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Illinois v. Abbott & Associates, Inc.

460 U.S. 557 (1983)

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

February 4, 1983

Re: 81-1114 - Illinois v. Abbott

Dear John:

I join.

Régards,

A handwritten signature in cursive script, appearing to be 'WRS', written in black ink.

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1983

Re: Illinois v. Abbott & Associates, No. 81-1114

Dear John:

I understand that you have agreed to Sandra's suggested footnote addition to your opinion. The change is helpful, and it may yet lead me to join you. At present, however, I am not sure that the new footnote goes far enough to allay the concerns that led me to vote to reverse in this case.

It appears to me that some of the features that bother me may be addressed more fully in argument and conference in United States v. Sells Engineering, No. 81-1032, to be argued the week after next. I realize that I am the only one who has not joined you in Abbott, and I apologize for holding you up. Still, I would prefer to wait until after then to make up my mind finally about it.

Sincerely,

WJB, Jr.

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 4, 1983

RE: No. 81-1114 Illinois v. Abbott & Associates, Inc.

Dear John:

Please join me in your opinion, but when other exigencies disappear I intend to write a brief concurrence. I'll try not to hold you up longer than the end of the Term.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 21, 1983

Re: Illinois v. Abbott & Assocs., No. 81-1114

Dear John:

I apologize again for holding you up in this case. I am circulating a brief concurrence that, I think, adequately addresses one of my remaining problems. There is another small point, however, not presently addressed in my concurrence, that I would like to mention.

Your opinion carries for me at least an implication that the "permitted by law" standard of §4F(b) must always be governed by the interpretation of Rule 6 existing in 1976, regardless of any changes in Rule 6 law afterwards. This seems to me both unnecessary and unwise. I see no reason to suppose that Congress, in enacting §4F(b), intended to "freeze-frame" 1976 law; it seems much more plausible that "permitted by law" means permitted by whatever law applies at the time disclosure is sought. Hence, I think that §4F(b) should be construed not by reference to 1976 law, but by reference to what would be permitted under Rule 6 at any given time if §4F(b) were not on the books.

As an illustration, consider our 1979 decision in Douglas Oil. As it happens, that decision was no great departure from pre-1976 law, but more a spelling-out of detail. But suppose it had been otherwise--suppose that in Douglas Oil we had made some substantial change in Rule 6 law, whether in the direction of more disclosure or less. It seems unlikely that Congress would have intended that two different Rule 6 standards should exist--the 1976 standard for §4F(b) disclosure, and Douglas Oil for everything else.

While this point has very little significance to this case, it might lay a hidden trap for later cases. We may someday make some significant change in Rule 6 law, either by construction or by amendment. Moreover, our approach in this case might well be taken by some courts as a model for statutory construction generally.

I wonder if this point might be cleared up by some quite minor changes in your opinion, along the following lines:

--The third sentence on page 7 might read: "It is therefore appropriate to examine the extent to which federal law, aside from §4F(b) itself, permits the Attorney General of the United States to disclose matters occurring before a federal grand jury to a state attorney general."

--The first paragraph on page 9 might read: "Thus, under Rule 6(e), two propositions are clear: (1) a state attorney general cannot obtain access to federal grand jury proceedings without federal court approval; and (2) the State cannot secure such approval merely by alleging that the materials are relevant to an actual or potential civil antitrust action. Absent §4F(b), a blanket disclosure request comparable to the one at issue in this case would be denied because it is not permitted by law. It follows from the plain language of the Act that the state attorney general is not entitled to the disclosure he seeks in this case."

--The sentence in footnote 15 running from page 8 to page 9 might read: "However such a standard might be formulated, it

differs from the 'particularized need' standard we have adopted under Rule 6(e), which is preserved by §4F(b)."

--The first two sentences of footnote 16 might read: "The State does not directly argue that, apart from §4F(b), the law permits it obtain grand jury materials without a showing of particularized need. At oral argument the Assistant Attorney General expressed uncertainty regarding the legal standard governing outside of §4F(b)'s scope."

Sincerely,



WJB, Jr.

Justice Stevens

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1114

ILLINOIS, PETITIONER *v.* ABBOTT & ASSOCIATES,
INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[March —, 1983]

JUSTICE BRENNAN, concurring.

I join in the Court's opinion. I write separately to state my view that when a district court considers "the public interest, if any, served by disclosure to a governmental body," *ante*, at 9, n. 15, that consideration may properly include consideration of a specific statutory policy favoring disclosure in particular circumstances. In this case, the district court would have before it the specific provisions of §4F(b) of the Clayton Act. I agree with the Court that §4F(b) does not relieve a State of the requirement that it show particularized need under Rule 6(e) and *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U. S. 211 (1979); but it does not follow that §4F(b) is irrelevant to the *Douglas Oil* balancing test. When the district court has before it a statute clearly evincing Congress's intent to foster cooperation with and disclosure to state governments to aid them in enforcement of federal antitrust laws, that is surely material to the public interest served by disclosure to such governments.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 23, 1983

Re: Illinois v. Abbott Assocs., No. 81-1114

Dear John:

Thank you for your prompt response. I agree that the changes you suggest would solve the problem I raised.

Sincerely,



WJB, Jr.

Justice Stevens

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1114

ILLINOIS, PETITIONER *v.* ABBOTT & ASSOCIATES,
INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[March —, 1983]

JUSTICE BRENNAN, with whom JUSTICE O'CONNOR joins,
concurring.

I join in the Court's opinion. I write separately to state my view that when a district court considers "the public interest, if any, served by disclosure to a governmental body," *ante*, at 9, n. 15, that consideration may properly include consideration of a specific statutory policy favoring disclosure in particular circumstances. In this case, the district court would have before it the specific provisions of §4F(b) of the Clayton Act. I agree with the Court that §4F(b) does not relieve a State of the requirement that it show particularized need under Rule 6(e) and *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U. S. 211 (1979); but it does not follow that §4F(b) is irrelevant to the *Douglas Oil* balancing test. When the district court has before it a statute clearly evincing Congress's intent to foster cooperation with and disclosure to state governments to aid them in enforcement of federal antitrust laws, that is surely material to the public interest served by disclosure to such governments.

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

February 15, 1983

CHAMBERS OF
JUSTICE BYRON R. WHITE

No. 81-1114 -- Illinois v.
Abbott, Inc., et al.

Dear John,

Please join me.

Sincerely,

Byron

Justice Stevens
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1983

Re: 81-1114-Illinois v. Abbott & Associates

Dear John:

Please join me.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 7, 1983

Re: No. 81-1114 - Illinois v. Abbott & Associates, Inc.

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 3, 1983

81-1114 Illinois v. Abbott & Associates

Dear John:

Please join me.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 9, 1983

81-1114 Illinois v. Abbott & Associates

Dear John:

I think Sandra's suggested addition is a helpful one.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

February 23, 1983

81-1114 Illinois v. Abbott

Dear John:

The Chief's suggestion is acceptable to me.

Sincerely,

Justice Stevens

lfp/ss

cc: Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 4, 1983

Re: No. 81-1114 Illinois v. Abbott & Associates, Inc.

Dear John,

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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JPS
~~Place for me~~
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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1114

**ILLINOIS, PETITIONER v. ABBOTT & ASSOCIATES,
INC., ET AL.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

The Attorney General of Illinois asserts a statutory right of access to transcripts, documents, and other materials gathered or generated by two federal grand juries during their investigations of alleged violations of the federal antitrust laws. He contends that §4F(b) of the Clayton Act, 15 U. S. C. §15f(b) (1976), enacted as part of Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“the Act”), makes it unnecessary for him to meet the “particularized need” standard generally required under Rule 6(e) of the Federal Rules of Criminal Procedure in order to obtain access to grand jury materials. Disagreeing with two other Courts of Appeals,¹ the Seventh Circuit rejected this contention. 659 F. 2d 800 (CA7 1981). We granted certiorari to resolve the conflict, — U. S. — (1982), and now affirm.

¹ *United States v. Colonial Chevrolet Corp.*, 629 F. 2d 943 (4th Cir. 1980), cert. denied, 450 U. S. 913 (1981) (placing the burden of justifying nondisclosure on the opposing party); and *United States v. B. F. Goodrich Co.*, 619 F. 2d 798 (9th Cir. 1980) (allowing disclosure on a showing of “relevance”). *Contra, In re Grand Jury Investigation of Cuisinarts, Inc.*, 665 F. 2d 24 (CA2 1981), cert. pending, No. 81-1585 (§4F(b) did not change the standard of “particularized need” for State attorneys general).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 23, 1983

Re: 81-1114 - Illinois v. Abbott

Dear Sandra:

With the Chief's permission, I am sharing with you a note he sent to me concerning footnote 15 which includes language that you suggested. I am also sharing the letter with Lewis, since he also favored your suggestion.

I tend to agree with the Chief's suggestion and wonder if it is acceptable to the two of you.

Respectfully,



Justice O'Connor

cc: The Chief Justice
Justice Powell ✓

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 22, 1983

Re: 81-1114 - Illinois v. Abbott

Dear Bill:

Thanks for your note. I think your criticism is well taken. I am inclined to think, however, that I do not need to make all of the changes you suggest as long as I make the point clear in the text. Would it satisfy you if I make the revisions on page 9 that are marked on the enclosure?

Respectfully,



Justice Brennan

Copies to the Conference

Enclosure

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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Footnotes renumbered

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1114

**ILLINOIS, PETITIONER v. ABBOTT & ASSOCIATES,
INC., ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

[March —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

The Attorney General of Illinois asserts a statutory right of access to transcripts, documents, and other materials gathered or generated by two federal grand juries during their investigations of alleged violations of the federal antitrust laws. He contends that §4F(b) of the Clayton Act, 15 U. S. C. §15f(b) (1976), enacted as part of Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Act"), makes it unnecessary for him to meet the "particularized need" standard generally required under Rule 6(e) of the Federal Rules of Criminal Procedure in order to obtain access to grand jury materials. Disagreeing with two other Courts of Appeals,¹ the Seventh Circuit rejected this contention. 659 F. 2d 800 (CA7 1981). We granted certiorari to resolve the conflict, 455 U. S. 1015 (1982), and now affirm.

¹*United States v. Colonial Chevrolet Corp.*, 629 F. 2d 943 (4th Cir. 1980), cert. denied, 450 U. S. 913 (1981) (placing the burden of justifying nondisclosure on the opposing party); and *United States v. B. F. Goodrich Co.*, 619 F. 2d 798 (9th Cir. 1980) (allowing disclosure on a showing of "relevance"). *Contra, In re Grand Jury Investigation of Cuisinarts, Inc.*, 665 F. 2d 24 (CA2 1981), cert. pending, No. 81-1585 (§ 4F(b) did not change the standard of "particularized need" for State attorneys general).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 29, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case held for Illinois v. Abbott & Associates, Inc., No. 81-1114

Connecticut v. Cuisinarts, No. 81-15⁹75

This petition presents the same question as No. 81-1114: whether §4F(b) of the Hart-Scott-Rodino Act permits State Attorneys General to obtain disclosure of grand jury materials in the custody of the United States Attorney General without making a showing of particularized need. The United States Court of Appeals for the Second Circuit held that Congress did not include grand jury materials within the "investigative files or other materials" subject to disclosure under the Act, and also that the statute did not free State Attorneys General of the traditional obligation to establish particularized need. Because I believe that the court of appeals reached the correct result in this case, I will vote to DENY.

Respectfully,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 8, 1983

No. 81-1114 Illinois v. Abbott & Associates

Dear John:

I agree with your conclusion that state attorneys general must establish a "particularized need" to obtain an order permitting disclosure of grand jury materials. I also agree that the Illinois Attorney General failed to make such a showing in this case, and that therefore the judgment below should be affirmed. I am concerned, however, that your very able opinion may create the impression that, in determining whether to order disclosure to a governmental body under Rule 6(e)(3)(C)(i), the district court may not weigh the public interests served by disclosure--along with the requisite particularized need--against the public interest in grand jury secrecy.

I think a sentence along the following lines, perhaps at the end of note 15 on page 9, would allay my concerns:

In rejecting such a rule, however, we stress that under the particularized need standard, the district court may weigh the public interest, if any, served by disclosure to a governmental body--along with the requisite particularized need--in determining whether "the need for disclosure is greater than the need for continued secrecy." Douglas Oil, supra, at 222.

If you can accommodate my request, I would be pleased to join the opinion.

Sincerely,



Justice Stevens

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

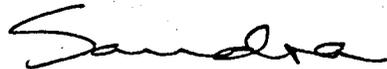
February 15, 1983

Re: No. 81-1114 Illinois v. Abbott & Associates

Dear John,

Thank you for amending the footnote on page 9.
Please join me in the 2nd draft of your opinion.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 23, 1983

No. 81-1114 Illinois v. Abbott

Dear John,

I tend to prefer the original suggestion. It seems to me a request from a governmental body should invoke greater concerns for the public interest than a request from a private party. By no means does the language I suggested in your footnote govern the outcome of Sells Engineering, Inc., in which the government argues: (1) that civil fraud attorneys in the Department of Justice are entitled to the material without any court order at all; and (2) alternatively, that a standard other than that proposed in Douglas Oil should govern court ordered disclosures of grand jury materials to government personnel.

Your draft opinion already has rejected the second proposition, and does not address the first.

Sincerely,

Sandra

Justice Stevens

cc: The Chief Justice
Justice Powell

I'd go w/ Chief's suggestion, but it hardly is important - nothing worth having a concurrence about.

MY

File

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 21, 1983

No. 81-1114 Illinois v. Abbott

Dear John,

I think Bill Brennan has made some good suggestions in his letter of March 21 and I would be happy to see them incorporated in your opinion.

Sincerely,

Sandra

Justice Stevens

cc: Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 21, 1983

No. 81-1114 Illinois v. Abbott

Dear Bill,

Please join me in your concurring
opinion.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference