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United States v. Rylander

460 U.S. 752 (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

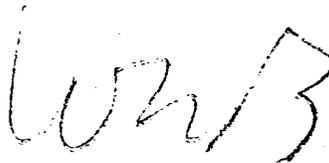
February 26, 1983

Re. No. 81-1120, U.S. v. Rylander

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to read "WB", is written over the typed word "Regards,".

Justice Rehnquist

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 25, 1983

Re: United States v. Rylander, No. 81-1120

Dear Bill:

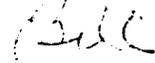
Although I passed on this case in conference, I am now persuaded that we should reverse. Please join me in your fine opinion.

I do think, however, that the addition John has suggested is a good one. Indeed, I would add one further detail to it. In Maggio, we held that there is no per se "presumption of continuing possession"; past possession is merely a relevant fact from which, where appropriate, one may draw a reasonable inference of present possession. 333 U.S. at 64-67. Here, the facts make such an inference clearly appropriate. I would like to steer clear, however, of any suggestion that such an inference is always appropriate. Perhaps John's last sentence could be modified to read:

"That finding is adequately supported in this case. The District Court found that Rylander possessed the documents at the time of the compulsion order hearing, and the circumstances warranted an inference of continuing possession. See Maggio v. Zeitz, 333 U.S. 56, 64-67 (1948)."

In any case, please join me.

Sincerely,


WJB, Jr.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1983

Re: 81-1120 - United States v. Rylander

Dear Bill,

I agree.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

From: **Justice Marshall**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1120

UNITED STATES, ET AL., PETITIONERS *v.* RICHARD
W. RYLANDER, SR., AS PRESIDENT OF RYLANDER
& CO. REALTORS, INC., ET AL.

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

[April —, 1983]

JUSTICE MARSHALL, dissenting.

I will not join another opinion which creates a new exception to a basic constitutional right—the Fifth Amendment privilege against self-incrimination.

Prior to the decision today, a man could not be held in civil contempt for failure to perform an act which he is currently unable to perform, regardless of whether he was once able to perform the act and wrongfully failed to so. See *Maggio v. Zeitz*, 333 U. S. 56, 72-74, and n. 6 (1948) and authorities cited therein.

Here the District Court made no finding that respondent possessed the documents at the time of the contempt proceeding. It stated only that “as president or other corporate officer he *had* possession or control, or both, of the books and records of said corporations.” (Emphasis added.) Although “[u]nder some circumstances it may be permissible . . . to reach the conclusion of present control from proof of previous possession,” *Maggio v. Zeitz*, 333 U. S., at 65, that is a determination to be made in the first instance by the trier of fact, not by this Court. In this case the District Court found only *past* possession, not *present* possession.

Since the District Court did not find that respondent was currently able to comply with the order to produce the docu-

stylistic changes

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

From: **Justice Marshall**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1120

UNITED STATES, ET AL., PETITIONERS *v.* RICHARD
W. RYLANDER, SR., AS PRESIDENT OF RYLANDER
& CO. REALTORS, INC., ET AL.

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Since the District Court did not find that respondent was currently able to comply with the order to produce the docu-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 25, 1983

Re: No. 81-1120 United States v. Rylander

Dear Bill:

Please join me.

I would have no objection to your accommodating John's suggestion as set forth in his letter of February 24.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 25, 1983

81-1120 United States v. Rylander

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1120

UNITED STATES, ET AL., PETITIONERS *v.* RICHARD
W. RYLANDER, SR., AS PRESIDENT OF RYLANDER
& CO. REALTORS, INC., ET AL.

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

[February —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Rylander was held in civil contempt by the United States District Court for the Eastern District of California because of his failure to comply with its earlier order enforcing an IRS summons for corporate books and records. The Court of Appeals for the Ninth Circuit reversed that holding, concluding that Rylander's showing at the contempt hearing, together with his invocation of the privilege against compulsory self-incrimination, required the government to shoulder the burden of producing evidence that Rylander was able to produce the documents in question. Because of a conflict among the various Courts of Appeals on this issue, we granted certiorari, — U. S. — (1982), and we now reverse.

In January, 1979, the IRS issued a summons to Rylander pursuant to 26 U. S. C. §7602 (1976). The summons ordered him to appear before an agent of the Service in Sacramento, California, and to produce for examination, and testify with respect to, books and records of two corporations. Rylander was the president of each corporation. When he failed to comply with the summons, the District Court issued an order to show cause why the summons should not be enforced. Rylander for several months suc-

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5-6

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1120

UNITED STATES, ET AL., PETITIONERS *v.* RICHARD
W. RYLANDER, SR., AS PRESIDENT OF RYLANDER
& CO. REALTORS, INC., ET AL.

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Bp 2, 9

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

From: **Justice Rehnquist**

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3d
-2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1120

UNITED STATES, ET AL., PETITIONERS *v.* RICHARD
W. RYLANDER, SR., AS PRESIDENT OF RYLANDER
& CO. REALTORS, INC., ET AL.

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

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From: **Justice Rehnquist**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1120

UNITED STATES, ET AL., PETITIONERS *v.* RICHARD
W. RYLANDER, SR., AS PRESIDENT OF RYLANDER
& CO. REALTORS, INC., ET AL.

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

[April —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 26, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-1120, United States v. Rylander

1. No. 81-1063, United States v. Meeks. In an enforcement proceeding, the DC rejected respondent's assertion of nonpossession and ordered enforcement of an IRS summons to produce records. Respondent filed an appeal but it was subsequently dismissed for lack of prosecution. When respondent continued to refuse to comply he was charged with civil contempt. At the contempt proceeding respondent filed a written declaration denying possession, but asserted his Fifth Amendment privilege and refused to offer any evidence. The DC adjudged respondent in civil contempt. A divided panel of the CA5 reversed, concluding that the civil contempt judgment violated respondent's privilege against self-incrimination. The CA5's decision is essentially the same as the CA9's in Rylander. I will vote to GVR.

2. No. 82-786, United States v. Doe. During an investigation of corruption relating to awards of county and municipal contracts, a federal grand jury issued several subpoenas to respondent for the production of numerous business records relating to companies of which respondent was sole proprietor. Respondent moved to quash the subpoenas on Fifth Amendment grounds. The DC granted the motion. The CA3 affirmed. Four issues are raised.

First, relying on Boyd v. United States, 116 U.S. 616 (1886), the CA3 ruled that the Fifth Amendment privilege attaches to the "contents" of an individual's own business records. The CA recognized that there was tension between Boyd and our decision in Fisher v. United States, 425 U.S. 391 (1976), but noted that Fisher specifically left this

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 24, 1983

Re: 81-1120 - United States v. Rylander

Dear Bill:

Your opinion convinces me that although Curcio requires us to respect the respondent's assertion of the privilege against self-incrimination, it does not require the District Court to accept his direct testimony when he insists on claiming the privilege. I have therefore decided to join your opinion.

I would like to suggest, however, that you add a footnote making explicit what I think is already implicit in your opinion. Would you consider adding a footnote along the following lines to come on page 9 at the end of the first sentence in the first full paragraph:

"Although it would have been preferable for the District Court to state explicitly its finding that Rylander still possessed the documents at the time of the contempt proceeding, we believe such a finding to be plainly implicit in its memorandum. That finding is adequately supported in this case by the presumption of continuing possession."

Whether or not you accept this suggestion, please join me.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 22, 1983

No. 81-1120 United States v. Rylander

Dear Bill,

Please join me in your opinion.

Sincerely,



Justice Rehnquist

Copies to the Conference