

# The Burger Court Opinion Writing Database

## *Bell v. United States*

462 U.S. 356 (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

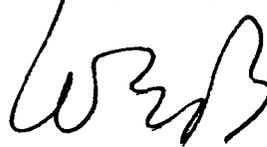
June 1, 1983

Re: No. 82-5119, Bell v. U.S.

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WJP', written in a cursive style.

Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1983

No. 82-5119

Nelson Bell v. United States

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Dear Lewis,

I agree.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 1, 1983

Re: 82-5119 - Bell v. United States

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 1, 1983

Re: No. 82-5119-Bell v. United States

Dear Lewis:

I await the dissent.

Sincerely,

*JM.*

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 8, 1983

Re: No. 82-5119-Nelson Bell v. United States

Dear Lewis:

Please join me.

Sincerely,

  
T.M.

Justice Powell

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 8, 1983

Re: No. 82-5119 - Bell v. United States

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

MAY 29 1983

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

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-5119

NELSON BELL, PETITIONER *v.* UNITED STATES

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

[June —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

The issue presented is whether 18 U. S. C. §2113(b), a provision of the Federal Bank Robbery Act, proscribes the crime of obtaining money under false pretenses.

I

On October 13, 1978, a Cincinnati man wrote a check for \$10,000 drawn on a Cincinnati bank. He endorsed the check for deposit to his account at Dade Federal Savings & Loan of Miami and mailed the check to an agent there. The agent never received the check. On October 17, petitioner Nelson Bell opened an account at a Dade Federal branch and deposited \$50—the minimum amount necessary for new accounts. He used his own name, but gave a false address, birth date, and social security number. Later that day, at another branch, he deposited the Cincinnati man's \$10,000 check into this new account. The endorsement had been altered to show Bell's account number. Dade Federal accepted the deposit, but put a 20-day hold on the funds. On November 7, as soon as the hold had expired, Bell returned to the branch at which he had opened the account. The total balance, with accrued interest, was then slightly over \$10,080. Bell closed the account and was paid the total balance in cash.

Bell was apprehended and charged with violating 18 U. S. C. §2113(b). The statute provides, in relevant part:

changes  
throughout

JUN 5 1983

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

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: JUN 6 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-5119

**NELSON BELL, PETITIONER v. UNITED STATES**

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

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Bell was apprehended and charged with violating 18 U. S. C. §2113(b). The statute provides, in relevant part:

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 13, 1983

MEMORANDUM TO CONFERENCE

Re: Cases held for Bell v. United States, No. 82-5119

No. 82-5201, Brown v. United States. Petitioner was convicted under 18 U.S.C. §2113(b) for his part in a scheme to cash forged and stolen checks at federally insured banks. In terms of the traditional distinctions, he "took and carried away" money that he had obtained under false pretenses. His conviction is entirely consistent with Bell.

The case presents two issues that are unrelated to Bell. Petitioner challenges the District Court's failure to ask jurors during voir dire whether they could presume a defendant innocent even if he did not testify on his own behalf. The District Court asked other questions and gave other instructions that protected petitioner's interests in this regard. Petitioner also argues that the District Court misapplied Fed. R. Evid. 404 when it permitted testimony about his participation in an earlier check forgery scheme. He did not object to this testimony and he did not request a limiting instruction.

I will vote to DENY.

No. 82-5550, Shoels v. United States. Petitioner was convicted under §2113(b) for cashing a forged check at an insured savings and loan institution. In terms of the traditional distinctions, he "took and carried away" money that he had obtained under false pretenses. His conviction is entirely consistent with Bell. I will vote to DENY.

No. 82-5845, Bilotti v. United States. Petitioners here were coconspirators with the petitioner in No. 82-5201, Brown v. United States. As in No. 82-5201, their §2113(b) convictions are entirely consistent with Bell.

The case presents two issues that are unrelated to Bell. Petitioners contend that the evidence showed multiple conspiracies rather than the single conspiracy with which they were charged. This is a highly fact-specific contention. Petitioners also argue that the District Court erred

in suggesting to the jury that petitioners were not present at the end of the trial because they had fled. The District Court had instructed the jury that the possibility that petitioners had fled should be immaterial to their deliberations. Petitioners had, in fact, fled after final summations.

I will vote to DENY.

  
L.F.P., JR.

LFP/vde

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 1, 1983

Re: No. 82-5119 Bell v. United States

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 1, 1983

Re: 82-5119 - Bell v. United States

Dear Lewis:

In a few days I will circulate a very short dissent.

Respectfully,

A handwritten signature in dark ink, appearing to be the initials 'JP' with a flourish, positioned below the word 'Respectfully,'.

Justice Powell

Copies to the Conference

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

From: Justice Stevens

Circulated: JUN 8 '83

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-5119

NELSON BELL, PETITIONER *v.* UNITED STATES

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

[June —, 1983]

JUSTICE STEVENS, dissenting.

Although federal criminal statutes that are intended to fill a void in local law enforcement should be construed broadly, see, *e. g.*, *United States v. Staszczuk*, 517 F. 2d 53, 57-58 (CA7 1975) (en banc), I take a different approach to federal laws that merely subject the citizen to the risk of prosecution by two different sovereigns. See *e. g.*, *United States v. Altobella*, 442 F. 2d 310, 316 (CA7 1971). When there is no perceivable obstacle to effective state enforcement, I believe federal criminal legislation should be narrowly construed unless it is clear that Congress intended the coverage in dispute. *McElroy v. United States*, 455 U. S. 642, 675 (1982) (STEVENS, J., dissenting); see *Jerome v. United States*, 318 U. S. 101, 104-105 (1943).

The history of the bank robbery and bank larceny legislation enacted in 1934 and 1937 persuades me that Congress did not intend federal law to encompass the conduct of obtaining funds from a bank with its consent, albeit under false pretenses. The 1934 Act was a response to the spate of armed bank robberies committed by John Dillinger and other traveling gunmen who outwitted and outmaneuvered a series of local police forces as they moved from State to State in the early 1930's.<sup>1</sup> Congress responded to local requests for fed-

<sup>1</sup>The Department of Justice explained the need for new legislation



CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

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

Mike - can we  
dispose of  
this in  
a note?

June 1, 1983

No. 82-5119 Bell v. United States

Dear Lewis,

I note that your opinion does not refer either to Jerome v. United States, 318 U.S. 101 (1943), the leading case in support of the petitioner, or to the early legislative version of the 1934 law, which by its terms prohibited theft by false pretenses. Depending upon the time available, I may decide to write a separate concurrence to mention them and at least try to distinguish Jerome. If you should decide to mention them in a subsequent draft, I would not feel so inclined, however. If there is to be a dissent, no doubt they will be discussed.

Sincerely,

*Sandra*

Justice Powell

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 1, 1983

No. 82-5119 Bell v. United States

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 7, 1983

No. 82-5119 Bell v. United States

Dear Lewis,

Your second draft now acknowledges the 1934 legislative version as well as the Jerome dicta. Accordingly, I will not be writing anything separately in this case and my joinder is complete.

Sincerely,

*Sandra*

Justice Powell