

The Burger Court Opinion Writing Database

United States v. Boyle

469 U.S. 241 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

From: **The Chief Justice**

Circulated: NOV 16 1984

Recirculated: _____

C
Boyle

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[November —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to resolve a conflict among the Cir-
cuits on whether a taxpayer's reliance on an attorney to pre-
pare and file a tax return constitutes "reasonable cause"
under § 6651(a)(1) of the Internal Revenue Code, so as to de-
feat a statutory penalty incurred because of a late filing.

I

A

Respondent, Robert W. Boyle, was appointed executor of
the estate of his mother, Myra Boyle, who died on September
14, 1978; respondent retained Ronald Keyser to serve as
attorney for the estate. Keyser informed respondent that
the estate must file a federal estate tax return, but he did not
mention the deadline for filing this return. Under 26
U. S. C. § 6075(a) (1982), the return was due within nine
months of the decedent's death, *i. e.*, not later than June 14,
1979.

Although a businessman, respondent was not experienced
in the field of federal estate taxation, other than having been
executor of his father's estate 20 years earlier. It is undis-
puted that he relied on Keyser for instruction and guidance.
He cooperated fully with his attorney and provided Keyser

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

CHAMBERS OF
THE CHIEF JUSTICE

November 20, 1984

RE: No. 83-1266, United States v. Boyle

MEMORANDUM TO THE CONFERENCE

I respond here to Byron's "neutral" memo of November 16, and to Lewis's and Sandra's memos of November 19, suggesting that we should, in effect, "catalog" some exceptions to the "bright line" rule.

The problem is that bright line rules lose some of their "sheen" when we embark on the suggested road.

My omission of this kind of "advisory" was not inadvertent. In an early working draft I had the following in the discussion of the cases now on page 9 of the opinion:

"Similarly, it has been held that a taxpayer demonstrates reasonable cause when, in reliance on the advice of his attorney or accountant, he files the return after the actual due date but within the time the advisor erroneously told him was available. See Sanderling, Inc. v. Commissioner, 571 F.2d 174, 178-179 (CA3 1978); Estate of Rapelje v. Commissioner, 73 T.C. 82, 90 n. 9 (1979); Estate of DiPalma v. Commissioner, 71 T.C. 324, 327 (1978), acq., 1979-1 C.B. 1; Estate of Bradley v. Commissioner, 33 T.C.M. (CCH) 70, 72-73 (1974), aff'd, 511 F.2d 527 (CA6 1975). But see Estate of Kerber v. United States, 717 F.2d 454, 454-455, and n. 1 (CA8 1983) (per curiam); Smith v. United States, 702 F.2d 741, 742 (CA8 1983); Sarto v. United States, 563 F. Supp. 476, 478 (ND Cal. 1983).

When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists or precisely when a return is due, it is reasonable for the taxpayer to rely on that advice. ..." (Second emphasis added.)

I also had the following as a footnote near the end of the opinion:

"The holding we reach today might not apply in those extraordinary situations in which the taxpayer cannot fairly be held to the 'reasonable man' standard of the statute -- for example, when the taxpayer is mentally disabled."

I dropped this treatment not only because of the need for a clear rule, but also because of the standard we profess to follow in not deciding cases that are not here. Having practiced 23 years, I was sometimes grateful when a court gave "advisory" opinions, but that has negative aspects.

There are now five votes for the "bright line" approach, but I do not close my mind on the subject because of that. A fuzzy line from us will bring more cases at every level.

Regards,



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

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

CHAMBERS OF
THE CHIEF JUSTICE

November 30, 1984

Re: 83-1266 - United States v. Boyle

MEMORANDUM TO THE CONFERENCE:

I have been working on modifications that may or may not satisfy the problems some had with this case.

Perhaps in a week or so!

Regards,



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

STYLISTIC CHANGES THROUGHOUT

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

CHANGES AS MARKED: pp. 1-2, 5, 7-10

From: **The Chief Justice**

Circulated: _____

Recirculated: DEC 11 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[December —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to resolve a conflict among the Cir-
cuits on whether a taxpayer's reliance on an attorney to pre-
pare and file a tax return constitutes "reasonable cause"
under § 6651(a)(1) of the Internal Revenue Code, so as to de-
feat a statutory penalty incurred because of a late filing.

I

A

Respondent, Robert W. Boyle, was appointed executor of
the will of his mother, Myra Boyle, who died on September
14, 1978; respondent retained Ronald Keyser to serve as
attorney for the estate. Keyser informed respondent that
the estate must file a federal estate tax return, but he did not
mention the deadline for filing this return. Under 26
U. S. C. § 6075(a) (1982), the return was due within nine
months of the decedent's death, *i. e.*, not later than June 14,
1979.

Although a businessman, respondent was not experienced
in the field of federal estate taxation, other than having been
executor of his father's will 20 years earlier. It is undis-
puted that he relied on Keyser for instruction and guidance.
He cooperated fully with his attorney and provided Keyser

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

CHANGES AS MARKED: *pp. 7-8*

From: **The Chief Justice**

Circulated: _____

Recirculated: JAN 3 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[January —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to resolve a conflict among the Cir-
cuits on whether a taxpayer's reliance on an attorney to pre-
pare and file a tax return constitutes "reasonable cause"
under § 6651(a)(1) of the Internal Revenue Code, so as to de-
feat a statutory penalty incurred because of a late filing.

I

A

Respondent, Robert W. Boyle, was appointed executor of
the will of his mother, Myra Boyle, who died on September
14, 1978; respondent retained Ronald Keyser to serve as
attorney for the estate. Keyser informed respondent that
the estate must file a federal estate tax return, but he did not
mention the deadline for filing this return. Under 26
U. S. C. § 6075(a) (1982), the return was due within nine
months of the decedent's death, *i. e.*, not later than June 14,
1979.

Although a businessman, respondent was not experienced
in the field of federal estate taxation, other than having been
executor of his father's will 20 years earlier. It is undis-
puted that he relied on Keyser for instruction and guidance.
He cooperated fully with his attorney and provided Keyser

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 21, 1984

No. 83-1266

United States v. Boyle

Dear Chief:

I agree that the judgment of the Seventh Circuit must be reversed, and I agree with most of the reasoning of your proposed opinion for the Court. Specifically, I fully concur that, although 26 U.S.C. §6651(a)(1) is ambiguous with respect to the relationship between "reasonable cause" and "willful neglect," we should defer to the construction that the courts and the IRS have followed for almost 70 years. The applicable standard is therefore whether the taxpayer exercised "ordinary business care and prudence." I also agree that taxpayers in the exercise of ordinary business care and prudence must ascertain relevant filing deadlines and ensure that those deadlines are met.

I am presently unable to join in the proposed opinion, however, for precisely the reasons set forth in Lewis's and Sandra's memoranda of November 19th. Specifically, there is no question here that Robert Boyle not only failed to exercise ordinary business care in monitoring the progress of his mother's estate, but also failed to present any evidence that he was unable to exercise the usual care and diligence required of an executor. The outcome might well be different if a taxpayer were able to demonstrate that, for reasons of incompetence or infirmity, he understandably was unable to meet the standard of ordinary business care. In such circumstances, I would see no good reason for imposing this harsh penalty in addition to the prescribed statutory interest. I would therefore leave open the possibility of an exemption for the widowed telephone operator referred to by Judge Posner below and for the mentally incompetent taxpayer referred to by Sandra at oral argument.

Is not the proposed opinion ambiguous on this important point? On the one hand, it acknowledges that the IRS has carved out numerous exemptions in order to provide "sufficient flexibility" in administering the penalty. On the other hand, however, it emphasizes the need "for a rule with as 'bright' a

line as can be drawn," and it stresses that the Government "cannot assume the burden of countless ad hoc determinations under any other rule." Accordingly, the opinion seems to conclude that a taxpayer must always ensure the timely filing of his return (subject to whatever exemptions the IRS cares to accord) or else face the stiff penalty; "[i]t requires no special training or effort to ascertain a deadline and make sure that it is met."

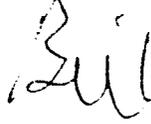
If the Government were determined to draw a bright line and to avoid the burden of ad hoc determinations, it would not provide for any exemptions from the penalty provision. Congress has emphasized that exemptions must be made where a taxpayer demonstrates "reasonable cause," however, and the IRS already provides dispensations where, for example, a taxpayer or a member of his family was seriously ill, the taxpayer was unavoidably absent, or the taxpayer's records had been destroyed. Thus the Government has eschewed a bright-line rule and committed itself to necessarily ad hoc decisionmaking. The graveman of the IRS's exemptions seems to be that the Government will not seek to impose a penalty where the taxpayer was reasonably unable to exercise ordinary business care and prudence. The IRS does not appear to interpret its enumerated exemptions as being exclusive, and it might well act arbitrarily if it purported to do otherwise. Thus a substantial argument can be made that the draconian penalty provisions should not apply where a taxpayer convincingly demonstrates that, for whatever reason, he was unable to exercise ordinary business care.

Harry's letter of November 19th emphasizes that the penalty in this case "is against the estate, not the representative personally." But the principles we announce in this case will be fully applicable to personal tax returns as well. Moreover, many executors are widows or widowers well along in years, and a penalty against the "estate" usually will be a penalty against their inheritance. Your proposed opinion properly emphasizes the need for efficient tax collection and stern incentives. But it seems to me that Congress and the IRS have themselves recognized that efficiency should yield to other values in appropriate circumstances.

We all agree that Robert Boyle was fully capable of meeting the required standard of ordinary business care, so we need not decide the issue of whether and under what circumstances a taxpayer who presents evidence that he was unable to exercise ordinary business care might be entitled to relief from the penalty. I read your memorandum of November 20th as acknowledging this fact. However, you then state that you are unwilling to note explicitly that the issue remains open. Because the language about "bright lines" could well be read to indicate that the issue is closed, I am presently inclined to

write separately to emphasize my own understanding that, notwithstanding the opinion's ambiguity, this important issue remains open.

Sincerely,



The Chief Justice

Copies to 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 Wm. J. BRENNAN, JR.

November 28, 1984

No. 83-1266

United States v. Boyle

Dear Lewis and Sandra:

I have taken the liberty of drafting a concurring opinion setting forth the reservations we all expressed in our separate memoranda. I have attempted faithfully to restate our mutual concerns, but would be grateful for any suggestions you may have before I circulate the draft to the Conference.

Lewis, the third paragraph of your November 19 memorandum contains a sentence that captures the issue perfectly. I have proposed to use this sentence in the second paragraph of the opinion, but I wanted to ask for your permission before proceeding further.

Sincerely,



Justice Powell

Justice O'Connor

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

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

From: Justice Brennan

Circulated: 11-30-84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[December —, 1984]

JUSTICE BRENNAN, concurring.

I concur that the judgment must be reversed. Although the standard of taxpayer liability found in 26 U. S. C. § 6651(a)(1) might plausibly be characterized as ambiguous,¹ courts and the Internal Revenue Service have for almost 70 years interpreted the statute as imposing a standard of "ordinary business care and prudence." *Ante*, at — — —. I agree with the Court that we should defer to this long-standing construction. *Id.*, at —. I also agree that taxpayers in the exercise of ordinary business care and prudence must ascertain relevant filing deadlines and ensure that those deadlines are met. As the Court correctly holds, a taxpayer cannot avoid the reach of § 6651(a)(1) merely by delegating this duty to an attorney, accountant, or other individual. *Id.*, at —.²

¹ For each month or fraction of a month that a tax return is overdue, 26 U. S. C. § 6651(a)(1) provides for a mandatory penalty of 5% of the tax (up to a maximum of 25%) "unless it is shown that [the failure to file on time] is due to reasonable cause and not due to willful neglect." As Judge Posner observed in his dissent below, "in making 'willful neglect' the opposite of 'reasonable cause' the statute might seem to have modified the ordinary meaning of 'reasonable' . . ." 710 F. 2d 1251, 1256 (CA7 1983).

² As the Court emphasizes, this principle of non-delegation does not extend to situations in which a taxpayer reasonably relies on expert advice

1-4

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

From: **Justice Brennan**

Circulated: _____

Recirculated: DEC 13 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[December —, 1984]

JUSTICE BRENNAN, concurring.

I concur that the judgment must be reversed. Although the standard of taxpayer liability found in 26 U. S. C. § 6651(a)(1) might plausibly be characterized as ambiguous,¹ courts and the Internal Revenue Service have for almost 70 years interpreted the statute as imposing a standard of "ordinary business care and prudence." *Ante*, at — — —. I agree with the Court that we should defer to this long-standing construction. *Id.*, at —, n. 4. I also agree that taxpayers in the exercise of ordinary business care and prudence must ascertain relevant filing deadlines and ensure that those deadlines are met. As the Court correctly holds, a taxpayer cannot avoid the reach of § 6651(a)(1) merely by delegating this duty to an attorney, accountant, or other individual. *Id.*, at —.²

¹For each month or fraction of a month that a tax return is overdue, 26 U. S. C. § 6651(a)(1) provides for a mandatory penalty of 5% of the tax (up to a maximum of 25%) "unless it is shown that [the failure to file on time] is due to reasonable cause and not due to willful neglect." As Judge Posner observed in his dissent below, "in making 'willful neglect' the opposite of 'reasonable cause' the statute might seem to have modified the ordinary meaning of 'reasonable'" 710 F. 2d 1251, 1256 (CA7 1983).

²As the Court emphasizes, this principle of non-delegation does not extend to situations in which a taxpayer reasonably relies on expert advice

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

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

From: Justice Brennan

Circulated: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[December —, 1984]

JUSTICE BRENNAN, with whom JUSTICE POWELL and JUSTICE O'CONNOR join, concurring.

I concur that the judgment must be reversed. Although the standard of taxpayer liability found in 26 U. S. C. § 6651(a)(1) might plausibly be characterized as ambiguous,¹ courts and the Internal Revenue Service have for almost 70 years interpreted the statute as imposing a standard of "ordinary business care and prudence." *Ante*, at — — —. I agree with the Court that we should defer to this long-standing construction. *Id.*, at —, n. 4. I also agree that taxpayers in the exercise of ordinary business care and prudence must ascertain relevant filing deadlines and ensure that those deadlines are met. As the Court correctly holds, a taxpayer cannot avoid the reach of § 6651(a)(1) merely by delegating this duty to an attorney, accountant, or other individual. *Id.*, at —.²

¹ For each month or fraction of a month that a tax return is overdue, 26 U. S. C. § 6651(a)(1) provides for a mandatory penalty of 5% of the tax (up to a maximum of 25%) "unless it is shown that [the failure to file on time] is due to reasonable cause and not due to willful neglect." As Judge Posner observed in his dissent below, "in making 'willful neglect' the opposite of 'reasonable cause' the statute might seem to have modified the ordinary meaning of 'reasonable'" 710 F. 2d 1251, 1256 (CA7 1983).

² As the Court emphasizes, this principle of non-delegation does not extend to situations in which a taxpayer reasonably relies on expert advice

In The Circuit
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1266

UNITED STATES, PETITIONER *v.* ROBERT W.
BOYLE, EXECUTOR OF THE ESTATE OF
MYRA W. BOYLE, DECEASED

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

[December —, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE POWELL, and JUSTICE O'CONNOR join, concurring.

I concur that the judgment must be reversed. Although the standard of taxpayer liability found in 26 U. S. C. § 6651(a)(1) might plausibly be characterized as ambiguous,¹ courts and the Internal Revenue Service have for almost 70 years interpreted the statute as imposing a standard of "ordinary business care and prudence." *Ante*, at — — —. I agree with the Court that we should defer to this long-standing construction. *Id.*, at —, n. 4. I also agree that taxpayers in the exercise of ordinary business care and prudence must ascertain relevant filing deadlines and ensure that those deadlines are met. As the Court correctly holds, a taxpayer cannot avoid the reach of § 6651(a)(1) merely by delegating this duty to an attorney, accountant, or other individual. *Id.*, at —.²

¹For each month or fraction of a month that a tax return is overdue, 26 U. S. C. § 6651(a)(1) provides for a mandatory penalty of 5% of the tax (up to a maximum of 25%) "unless it is shown that [the failure to file on time] is due to reasonable cause and not due to willful neglect." As Judge Posner observed in his dissent below, "in making 'willful neglect' the opposite of 'reasonable cause' the statute might seem to have modified the ordinary meaning of 'reasonable' . . ." 710 F. 2d 1251, 1256 (CA7 1983).

²As the Court emphasizes, this principle of non-delegation does not extend to situations in which a taxpayer reasonably relies on expert advice

✓

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 16, 1984

83-1266 - United States v. Robert W. Boyle

Dear Chief,

Please join me. I have one comment, however. As I read your draft, the taxpayer would lose even if he had asked his attorney and had been misinformed as to the applicable deadline. If that is so--or if it is not--it would be helpful to say so explicitly.

Sincerely yours,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 16, 1984

Re: No. 83-1266-U.S. v. Boyle

Dear Chief:

Please join me.

Sincerely,

JM.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 19, 1984

Re: No. 83-1266-U.S. v. Boyle

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

J.M.
T.M.

Justice Brennan

cc: The Conference

W

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 19, 1984

Re: No. 83-1266, United States v. Boyle

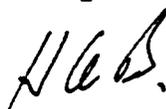
Dear Chief:

Please join me.

I have concluded that the bright line is necessary. The penalty, of course, is against the estate, not the representative personally. His remedy here is against the attorney.

I agree with the point made in the last paragraph of Lewis' letter of November 19. It was the attorney's responsibility to know the deadline, even though he tried to delegate the duty to the secretary. It is so easy to blame the secretary. As Lewis suggests, "oversight" here seems to be the better description.

Sincerely,



The Chief Justice

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 LEWIS F. POWELL, JR.

November 19, 1984

83-1266 United States v. Boyle

Dear Chief:

I voted to reverse in this case, but with reservations as to how our opinion should be written.

I do not agree with the SG's argument that the duty to file a tax return on the due date is nondelegable in any and all circumstances. I appreciate, as your opinion emphasizes, that a statutory deadline ordinarily is not a matter that requires the advice of an accountant, attorney, or even an experienced lay person. In the great majority of situations, I would agree with what seems to be your "bright line" holding (see p. 10).

I am not able to join your opinion in its present form because, as I read it, it makes no allowance for situations that we all know do exist. Elderly persons and persons of limited education or limited physical or mental capacity necessarily must rely on the advice and action of others. In my view, the "ordinary business care and prudence" standard is applicable only to the "ordinary person," namely, one who is capable - physically and mentally - of knowing, remembering and understanding the necessity of meeting a filing date.

I will, of course, join your judgment, and could join your opinion if it recognizes that a "bright line" applies only when the taxpayer is capable of exercising ordinary business "care and prudence".

One minor point. On p. 2 your opinion states that Keyser overlooked the filing date "because of a secretary's mistake." The attorney's affidavit (see joint appendix, p. 16, ¶9) states that no one knows why the due date was not posted on the master calendar. As I want to keep in the good graces of my secretaries, could I persuade you to change this simply to an "oversight"?

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 29, 1984

83-1266 United States v. Boyle

Dear Bill:

Your draft is excellent, and unless the Chief makes appropriate revisions I will be happy to join it.

As the Chief has indicated that he will respond to our concerns perhaps we should see what changes he may make.

I would be surprised if he goes as far as I think is required. In any event, a concurring opinion along the lines of your draft may very well be appropriate.

I appreciate your giving me the opportunity to see your draft.

Sincerely,



Justice Brennan

lfp/ss

cc: Justice O'Connor

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 14, 1984

83-1266 United States v. Boyle

Dear Chief:

The changes made in your draft of December 11, enable me to join your opinion.

As you know from my letter of November 19, I have shared the same concerns expressed by Bill Brennan in his concurring opinion circulated on November 30, concerns that I think Sandra also shared. Your opinion is not as explicit as Bill's, but I can join you.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 18, 1984

83-1266 United States v. Boyle

Dear Bill:

Please add my name to your concurring opinion.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

R

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 19, 1984

Re: No. 83-1266 United States v. Boyle

Dear Chief,

Please join me.

Sincerely,

WR

The Chief Justice

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 JOHN PAUL STEVENS

November 19, 1984

Re: 83-1266 - United States v. Boyle

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

NOV 21 1984

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 19, 1984

Re: 83-1266 United States v. Boyle

Dear Chief,

I have read your excellent opinion in this case and agree with you that it is desirable to have "bright line" rules where possible. Nevertheless, I share Lewis' concerns about the exceptional case of those who, for example, by virtue of senility, mental retardation, or other causes, must rely on others to assist them. I agree with Lewis that there should be exceptions to the proposed rule.

I also agree with Byron that we should clarify where misinformation about the due date fits into the scheme.

Sincerely,



The Chief Justice

Copies to the Conference

.11. 11. 11. 11. 11.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

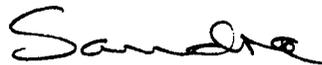
November 28, 1984

No. 83-1266 United States v. Boyle

Dear Bill,

Your draft expresses very well the concerns I have also with the Chief's circulating opinion. I have not abandoned hope that he will still change his opinion to reflect our concerns. If that is not to be, I would join your concurring opinion.

Sincerely,



Justice Brennan

cc: Justice Powell

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

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 18, 1984

No. 83-1266 United States v. Boyle

Dear Bill,

Please join me in your concurring opinion.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

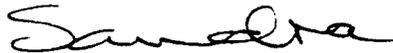
December 18, 1984

No. 83-1266 United States v. Boyle

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference