

# The Burger Court Opinion Writing Database

*United States v. Doe*

465 U.S. 605 (1984)

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 31, 1984

Re: No. 82-786 - United States v. Doe, John

Dear Lewis:

I join.

Regards,

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

Justice Powell

Copies to the Conference

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70

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 13, 1983

No. 82-786

United States v. Doe

Dear Thurgood and John,

We three are in dissent in the  
above. Thurgood, would you be willing  
to try the dissent?

Sincerely,



Justice Marshall

Justice Stevens

WJBS

Went to ...

CP JFS



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 5, 1984

No. 82-786

United States v. Doe

Dear Lewis,

I'll await further writing.

Sincerely,

Justice Powell

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 24, 1984

No. 82-786

United States v. Doe

Dear Thurgood,

Please join me in your recent  
circulation.

Sincerely,

*Bilo*

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

RECEIVED  
SUPREME COURT U.S.  
JUSTICE POWELL

January 6, 1984

'84 JAN -6 P3:08

Re: 82-786 - United States v. Doe

---

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 13, 1983

Re: No. 82-786 - United States v. Doe

Dear Bill:

Will do dissent in this case.

Sincerely,

  
T.M.

Justice Brennan

cc: Justice Stevens

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

13

January 4, 1984

Re: No. 82-786-U.S. v. Doe

Dear Lewis:

In due course I will circulate a dissent.

Sincerely,

*J.M.*

T.M.

Justice Powell

cc: The Conference

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

From: **Justice Marshall**

Circulated: FEB 23 1984

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[February —, 1984]

JUSTICE MARSHALL concurring in part and dissenting in part.

I concur in the Court's affirmance of the Court of Appeals' ruling that the act of producing the documents could not be compelled without an explicit grant of use immunity pursuant to 18 U. S. C. §§ 6002 and 6003. I dissent, however, with respect to that part of the Court's opinion reversing the Court of Appeals. The basis for the reversal is the majority's disagreement with the Court of Appeals' discussion of whether the Fifth Amendment protected the contents of the documents respondent sought to withhold from disclosure. Inasmuch as the Court of Appeals' judgment did not rest upon the disposition of this issue, this Court errs by reaching out to decide it. As JUSTICE STEVENS rightly insists, "[t]his Court . . . reviews judgments, not statements in opinions." *Post*, at — (citing *Black v. Cutter Laboratories*, 351 U. S. 292, 297 (1955)). Contrary to what JUSTICE O'CONNOR contends, *ante*, at —, I do not view the Court's opinion in this case as having reconsidered whether the Fifth Amendment provides protection for the contents of "private papers of any kind." This case presented nothing remotely close to the question that JUSTICE O'CONNOR eagerly poses and answers. First, as noted above, the issue whether the Fifth Amendment protects the contents of the documents was obviated by the Court of Appeals' rulings relating to the act of production and statutory use immunity. Second, the documents at

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

RECEIVED  
SUPREME COURT U.S.  
JUSTICE HARRY A. BLACKMUN

January 13, 1984

'84 JAN 13 A9:53

Re: No. 82-786 - United States v. Doe

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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01/02

1/3

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

From: **Justice Powell**

Circulated: JAN 4 1984

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*LF*  
*for Justice*  
*Blackmun*

**2nd CHAMBERS DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[January —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the issue whether, and to what extent, the Fifth Amendment privilege against compelled self-incrimination applies to the business records of a sole proprietorship.

## I

Respondent is the owner of several sole proprietorships. In late 1980, a grand jury, during the course of an investigation of corruption in the awarding of county and municipal contracts, served five subpoenas on respondent. The first two demanded the production of the telephone records of several of respondent's companies and all records pertaining to four bank accounts of respondent and his companies. The subpoenas were limited to the period between January 1, 1977 and the dates of the subpoenas. The third subpoena demanded the production of a list of virtually all the business records of one of respondent's companies for the period between January 1, 1976, and the date of the subpoena.<sup>1</sup> The

<sup>1</sup>The categories of records sought by the third subpoena were: 1) general ledgers; 2) general journals; 3) cash disbursement journals; 4) petty cash books and vouchers; 5) purchase journals; 6) vouchers; 7) paid bills; 8) invoices; 9) cash receipts journal; 10) billings; 11) bank statements; 12) cancelled checks and check stubs; 13) payroll records; 14) contracts and copies of contracts, including all retainer agreements; 15) financial statements; 16) bank deposit tickets; 17) retained copies of partnership income tax returns; 18) retained copies of payroll tax returns; 19) accounts payable ledger; 20) accounts receivable ledger; 21) telephone company statement of calls and

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January 5, 1984

82-786 United States v. Doe

Dear Sandra:

Both of the suggestions in your note of January 4 have merit. I will be glad to change the sentence in footnote 15.

I would prefer not to overrule Boyd expressly. In my view the Court should have done this some time ago. Yet, although opportunities have existed, the Court has never gone this far. Nor did we discuss this at Conference.

I therefore propose, in footnote 7, immediately following the first sentence (that refers to the "zone of privacy argument"), to add the following:

"This argument derives from language in Boyd v. United States, 116 U.S. 616, 630 (1886).

Then, as a separate paragraph in n. 7 following the present quote from Fisher, I would add the language in Rider A, a copy of which I enclose.

If these have your approval, I will recirculate promptly.

Sincerely,

Justice O'Connor

lfp/ss

01/06

P# 5, + 10

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

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SUPREME COURT  
JUST

From: Justice Powell

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

'84 JAN -6 P3:07

Recirculated: JAN 6 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[January —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the issue whether, and to what extent, the Fifth Amendment privilege against compelled self-incrimination applies to the business records of a sole proprietorship.

I

Respondent is the owner of several sole proprietorships. In late 1980, a grand jury, during the course of an investigation of corruption in the awarding of county and municipal contracts, served five subpoenas on respondent. The first two demanded the production of the telephone records of several of respondent's companies and all records pertaining to four bank accounts of respondent and his companies. The subpoenas were limited to the period between January 1, 1977 and the dates of the subpoenas. The third subpoena demanded the production of a list of virtually all the business records of one of respondent's companies for the period between January 1, 1976, and the date of the subpoena.<sup>1</sup> The

<sup>1</sup>The categories of records sought by the third subpoena were: 1) general ledgers; 2) general journals; 3) cash disbursement journals; 4) petty cash books and vouchers; 5) purchase journals; 6) vouchers; 7) paid bills; 8) invoices; 9) cash receipts journal; 10) billings; 11) bank statements; 12) cancelled checks and check stubs; 13) payroll records; 14) contracts and copies of contracts, including all retainer agreements; 15) financial statements; 16) bank deposit tickets; 17) retained copies of partnership income tax returns; 18) retained copies of payroll tax returns; 19) accounts payable ledger; 20) accounts receivable ledger; 21) telephone company statement of calls and

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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JUSTICE POWELL

January 10, 1984

'84 JAN 11 A9:56

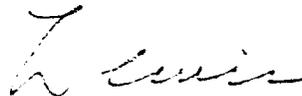
82-786 United States v. Doe

Dear John:

Thank you for letting me know that although you believe my exposition of the law is correct, you have a different view as to the proper disposition of the case.

I have taken a second look at the opinion of the Court of Appeals. Although it might be viewed as ambiguous in certain respects, I continue to think I have read it correctly.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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01/10

*pg 8*

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

From: Justice Powell

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

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

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[January —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the issue whether, and to what extent, the Fifth Amendment privilege against compelled self-incrimination applies to the business records of a sole proprietorship.

I

Respondent is the owner of several sole proprietorships. In late 1980, a grand jury, during the course of an investigation of corruption in the awarding of county and municipal contracts, served five subpoenas on respondent. The first two demanded the production of the telephone records of several of respondent's companies and all records pertaining to four bank accounts of respondent and his companies. The subpoenas were limited to the period between January 1, 1977 and the dates of the subpoenas. The third subpoena demanded the production of a list of virtually all the business records of one of respondent's companies for the period between January 1, 1976, and the date of the subpoena.<sup>1</sup> The

<sup>1</sup>The categories of records sought by the third subpoena were: 1) general ledgers; 2) general journals; 3) cash disbursement journals; 4) petty cash books and vouchers; 5) purchase journals; 6) vouchers; 7) paid bills; 8) invoices; 9) cash receipts journal; 10) billings; 11) bank statements; 12) cancelled checks and check stubs; 13) payroll records; 14) contracts and copies of contracts, including all retainer agreements; 15) financial statements; 16) bank deposit tickets; 17) retained copies of partnership income tax returns; 18) retained copies of payroll tax returns; 19) accounts payable ledger; 20) accounts receivable ledger; 21) telephone company statement of calls and

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01/13

pp. 4, 12

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

From: **Justice Powell**

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

Recirculated: JAN 13 1984

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

**UNITED STATES, PETITIONER v. JOHN DOE**

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

[January —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the issue whether, and to what extent, the Fifth Amendment privilege against compelled self-incrimination applies to the business records of a sole proprietorship.

I

Respondent is the owner of several sole proprietorships. In late 1980, a grand jury, during the course of an investigation of corruption in the awarding of county and municipal contracts, served five subpoenas on respondent. The first two demanded the production of the telephone records of several of respondent's companies and all records pertaining to four bank accounts of respondent and his companies. The subpoenas were limited to the period between January 1, 1977 and the dates of the subpoenas. The third subpoena demanded the production of a list of virtually all the business records of one of respondent's companies for the period between January 1, 1976, and the date of the subpoena.<sup>1</sup> The

<sup>1</sup>The categories of records sought by the third subpoena were: 1) general ledgers; 2) general journals; 3) cash disbursement journals; 4) petty cash books and vouchers; 5) purchase journals; 6) vouchers; 7) paid bills; 8) invoices; 9) cash receipts journal; 10) billings; 11) bank statements; 12) cancelled checks and check stubs; 13) payroll records; 14) contracts and copies of contracts, including all retainer agreements; 15) financial statements; 16) bank deposit tickets; 17) retained copies of partnership income tax returns; 18) retained copies of payroll tax returns; 19) accounts payable ledger; 20) accounts receivable ledger; 21) telephone company statement of calls and

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 28, 1984

82-786 United States v. Doe

MEMORANDUM TO THE CONFERENCE

Henry Lind has relayed the suggestion of the Solicitor General's office that the word "only" in the 6th line of page 5 of my opinion should follow "privilege" rather than following "Amendment."

I agree that the change is desirable. Absent dissent, I will instruct the Reporter's Office to make the change.

*L.F.P.*  
L.F.P., JR.

LFP/vde

111

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 1, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for United States v. Doe, No. 82-786

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One case was held for Doe:

Schlansky v. United States, No. 83-227: Petr delivered to his accountant various records that were necessary to complete his individual income tax return. The accountant put the information from petr's records into workpapers, calculated petr's income tax, prepared and filed the returns. The accountant then stapled petr's records to the workpapers, put them all in a three ring binder, and returned them to petr.

The IRS issued a summons requesting production of the binder. A magistrate inspected the binder in camera and found that it contained the accountant's workpapers, bank statements, cancelled checks belonging to petr and petr's wife, copies of corporate tax returns, and deposit slips. The magistrate found that the records in the binder were not protected by the 5th Amendment. The DC adopted the Magistrate's recommendation, and ordered petr to deliver the binder to the IRS. The CA6 affirmed.

The CA6 held that the contents of the binder were not privileged because petr had not been compelled to "restate, repeat, or affirm the truth of the contents of the documents sought." The CA6 also held that the act of producing the binder would not involve testimonial self-incrimination because there was no question that the records existed and were in petr's possession. Also, the records could be authenticated by petr's accountant or employees of petr's bank. The court noted that if the IRS tried to use the act of production to authenticate the records, petr could reassert his 5th Amendment privilege at that time.

The CA6's disposition of the case is consistent with our opinion in Doe. The differing results in the two cases resulted from the finding of the TC and the CA in Doe that the act of production under the circumstances there would involve testimonial self-incrimination. As indicated in Doe, this determination is basically a finding of fact. I recommend that the petition in Schlansky be denied.

L. F. P.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 10, 1984

Re: No. 82-786 United States v. Doe

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

*Rob - This looks OK*  
Supreme Court of the United States *to me*  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 10, 1984

Re: No. 82-786 United States v. Doe

Dear Lewis:

Please join me.

Sincerely,

*WRM*

Justice Powell

cc: The Conference

P.S. TO JUSTICE POWELL ONLY - I had some doubt as to whether the District Court in this case gave any good reasons for its finding that the act of production would incriminate the respondent, and my feeling in this regard is confirmed by your quotation from the District Court's language in footnote 10 of your opinion. Rather than saying, as you do, in the last sentence of part IIIB, page 8, that "We agree with the Court of Appeals that the record before us supports the District Court's finding," would you consider saying instead:

"We therefore decline to overturn the finding of the District Court in this regard, where as here it has been affirmed by the Court of Appeals."

*yes*

This is a minor point, and only a suggestion; my "join" is not conditional upon your adopting it.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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JUSTICE JOHN PAUL STEVENS

January 6, 1984

'84 JAN -9 A10:21

Re: 82-786 - United States v. Doe

Dear Lewis:

Although I believe I agree with your exposition of the law, I do not agree with your disposition of the case. It seems to me that the judgment of the Court of Appeals should be affirmed and that the Government should not be given a second bite at the apple in this litigation. Both the District Court and the Court of Appeals invited it to offer statutory immunity, and it declined to do so. The Government is, however, free to convene another grand jury and issue another subpoena but I think they had their chance to tender statutory immunity in this proceeding.

I also am still not persuaded that you fairly read the Court of Appeals' opinion. I do not understand that court to have held that all of respondent's business records were privileged. It is my understanding that all the court intended to hold was that a sole proprietor has standing to assert a privilege to the extent that the act of producing subpoenaed records would be incriminating. If it had intended to hold all the records privileged, it would not have needed to reach what you describe as its second holding. As I read the opinion, it merely held that a sole proprietor, unlike an agent for a corporation or partnership, does have standing to assert such a privilege even though the custodian of records of a corporation would not.

In all events, I expect to write briefly concurring in part and dissenting in part.

Respectfully,

A handwritten signature in dark ink, appearing to be the initials 'J.P.' with a stylized flourish.

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: JAN 12 '84

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[January —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

When both the District Court and the Court of Appeals correctly apply the law, and correctly dispose of the issue before them, I think it is poor appellate practice for this Court to reverse.

The question in this case is whether, without tendering statutory immunity, the Government can compel the sole proprietor of a business to produce incriminating records pursuant to a grand jury subpoena. Except for the records that are required by law to be kept or to be disclosed to public agencies, the District Court held that production could not be required. The basis for that decision turned, not on any suggestion that the contents of the documents were privileged, but rather on the significance of the act of producing them. As the District Court explained:

“[T]he relevant inquiry is not whether the subpoenaed documents on their face reveal incriminating communications, but whether the *act* of producing the documents has communicative aspects which warrant Fifth Amendment protection. *Fisher v. United States*, 425 U. S. 391 (1976). In yielding to the command of the subpoena, Mr. [Doe] may be required to make any one of several communications. The mere act of producing the documents may be considered a communication of testimo-

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

No. 1, 4

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JAN 16 1984

From: Justice Stevens

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'84 JAN 16 A11:02

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[January —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

"This Court . . . reviews judgments, not statements and opinions." *Black v. Cutter Laboratories*, 351 U. S. 292, 297.<sup>1</sup> When both the District Court and the Court of Appeals correctly apply the law, and correctly dispose of the issue before them, I think it is poor appellate practice for this Court to reverse.

The question in this case is whether, without tendering statutory immunity, the Government can compel the sole proprietor of a business to produce incriminating records pursuant to a grand jury subpoena. Except for the records that are required by law to be kept or to be disclosed to public agencies, the District Court held that production could not be required. The basis for that decision turned, not on any suggestion that the contents of the documents were privileged, but rather on the significance of the act of producing them. As the District Court explained:

"[T]he relevant inquiry is not whether the subpoenaed documents on their face reveal incriminating communications, but whether the *act* of producing the documents

<sup>1</sup> More particularly, we review the judgment that the Court of Appeals entered in this case, not the judgment that it may have entered in some other case, see *ante* 4, at n. 6, or some isolated statement in its opinion commenting on the holding in some other case.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 4, 1984

No. 82-786 United States v. Doe

Dear Lewis:

I have reviewed your opinion in this case. It is excellent, and I am sure that I can join it. I wonder, however, if you would consider the following two changes.

First, I am concerned about the breadth of the first sentence in footnote 15. Our decisions counsel against exclusion of "any" incriminating evidence that results from a violation of a witness's Fifth Amendment rights. See, e. g., Oregon v. Hass, 420 U.S. 714 (1975) (impeachment evidence); Harris v. New York, 401 U.S. 222 (1971) (same); cf. Michigan v. Tucker, 417 U.S. 433 (1974) (admission of nontestimonial evidence derived from violation of Miranda prophylactics). Perhaps you could change the sentence to read: "Of course, courts generally suppress compelled, incriminating testimony that results from a violation of a witness's Fifth Amendment rights."

Second, the opinion acknowledges that Fisher left open the question concerning whether the contents of a person's private papers were protected by the Fifth Amendment. It then concludes that that question must be answered in the negative for the very reasons stated in Fisher. But the opinion does not even mention the source of this question-- Boyd v. United States, 116 U.S. 616 (1886). Shouldn't the opinion expressly overrule that aspect of Boyd which supports the protection of the content of private papers? I am afraid that, if the opinion does not overrule Boyd, lower courts will continue to believe that Boyd retains some vitality. Certainly that was the mistake made by the court below in this case.

Sincerely,



Justice Powell

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 5, 1984

No. 82-786 United States v. Doe

Dear Lewis,

Thank you for making the changes described  
in your January 5 letter.

I will gladly join your opinion, although  
I will circulate a very brief concurrence observing  
that I would go further and overrule Boyd outright.

Sincerely,



Justice Powell

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 6, 1984

No. 82-786 United States v. Doe

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-786

UNITED STATES, PETITIONER *v.* JOHN DOE

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

[January —, 1984]

JUSTICE O'CONNOR, concurring.

I concur in both the result and reasoning of JUSTICE POWELL's opinion for the Court. I write separately, however, just to make explicit what is implicit in the analysis of that opinion: that the Fifth Amendment provides absolutely no protection for the contents of private papers of any kind. The notion that the Fifth Amendment protects the privacy of papers originated in *Boyd v. United States*, 116 U. S. 616, 630 (1886), but our decision in *Fisher v. United States*, 425 U. S. 391 (1976), sounded the death-knell for *Boyd*. "Several of *Boyd's* express or implicit declarations [had] not stood the test of time[,]" *id.*, at 407, and its privacy of papers concept "had long been a rule searching for a rationale . . ." *Id.*, at 409. Today's decision puts a long-overdue end to that fruitless search.

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