

The Burger Court Opinion Writing Database

United States v. LaSalle National Bank
437 U.S. 298 (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

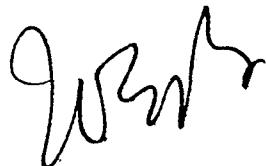
June 7, 1978

Dear Harry:

Re: 77-365 United States v. La Salle

I think the "bright line" approach is really the sound solution, and I am with that view as I was at Conference.

Regards,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 12, 1978

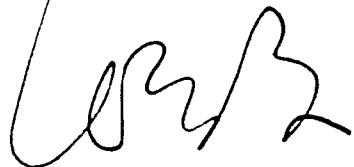
Re: 77-365 - United States v. LaSalle National Bank

Dear Potter:

Please show me joining in your opinion.

Should your opinion not be either "concurring in the judgment" or "concurring and dissenting"?

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

April 3, 1978

RE: No. 77-365 United States v. La Salle National Bank

Dear Thurgood:

We two are in dissent in the above. I'll be happy
to undertake the dissent.

Sincerely,

Brennan

Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 26, 1978

RE: No. 77-365 United States v. LaSalle National Bank

Dear Harry:

I'll be circulating a dissent in the above in due course.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

May 31, 1978

RE: No. 77-365 United States v. LaSalle National Bank

Dear Harry:

I voted at conference to Affirm in this case but your opinion persuades me that the proper disposition is to reverse and remand. I am therefore happy to join.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 26, 1978

Re: No. 77-365, U.S. v. LaSalle National Bank

Dear Harry,

During our Conference discussion of this case, I expressed agreement with Judge Friendly's opinion in the Keech case (reproduced in the appendix to the Solicitor General's Reply Brief), and it was my impression, perhaps mistakenly, that this was the view of the Conference majority. Under this view, a summons will properly issue under § 7602 at any time until a formal recommendation for criminal prosecution has been made, unless the IRS is guilty of the kind of bad faith specifically described in Justice Harlan's opinion in the Powell case. See 379 U.S. 48, 58.

I am still unpersuaded that this relatively simple bright-line test is not the right answer in this case, and I would reverse the judgment before us on this basis. To the extent that your opinion introduces additional considerations and remands the case to the District Court for canvassing these considerations, I am sorry to say that I cannot join it.

Sincerely yours,

P.S.
P.

Mr. Justice Blackmun

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: 9 JUN 1977

No. 77-365, United States v. LaSalle National Bank

Recirculated: _____

MR. JUSTICE STEWART, dissenting.

This case is here only because of judicial misreadings of a passage in the Court's opinion in United States v. Donaldson, 400 U.S. 517, at 533. That passage has been read by the federal courts, in this case and in others, to mean that a summons under I.R.C. § 7602 is improper if issued in aid of "an investigation solely for criminal purposes."^{1/} Yet the statute itself contains no such limitation, and the Donaldson opinion in fact clearly stated that there are but two limits upon enforcement of such a summons: it must be "issued in good faith and prior to a recommendation for criminal prosecution." Id., at 536. I adhere to that view.

The Court concedes that the task of establishing the "purpose" of an individual agent is "undesirable and unrewarding." Ante, at _____. Yet the burden it imposes today -- to discover the "institutional good faith" of the entire Internal Revenue Service -- is, in my view, even less desirable and less rewarding. The elusiveness of "institutional good faith" as described by the Court can produce little but endless discovery delays and ultimate frustration of the fair administration of the Internal Revenue Code. In short, I fear that the Court's new criteria will prove wholly unworkable.

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

From: Mr. Justice SC.

Distributed: 11/11/78

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-365

United States et al., Petitioner, } On Writ of Certiorari to the
v. } United States Court of
LaSalle National Bank et al. } Appeals for the Seventh
Circuit.

[June —, 1978]

MR. JUSTICE STEWART, dissenting.

This case is here only because of judicial misreadings of a passage in the Court's opinion in *United States v. Donaldson*, 400 U. S. 517, at 533. That passage has been read by the federal courts, in this case and in others, to mean that a summons under I. R. C. § 7602 is improper if issued in aid of "an investigation solely for criminal purposes."¹ Yet the statute itself contains no such limitation, and the *Donaldson* opinion in fact clearly stated that there are but two limits upon enforcement of such a summons: it must be "issued in good faith and prior to a recommendation for criminal prosecution." *Id.*, at 536. I adhere to that view.

The Court concedes that the task of establishing the "purpose" of an individual agent is "undesirable and unrewarding." *Ante*, at —. Yet the burden it imposes today—to discover the "institutional good faith" of the entire Internal Revenue Service—is, in my view, even less desirable and less rewarding. The elusiveness of "institutional good faith" as described by the Court can produce little but endless discovery proceedings and ultimate frustration of the fair administration of the Internal Revenue Code. In short, I fear that the Court's new criteria will prove wholly unworkable.

Earlier this year the Court of Appeals for the Second Circuit

¹ See *ante*, p. — n. 6.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 12, 1978

Re: 77-365, U. S. v. LaSalle Nat'l Bank

Dear Chief,

Thanks for your note. Since the judgment of the Court will instruct the Court of Appeals to remand this case to the District Court for further proceedings, and since that is precisely what I would not do, I concluded that the most accurate designation of what I have written is a dissenting opinion.

Sincerely yours,

PS.

The Chief Justice

Copies to the Conference

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

From: Mr. Justice Stewart

2nd DRAFT

Circulated: _____

15 JUN 1978

Reprinted: _____

SEE PAGES: 1, 3

SUPREME COURT OF THE UNITED STATES

No. 77-365

United States et al., Petitioner, | On Writ of Certiorari to the
v. | United States Court of
LaSalle National Bank et al. | Appeals for the Seventh
Circuit.

[June —, 1978]

MR. JUSTICE STEWART, with whom THE CHIEF JUSTICE, MR. JUSTICE REHNQUIST, and MR. JUSTICE STEVENS join, dissenting.

This case is here only because of judicial misreadings of a passage in the Court's opinion in *Donaldson v. United States*, 400 U. S. 517, at 533. That passage has been read by the federal courts, in this case and in others, to mean that a summons under § 7602 of the Internal Revenue Code, 26 U. S. C. § 7602, is improper if issued in aid of "an investigation solely for criminal purposes."¹ Yet the statute itself contains no such limitation, and the *Donaldson* opinion in fact clearly stated that there are but two limits upon enforcement of such a summons: it must be "issued in good faith and prior to a recommendation for criminal prosecution." *Id.*, at 536. I adhere to that view.

The Court concedes that the task of establishing the "purpose" of an individual agent is "undesirable and unrewarding." *Ante*, at —. Yet the burden it imposes today—to discover the "institutional good faith" of the entire Internal Revenue Service—is, in my view, even less desirable and less rewarding. The elusiveness of "institutional good faith" as described by the Court can produce little but endless discovery proceedings and ultimate frustration of the fair administration of the

¹ See *ante*, p. — n. 6.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 26, 1978

Re: 77-365 - United States v. LaSalle
National Bank

Dear Harry,

Please join me.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 26, 1978

Re: No. 77-365 - U.S. v. LaSalle National Bank

Dear Harry:

I shall wait for the dissent in this one.

Sincerely,

J.M.

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1978

Re: No. 77-365 - U.S. v. LaSalle National Bank

Dear Harry:

Please join me.

Sincerely,

J.M.
T.M.

Mr. Justice Blackmun
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: MAY 24 1970

Recirculated: _____

No. 77-365 - United States v. LaSalle National Bank

MR. JUSTICE BLACKMUN delivered the opinion of the

Court.

This case is a supplement to our decision in *Donaldson v.*

United States, 400 U.S. 517 (1971). It presents the issue whether

the District Court correctly refused to enforce Internal Revenue

Service summonses when it specifically found that the special agent

who issued them "was conducting his investigation solely for the

who issued them was conducting his investigation solely for the

purpose of unearthing evidence of criminal conduct." 76-1 USIC

84,072, 84,073, 37 AFTR 2d 76-1239, 76-1240 (ND Ill. 1976).

1/

Frequently, a revenue agent of the IRS Audit Division will refer a case on which he is working to the Intelligence Division for investigation of possible fraud. After such a referral, and at other times, the special agent and the revenue agent will work together. Because of the importance and sensitivity of the criminal aspects of the joint investigation, the special agent assumes control of the inquiry. See, e.g., Internal Revenue Manual, ch. 4500 §§ 4563.45-4565.44 (1976 and 1978).

The Audit Division and the Intelligence Division have now been redesignated as the Examinations Division and the Criminal Enforcement Division, respectively. IRS News Release, February 6, 1978.

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 Bla

Circulated:

Recirculated: MAY 30 197

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-365

United States et al., Petitioner, v. LaSalle National Bank et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case is a supplement to our decision in *Donaldson v. United States*, 400 U. S. 517 (1971). It presents the issue whether the District Court correctly refused to enforce Internal Revenue Service summonses when it specifically found that the special agent who issued them "was conducting his investigation solely for the purpose of unearthing evidence of criminal conduct." 76-1 U. S. T. C. 84,072, 84,073, 37 A. F. T. R. 2d 76-1239, 76-1240 (ND Ill. 1976).

I

In May 1975, John F. Olivero, a special agent with the Intelligence Division of the Chicago District of the Internal Revenue Service (hereinafter IRS or the Service), received an assignment to investigate the tax liability of John Gattuso for his taxable years 1970-1972. App. 26-27, 33. Olivero testified that he had requested the assignment because of information he had received from a confidential informant and from an unrelated investigation. *Id.*, at 35. The case was not referred to the IRS from another law enforcement agency, but the nature of the assignment, Olivero testified, was “[t]o investigate the possibility of any criminal violations of the Internal Revenue Code.” *Id.*, at 33. Olivero pursued the

pp. 17, 18, 19
RJ

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: JUN 1 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-365

United States et al., Petitioner, } On Writ of Certiorari to the
v. } United States Court of
LaSalle National Bank et al. } Appeals for the Seventh
Circuit.

[June —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case is a supplement to our decision in *Donaldson v. United States*, 400 U. S. 517 (1971). It presents the issue whether the District Court correctly refused to enforce Internal Revenue Service summonses when it specifically found that the special agent who issued them "was conducting his investigation solely for the purpose of unearthing evidence of criminal conduct." 76-1 U. S. T. C. 84,072, 84,073, 37 A. F. T. R. 2d 76-1239, 76-1240 (ND Ill. 1976).

I

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-365 - U.S. v. LaSalle National Bank

In response to Potter's dissent, I propose to drop a new footnote 18 at the end of the third sentence of the paragraph beginning on page 18. The enclosure is the footnote. Subsequent footnotes will be renumbered accordingly.

HAB

18/

The dissent would abandon this aspect of the good faith inquiry. It would permit the IRS to use the summons authority solely for criminal investigation. It reaches this conclusion because it says the Code contains no limitation to prevent such use. Its argument reveals a fundamental misunderstanding about the authority of the IRS. The Service does not enjoy inherent authority to summon production of the private papers of citizens. It may exercise only that authority granted by Congress. In § 7602 Congress has bestowed upon the Service the authority to summon production for four purposes only: for "ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax . . . or collecting any such liability." Congress therefore intended the summons authority to be used to aid the determination and collection of taxes. These purposes do not include the goal of filing criminal charges against citizens. Consequently, summons

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 77-365 - United States v. LaSalle
National Bank

There is only one hold for LaSalle. It is No. 77-1261,

Myslajek v. United States. In that case, an accountant resists enforcement of IRS summonses of the financial records of an accounting client. The summonses were issued by a special agent in pursuit of a civil/criminal tax fraud investigation that had begun as a standard audit inquiry. The DC granted enforcement, and the CA8 affirmed.

The petition raises four issues, none of which, it seems to me, is in doubt after LaSalle and none of which is otherwise significant. I therefore shall vote to deny.

First, petitioner contends that service of the summonses was improper because they were not left at her "last and usual place of abode," as required by § 7603, but, instead, were left at her place of business. The CA8 responded that petitioner had not demonstrated any prejudice or lack of actual notice, and that by failing to object to the form of service at the initial appearance before the agent, she waived strict compliance with the requirements of § 7603. Although the waiver theory is novel, it does not conflict with any other circuit decision and, it seems to me, is not otherwise certworthy.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1978

No. 77-365 U.S. v. LaSalle National Bank

Dear Harry:

I had an opportunity over the weekend to review your opinion for the Court circulated May 24.

It is a fine opinion, and I am with you up to page 22. On balance I am inclined to agree with Potter that a "bright line" test is preferable to the balancing type inquiries your opinion would invite. You do emphasize, however, that one challenging a summons would have a heavy burden to carry and the result in most cases would be the same.

It is important to have a Court opinion settling the rule. As the statute itself draws no distinction between civil and criminal investigations, and as the institutional safeguards are substantial (as you bring out clearly in your opinion), I favor the "bright line" formulation as I think it would prevent a good deal of pointless litigation. But I end up being flexible enough to join four Justices either for your opinion as written or as you may change it to adopt the bright line test.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

June 8, 1978

No. 77-365 LaSalle National Bank

Dear Chief:

I enclose a copy of my "join" note to Harry.

When we talked late yesterday, I thought Bill Rehnquist's vote was the fifth for the "bright line" exclusive of me. Although my letter to Harry of May 29 (copy enclosed) is ambiguous enough on its face to go either way, my intention was to support him if this were necessary to give him a Court.

Where the difference in two positions is not likely to have serious consequences (as I view the difference in this case), I usually am inclined to stay with the Justice to whom the opinion has been assigned.

I understand that you think the difference is important enough to leave Harry. But his opinion makes clear that one who challenges a summons has a heavy burden to carry, and I doubt that the result in many cases will be different.

Sincerely,

The Chief Justice

lfp/ss
Enc.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1978

No. 77-365 LaSalle National Bank

Dear Harry:

In my letter to you of May 29 I stated that I preferred the "bright line", but was flexible enough to join four Justices either for that view or for your somewhat more flexible formulation.

I now find myself as the "swing man" with four votes each way. As you were assigned the opinion for the Court, and as - in the end - I doubt that in practice the difference will be significant - I now join you.

Sincerely



Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 2, 1978

Re: No. 77-365 United States v. La Salle National Bank

Dear Harry:

I find myself somewhat up in the air on this case, not as to result but as to the method of reaching the result. I of course remain with you in voting to reverse the judgment of the Seventh Circuit, but I also agree with Lewis that some sort of "bright line" test is desirable. I think if the choice were solely mine, I would agree with Potter that Henry Friendly's view that the question is simply one of when the matter is referred to the Justice Department is the best test, because that test allows the least latitude for collateral litigation about the validity of the subpoena. On the other hand, I also recognize that the person assigned the opinion must have some latitude to work the details of the opinion out. Please forgive me for taking a few more days to make up my mind.

Sincerely,

Wm

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1978

Re: No. 77-365 United States v. La Salle National Bank

Dear Harry:

After such pondering as I have had time to do in the last few days, I think I prefer the "bright line" approach embodied in Henry Friendly's opinion for the Second Circuit which we discussed at Conference. My main reason for preferring it is that I think it will cut litigation with respect to the validity of the IRS summons as to a minimum.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1978

Re: No. 77-365 United States v. LaSalle National Bank

Dear Potter:

Will you please join me in your dissenting opinion.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 25, 1978

Re: 77-365 - United States v. LaSalle
National Bank

Dear Harry:

If I correctly understand the discussion of the "institutional commitment" of the IRS to refer a case to the Justice Department for prosecution which is found on pages 28, 29, and 31 of the typed draft of your opinion, I am afraid I do not agree with it. This new definition of good faith may replace the inquiry into a special agent's motive with an even more cumbersome inquiry. I also do not understand the statutory basis for it. Finally, I hate to remand for another hearing. In short, I will not be able to join the opinion as now drafted.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1978

Re: 77-365 - United States v. LaSalle National
Bank

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference