

The Burger Court Opinion Writing Database

United States v. Morrison

449 U.S. 361 (1981)

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

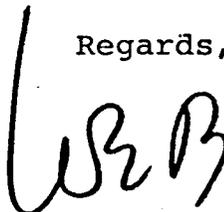
January 8, 1981

RE: 79-395 - United States v. Morrison

Dear Byron:

I join.

Regards,



Mr. Justice White

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1980

RE: No. 79-395 United States v. Morrison

Dear Byron:

I agree.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1980

Re: 79-395 - United States v. Morrison

Dear Byron,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Justice White

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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: 30 DEC 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-395

United States, Petitioner,		On Writ of Certiorari to the
v.		United States Court of Ap-
Hazel Morrison.		peals for the Third Circuit.

[January —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Hazel Morrison, respondent here, was indicted on two counts of distributing heroin in violation of 21 U. S. C. § 841 (a)(1). She retained private counsel to represent her in the impending criminal proceedings. Thereafter, two agents of the Drug Enforcement Agency, aware that she had been indicted and had retained counsel, sought to obtain her cooperation in a related investigation. They met and conversed with her without the knowledge or permission of her counsel. Furthermore, in the course of the conversation, the agents disparaged respondent's counsel, stating that respondent should think about the type of representation she could expect for the \$200 retainer she had paid him and suggesting that she could be better represented by the public defender. In addition, the agents indicated that respondent would gain various benefits if she cooperated but would face a stiff jail term if she did not. Respondent declined to cooperate and immediately notified her attorney. The agents visited respondent again in the absence of counsel, but at no time did respondent agree to cooperate with them, incriminate herself or supply any information pertinent to her case. Contrary to the agents' advice, respondent continued to rely upon the services of the attorney whom she had retained.

Respondent subsequently moved to dismiss the indictment with prejudice on the ground that the conduct of the agents

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 7, 1981

Re: 80-395 - U. S. v. Morrison

Dear Thurgood,

Although as I see it, the circulating draft is quite consistent with the record and with the oral argument in this case, I am quite willing to make the changes that you suggest, which are also consistent with the record. I have sent the changes to the printer.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

B P W
Please form me
TM

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: _____

7 JAN 1981

Recirculated: _____

2, 4-6

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-395

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Ap-
Hazel Morrison. | peals for the Third Circuit.

[January —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Hazel Morrison, respondent here, was indicted on two counts of distributing heroin in violation of 21 U. S. C. § 841 (a)(1). She retained private counsel to represent her in the impending criminal proceedings. Thereafter, two agents of the Drug Enforcement Agency, aware that she had been indicted and had retained counsel, sought to obtain her cooperation in a related investigation. They met and conversed with her without the knowledge or permission of her counsel. Furthermore, in the course of the conversation, the agents disparaged respondent's counsel, stating that respondent should think about the type of representation she could expect for the \$200 retainer she had paid him and suggesting that she could be better represented by the public defender. In addition, the agents indicated that respondent would gain various benefits if she cooperated but would face a stiff jail term if she did not. Respondent declined to cooperate and immediately notified her attorney. The agents visited respondent again in the absence of counsel, but at no time did respondent agree to cooperate with them, incriminate herself or supply any information pertinent to her case. Contrary to the agents' advice, respondent continued to rely upon the services of the attorney whom she had retained.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 6, 1981

Re: No. 79-395 - United States v. Morrison

Dear Byron:

Although I want to join your opinion, it includes several specific phrases that preclude my joining at this time.

First, the last sentence of the carry-over paragraph on page 2 is not true. Although respondent clearly sought a per se rule avoiding a prejudice requirement, respondent never conceded that the interference with her Sixth Amendment right was non-prejudicial. What respondent failed to do was to allege prejudice with any specificity or support. Thus, on pages 51-52 of her brief, respondent alleges "inherent prejudice," and various taints of her confidence in her attorney. See also Brief of National Legal Aid and Defender Association, as Amicus Curia, pages 2-5. Thus, I would be more comfortable if you would omit the above-mentioned sentence on your page 2. Short of that, a sentence of the following sort would be acceptable: "This unspecified interference was urged as sufficient basis for the requested disposition."

Secondly, I am troubled in general by the opinion's treatment of the prejudice issue. I am not sure that it is accurate to conclude that she never alleged prejudice at all, as your opinion indicates in the second sentence in footnote 2 ("there being no claim of any taint") and the first sentence in the first full paragraph on page 5

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("has alleged no prejudice"). It seems more correct to observe that respondent never alleged prejudice with specificity or persuasiveness. For clarity, you may wish to explain that respondent failed to allege prejudice within the trial context, or failed to proffer any evidence of prejudice, or better yet, that the District Court failed to make any findings of prejudice. It should be clear, of course, that if respondent had been able to demonstrate a continuing pattern of similar conduct by DEA agents, relief may have been warranted even in the absence of prejudice in this case.

Finally, I do not understand the meaning of the words "if established" in the second sentence on page 6. This phrase has nothing to do with this case, as we agreed at Conference that for the purposes of this opinion, a Sixth Amendment violation would be assumed. Its significance for other cases, then, becomes less than obvious. Indeed, it may be read to mean that something more than what was present in this case -- some persuasive evidence of prejudice -- must be proffered before civil damages may be awarded for a Sixth Amendment violation. Rather than risk such an implication, I think the sentence should be altered to read, "Nor do we suggest that in cases such as this, the Sixth Amendment violation may not be remedied in other proceedings."

Sincerely,

T.M.

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1981

Re: No. 79-395 - United States v. Morrison

Dear Byron:

Please join me.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

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NATIONAL ARCHIVES MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 31, 1980

Re: No. 79-395 - United States v. Morrison

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 5, 1981

No. 79-395 U.S. v. Morrison

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 31, 1980

Re: No. 79-395 United States v. Morrison

Dear Byron:

Please join me.

Sincerely,

WR

Mr. Justice White

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1981

Re: 79-395 - United States v. Morrison

Dear Byron:

Please join me.

Respectfully,



Justice White

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