three defendants, but on the Government's petition for rehearing it affirmed with respect to the corporation.

³ 395 U. S. 932.

STYLISTIC CHANGES THROUGHOUT.
PP. 1-4, 6, 8, 10

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 87.—OCTOBER TERM, 1969

From: Stewart, J.

Circulated:

FEB 10 1970

United States, Petitioner,
v.
Lelord Kordel and Alfred Feldten.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[February —, 1970]

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³ 395 U. S. 932.

pp. 8, 11
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The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES: Stewart, J.

No. 87.—OCTOBER TERM, 1969

Circulated:

Recirculated: FEB 12 19

United States, Petitioner,
v.
Lelord Kordel and Alfred Feldten.

On Writ of Certiorari
to the United States
Court of Appeals for
the Sixth Circuit.

[February —, 1970]

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The respondents are the president and vice president, respectively, of Detroit Vital Foods, Inc. They were convicted in the United States District Court for the Eastern District of Michigan, along with the corporation, for violations of the Federal Food, Drug, and Cosmetic Act.¹ The Court of Appeals for the Sixth Circuit reversed the respondents' convictions on the ground that the Government's use of interrogatories to obtain evidence from the respondents in a nearly contemporaneous ~~civil condemnation proceeding operated to violate their~~ Fifth Amendment privilege against compulsory self-incrimination.² We granted certiorari to consider the questions raised by the Government's invocation of simultaneous civil and criminal proceedings in the enforcement of federal law.³

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³ 395 U. S. 932.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 17, 1970

MEMORANDUM TO THE CONFERENCE

No. 87 - United States v. Kordel

Pending the disposition of this case, we have held the petition of Detroit Vital Foods for rehearing of our denial of its petition for a writ of certiorari. 395 U.S. 935 (No. 1285, O. T. 1968). As noted in the opinion I have circulated, the Court of Appeals initially overturned the corporation's conviction along with those of the respondents, but reversed itself on the Government's petition for rehearing and affirmed with respect to the company. That affirmance, as the corporation now concedes in its application for rehearing, amounts to a sub silentio rejection of all other contentions advanced by the corporation before the Court of Appeals. Thus, although we remand in No. 87 for consideration of the remaining claims urged by the individual defendants not yet reached by the Court of Appeals, there is no reason to suppose that that court has not already given full consideration to the errors claimed by the corporation. Accordingly, I recommend that the corporation's application for rehearing be denied without comment on the Order List following announcement of the opinion in No. 87.

P.S.

SEARCHED 6, 1970

REO. 87 - 1970 - LATE V. REO. 101

SEARCHED

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 9, 1970

Re: No. 87 - U. S. v. Lelord Kordel and
Alfred Feldten

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference