

# The Burger Court Opinion Writing Database

*United States v. Culbert*

435 U.S. 371 (1978)

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

March 14, 1978

Re: 77-142 - United States v. Culbert

Dear Thurgood:

I fear I cannot join the opinion as written with its treatment of legislative history in Part II.

If ever we had a statute and facts rendering reference to legislative history unnecessary, this is it.

As of now, I will be obliged to write on this, and if so, I will add a word about the "confession of error" issue. The opinion seems to hint agreement with the United States Attorney's action which has been repudiated by the Department.

Regards,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 22, 1978

Dear Thurgood:

Re: 77-142 United States v. Culbert  
I join.

Regards,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 9, 1978

RE: No. 77-142 United States v. Culbert

Dear Thurgood:

Will you please note at the foot of your opinion that  
"Mr. Justice Brennan took no part in the consideration or  
decision of this case."

Sincerely,

*Wm. J. Brennan, Jr.*

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543  
*(2)*

CHAMBERS OF  
JUSTICE POTTER STEWART

March 9, 1978

Re: No. 77-142, United States v. Culbert

Dear Thurgood,

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

Sincerely yours,

*P.S.*  
*1/*

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 9, 1978

(1)

Re: 77-142 - United States  
v. Culbert

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Dear Thurgood:

Please join me.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-142, United States v. Culbert

I vote to reverse the judgment of the Court of Appeals. The language of the Hobbs Act clearly covers any "extortion" (as defined in the statute) that has the requisite effect on commerce. The legislative history is consistent with the language. I therefore see no warrant for limiting the statute's coverage to "racketeering," whatever that might mean.

*file.*

T.M.

8 MAR 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-142

United States, Petitioner, | On Writ of Certiorari to the United  
v. | States Court of Appeals for the  
Donald Lavern Culbert. | Ninth Circuit.

[March —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court. Respondent was convicted of violating the Hobbs Act, 18 U. S. C. § 1951, which provides in relevant part:

"Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years or both." *Id.*, § 1951 (a).

The question in this case is whether the Government not only had to establish that respondent violated the express terms of the Act, but also had to prove that his conduct constituted "racketeering."

The evidence at respondent's jury trial showed that he and an accomplice attempted to obtain \$100,000 from a federally insured bank by means of threats of physical violence made to the bank's president. The United States Court of Appeals for the Ninth Circuit, with one judge dissenting, reversed the Hobbs Act conviction,<sup>1</sup> holding that, " 'although an activity

<sup>1</sup> Respondent was also convicted of attempted bank robbery, a violation of 18 U. S. C. § 2113 (a). In the Court of Appeals, however, the Government confessed error on the ground that 18 U. S. C. § 2113 (a) is not

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 17, 1978

Re: No. 77-142, United States v. Culbert

Dear Chief:

I do not think I can meet your objection on the use of legislative history. However, I would be happy to make the following addition to footnote 1 in response to the concern you and Harry have expressed, provided that no one who has joined the opinion objects:

"In its brief in this Court, the Government notes that 'the United States Attorney's concession was not approved by the Solicitor General and does not represent the position of the Department of Justice on this question.' Brief for the United States, at 33 n. 19. We express no view on the validity of the United States Attorney's interpretation of 18 U.S.C. 2113(a).

Sincerely,

*T. M.*

T. M.

The Chief Justice

cc: The Conference

P. 29

23 MAR 1978

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-142

United States, Petitioner, | On Writ of Certiorari to the United  
v. | States Court of Appeals for the  
Donald Lavern Culbert. | Ninth Circuit.

[March —, 1978]

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The question in this case is whether the Government not only had to establish that respondent violated the express terms of the Act, but also had to prove that his conduct constituted “racketeering.”

The evidence at respondent’s jury trial showed that he and an accomplice attempted to obtain \$100,000 from a federally insured bank by means of threats of physical violence made to the bank’s president. The United States Court of Appeals for the Ninth Circuit, with one judge dissenting, reversed the Hobbs Act conviction,<sup>1</sup> holding that, “‘although an activity

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 12, 1978

MEMORANDUM TO THE CONFERENCE

Re: Case being held for No. 77-142, United States v. Culbert  
No. 77-487, Frazier v. United States

This case also presents the issue of whether proof of "racketeering" is a necessary element of a Hobbs Act conviction. Petitioner was convicted of attempted extortion violation of 18 U.S.C. § 1951. The evidence at trial showed that petitioner suggested to one James Clayton that he attach an explosives belt to the president of a bank which would be removed upon payment by the bank of \$150,000. Clayton notified the FBI of petitioner's plan and agreed to cooperate by pretending to comply with petitioner's scheme. The explosive belt was delivered to Clayton who attached the belt to an FBI agent impersonating the bank president. Petitioner called the bank and issued the instructions for delivery of the money to the parking lot of an airport. Petitioner failed to make the pickup and the agents arrested him elsewhere.

Petitioner claims that the evidence fails to disclose that he was guilty of "racketeering" and therefore he cannot be convicted of a violation of the Hobbs Act. The Court of Appeals rejected his claim on the basis that the Hobbs Act does not require proof of "racketeering." Since the issue here is exactly the same as that in Culbert, I will vote to deny certiorari for the reasons stated in the Court's opinion in Culbert.

Petitioner also claims that his rights under the Fourth Amendment were violated when, without the benefit of a warrant, the FBI attached an electronic beeper to petitioner's automobile. The FBI located petitioner at the time of his arrest by means of the beeper. Prior to petitioner's trial, the district court granted petitioner's motion to suppress evidence seized as a result of the use of the beeper on the ground that the FBI had been required to obtain a search warrant for its use. On the Government's appeal, the Court of Appeals reversed, 538 F.2d 1322 (CA8 1976), and we denied certiorari, 429 U.S. 1046. I will vote to deny certiorari.

Sincerely,



T.M.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 10, 1978

Re: No. 77-142 - United States v. Culbert

Dear Thurgood:

Please join me.

I share John's mild concern with the dictum in the first full paragraph on page 3 and would prefer to avoid it if possible.

I also have a little difficulty with footnote 1 and its second sentence. I would prefer to bring the sentence to an end after the words "confessed error."

I am still with you whatever you may do with these suggestions.

Sincerely,

*Harry*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 9, 1978

No. 77-142 United States v. Culbert

Dear Thurgood:

Please join me.

Sincerely,

*L Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 8, 1978

Re: No. 77-142 - United States v. Culbert

Dear Thurgood:

Please join me.

Sincerely,

*WM*

Mr. Justice Marshall

Copies to the Conference

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✓  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

(2)

March 9, 1978

Re: 77-142 - United States v. Culbert

Dear Thurgood:

Would you consider omitting the reference to the possible constitutional problem on page 3? Since the "racketeering" argument would have the effect of narrowing the coverage of the statute, I do not believe it would raise a serious constitutional problem.

Whether or not you make this change, please join me in the opinion.

Respectfully,



Mr. Justice Marshall

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