

The Burger Court Opinion Writing Database

United States v. Mechanik

475 U.S. 66 (1986)

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: **FEB 20 1986**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-1640, 84-1700 AND 84-1704

84-1640 UNITED STATES, PETITIONER
v.
MARSHALL MECHANIK ET AL.

84-1700 JEROME OTTO LILL, PETITIONER
v.
UNITED STATES

84-1704 MARSHALL MECHANIK, AKA MICHAEL PATRICK
FLANAGAN, PETITIONER
v.
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February —, 1986]

CHIEF JUSTICE BURGER, concurring.

I concur in JUSTICE REHNQUIST's opinion for the Court. I write separately only to state my view that this case is controlled by Justice Black's opinion for the Court in *Costello v. United States*, 350 U. S. 359 (1956).

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 3, 1986

No. 84-1640 United States v. Mechanik
No. 84-1700 Lill v. United States
No. 84-1704 Mechanik v. United States

Dear Sandra:

While I expect to join your excellent opinion concurring in the judgment, I wonder if you would consider adopting two changes.

1. Page six, first paragraph, first sentence - substitute something along these lines:

"In my view, when a defendant makes a timely objection to the grand jury indictment based on a violation of Rule 6(d), the remedy of dismissal of the indictment is appropriate if it is established that the violation substantially influenced the grand jury's decision to indict, or if there is grave doubt as to whether it had such effect."

Would not this language more accurately reflect the harmless error test as set forth in Lane and Kotteakos?

2. Page six, second paragraph, third sentence - substitute something along these lines:

"Even where an unremedied violation is proved, the trial judge must still be satisfied that the violation resulted in grand jury intimidation or improper influence on important witnesses' testimony and thus had a 'substantial influence' on the indictment returned, or that

there is grave doubt as to whether it had such effect."

Again, would not this language more accurately reflect the Lane and Kotteakos test for harmless error?

Sincerely,

Bill

Justice O'Connor

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 19, 1986

No. 84-1640) United States v. Mechanik
)
No. 84-1700) Lill v. United States
)
No. 84-1704) Mechanik v. United States

Dear Sandra,

Please join me in your opinion concurring in
the judgment in the above case.

Sincerely,



Justice O'Connor

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 17, 1986

84-1640 - United States v. Mechanik
84-1700 - Lill v. United States
84-1704 - Mechanik v. United States

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

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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

Nos. 84-1640, 84-1700 AND 84-1704

84-1640 UNITED STATES, PETITIONER
v.
MARSHALL MECHANIK ET AL.

84-1700 JEROME OTTO LILL, PETITIONER
v.
UNITED STATES

84-1704 MARSHALL MECHANIK, AKA MICHAEL PATRICK
FLANAGAN, PETITIONER
v.
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February —, 1986]

JUSTICE MARSHALL, dissenting.

The Court concedes that federal prosecutors violated Rule 6 of the Federal Rules of Criminal Procedure in presenting their case against defendants Mechanik and Lill to the grand jury. The Court holds, however, that because defendants were ultimately convicted of some of the counts against them, "any error in the grand jury proceeding connected with the charging decision was harmless beyond a reasonable doubt." *Ante*, at 5. Because I believe that the majority's rule misconceives the role both of the grand jury and of the harmless error doctrine, I dissent.

I

The Court's decision today renders Rule 6(d) almost unenforceable. As the facts of this case demonstrate, Rule 6(d)

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STYLISTIC CHANGES THROUGHOUT

+ P. 7

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

Nos. 84-1640, 84-1700 AND 84-1704

84-1640 UNITED STATES, PETITIONER
v.
MARSHALL MECHANIK ET AL.

84-1700 JEROME OTTO LILL, PETITIONER
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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February —, 1986]

JUSTICE MARSHALL, dissenting.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 22, 1986

Re: No. 84-1640) United States v. Mechanik
No. 84-1700) Lill v. United States
No. 84-1704) Mechanik v. United States

Dear Bill:

For now, I shall await further writing, if any, in these cases.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 20, 1986

Re: No. 84-1640) United States v. Mechanik
No. 84-1700) Lill v. United States
No. 84-1704) Mechanik v. United States

Dear Sandra:

Please join me in your opinion concurring in the judgment in these cases.

Sincerely,



Justice O'Connor

cc: The Conference



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

February 10, 1986

84-1640 United States v. Mechanik

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

84-1640

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

Nos. 84-1640, 84-1700 AND 84-1704

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FLANAGAN, PETITIONER
v.
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[January —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

Fed. Rule Crim. Proc. 6(d) states that only specified persons including "the witness under examination" may be present at a grand jury proceeding. In this case, two government witnesses testified in tandem before the grand jury, which indicted respondents and cross-petitioners (hereafter "defendants") Mechanik and Lill for various drug-related offenses and conspiracy to commit such offenses. The Court of Appeals for the Fourth Circuit held that the simultaneous presence of these two witnesses violated Rule 6(d), and that even though the petit jury subsequently returned a verdict of guilty against defendants, the verdict must be set aside on any count that corresponds to a "tainted" portion of the indictment. We believe that the petit jury's verdict of guilty beyond a reasonable doubt demonstrates *a fortiori* that there

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PP 4, 5, 7
STYLISTIC CHANGES THROUGHOUT

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Justice Brennan
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Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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v.
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[January —, 1986]

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

January 17, 1986

Re: 84-1640 - United States v.
Mechanik, et al.
84-1700 - Lill v. United States
84-1704 - Mechanik v. United States

Dear Bill:

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

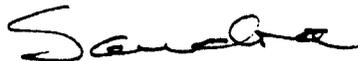
January 30, 1986

No. 84-1640 U. S. v. Mechanik
84-1700 Lill v. U. S.
84-1704 Mechanik v. U. S.

Dear Bill,

I have decided I cannot join your opinion in these cases which adopts a form of per se rule based on the trial verdict to determine whether a Rule 6(d) violation is harmless. I will circulate an opinion concurring in the judgment in the next day or so.

Sincerely,



Justice Rehnquist

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82 9 30 10:00

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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

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[January —, 1986]

JUSTICE O'CONNOR, concurring in the judgment.

I agree with the Court that the convictions obtained in the trial court against defendants Mechanik and Lill should not have been set aside. I write separately because I believe that the analysis adopted by the Court for determining the effect of a violation of the rules governing the conduct of grand juries effectively renders those rules a dead letter, thereby seriously undermining the grand jury's traditional function of protecting the innocent from unwarranted public accusation.

The grand jury has two principal functions. First, it bears the weighty responsibility of investigating crime and determining whether there is probable cause to believe that a crime has been committed. *United States v. Calandra*, 414 U. S. 338, 343 (1974). The second, and no less important,

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 10, 1986

No. 84-1640 United States v. Mechanik
No. 84-1700 Lill v. United States
No. 84-1704 Mechanik v. United States

Dear Bill,

Your suggestions are helpful and I will
incorporate them in the next draft.

Sincerely,



Justice Brennan

Supreme Court of the United States

pp. 6

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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2nd DRAFT

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
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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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3rd DRAFT /

SUPREME COURT OF THE UNITED STATES

Nos. 84-1640, 84-1700 AND 84-1704

84-1640 UNITED STATES, PETITIONER
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MARSHALL MECHANIK ET AL.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February —, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN joins,
concurring in the judgment. /

I agree with the Court that the convictions obtained in the trial court against defendants Mechanik and Lill should not have been set aside. I write separately because I believe that the analysis adopted by the Court for determining the effect of a violation of the rules governing the conduct of grand juries effectively renders those rules a dead letter, thereby seriously undermining the grand jury's traditional function of protecting the innocent from unwarranted public accusation.

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

From: Justice O'Connor

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4th DRAFT |

SUPREME COURT OF THE UNITED STATES

Nos. 84-1640, 84-1700 AND 84-1704

84-1640 UNITED STATES, PETITIONER
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MARSHALL MECHANIK ET AL.

84-1700 JEROME OTTO LILL, PETITIONER
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84-1704 MARSHALL MECHANIK, AKA MICHAEL PATRICK
FLANAGAN, PETITIONER
v.
UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February —, 1986]

JUSTICE O'CONNOR, with whom JUSTICES BRENNAN and
BLACKMUN join, concurring in the judgment.

I agree with the Court that the convictions obtained in the trial court against defendants Mechanik and Lill should not have been set aside. I write separately because I believe that the analysis adopted by the Court for determining the effect of a violation of the rules governing the conduct of grand juries effectively renders those rules a dead letter, thereby seriously undermining the grand jury's traditional function of protecting the innocent from unwarranted public accusation.

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