

# The Burger Court Opinion Writing Database

*United States v. Powell*

469 U.S. 57 (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

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

May 10, 1984

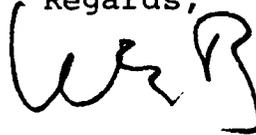
04 MAY 10 P3:03

Re: 83-1307 - United States v. Powell

Dear Bill:

Please join me in your dissent from denial of cert.  
I could readily grant and reverse.

Regards,



Justice Rehnquist

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 9, 1984

83-1307 United States v. Powell

Dear Bill:

Please add my name to your dissent.

Sincerely,

L. F. P.

Justice Rehnquist

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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

UNITED STATES *v.* BETTY LOU POWELL

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

No. 83-1307. Decided May —, 1984

JUSTICE REHNQUIST, dissenting from denial of certiorari.

Respondent Powell was convicted on three counts of using a telephone to facilitate certain drug offenses and one count of giving a false statement to a magistrate, while being acquitted of the remaining charges of a 15-count indictment. Count 1 of the counts of which she was acquitted charged a conspiracy between respondent, her husband, their son, and "diverse other persons," to knowingly and intentionally possess cocaine with intent to distribute it, in violation of 21 U. S. C. §§ 846 and 841(a)(1) (1982). Three of the overt acts alleged in support of this conspiracy charge were the very same telephone calls offered in the government's case on the three counts of telephone facilitation of which she was convicted. The Court of Appeals for the Ninth Circuit reversed the judgments of conviction on the three facilitation counts, 708 F. 2d 455 (1983), and the government has petitioned for certiorari.

The Court of Appeals concluded that the verdicts of "guilty" on the facilitation counts were inconsistent with the verdict of "not guilty" on the conspiracy charge. It rejected the government's argument that the verdicts were not necessarily inconsistent because the other person or persons party to the telephone calls charged in the facilitation counts might have been different from the persons in the conspiracy count, saying:

"We have reviewed the record and we are not convinced that there is evidence to support the government's claim that 'someone other than' the conspirators named in Count 1 had possession and that appellant's

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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

UNITED STATES *v.* BETTY LOU POWELL

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

No. 83-1307. Decided May —, 1984

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE POWELL join, dissenting from denial of certiorari.

Respondent Powell was convicted on three counts of using a telephone to facilitate certain drug offenses and one count of giving a false statement to a magistrate, while being acquitted of the remaining charges of a 15-count indictment. Count 1 of the counts of which she was acquitted charged a conspiracy between respondent, her husband, their son, and "diverse other persons," to knowingly and intentionally possess cocaine with intent to distribute it, in violation of 21 U. S. C. §§ 846 and 841(a)(1) (1982). Three of the overt acts alleged in support of this conspiracy charge were the very same telephone calls offered in the government's case on the three counts of telephone facilitation of which she was convicted. The Court of Appeals for the Ninth Circuit reversed the judgments of conviction on the three facilitation counts, 708 F. 2d 455 (1983), and the government has petitioned for certiorari.

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"We have reviewed the record and we are not convinced that there is evidence to support the government's claim that 'someone other than' the conspirators

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 15, 1984

No. 83-1307 United States v. Powell

Dear Bill,

Please join me in your dissent from denial.  
This should provide four votes to grant.

Sincerely,

*Sandra*

Justice Rehnquist

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