The Burger Court Opinion Writing Database

United States v. Payner

447 U.S. 727 (1980)

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

April 11, 1980

PERSONAL

Re: 78-1729 - United States v. Payner

Dear Lewis:

I agree with your resolution of this case, but raise a point of concern. I would like to avoid joining any opinion that can be misread as giving approval to an absolute Exclusionary Rule in any class of cases. For example, on page 7 the opinion states

> " . . . exclusion is a necessary deterrent to unlawful conduct in appropriate cases . . ."

The remainder of the paragraph qualifies this "approval" of exclusion, but I would not care to make it easy for "leopards" to quote the first sentence of the paragraph out of context.

Your excellent later discussion shows your skepticism about an absolute Exclusionary Rule but those parts will not be quoted by lovers of exclusion. Perhaps it is not always possible to prevent corruption of our opinions, but may I suggest that changing "is" to "may be" in the quoted sentence may do its part. For my part, I would add cites to Oaks, Studying the Exclusionary Rule in Search and Seizure, 37 U. Chi. L. Rev. 665 (1970), and (immodestly) to my dissent in Bivens.

My proposed chastising of the IRS (attached) is open to revision; it is not something best said in a Court opinion.

Regards,

WEB

Mr. Justice Powell

p.s. As my concurring opinion indicates, I am prepared to join your opinion if you can see your way to the above ideas.

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

From: The Chief Justice

Circulated: APR 11 1980

Recirculated: _____

Re: No. 78-1729, United States v. Payner

MR. CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion because Payner -- whose guilt is not in doubt -- cannot take advantage of the Government's violation of the constitutional rights of Wolstencroft, who is not a party to this case. The Court's opinion makes clear the reasons for that sound rule. However, the Internal Revenue Service conduct in hiring "private investigators" to secure evidence of Payner's criminal acts, in the manner shown by this record, is repugnant to fundamental tenets of how our Government ought to conduct its affairs.

Orderly government under our system of separate powers should encourage maximum internal self-restraint and discipline in each Branch. Although this Court has supervisory authority with respect to the federal courts, it has no general authority over the Executive Branch. In my view, it is unseemly, to put it mildly, for a government to conduct its law enforcement investigations in the way this case reveals.

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

CHAMBERS OF
THE CHIEF JUSTICE

April 15, 1980

RE: 78-1729 - United States v. Payner

Dear Lewis:

I join.

Regards,

WEB

Mr. Justice Powell

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

From: The Chief Justice

APR 17 1980

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Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1729

United States, Petitioner, v. Jack Payner. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion because Payner—whose guilt is not in doubt—cannot take advantage of the Government's violation of the constitutional rights of Wolstencroft, for he is not a party to this case. The Court's opinion makes clear the reason for that sound rule.

Orderly government under our system of separate powers calls for internal self-restraint and discipline in each Branch; this Court has no general supervisory authority over operations of the Executive Branch, as it has with respect to the federal courts. The Court correctly holds that the Exclusionary Rule is inapplicable to a case of this kind, but that should not be read as condoning the conduct of the IRS "private investigators" as disclosed by this record or approval of their evidence-gathering methods.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 23, 1980

Re: No. 78-1729 - United States v. Payner

MEMORANDUM TO THE CONFERENCE

The last sentence in my concurring opinion will be modified to read as follows:

"I agree fully with the Court that the Exclusionary Rule is inapplicable to a case of this kind, but the Court's holding should not be read as condoning the conduct of the IRS 'private investigators' disclosed by this record, or as approval of their evidence-gathering methods."

Regards,

WEB

cc: Mr. Louis Cornio
Mr. Henry Lind

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 4, 1980

RE: No. 78-1729 United States v. Payner

Dear Thurgood:

You, Harry and I are in dissent in the above. Would you be willing to undertake the dissent?

Sincerely,

Bill

Mr. Justice Marshall

cc: Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1980

RE: No. 78-1729 United States v. Payner

Dear Thurgood:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 14, 1980

Re: No. 78-1729, United States v. Payner

Dear Lewis,

I am glad to join your opinion for the Court.

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 11, 1980

Re: 78-1729 - United States v. Payner

Dear Lewis,

Please join me.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

cmc

March 4, 1980

Re: No. 78-1729 - United States v. Payner

Dear Bill:

OK - I will do it.

Sincerely,

T.M.

Mr. Justice Brennan

cc: Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 11, 1980

Re: No. 78-1729 - United States v. Payner

Dear Lewis:

In due course I will circulate a dissent in this one.

Sincerely,

T.M.

Mr. Justice Powell

cc: The Conference

17 JUN 1980

No. 78-1729

United States, Petitioner, v. Jack Payner

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

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that a federal court is unable to exercise its supervisory powers to prevent the use of evidence in a criminal prosecution in that court, even though that evidence was obtained through intentional illegal and unconstitutional conduct by agents of the United States, because the defendant does not satisfy the standing requirements of the Fourth Amendment. That holding effectively turns the standing rules created by this Court for assertions of Fourth Amendment violations into a sword to be used by the Government to permit it deliberately to invade one person's Fourth Amendment rights in order to obtain evidence against another person. Unlike the Court, I do not believe that the federal courts are unable to protect the integrity of the judicial system from such gross government misconduct.

I

The facts as found by the District Court need to be more fully stated in order to establish the level of purposeful misconduct to which agents of the United States have sunk in this case. Operation Trade Winds was initiated by the Internal

6-20-80

pp. 1, 12, 13

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1729

United States, Petitioner, v. Jack Payner. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1980]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN join, dissenting.

The Court today holds that a federal court is unable to exercise its supervisory powers to prevent the use of evidence in a criminal prosecution in that court, even though that evidence was obtained through intentional illegal and unconstitutional conduct by agents of the United States, because the defendant does not satisfy the standing requirement of the Fourth Amendment. That holding effectively turns the standing rules created by this Court for assertions of Fourth Amendment violations into a sword to be used by the Government to permit it deliberately to invade one person's Fourth Amendment rights in order to obtain evidence against another person. Unlike the Court, I do not believe that the federal courts are unable to protect the integrity of the judicial system from such gross government misconduct.

I

The facts as found by the District Court need to be more fully stated in order to establish the level of purposeful misconduct to which agents of the United States have sunk in this case. Operation Trade Winds was initiated by the Internal Revenue Service (IRS) in 1965 to gather information about the financial activities of American citizens in the Bahamas. The investigation was supervised by Special Agent Richard Jaffe in the Jacksonville, Fla., office. It was not until June 1972 that the investigation focused on the Castle

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 14, 1980

Re: No. 78-1729 - United States v. Payner

Dear Lewis:

I shall await the dissent.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1980

Re: No. 78-1729 - United States v. Payner

Dear Thurgood:

Please join me in your dissenting opinion.

Sincerely,

HAB.

Mr. Justice Marshall

cc: The Conference

4-10-80

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: APR 10 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1729

United States, Petitioner, v. Jack Payner.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question is whether the District Court properly suppressed the fruits of an unlawful search that did not invade the respondent's Fourth Amendment rights.

I

Respondent Jack Payner was indicted in September 1976 on a charge of falsifying his 1972 federal income tax return in violation of 18 U. S. C. § 1001.[1] The indictment alleged that respondent denied maintaining a foreign bank account at a time when he knew that he had such an account at the Castle Bank and Trust Company of Nassau, Bahama Islands. The Government's case rested heavily on a loan guarantee agreement dated April 28, 1972, in which respondent pledged the funds in his Castle Bank account as security for a $100,000 loan.

Respondent waived his right to jury trial and moved to suppress the guarantee agreement. With the consent of the parties, the United States District Court for the Northern District of Ohio took evidence on the motion at a hearing consolidated with the trial on the merits. The court found

[1] 18 U. S. C. § 1001 provides in relevant part:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully . . . makes any false, fictitious or fraudulent statements or representations, . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both."

April 14, 1980

78-1729 United States v. Payner

Dear Chief:

Thank you for your personal letter of April 11.

I have eliminated the language in the first full paragraph on page 11, that you preferred not to leave in the opinion. Also, as you suggested, I have added a reference to Dallin Oaks' superb article. On balance, I thought it best not to refer to your excellent discussion of the Exclusionary Rule in your Bivens dissent. Although you and I are fairly close together on that rule, I have not yet gone all the way with you. More importantly, I did not want to go too far afield in this case.

I do appreciate your assistance.

Sincerely,

The Chief Justice

lfp/ss

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

6,7,8

4-14-80

From: Mr. Justice Powell

Circulated: APR 14 1980

2nd DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1729

United States, Petitioner, *v.* Jack Payner.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question is whether the District Court properly suppressed the fruits of an unlawful search that did not invade the respondent's Fourth Amendment rights.

I

Respondent Jack Payner was indicted in September 1976 on a charge of falsifying his 1972 federal income tax return in violation of 18 U. S. C. § 1001.[1] The indictment alleged that respondent denied maintaining a foreign bank account at a time when he knew that he had such an account at the Castle Bank and Trust Company of Nassau, Bahama Islands. The Government's case rested heavily on a loan guarantee agreement dated April 28, 1972, in which respondent pledged the funds in his Castle Bank account as security for a $100,000 loan.

Respondent waived his right to jury trial and moved to suppress the guarantee agreement. With the consent of the parties, the United States District Court for the Northern District of Ohio took evidence on the motion at a hearing consolidated with the trial on the merits. The court found

[1] 18 U. S. C. § 1001 provides in relevant part:

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1980

78-1729, United States v. Payner

MEMORANDUM TO THE CONFERENCE:

I propose to add the following to footnote 8 at page 8 of the proposed opinion in this case:

> The dissent, post, at 8, urges that the balance of interests under the supervisory power differs from that considered in Alderman and like cases, because the supervisory power focuses upon the "need to protect the integrity of the federal courts." Although the District Court in this case relied upon a deterrent rationale, we agree that the supervisory power serves the "two-fold" purpose of deterring illegality and protecting judicial integrity. See post, at 7. As the dissent recognizes, however, the Fourth Amendment exclusionary rule serves precisely the same purposes. Ibid., citing, inter alia, Dunaway v. New York, 442 U.S. 200, 218 (1979), and Mapp v. Ohio 367 U.S. 643, 659-660 (1961). Thus, the Fourth Amendment exclusionary rule, like the supervisory power, is applied in part "to protect the integrity of the court rather than to vindicate the constitutional rights of the defendant . . . ." Post, at 10; see generally Stone v. Powell, 428 U.S. 465, 486 (1976); United States v. Calandra, 414 U.S. 338, 486 (1974).
>
> In this case, where the illegal conduct did not violate the respondent's rights, the interest in preserving judicial integrity and in deterring such conduct is outweighed by the societal interest in presenting probative evidence to the trier of fact. See supra; see also, e.g., Stone v. Powell, supra, at 485-486. None of the cases cited by the dissent, post, at 7-9, supports a contrary view, since none of those cases involved criminal defendants who were not themselves the

victims of the challenged practices. Thus, our decision today does not limit the traditional scope of the supervisory power in any way; nor does it render that power "superfluous." Post, at 12. We merely reject its use as a substitute for established Fourth Amendment doctrine.

L.F.P.

L.F.P., Jr.

ss

6-20-80

5, 8, 9

3rd DRAFT

Chief Justice
Brennan
Stewart
White
Marshall
Blackmun
Rehnquist
Stevens
Justice Powell

SUPREME COURT OF THE UNITED STATES

No. 78-1729

Circulated: _____

Recirculated: JUN 20 1980

United States, Petitioner, v. Jack Payner. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question is whether the District Court properly suppressed the fruits of an unlawful search that did not invade the respondent's Fourth Amendment rights.

I

Respondent Jack Payner was indicted in September 1976 on a charge of falsifying his 1972 federal income tax return in violation of 18 U. S. C. § 1001.[1] The indictment alleged that respondent denied maintaining a foreign bank account at a time when he knew that he had such an account at the Castle Bank and Trust Company of Nassau, Bahama Islands. The Government's case rested heavily on a loan guarantee agreement dated April 28, 1972, in which respondent pledged the funds in his Castle Bank account as security for a $100,000 loan.

Respondent waived his right to jury trial and moved to suppress the guarantee agreement. With the consent of the parties, the United States District Court for the Northern District of Ohio took evidence on the motion at a hearing consolidated with the trial on the merits. The court found

[1] 18 U. S. C. § 1001 provides in relevant part:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully . . . makes any false, fictitious or fraudulent statements or representations, . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both."

June 20, 1980

MEMORANDUM TO THE CONFERENCE

Hold for No. 78-1729, United States v. Payner.

The only case held for Payner is No. 79-395, United States v. Morrison.

The respondent entered a plea of guilty to one count of an indictment charging distribution of heroin. Before doing so, she moved to dismiss the indictment on the ground that DEA agents had visited and interviewed her after her indictment in the absence of defense counsel. She alleged that this conduct violated her Sixth Amendment right to the effective assistance of counsel. The District Court denied the motion after hearing, but the Court of Appeals for the Fourth Circuit reversed and ordered the indictment dismissed with prejudice.

The evidence showed that two DEA agents tried to obtain respondent's cooperation by visiting her at her home. The agents knew that criminal charges were pending against the respondent, but they did not notify her lawyer or the U.S. Attorney's office that they desired an interview. Instead, they went to her house and questioned her about her heroin sources. The agents told the respondent that she faced a lengthy jail sentence and that they could recommend leniency. They also told her lawyer was not particularly competent. Respondent gave the agents no information. She tried to set up a meeting when her lawyer could be present, but the agents did not appear at the appointed hour. Instead, they visited the respondent three more times when her lawyer was not there. She again refused to cooperate. Nor did she abandon her lawyer, who ultimately negotiated a conditional plea agreement with the prosecutor.

The Court of Appeals did not disagree with the government's contention that respondent was not prejudiced by the misconduct in this case. But the court found that the government's conduct violated the Sixth Amendment without a showing of prejudice, because the agents "deliberate[ly] attempt[ed] to destroy the attorney-client relationship and to subvert the defendant's right to effective assistance of counsel and a fair trial." The court distinguished Weatherford v. Bursey,

429 U.S. 545 (1977), in which this Court held that the mere presence of a government informer at defense strategy meetings did not violate the Sixth Amendment, on the ground that this case involved a "purposeful intrusion" not present in Weatherford. The Court of Appeals also held that the violation was "not amenable to remedy through suppression [of evidence] or reversal of conviction." The court thought dismissal of the indictment an appropriate deterrent measure when no other relief would remedy a violation that could make courts "unwitting instrumentalit[ies]" for deliberate undermining of constitutional rights.

Judges Garth and Rosenn dissented from denial of rehearing en banc, arguing principally that dismissal of the indictment was an unwarranted and illogical remedy. Judge Adams also would have granted rehearing en banc, because the panel's conclusion was arguably inconsistent with United States v. Broward, 594 F.2d 345 (CA2 1979), cert. denied, No. 78-1535 (June 18, 1979). In Broward, the Second Circuit held that dismissal was such a "drastic" sanction that "it must be reserved for the truly extreme cases."

The government's petition argues that dismissal of an indictment is not an appropriate remedy for misconduct that does not injure the defendant in any way. The government suggests that Weatherford requires a showing of prejudice, and that even if it does not, the sanction ordered in this case is inconsistent with the holdings of other Courts of Appeals and will breed litigation. Since neither the Court of Appeals nor the parties rely upon the supervisory power, Payner sheds little light on these issues.

The SG urges us to grant, insisting that there is substantial confusion among the Circuits as to whether and when, the "dismissal" sanction is appropriate. The conduct of the DEA agents is indefensible, and yet apparently it would not have affected the fairness of respondent's trial. The sanction of dismissal with prejudice seems inappropriate. I would grant.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

July 3, 1979

Re: No. 78-1729, United States v. Payner

MEMORANDUM TO THE CONFERENCE:

I received today the enclosed letter from Donald C. Alexander, who was Commissioner of Internal Revenue at the time of the events in the above suit. Mr. Alexander objects to the second, third, and fifth sentences (exclusive of citations) in footnote 5 of the Court opinion. In particular, he asserts that he did all he could to require IRS agents to conform to the law, and that he was severely criticized for calling off Operation Trade Winds when he learned of the improprieties revealed in the Payner case.

From newspaper clippings attached to Mr. Alexander's letter, I gather that he was falsely accused of suspending the Bahamian bank investigation in order to protect persons whom he knew. Congress investigated this and similar accusations in the hearings cited in footnote 5. In the course of the investigation, however, the congressional committee delved at length into the illegal acts committed by Mr. Jaffe and Mr. Casper in the "briefcase caper." Thus, I believe it was accurate to state that "in 1976 Congress investigated the improprieties revealed in this record."

Perhaps the political climate prevented Mr. Alexander from taking more positive measures to discipline the agents responsible for the briefcase affair. It nevertheless remains true that the measures taken "appear on their face to be less positive than one might expect from an agency charged with enforcing the law." Therefore, I would not change the second or fifth sentences in footnote 5.

The third sentence, however, may be inaccurate in its implication. It reads: "As a result [of the congressional investigation], the Commissioner of Internal Revenue 'called off' Operation Tradewinds." The information submitted by Mr. Alexander shows that he suspended the operation before any congressional investigation began. It therefore appears appropriate to correct the statement that the Commissioner's action was triggered by Congress' interest in the matter. In fact, it seems more likely that Congress' interest was prompted in part by the Commissioner's actions. Thus, I propose that the sentence be changed to read: "Moreover, the Commissioner of Internal Revenue--on his own initiative--'called off' Operation Trade Winds."

Unless there is some objection, I will instruct the Reporter to substitute the language quoted above for the third sentence of footnote 5. I plan no other changes in the footnote.

L.F.P., Jr.

L.F.P.

File

MORGAN, LEWIS & BOCKIUS
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1800 M STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE: (202) 872-5000

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ASSOCIATED OFFICE

DONALD C. ALEXANDER
DIAL DIRECT (202) 872-5045

July 1, 1980

1980 JUL 2

Hon. Lewis F. Powell, Jr.
Associate Justice
Supreme Court of the United States
1 First Street, N. E.
Washington, D. C. 20543

RE: United States v. Payner

Dear Justice Powell:

As Commissioner of Internal Revenue from May, 1973 to March, 1977, I am deeply concerned about certain of the statements made in Footnote 5 to your majority opinion in the above case. It seems clear that the Court may not have been given a fully accurate picture of the facts. These statements and my comments follow.

1. "We note that in 1976 Congress investigated the improprieties revealed in this record."

It is true that in 1976 Congress investigated the "briefcase caper", but it is difficult for me to see how a person reading the hearings of the two Congressional investigations, that made by Chairman Rosenthal's Subcommittee of the House Government Operations Committee and cited in Footnote 5 and the other by Representative Vanik's Oversight Subcommittee of the Committee on Ways and Means, could conclude that the "improprieties" investigated were those involved in the taking of the briefcase. Instead, the primary interest of both Subcommittees was investigating allegations about me. Certain members of the law enforcement community (including the people who set up the briefcase caper) joined with their associates in the media in planting and disseminating the contention that I called off Operation Haven, using the briefcase incident as a pretext, to protect my former law firm and its clients. That Congressmen Rosenthal and Vanik were investigating these allegations, and other allegations that I was "soft on crime" is obvious from a reading of the records. See, e.g., Rosenthal's record at pp. 30, 82-99, 112, 116-7, 992-927 and 1265-1323.

2. "As a result, the Commissioner of Internal Revenue 'called off' Operation Trade Winds."

Neither Operation Trade Winds nor Operation Haven was called off as a result of any Congressional hearing. Operation Trade Winds had previously been curtailed when the Internal Revenue Service reexamined its policy and practices regarding informants. Operation Haven was temporarily suspended after the "briefcase caper" became known to the IRS National Office officials, and was resumed, at IRS' request, through a grand jury convened by the Department of Justice. Congress had nothing to do with any curtailment; instead, some in Congress were attacking me for having attempted to make law enforcement officers abide by the law.

3. "Although these measures appear on their face to be less positive than one might expect from an agency charged with upholding the law, they do indicate disapproval of the practices found to have been implemented in this case."

The first half of this statement is deeply disturbing to me. What more "positive" actions could I have taken? I find it surprising that anyone aware of the facts in 1975-76, or willing to inquire into the facts, could speak so slightingly. I attempted, as strongly as I could and with more vigor than discretion, to prevent certain overzealous IRS criminal investigators from violating the Constitution and the law. For this effort, I was subjected to a continuing (and almost successful) campaign of personal harassment in the media and in Congress. I was the target of a grand jury investigation in Washington, and I also had to testify in my defense before a grand jury in Miami. In the end, thanks to the fact that the allegations against me were completely false and the fact that Secretary Simon, President Ford and Attorney General Levi were honorable men, I was cleared and I remained in office.

Since it appears clear that you and your office were not acquainted with these facts, I am enclosing some clippings describing the allegations made and the actions taken.

As I stated immediately after the first allegations about me were carried on national television, this is the price one has to pay for trying to prevent lawless conduct by law enforcement officials. I think that those who head law enforcement

agencies are fully aware of what happened to me and why it happened; and it is unrealistic to assume that they will deliberately subject themselves to the same treatment.

Sincerely yours,

Donald C. Alexander

/alt

Enclosures

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 14, 1980

Re: No. 78-1729 - United States v. Payner

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

April 11, 1980

Re: 78-1729 - United States v. Payner

Dear Lewis:

Except for the first sentence of the full paragraph on page 8, I think your opinion is fine. I am afraid, however, that I cannot agree that evidence should never be suppressed "without carefully balancing the benefits of exclusion against its high societal cost." If that were the test, I would suppress the evidence in this case. For me, the test is whether the search violated the defendant's constitutional rights. If the answer is yes, I believe suppression is appropriate; if the answer is no, suppression is inappropriate even if the illegality is as serious as we find in this case.

If you can see your way clear to deleting the language I have quoted, I will be happy to join you.

Respectfully,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 15, 1980

Re: 78-1729 - United States v. Payner

Dear Lewis:

Please join me.

Respectfully,

Mr. Justice Powell

Copies to the Conference