The Burger Court Opinion Writing Database

United States v. Janis

428 U.S. 433 (1976)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1976

PERSONAL

Re: 74-958 - United States v. Janis

Dear Harry:

I will, of course, be going along in this case, but these comments occur to me would sharpen what I think the best job you have turned out this Term.

(1) I think it would be very helpful if in your first line, after "presents", you underscored the novelty of the case with words "for the first time" since Potter's dissent blandly tries to lump this case with John Harlan's cluster of "oddities."

(2) In footnote 15 there is a good opportunity to remind the Brethren how the Court has "wobbled" over the years on the rationale. I wish you would consider adding to the first sentence of Note 15, p. 13, something to the effect that "the rationale has varied over the years."

(3) Page 14, last text line, insert after "relevant" the words "and highly reliable". This is not too crucial and maybe the evidence should be free of the folly of the exclusionary rule even if less reliable from the gentleman's own records.

Regards,

WEB

Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1976

Re: 74-958 - United States v. Janis

Dear Harry:

I join your June 11 proposed opinion.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 14, 1976

RE: No. 74-958 United States v. Janis

Dear Harry:

I plan to write a dissent in the above but I thought I'd wait on Lewis' circulation in Nos. 74-1222 Wolff v. Rice and No. 74-1055 Stone v. Powell. As I recall the conference discussion they are related.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

SUPREME COURT OF THE UNITED STATES

No. 74-958 O.T. 1975

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: 6/21/76

Recirculated: _____

United States, et al.,
Petitioners

v.

Max Janis

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

[June ____ 1976]

MR. JUSTICE BRENNAN, dissenting.

I adhere to my views that the exclusionary rule is a necessary and inherent constitutional ingredient of the protections of the Fourth Amendment. See United States v. Calandra, 414 U.S.338, 355-367 (1974) (Brennan, J., dissenting) and United States v. Peltier, 422 U.S. 531, 550-562 (1975) (Brennan, J., dissenting). Repetition or elaboration of those views in this case would serve no useful purpose. Those views would of course require an affirmance of the Court of Appeals in this case. Today's decision and Stone v. Powell, ante, continue the Court's "business of slow strangulation of the rule," id., at 561. But even accepting the proposition that deterrence of police misconduct is the only purpose served by the exclusionary rule, as my brother Stewart apparently does, his dissent persuasively demonstrates the error of today's result. I dissent.

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: 7/3

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–958

United States et al., Petitioners, v. Max Janis. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL concurs, dissenting.

I adhere to my view that the exclusionary rule is a necessary and inherent constitutional ingredient of the protections of the Fourth Amendment. See *United States* v. *Calandra*, 414 U. S. 338, 355–367 (1974) (BRENNAN, J., dissenting) and *United States* v. *Peltier*, 422 U. S. 531, 550–562 (1975) (BRENNAN, J., dissenting). Repetition or elaboration of the reasons supporting that view in this case would serve no useful purpose. My view of the exclusionary rule would of course require an affirmance of the Court of Appeals. Today's decisions in this case and in *Stone* v. *Powell, post,* continue the Court's "business of slow strangulation of the rule," 422 U. S., at 561. But even accepting the proposition that deterrence of police misconduct is the only purpose served by the exclusionary rule, as my Brother STEWART apparently does, his dissent persuasively demonstrates the error of today's result. I dissent.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-958

United States et al., Petitioners, *v.* Max Janis. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1976]

MR. JUSTICE STEWART, dissenting.

WJB

The Court today holds that evidence unconstitutionally seized from the respondent by state officials may be introduced against him in a proceeding to adjudicate his liability under the wagering excise tax provisions of the Internal Revenue Code of 1954. This result, in my view, cannot be squared with *Elkins* v. *United States*, 364 U. S. 206. In that case the Court discarded the "silver platter doctrine" and held that evidence illegally seized by state officers cannot lawfully be introduced against a defendant in a federal criminal trial.

Unless the *Elkins* doctrine is to be abandoned, evidence illegally seized by state officers must be excluded as well from federal proceedings to determine liability under the federal wagering excise tax provisions. These provisions, constituting an "interrelated statutory system for taxing wagers," *Marchetti* v. *United States*, 390 U. S. 39, 42, operate in an area "permeated with criminal statutes" and impose liability on a group "inherently suspect of criminal activities." *Albertson* v. *SACB*, 382 U. S. 70, 79, *quoted in Marchetti* v. *United States*, 390 U. S., at 47. While the enforcement of these provisions results in the collection of revenue, "we cannot ignore either the characteristics of the activities" which give rise to wagering tax liability "or the composition of the group" from

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 14, 1976

Re: No. 74-958 - United States v. Janis

Dear Harry:

I agree.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 9, 1976

Re: No. 74-958 - United States v. Janis

Dear Harry:

Your suggestions for changes in this case completely satisfy me and I appreciate your willingness to make them.

Sincerely,

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1976

Re: No. 74-958 O.T. 1975 -- U. S. v. Janis

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

√ —

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

From: Mr. Justice Blackmun

Circulated: 4/13/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-958

United States et al., Petitioners, *v.* Max Janis. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of the appropriateness of an extension of the judicially created exclusionary rule: is evidence seized by a state officer in good faith, but nonetheless unconstitutionally, inadmissible in a civil proceeding by or against the United States?

I

In November 1968 the Los Angeles police obtained a warrant directing a search for bookmaking paraphernalia at two specified apartment locations in the city and, as well, on the respective persons of Morris Aaron Levine and respondent Max Janis. The warrant was issued by a judge of the Municipal Court of the Los Angeles Judicial District. It was based upon the affidavit of Officer Leonard Weissman.[1] After the search, made pursuant

[1] Officer Weissman's affidavit, App. 69–74, stated: He and Sergeant Briggs of the Los Angeles Police Department each had received information from an informant concerning respondent Janis and Levine and concerning telephone numbers the two men used for bookmaking. Police investigation disclosed that Janis had two telephones with unpublished numbers, including the number given by Weissman's informant, and that there was a third published

pp. 8, 16 and

STYLISTIC CHANGES

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 5/31/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–958

United States et al., Petitioners, *v.* Max Janis. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of the appropriateness of an extension of the judicially created exclusionary rule: is evidence seized by a state criminal law enforcement officer in good faith, but nonetheless unconstitutionally, inadmissible in a civil proceeding by or against the United States?

I

In November 1968 the Los Angeles police obtained a warrant directing a search for bookmaking paraphernalia at two specified apartment locations in the city and, as well, on the respective persons of Morris Aaron Levine and respondent Max Janis. The warrant was issued by a judge of the Municipal Court of the Los Angeles Judicial District. It was based upon the affidavit of Officer Leonard Weissman.[1] After the search, made pursuant

[1] Officer Weissman's affidavit, App. 69–74, stated: He and Sergeant Briggs of the Los Angeles Police Department each had received information from an informant concerning respondent Janis and Levine and concerning telephone numbers the two men used for bookmaking. Police investigation disclosed that Janis had two telephones with unpublished numbers, including the number given by Weissman's informant, and that there was a third published

June 9, 1976

Re: No. 74-958 - United States v. Janis

Dear Byron:

This note concerns the two points we discussed this morning:

1. You were disturbed about the sentence on page 10 beginning with "A violation of." What do you think of converting that sentence and the one following it to "In contrast to the Fifth Amendment's direct command against the admission of compelled testimony, the issue of admissibility of evidence obtained in violation of the Fourth Amendment is determined after, and apart from, the violation."

2. You were also concerned with some of the content in the third paragraph of footnote 35 on page 25. I propose to omit the second sentence beginning with "In the Fifth Amendment area," the reference to the Linkletter case, and the fourth sentence beginning with "The court does not." The third paragraph of the footnote would then read:

> "The primary meaning of 'judicial integrity' in the context of evidentiary rules is that the courts must not commit or encourage violations of the Constitution. In the Fourth Amendment area, however, the evidence is unquestionably accurate, and the violation is complete by the time the evidence is presented to the court. See United States v. Calandra, 414 U.S. . . ."

If the forgoing is acceptable to you, I shall make these changes and recirculate. I shall not do so, however, until I have heard from you.

Sincerely,

HAB

Mr. Justice White

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 11, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-958 - United States v. Janis

We have noted that in today's recirculation of this case reference was made to the Fourth Amendment on line 13, page 10. This obviously should have been the Fifth Amendment, and the error will be corrected.

pp. 10, 25

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 6/11/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-958

United States et al., Petitioners, *v.* Max Janis. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of the appropriateness of an extension of the judicially created exclusionary rule: is evidence seized by a state criminal law enforcement officer in good faith, but nonetheless unconstitutionally, inadmissible in a civil proceeding by or against the United States?

I

In November 1968 the Los Angeles police obtained a warrant directing a search for bookmaking paraphernalia at two specified apartment locations in the city and, as well, on the respective persons of Morris Aaron Levine and respondent Max Janis. The warrant was issued by a judge of the Municipal Court of the Los Angeles Judicial District. It was based upon the affidavit of Officer Leonard Weissman.[1] After the search, made pursuant

[1] Officer Weissman's affidavit, App. 69-74, stated: He and Sergeant Briggs of the Los Angeles Police Department each had received information from an informant concerning respondent Janis and Levine and concerning telephone numbers the two men used for bookmaking. Police investigation disclosed that Janis had two telephones with unpublished numbers, including the number given by Weissman's informant, and that there was a third published

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-958 - United States v. Janis

Pursuant to a suggestion, I am inserting the words "and reliable" before the word "evidence" in the last line of the body of the opinion on page 14. On page 10, line 13, the reference to the Fourth Amendment should be to the Fifth Amendment, and that correction is being made.

Harry

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1976

No. 74-958 United States v. Janis

Dear Harry:

Please join me.

Sincerely,

L Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

74-958

4/21/76

Supreme Court of the United States
Memorandum

__________________________________, 19_______

I plan to join your Janis — I was at first disappointed that it was not broader, & not said flatly that exclusionary rule does not apply in civil actions. But your approach, even to me, is equally sensible & gives analysis I think will lend itself to re-evaluation of exclusionary rule.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 22, 1976

Re: No. 74-958 - United States v. Janis

Dear Harry:

Please join me.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference