

# The Burger Court Opinion Writing Database

*United States v. Miller*

425 U.S. 435 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Chambers of the Chief Justice

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

File

Take  
a look

March 30, 1976

✓

Re: 74-1179 - United States v. Miller

Dear Lewis:

I join your proposed opinion of March 25. I  
was ready to reverse this summarily.

Regards,

WFB

Mr. Justice Powell

Copies to the Conference

P.S. [LFP only] Page 11, paragraph V: Should  
"decision" be "judgment"?

~~Yes - I will make  
the change.~~

CW

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 30, 1976

Re: 74-1179 - United States v. Miller

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Regards,

*W.P.*

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 4/7/76

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-1179

United States, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Ap-  
 Mitchell Miller. | peals for the Fifth Circuit,

[April —, 1976]

MR. JUSTICE BRENNAN, dissenting.

The pertinent phrasing of the Fourth Amendment—"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"—is virtually *in haec verba* with Art. I, § 13, of the California Constitution—"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated." The California Supreme Court has reached a conclusion under Art. I, § 13, in the same factual situation, contrary to that reached by the Court today under the Fourth Amendment.<sup>1</sup> I dissent because in my view the California Supreme Court correctly interpreted the relevant constitutional language.

In *Burrows v. Superior Court*, 13 Cal. 3d 238, 529

<sup>1</sup> The expectation of privacy relied upon by respondent to support his Fourth Amendment claim is similar to that rejected as to similar documents in *Couch v. United States*, 409 U. S. 322 (1973). But in *Couch* the taxpayer had delivered the documents to her accountant for preparation of income tax returns "knowing that mandatory disclosure of much of the information therein is required in an income tax return." *Id.*, at 335; see *id.*, at 337 (BRENNAN, J., concurring). In contrast, in the instant case the banks were obliged only to respond to lawful process, *California Bankers Assn. v. Shultz*, 416 U. S. 21, 52-54 (1974), and had no obligation to disclose the information voluntarily. The expectation of privacy asserted in *Fisher v. United States*, — U. S. — (1976), is distinguishable on similar grounds.

8

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

From Mr. Justice Brennan

Circulated

Recirculated

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1179

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v. | United States Court of Ap-  
Mitchell Miller. | peals for the Fifth Circuit.

[April —, 1976]

9 D  
Mr. all day

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2,8  
P.P. 2,8

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

From: Mr. Justice Brennan

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Recirculated 4/15/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1179

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Mitchell Miller. | peals for the Fifth Circuit.

[April —, 1976]

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

V

CHAMBERS OF  
JUSTICE POTTER STEWART

March 26, 1976

Re: No. 74-1179, United States v. Miller

Dear Lewis,

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

April 2, 1976

Re: No. 74-1179 - United States v. Miller

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

From: Mr. Justice Marshall  
Circulated: APR 15 1976

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1179

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Mitchell Miller. | peals for the Fifth Circuit.

[April —, 1976]

MR. JUSTICE MARSHALL, dissenting.

In *California Bankers Assn. v. Shultz*, 416 U. S. 21 (1974), the Court upheld the constitutionality of the recordkeeping requirement of the Bank Secrecy Act. 12 U. S. C. § 1829b (d). I dissented, finding the required maintenance of bank customers' records to be a seizure within the meaning of the Fourth Amendment and unlawful in the absence of a warrant and probable cause. While the Court in *California Bankers Assn.* did not then purport to decide whether a customer could later challenge the bank's delivery of his records to the Government pursuant to subpoena, I warned:

"[I]t is ironic that although the majority deems the bank customers' Fourth Amendment claims premature, it also intimates that once the bank has made copies of a customer's checks, the customer no longer has standing to invoke his Fourth Amendment right when a demand is made on the bank by the Government for the records. . . . By accepting the Government's bifurcated approach to the recordkeeping requirement and the acquisition of records, the majority engages in a hollow charade whereby Fourth Amendment claims are to be labeled premature until such time as they can be deemed too late." 416 U. S., at 97 (dissenting op.).

Today, not surprisingly, the Court finds respondent's

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

P. 2

From: Mr. Justice Marshall

Circulated: ~~APR 16 1976~~

Recirculated: APR 16 1976

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1179

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Mitchell Miller. | peals for the Fifth Circuit.

[April —, 1976]

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Today, not surprisingly, the Court finds respondent's

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 30, 1976

Re: No. 74-1179 - United States v. Miller

Dear Lewis:

Please join me in your circulation of today.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Powell

Circulated: MAR 25 1976

Recirculated: \_\_\_\_\_

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1179

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Mitchell Miller. } peals for the Fifth Circuit.

[April —, 1976]

MR. JUSTICE POWELL delivered the opinion of the Court.

Respondent was convicted of possessing an unregistered still, carrying on the business of a distiller without giving bond and with intent to defraud the Government of whiskey tax, possessing 175 gallons of whiskey upon which no taxes had been paid, and conspiring to defraud the United States of tax revenues. 18 U. S. C. § 371; 26 U. S. C. § 5179, 5205, 5601 *et seq.* Prior to trial respondent moved to suppress copies of checks and other bank records obtained by means of allegedly defective subpoenas *duces tecum* served upon two banks at which he had accounts. The records had been maintained by the banks in compliance with the requirements of the Bank Secrecy Act of 1970, 12 U. S. C. § 1829 (d).

The District Court overruled respondent's motion to suppress and the evidence was admitted. The Court of Appeals for the Fifth Circuit reversed on the ground that a depositor's Fourth Amendment rights are violated when bank records maintained pursuant to the Bank Secrecy Act are obtained by means of a defective subpoena. It held that any evidence so obtained must be suppressed. Since we find that respondent had no protectable Fourth Amendment interest in the subpoenaed documents, we reverse the decision below.

Stylistic Changes Throughout.

4,8

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

From: Mr. Justice Powell

Circulated:

Recirculated: MAR 30 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1179

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Mitchell Miller. | peals for the Fifth Circuit.

[April —, 1976]

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✓ 10, 11

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

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

Recirculated: APR 13 1976

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1179

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Mitchell Miller. | peals for the Fifth Circuit,

[April —, 1976]

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 29, 1976

Case held for No. 74-1179 U.S. v. Miller

MEMORANDUM TO THE CONFERENCE:

No. 75-5425 Riddick v. United States

The only question in this case is that addressed by the Court in Miller: Whether a defendant can challenge the admission into evidence at trial of bank records subpoenaed from a bank handling his financial transactions. In this case, unlike Miller, the subpoenas were concededly in compliance with Rule 17 of the Federal Rules of Criminal Procedure. But, as we said in Miller (note 2):

"We see no reason why the existence of a Fourth Amendment interest turns on whether the subpoena is defective. Therefore, we do not limit our consideration to the situation in which there is an alleged defect in the subpoena served on the bank."

CA8 refused to allow petitioner to challenge the introduction of the subpoenaed evidence. I will vote to Deny certiorari.

*L.F.P.*  
L.F.P., Jr.

ss

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 29, 1976

Re: No. 74-1179 - United States v. Miller

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

V

March 26, 1976

Re: No. 74-1179 - United States v. Miller

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Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference