

# The Burger Court Opinion Writing Database

*United States v. Calandra*

414 U.S. 338 (1974)

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. 20530

CHAMBERS OF  
THE CHIEF JUSTICE

January 3, 1974

Re: No. 72-734 - United States v. Calandra

Dear Lewis:

Please join me.

Regards,

WJB

Mr. Justice Powell

Copies to the Conference

## Supreme Court of the United States

## *Memorandum*

19

210

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 12, 1973

Dear Bill:

Please join me in your dissent in  
72-734, U.S. v. Calandra.

*W. O. Douglas*  
William O. Douglas

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 21, 1973

MEMORANDUM TO THE CONFERENCE

RE: No. 72-734 United States v. Calandra

In due course I shall circulate a dissent  
in the above.

W.J.B.Jr.

*Circulate*  
(2-12-73)

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No 72-734

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
John P. Calandra. } peals for the Sixth Circuit.

[December —, 1973]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that the exclusionary rule in search and seizure cases does not apply to grand jury proceedings because *the* objective of the rule is "to deter future unlawful police conduct," *ante*, p. 9, and "it is unrealistic to assume that application of the rule to grand jury proceedings would significantly further that goal." *Id.*, 13. This downgrading of the exclusionary rule to a determination whether its application in a particular type of proceeding furthers deterrence of future police misconduct reflects a startling misconception, unless it is a purposeful rejection, of the historical objective and purpose of the rule.

The commands of the Fourth Amendment are of course directed solely to public officials. Necessarily therefore only official violations of those commands could have created the evil that threatened to make the Amendment a dead letter. But curtailment of the evil, if a consideration at all, was at best only a hoped for effect of the exclusionary rule, not its ultimate objective. Indeed, there is no evidence that the possible deterrent effect of the rule was given any attention by the judges chiefly responsible for its formulation. Their concern as guardians of the Bill of Rights was to fashion an enforcement tool to give content and meaning to the Fourth Amendment's guarantees. They thus bore out

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 72-734

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
John P. Calandra. } peals for the Sixth Circuit

(December — 1973)

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

The Court holds that the exclusionary rule in search and seizure cases does not apply to grand jury proceedings because the principal objective of the rule is "to deter future unlawful police conduct," *ante*, p. 9, and "it is unrealistic to assume that application of the rule to grand jury proceedings would significantly further that goal." *Id.*, 13. This downgrading of the exclusionary rule to a determination whether its application in a particular type of proceeding furthers deterrence of future police misconduct reflects a startling misconception, unless it is a purposeful rejection, of the historical objective and purpose of the rule.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 26, 1973

No. 72-734 - U. S. v. Calandra

Dear Lewis,

Upon the understanding that you will consider the editorial changes we discussed on the telephone today, I am glad to join your opinion for the Court in this case.

Sincerely yours,

*P. S.*

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 23, 1973

Re: No. 72-734 - United States v. Calandra

Dear Lewis:

Please join me in your opinion in this  
case.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 28, 1973

Re: No. 72-734 -- United States v. Calandra

Dear Lewis:

I am waiting for Bill Brennan's dissent.

Sincerely,

  
T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1973

Re: No. 72-734 -- U. S. v. Calandra

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 26, 1973

Re: No. 72-734 - U.S. v. Calandra

Dear Lewis:

I shall be with you in this case, I am sure, but might I offer the following suggestions for your consideration:

1. I am somewhat disturbed about the two references, on page 8, to restraint of the grand jury. This aspect is not before us here, and I would prefer not to cover it by dictum at this time. Could we omit the first full sentence on page 8 and the last two sentences of Part II?

2. I had a little trouble with the very end of the opinion. I think my difficulty would be alleviated if the word "The" at the beginning of the next to the last sentence of the penultimate paragraph were changed to "Our." I admit that this is a trivial suggestion, but it seems to straighten me out.

Sincerely,



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

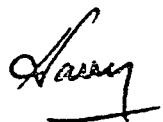
November 28, 1973

Re: No. 72-734 - U. S. v. Calandra

Dear Lewis:

I am pleased to join your opinion as re-circulated November 27.

Sincerely,



Mr. Justice Powell

cc: The Conference

To: The Chief Justice  
Mr. Justice Douglas  
✓ Mr. Justice Brennan  
Mr. Justice Marshall  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun

**1st DRAFT**

From: Powell, J.

**SUPREME COURT OF THE UNITED STATES**

Received: 11-21-73

No. 72-734

circulated:

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
John P. Calandra. | peals for the Sixth Circuit.

[December 11, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a witness summoned to appear and testify before a grand jury may refuse to answer questions on the ground that they are based on evidence obtained from an unlawful search and seizure. This issue is of considerable importance to the administration of criminal justice.

1

On December 11, 1970, federal agents obtained a warrant authorizing a search of respondent John Calandra's place of business, the Royal Machine and Tool Company in Cleveland, Ohio. The warrant was issued in connection with an extensive investigation of suspected illegal gambling operations. It specified that the object of the search was the discovery and seizure of bookmaking records and wagering paraphenalia. A master affidavit submitted in support of the application for the warrant contained information derived from statements by confidential informants to the Federal Bureau of Investigation (FBI), from physical surveillance con-

Changer Pg 7, 8, 10, 11, 13,  
14, 15, 16 and stylized  
changers

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated:

No. 72-734

Recirculated: NOV 27 1973

United States, Petitioner, | On Writ of Certiorari to the  
v | United States Court of Ap-  
John P. Calandra. | peals for the Sixth Circuit.

[December — 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a witness summoned to appear and testify before a grand jury may refuse to answer questions on the ground that they are based on evidence obtained from an unlawful search and seizure. The issue is of considerable importance to the administration of criminal justice

On December 11, 1970, federal agents obtained a warrant authorizing a search of respondent John Calandra's place of business, the Royal Machine and Tool Company in Cleveland, Ohio. The warrant was issued in connection with an extensive investigation of suspected illegal gambling operations. It specified that the object of the search was the discovery and seizure of bookmaking records and wagering paraphernalia. A master affidavit submitted in support of the application for the warrant contained information derived from statements by confidential informants to the Federal Bureau of Investigation (FBI), from physical surveillance con-

*changes 4, 9, 13, 14, 17*

To: The Clerk of the Court  
Mr. Justice BREWSTER  
Mr. Justice CLARK  
Mr. Justice HARLAN  
Mr. Justice MARSHALL  
Mr. Justice MURPHY  
Mr. Justice STEWART  
Mr. Justice THOMAS  
Mr. Justice WHITE

**4th DRAFT**

Printed: December 11, 1973

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**SUPREME COURT OF THE UNITED STATES**

No. 72-734

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
John P. Calandra. } peals for the Sixth Circuit.

[December 11, 1973]

Mr. JUSTICE POWELL delivered the opinion of the Court

This case presents the question whether a witness summoned to appear and testify before a grand jury may refuse to answer questions on the ground that they are based on evidence obtained from an unlawful search and seizure. The issue is of considerable importance to the administration of criminal justice.

On December 11, 1970, federal agents obtained a warrant authorizing a search of respondent John Calandra's place of business, the Royal Machine and Tool Company in Cleveland, Ohio. The warrant was issued in connection with an extensive investigation of suspected illegal gambling operations. It specified that the object of the search was the discovery and seizure of bookmaking records and wagering paraphenalia. A master affidavit submitted in support of the application for the warrant contained information derived from statements by confidential informants to the Federal Bureau of Investigation (FBI), from physical surveillance con-

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 16, 1974

FILE COPY

PLEASE RETURN  
TO FILE

Case Held for No. 72-734 United States v. Calandra

MEMORANDUM TO THE CONFERENCE:

No. 72-1649 Westerberg v. District Court in and for  
the Second Judicial District of Colorado, et al

Petitioners were subpoenaed to testify before a state grand jury empaneled to investigate certain criminal activities. After having been notified that the grand jury intended to ask questions based on information obtained pursuant to court-approved electronic surveillance, petitioners moved unsuccessfully in the state courts for a suppression hearing. Petitioners later appeared before the grand jury but refused to testify, contending that the wiretaps violated the Fourth Amendment. Petitioners were then granted transactional immunity but again refused to testify. After the state trial court announced its intention to hold a suppression hearing, the State applied to the Colorado Supreme Court for a writ of prohibition. That court granted the writ, holding that petitioners' claim could only be considered after they had refused to testify and been cited for contempt.

Petitioners' contentions are essentially the same as those in Calandra. No claim is made under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. §§ 2510, et seq. I would therefore deny certiorari.

L. F. P., Jr.

ss

*L. F. P.*

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 23, 1973

Re: No. 72-734 - United States v. Calandra

Dear Lewis:

I anticipate joining your fine opinion in this case. I am presently uneasy -- very likely unjustifiably so -- by two statements in the opinion, both on page 8. The first is:

"When the grand jury itself threatens to commit a wrong, it may be restrained."

The second is:

"And presumably grand jurors who themselves threaten to conduct an illegal search may be restrained like any others. Judicial intervention is appropriate in such cases because it may prevent the wrong before it occurs."

Without having gone into the subject as deeply as I know you have in preparing this opinion, I had thought that the principal control over grand juries is that which you detail in footnote No. 4 on page 5:

"In particular, the grand jury must rely on the court to compel production of books, papers, documents and the testimony of witnesses, and the court <sup>may</sup> quash or modify a subpoena on motion . . ."

Though there may be cases of this Court which support injunctions against grand juries themselves, I am not familiar with them. I am worried that the two quoted sentences may be thought to authorize injunction actions which would cut entirely against the thrust of your opinion here, and of Potter's opinion of last year in Mara and Dionisio.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bell".

Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 28, 1973

Re: No. 72-734 - United States v. Calandra

Dear Lewis:

Please join me in your circulation of November 27th.

Sincerely,



Mr. Justice Powell

Copies to the Conference