

# 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

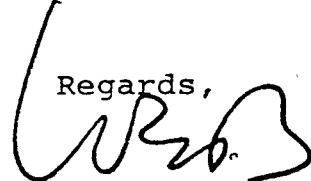
August 5, 1980

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

Dear Lewis:

Your July 3 suggestion re this case is entirely acceptable to me.

Regards,



cc: The Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

✓

September 17, 1980

RE: 78-1729 United States v. Payner

Dear Lewis:

I leave this matter in your hands.

Regards,

WFB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

September 18, 1980

✓

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

Dear Lewis:

I agree that nothing further need be done.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

September 17, 1980

Re: 78-1729 - United States v. Payner

Dear Lewis:

Thanks for sharing copies of your correspondence with Donald Alexander. Although I am sympathetic with his concern, I agree with you that nothing further need be done.

Sincerely yours,

D. S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

September 23, 1980

✓

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

Dear Lewis:

I share your feeling that nothing further need be done.

Sincerely,

*Harry*

Mr. Justice Powell

cc: The Conference

September 17, 1980

78-1729 United States v. Payner

MEMORANDUM TO THE CONFERENCE:

You will recall that last July, responding to a request by Donald Alexander (former Commissioner of the IRS), we made a small change in footnote 5.

This did not entirely satisfy his concerns and he wrote me twice during the summer. I responded in my letter of September 5, copy enclosed. I now have his letter of September 15, in which he suggests that other members of the Court may be interested in the correspondence. Accordingly, I enclose copies of his three letters. In my view, nothing further need be done.

L.F.P., Jr.

ss

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW

1800 M STREET, N.W.

WASHINGTON, D.C. 20036

TELEPHONE: (202) 872-5000

September 15, 1980

DONALD C. ALEXANDER

SEP 16 1980

DIAL DIRECT (202) 872-5045

LOS ANGELES  
MIAMI  
PARIS  
ASSOCIATED OFFICE

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

RE: 78-1729 United States v. Payner

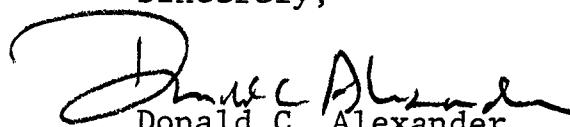
Dear Justice Powell:

Thank you for your letter of September 5. I am grateful for what you said and I fully accept your conclusion, although, of course, I wish that you had been willing to change the sentence that concerns me.

Let me again express my gratitude for your patience and your responsiveness. Perhaps the correspondence might be of interest to other members of the Court as an example of what may happen when the head of a law enforcement agency attempts to curb excesses. However, I am aware of the very heavy demands on the Court's time.

With best wishes,

Sincerely,

  
Donald C. Alexander

/alt

September 5, 1980

78-1729 United States v. Payner

Dear Mr. Alexander:

This will acknowledge your letters of ~~June~~<sup>July</sup> 28 and August 22 that were received while I was in Richmond and did not have access conveniently to our files.

Although I can understand your sensitivity, I do not feel justified in recommending, on the basis of the record before us, a change in the sentence that concerns you. Nor do I think that the intelligent reader will think that you were responsible personally. Indeed, I did not. I regarded the misconduct in the investigation as being wholly unauthorized, and the action finally taken as the product of departmental compromise - a result not uncommon in Washington.

In sum, after the change already made at your request, I am quite hesitant to make a further change in the note. If, however, you wish me to submit your correspondence to the entire Court, I will be happy to do so.

I add that I have heard no Justice speak critically of you personally.

Sincerely,

Hon. Donald C. Alexander  
Morgan, Lewis & Bockius  
1800 M Street, N.W.  
Washington, D. C. 20036

lfp/ss

JUL 29 1980

MORGAN, LEWIS & BOCKIUS

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LOS ANGELES  
MIAMI  
PARIS  
ASSOCIATED OFFICE

July 28, 1980

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

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:

Thank you very much for your letter of July 15. I deeply appreciate your interest in this important matter.

With my letter of July 1, I submitted clippings giving some detail of what happened to me by reason of my effort to prevent overzealous actions by IRS criminal investigators and to impose managerial controls (like those used by the FBI) upon IRS criminal investigations. Had I attempted to go further than I did, I am absolutely convinced that, at a minimum, I would have been removed from office. The power of the law enforcement community, investigative reporters who work with such community and congressmen (and their staffs) who work with both the media and the law enforcement community is almost incalculable. I did not realize this when I acted to try to bring IRS law enforcement activities under control, but I surely realize it now.

When I took office, I was firmly opposed to the exclusionary rule. I know better now. This rule is essential to the protection of American liberties.

Finally, I regret the language in Footnote 5 "[a]lthough these measures appear on their face to be less positive than one might expect from an agency charged with upholding the law . . ." apparently remains. The Oversight Hearings of Congressman Rosenthal's House Government Operations Subcommittee were cited immediately above this statement. I would like to

MORGAN, LEWIS & BOCKIUS

Hon. Lewis F. Powell, Jr.

Page 2

July 28, 1980

RE: United States v. Payner

call your attention to Special Agent Jaffe's affidavit on pages 232-238 of these Hearings. This and other material in the Subcommittee's Hearings, a part of the record, make it clear, I believe, what was done and that what was done was as much as was humanly possible to do.

With best wishes,

Sincerely yours,

  
Donald C. Alexander

/alt

PHILADELPHIA  
NEW YORK  
HARRISBURG

AUG 25 1980

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LOS ANGELES  
MIAMI  
PARIS  
ASSOCIATED OFFICE

August 22, 1980

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

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:

After sending my letter of July 28 to you, I realized that I should have enclosed a copy of the materials to which I referred.

A copy of Special Agent Jaffe's November, 1979 Affidavit is attached. Mr. Jaffe states on page 236 that he was the subject of a criminal investigation and that he was advised that the Federal Grand Jury in Miami would take his testimony. This Affidavit was part of the record in the Oversight Hearings specifically cited in Footnote 5 discussed in your letter of July 15 in response to mine of July 1.

As stated in my prior letters, I don't know what more IRS or I could have done. Surely IRS should not be blamed for the unwillingness of the Department of Justice to prosecute a law enforcement officer.

I hope that after reviewing this material you will modify the statement in Footnote 5 that "these measures appear on their face to be less positive than one might expect from an agency charged with upholding the law, . . . ." Mr. Jaffe - and many others in the IRS, the Department of Justice, Congress and the media - considered these actions to be much too positive.

Thank you again for your consideration.

With best wishes,

Sincerely,

  
Donald C. Alexander

/alt  
Enclosure

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

September 18, 1980

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

Dear Lewis:

I concur in the views stated in your memorandum of September 17th that nothing further need be done in this case.

Sincerely,

Wm. H. Rehnquist

Mr. Justice Powell

Copies to the Conference