

The Burger Court Opinion Writing Database

Bellis v. United States

417 U.S. 85 (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. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1974

Re: 73-190 - Bellis v. U. S.

Dear Thurgood:

Please join me.

Regards,

W. B.

Mr. Justice Marshall

Copies to the Conference

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 73-190

Circulate:

5-6

Isadore H. Bellis, Petitioner, } Recirculated: _____
v. } On Writ of Certiorari to the _____
United States. } United States Court of Appeals for the Third Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

Bellis, the petitioner, was formerly one of three partners in a small law firm; the partnership was dissolved, and Bellis currently has lawful possession of the firm's records. The grand jury has subpoenaed those records apparently for the purpose of a tax investigation directed against Bellis personally.* He refused to comply, claiming his Fifth Amendment privilege against self-incrimination, but the Court today holds that privilege not available to Bellis. I think the case is clearly controlled by *Boyd v. United States*, 116 U. S. 616, and thus I dissent.

In *Boyd* the court held that the Fifth Amendment privilege extends to the production of papers personally held as well as to the compulsion of testimony. "We have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself." *Boyd, supra*, at 633. In purporting to distinguish this case from *Boyd*, the Court relies on *United States v. White*, 322 U. S. 694, involving a subpoena directed to a union, not to any individual, for the production of official union documents. *White* in turn relied on cases holding that the privilege against

* See Appendix, at A24, Tr. of Oral Arg., at 8.

10 ~~m~~ The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3

3rd DRAFT

SUPREME COURT OF THE UNITED STATES; J.

Circulate:

No. 73-190

Recirculated:

5-8

Isadore H. Bellis, Petitioner,
v.
United States. } On Writ of Certiorari to the
United States Court of
Appeals for the Third
Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

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* See Appendix, at A24, Tr. of Oral Arg., at 8.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. May 6, 1974

RE: No. 73-190 Bellis v. United States

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1974

Re: No. 73-190, Bellis v. United States

Dear Thurgood,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 8, 1974

Re: No. 73-190, Bellis v. United States

Dear Thurgood,

Although I have joined your opinion for the Court in this case, I agree with the suggestions of Bill Rehnquist and Lewis Powell.

Sincerely yours,

P. S.
/

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 10, 1974

Re: No. 73-190 - Bellis v. United States

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

J. Marshall

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: MAY 3 1974

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-190

Isadore H. Bellis, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States. } Appeals for the Third
Circuit.

[May —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records.

Until 1969, petitioner Isadore Bellis was the senior partner in Bellis, Kolsby & Wolf, a law firm in Philadelphia. The firm was formed in 1955 or 1956. There were three partners in the firm, the three individuals listed in the firm name. In addition, the firm had about six employees: two other attorneys who were associated with the firm, one parttime; three secretaries; and a receptionist. Petitioner's secretary doubled as the partnership's bookkeeper, under the direction of petitioner and the firm's independent accountant. The firm's financial records were therefore maintained in petitioner's office during his tenure at the firm.

Bellis left the firm in late 1969 to join another law firm. The partnership was dissolved, although it is apparently still in the process of winding up its affairs. Kolsby and Wolf continued in business together as a new partnership, at the same premises. Bellis moved

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

8.15
P.
From: Marshall, J.

2nd DRAFT

Recirculated:

Recirculated: MAY 6 1974

SUPREME COURT OF THE UNITED STATES

No. 73-190

Isadore H. Bellis, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1974]

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Until 1969, petitioner Isadore Bellis was the senior partner in Bellis, Kolsby & Wolf, a law firm in Philadelphia. The firm was formed in 1955 or 1956. There were three partners in the firm, the three individuals listed in the firm name. In addition, the firm had about six employees: two other attorneys who were associated with the firm, one parttime; three secretaries; and a receptionist. Petitioner's secretary doubled as the partnership's bookkeeper, under the direction of petitioner and the firm's independent accountant. The firm's financial records were therefore maintained in petitioner's office during his tenure at the firm.

Bellis left the firm in late 1969 to join another law firm. The partnership was dissolved, although it is apparently still in the process of winding up its affairs. Kolsby and Wolf continued in business together as a new partnership, at the same premises. Bellis moved

P. 1-6, 9, 11, 13, 16
To: The Chief Justice
Mr. Justice Douglas
>Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated:

Recirculated: MAY 6 197

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-190

Isadore H. Bellis, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States. | Appeals for the Third
Circuit.

[May —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records.

Until 1969, petitioner Isadore Bellis was the senior partner in Bellis, Kolsby & Wolf, a law firm in Philadelphia. The firm was formed in 1955 or 1956. There were three partners in the firm, the three individuals listed in the firm name. In addition, the firm had about six employees: two other attorneys who were associated with the firm, one parttime; three secretaries; and a receptionist. Petitioner's secretary doubled as the partnership's bookkeeper, under the direction of petitioner and the firm's independent accountant. The firm's financial records were therefore maintained in petitioner's office during his tenure at the firm.

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P. 7, 8, 14, 17

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

4th DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

No. 73-190

Recirculated: MAY 8 1974

Isadore H. Bellis, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States. | Appeals for the Third
Circuit.

[May —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records.

Until 1969, petitioner Isadore Bellis was the senior partner in Bellis, Kolsby & Wolf, a law firm in Philadelphia. The firm was formed in 1955 or 1956. There were three partners in the firm, the three individuals listed in the firm name. In addition, the firm had about six employees: two other attorneys who were associated with the firm, one parttime; three secretaries; and a receptionist. Petitioner's secretary doubled as the partnership's bookkeeper, under the direction of petitioner and the firm's independent accountant. The firm's financial records were therefore maintained in petitioner's office during his tenure at the firm.

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16/17
P. 8, 13, 14, 16/17

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

5th DRAFT

Recirculated: _____

Recirculated: MAY 21 1974

SUPREME COURT OF THE UNITED STATES

No. 73-190

Isadore H. Bellis, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States. | Appeals for the Third
Circuit.

[May —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records.

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Bellis left the firm in late 1969 to join another law firm. The partnership was dissolved, although it is apparently still in the process of winding up its affairs. Kolsby and Wolf continued in practice together as a new partnership, at the same premises. Bellis moved

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1974

Dear Thurgood:

Re: No. 73-190 - Bellis v. United States

Please join me in your circulation of

May 21.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 7, 1974

No. 73-190 Bellis v. United States

Dear Thurgood:

I agree with the suggestions made by Bill Rehnquist in his letter to you of May 4.

The Constitution itself specifies no general right of "personal privacy", and we have been careful not to enunciate any such right in broad and sweeping terms. Rather, an individual's interest in privacy has been recognized on a case-by-case basis as an appendage - where appropriate - to a constitutional right.

It seems to me that the paragraph on p. 7 of your proposed opinion comes fairly close to enunciating a new and far-reaching declaration of constitutional rights.

I also am inclined to agree with Bill's comments in the last paragraph of his letter. The language in question seems addressed primarily to situations not presently before the Court.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1974

No. 73-190 Bellis v. United States

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 4, 1974

Re: No. 73-190 - Bellis v. United States

Dear Thurgood:

I agree with much of your proposed opinion in this case, and of course with the result. I do have serious difficulties with two passages in the present third draft, and wonder if you would give consideration to modifying or deleting them.

On page 7, you state:

"We have often recognized that the Fifth Amendment was intended to permit the individual to construct for himself a sphere of personal privacy around his private life -- his thoughts, his feelings, his writings, and his possessions -- into which the Government cannot enter over his objection. See, e.g., Griswold v. Connecticut, 381 U.S. 479, 484 (1965); Couch v. United States, supra, at 327, 335-336; id., at 349-350 (dissenting opinion);"

This seems to me a more expansive and less precise statement of this aspect of the Fifth Amendment than the cases cited with warrant. Bill Douglas in Griswold simply speaks generally about a right of "privacy", and Lewis Powell in Couch says that the privilege "respects a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation." It seems to me when you extend "sphere" to

a man's "writings and his possessions" and omit any reference to the fact that the privilege is directed to the extraction of "self-condemnation", you have broadened the principle further than any of our cases to date has done.

On page 8, you say that the record must "in fact be organizational records held in a representative capacity and not documents in which the individual has a significant personal interest. In other words, it must be truly meaningful to say that the records demanded are the records of the organization rather than those of any individual, and to fairly describe the individual's possession as being in a representative capacity, as custodian on behalf of the organization, rather than in a personal capacity." Almost identical language appears on page 14 and again on page 17. I certainly agree that an individual holding personal records in a personal capacity could claim whatever privilege the Fifth Amendment gives him and that the government could not rely on White to obtain them. But it seems to me that your language suggests that even though the records are in fact those of a corporation or partnership, if an individual holding them has a "significant personal interest" in them, or if he holds them "in a personal capacity", a different result might be reached here. I do not see how an individual can possess corporate records "in a personal capacity", and in the case of purely financial records such as this, I do not know what you mean when you say that the case might be different if the individual possessing them "has a significant personal interest" in them. Presumably every individual has a significant personal interest in not being incriminated by corporate records in his possession, but since we are affirming the judgment of the Third Circuit here I take it that is not the type of interest to which you refer. I am puzzled by the meaning of this language, and think that perhaps lower courts may be, too.

Sincerely,

ben

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1974

Re: No. 73-190 - Bellis v. United States

Dear Thurgood:

Please join me in your opinion for the Court in this case.

Sincerely,

WR

Mr. Justice Marshall

Copies to the Conference