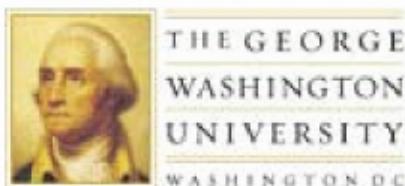


The Burger Court Opinion Writing Database

United States v. Havens

446 U.S. 620 (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

May 21, 1980

Re: 79-305 - United States v. Havens

Dear Byron:

I join.

Regards,

WSB

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

March 31, 1980

RE: No. 79-305 United States v. Havens

MEMORANDUM TO: Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Stevens

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



W.J.B.Jr.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 1, 1980

RE: No. 79-305 United States v. Havens

Dear Byron:

I'll be circulating a dissent in the above
in due, due, due course (eventually).

Ta,

Bill

Mr. Justice White

cc: The Conference

Mr. Justice
Mr. Justice

Mr. Justice, Justice, Brennan
Circulated: MAY 14 1980

1st DRAFT

Circulated: [REDACTED]

SUPREME COURT OF THE UNITED STATES

No. 79-305

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Appeals
J. Lee Havens. | for the Fifth Circuit.

[May —, 1980]

MR. JUSTICE BRENNAN, dissenting.

The Court upholds the admission at trial of illegally seized evidence to impeach a defendant's testimony deliberately elicited by the *Government* under the cover of impeaching an accused who takes the stand in his own behalf. I dissent. Criminal defendants now told that prosecutors are licensed to insinuate otherwise inadmissible evidence under the guise of cross-examination no longer have the unfettered right to elect whether or not to testify in their own behalf. Not only is today's decision an unwarranted departure from prior controlling cases, but regrettably, it is yet another element in the trend to depreciate the constitutional protections guaranteed the criminally accused.

I

The question before us is not of first impression. The identical issue was confronted in *Agnello v. United States*, 269 U. S. 20 (1925), which determined—contrary to the instant decision—that it was constitutionally impermissible to admit evidence obtained in violation of the Fourth Amendment to rebut a defendant's response to a matter first raised during the Government's cross-examination. Subsequently, *Walder v. United States*, 347 U. S. 62 (1954), affirmed the introduction of unlawfully acquired evidence to impeach an accused's false assertions about previous conduct that had been offered during *direct* testimony. But *Walder* took pains to draw the distinction between its own holding and *Agnello*, noting that "the

100	100	100
100	100	100
100	100	100
100	100	100
100	100	100

ANSWER KEY - Chapter 1, Section 1

2nd DRAFT

TES MAY 10 19
had resulted.

SUPREME COURT OF THE UNITED STATES

No. 79-305

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Appeals
J. Lee Havens. | for the Fifth Circuit.

[May —, 1980]

MR. JUSTICE BRENNAN, joined by MR. JUSTICE MARSHALL and joined in Part I by MR. JUSTICE STEWART and MR. JUSTICE STEVENS, dissenting.

The Court upholds the admission at trial of illegally seized evidence to impeach a defendant's testimony deliberately elicited *by the Government* under the cover of impeaching an accused who takes the stand in his own behalf. I dissent. Criminal defendants now told that prosecutors are licensed to insinuate otherwise inadmissible evidence under the guise of cross-examination no longer have the unfettered right to elect whether or not to testify in their own behalf. Not only is today's decision an unwarranted departure from prior controlling cases, but regrettably, it is yet another element in the trend to depreciate the constitutional protections guaranteed the criminally accused.

廿

The question before us is not of first impression. The identical issue was confronted in *Agnello v. United States*, 269 U. S. 20 (1925), which determined—contrary to the instant decision—that it was constitutionally impermissible to admit evidence obtained in violation of the Fourth Amendment to rebut a defendant's response to a matter first raised during the Government's cross-examination. Subsequently, *Walder v. United States*, 347 U. S. 62 (1954), affirmed the introduction of unlawfully acquired evidence to impeach an accused's false assertions about previous conduct that had been offered during *direct* testimony. But *Walder* took pains to draw the distinc-

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 5, 1980

Re: 79-305 - United States v. Havens

Dear Byron:

I shall await the dissenting opinion.

Sincerely yours,

P.S.
P.J.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 15, 1980

Re: 79-305 - United States v. Havens

Dear Bill:

In view of your willingness to make the small deletion on page 3 that we discussed, I am glad to join Part I of your dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

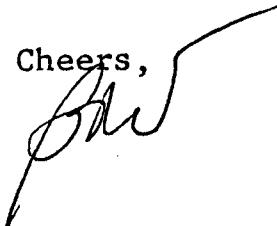
April 30, 1980

Re: 79-305 - United States v. Havens

MEMORANDUM TO THE CONFERENCE

I am circulating the attached as a proposed opinion of the Court although based on the Conference vote, there may be no more than four to take this route to reversal. Two others, as I understand it, would vacate or reverse on the Walder, Harris and Hass approach, i.e., that the impeachment here in effect was impeachment of direct testimony.

Cheers,



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

From: Mr. Justice White
30 APR 1980
Circulated: _____

Recirculated: _____

Re: 79-305 - United States v. Havens

MR. JUSTICE WHITE delivered the opinion of the Court. The petition for certiorari filed by the United States in this criminal case presented a single question: whether evidence suppressed as the fruit of an unlawful search and seizure may nevertheless be used to impeach a defendant's false trial testimony, given in response to proper cross-examination, where the evidence does not squarely contradict the defendant's testimony on direct examination. We issued the writ, ____ U. S. ____.

I

Respondent was convicted of importing, conspiring to import and intentionally possessing a controlled substance, cocaine. According to the evidence at his trial, Havens and John McLereth, both attorneys from Ft. Wayne, Indiana, boarded a flight from Lima, Peru, to Miami, Florida. In Miami, a Customs officer searched McLereth and found cocaine

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

From: Mr. Justice White

Circulated: _____

Recirculated: 5 MAY 1980

^{Printed}
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-305

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Appeals
J. Lee Havens. | for the Fifth Circuit.

[May —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The petition for certiorari filed by the United States in this criminal case presented a single question: whether evidence suppressed as the fruit of an unlawful search and seizure may nevertheless be used to impeach a defendant's false trial testimony, given in response to proper cross-examination, where the evidence does not squarely contradict the defendant's testimony on direct examination. We issued the writ, — U. S. —.

I

Respondent was convicted of importing, conspiring to import and intentionally possessing a controlled substance, cocaine. According to the evidence at his trial, Havens and John McLereth, both attorneys from Ft. Wayne, Ind., boarded a flight from Lima, Peru, to Miami, Fla. In Miami, a customs officer searched McLereth and found cocaine sewed into makeshift pockets in a T-shirt he was wearing under his outer clothing. McLereth implicated respondent, who had previously cleared customs and who was then arrested. His luggage was seized and searched without a warrant. The officers found no drugs but seized a T-shirt from which pieces had been cut that matched the pieces that had been sewn to McLereth's T-shirt. The T-shirt and other evidence seized in the course of the search were suppressed on motion prior to trial.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 1, 1980

Re: No. 79-305 - United States v. Havens

Dear Byron:

I await the dissent.

Sincerely,

J.M.

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

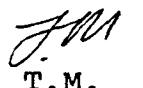
May 15, 1980

Re: No. 79-305 - United States v. Havens

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Brennan
cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1980

Re: No. 79-305 - United States v. Havens

Dear Byron:

I could join you and three others in your proposed opinion circulated April 30. I think a good case can be made, too, to the effect that the "tainted" evidence contradicted respondent's testimony on direct examination.

Sincerely,



Mr. Justice White
cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1980

Re: No. 79-305 - United States v. Havens

Dear Byron:

There seems to be question in the minds of some of the Brethren. This note will express a formal join that I thought was implicated in my letter of May 2.

Sincerely,



Mr. Justice White
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 30, 1980

79-305 United States v. Havens

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 1, 1980

Re: No. 79-305 - United States v. Havens

Dear Byron:

Please join me in the proposed opinion of the Court in this case which you circulated April 30th.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 5, 1980

Re: 79-305 - United States v. Havens

Dear Byron:

Since your opinion has not persuaded me, I shall await the dissent.

Respectfully,



Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Stevens
MAY 15 '80

Circulated: _____

Recirculated: _____

79-305 - United States v. Havens

MR. JUSTICE STEVENS, dissenting.

For the reasons stated in Part I of MR. JUSTICE BRENNAN'S dissenting opinion, I respectfully dissent.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 15, 1980

Re: 79-305 - United States v. Havens

Dear Bill:

Would you please join me in Part I of
your dissent.

Respectfully,



Mr. Justice Brennan

Copies to the Conference