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Court CA - 3 *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 73-190

Submitted ....., 19... *Announced* ....., 19...

ISADORE H. BELLIS, Petitioner

vs.

UNITED STATES

7/27/73 Cert. filed.

Granted

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Rehnquist, J.		✓	✓											
Powell, J.		✓												
Blackmun, J.			✓											
Marshall, J.			✓											
White, J.		✓												
Stewart, J.			✓											
Brennan, J.		✓												
Douglas, J.		✓												
Burger, Ch. J.			✓											

Excellent note

Read U.S. v. White, 322 US 694 (union) - which can be cited either way, but seems to point towards view that partnership ~~tax records~~ are personal to - Whether 5th Amend privilege partners may be invoked by partners of a 3 man law firm against an IRS subpoena for books & records of firm (but not clients files).

Await Discussion (I lean towards Grant but am in close)

DISCUSS

DC & CA 3 held that plaintiff is separate entity & that 5th A. is a personal right which cannot be invoked by a separate entities.

U S v White is leading case. (97 held Union could not invoke privilege). White can be read as supporting both sides. I think it leans towards Petrs., See p 4 for text.

Preliminary Memo

October 12, 1973 Conference
List 1, Sheet 3

No. 73-190

BELLIS

v.

UNITED STATES

Cert to CA 3
(Seitz, Gibbons & Hunter)
Federal - Civil Contempt

Timely

Await discussion. Defer to J. White. Owens. (Couch v. U.S. does not appear to control)

1. The CA affirmed the District Court's (Van Artsdalen) order finding petitioner in civil contempt for refusing to comply with a grand jury request to produce certain law partnership records. On August 2, 1973, the CA's mandate was stayed by Mr. Justice White pending disposition of the petition for writ of certiorari.

2. FACTS: The subpoena duces tecum sought production of all records for the years 1968 and 1969 in petr's possession for

his dissolved three-man law partnership that was then in the process of winding up. Petr appeared but refused to comply, relying upon his privileges under the First, Fourth, Fifth and Sixth Amendments. At the contempt hearing before the District Court, petr confined his claim to the Fifth Amendment privilege. The evidence at the hearing showed that the records removed by petr included the firm's cash receipts journals and most likely the accounts receivable journals. At the time the partnership was in existence, the firm's bookkeeper and an outside accountant, as well as the three law partners, had access to these books. Petr was the senior partner and personally supervised the work of the bookkeeper. The District Court ruled that since the documents were partnership papers, they were not subject to petr's personal privilege. In ordering petr to obey the subpoena and turn over "any cash receipt books, cash disbursement books or books of records and accounts of the partnership for the years in question" (Response, at 2-3), the District Court excluded confidential client files. Petr's refusal to comply precipitated the civil contempt adjudication.

3. DECISION OF THE CA: The CA addressed only one issue: whether an individual partner, assumedly in lawful possession of partnership records of a dissolved partnership, may refuse to produce such records on the ground that such production would violate his Fifth Amendment rights.

a. The CA concluded that since the Fifth Amendment privilege has traditionally been regarded personal in the sense

But not for certain tax purposes.

that it applies only to an individual's words or personal papers, it did not apply "to the possession of records of any entity such as a partnership which has a recognizable juridical existence apart from its members." Petn. Appx., at A15. Here only partnership records were sought and a partnership is certainly a separate legal entity. Accordingly, compelled production of the records would not encroach on petr's privilege with respect to personal records.

b. The CA recognized that United States v. White, 322 U.S. 694 (1944), involving an unincorporated labor union's records, "seemed to lay down a somewhat more involved test," but the panel was satisfied that its conclusion comported with 'the fundamental approach of that decision." Petn. Appx., at A16. The CA refused to hinge production on a distinction between the records of a large, presumably impersonal, partnership and those of a small firm.

4. CONTENTIONS:

a. Noting that this Court has never addressed the application of the Fifth Amendment privilege to the books and records of a small closely held partnership, petr criticizes the CA for "disregard[ing] the functional approach of White as to size and impersonality and apply[ing] a talismanic test to deny automatically the application of the privilege to books and records of any partnership regardless of size solely by reason of the separate legal identity of the partnership." Petn., at 6.

Instead, the CA should have employed the formula set out in White:

> "The test . . . is whether one can fairly say under all the circumstances that a particular type of organization has a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common group interests only. If so, the privilege cannot be invoked on behalf of the organization or its representatives in their official capacity." 322 U.S., at 701. 1/

Petr relies upon the plural "constituents" in the above language and argues that by this the Court meant to indicate that some small organizations like a small, intimate law firm further the purely private or personal interest of the members rather than common or group interests only. "The suggestion that books and records are said to be within the ambit of the Fifth Amendment witness privilege only when he is a sole proprietor, and then regardless of the size or capitalization of his enterprise or the number of his employees, serves no meaningful purpose." Petn., at 8.

The SG counters that the CA correctly applied White. The privilege is exclusively personal in nature and did not extend to the subpoenaed official records and documents of the law partnership such as cash receipts and cash disbursements journals. Neither the dissolution of the law firm nor the former

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1/ The Court concluded that labor unions and representatives acting in their official capacity could not invoke the privilege.

partners' willingness to make these records available to petr alters their fundamental character. Moreover, the White test cannot be reduced to a simple proposition based upon the size of the organization. The distinction drawn by the Court reveals that it meant "to protect organizations such as family units, where personal interests predominate. Where, as here, three individuals hold themselves out for the purpose of practicing a profession and sharing profits therefrom, the partnership records would reflect only their 'common or group interests' under the standards of the White case." Response, at 6.

The SG also points to prior authority in this Court and in the lower federal courts sanctioning the CA 3's approach in this case. McPhaul v. United States, 364 U.S. 372, 380 (Civil Rights Congress officer holding records in representative capacity); Curcio v. United States, 354 U.S. 118 (labor union records); In re Mal Brothers Contracting Co., 444 F.2d 615 (CA 3 1971), cert. denied, 404 U.S. 857 (partnership); United States v. Silverstein, 314 F.2d 789 (CA 2 1963), cert. denied, 37- U.S. 807 (family real estate and rental management partnership; and United States v. Warnes, 157 F.2d 797 (CA 7 19) (unincorporated oil drilling venture).

5. DISCUSSION: From all appearances, the question presented is significant and recurs enough to warrant review. The CA intimates that White prescribes "a somewhat more involved test"

than what it applied, and I tend to agree. Can we say, for example, that the records of a dissolved partnership are not "the private property of the [partner] claiming the privilege, or [are] at least in his possession in a purely private capacity. Boyd v. United States, 116 U.S. 616"? United States v. White, supra, 322 U.S., at 699. On behalf of what collective group does the former partner of a defunct law firm act in a representative capacity? 2/ Similarly, is it clear that a three-man law firm lacks "a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of" the three partners? 322 U.S., at 701.

The answers to these and other questions raised by this case do not readily emerge from the translucent language of White. A perhaps equally plausible interpretation of White (to that of the CA 3) is an analytical approach that looks to the focus of the investigative inquiry. If, for example, the purpose of the investigation is to ascertain whether the partnership qua partnership has violated the law (e.g. failure to pay social security taxes for employees), then the privilege does not obtain, even though the individual partners may become derivatively liable for civil or

---

2/ "And the official records and documents of the organization that are held by them in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate them personally." 322 U.S., at 699 [citations omitted].

criminal penalties. However, if the probe is primarily aimed at uncovering individual wrongdoing by a member of the partnership, the individual, to the extent he has possession or constructive possession of the partnership's records, could assert the privilege. By no means am I suggesting that this is necessarily the correct application of White, but one passage from the decision suggests that the "investigative focus analysis" outlined above is not far-fetched.

> "The greater portion of evidence of wrongdoing by an organization or its representatives is usually to be found in the official records and documents of that organization. Were the cloak of privilege to be thrown around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible. . . . [The privilege against self-incrimination was never intended] to protect economic or other interests of such organizations so as to nullify appropriate governmental regulation." 322 U.S., at 700.

Questions touching upon the privilege against self-incrimination go to the very nerve center of our constitutional system since "[t]he privilege reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. . . . This Court has been zealous to safeguard the values that underlie the privilege." Kastigar v. United States, 406 U.S. 441, 444-45 (1972) (footnotes omitted). This case raises important questions of first impression implicating the reach of the Fifth Amendment privilege. Regardless of the ultimate resolution of the issue, it would appear that the answer should come from this Court.

There is a response.

10/1/73	O'Donnell	Opinion in Petn. Appx.

ME

LFP/gg 2-19-74

John thinks Resp ~~Pet~~. should win - that ptship records are not individual records.

MEMORANDUM

To: John Jeffries

From: Justice Powell Date: February 19, 1974

No. 73-190 Bellis v. United States

In giving me your thoughts on the above case, bear in mind that I wrote both Couch v. U.S., 409 U.S. 322 and United States v. Basye 410 U.S. 441.

The SG relies on both of these cases. There are obvious factual distinctions, and I am inclined to think that neither is close enough to be a precedent pointing either way.

I would like your independent judgment, however, especially as to whether - if I should be so disposed - I could vote for the petitioner in this case on a basis entirely consistent with what I have written in the two cases above mentioned.

There are fairly good arguments on both sides in Bellis. If one thinks of a partnership such as Hunton, Williams with, say 30 partners, it is fairly easy to think of it as a wholly separate entity and of its books and records not possessing the "personal" quality held to be a predicate of asserting the privilege against self-incrimination. But all partnerships are not large.

Indeed most are fairly small and personal - such as the three man firm here involved in which the petitioner physically kept the records in his own office.

The fact which weighs most heavily on petitioner's side , as I view it at this time, is that the partnership pays no federal income taxes. The individual partners must pay a tax on their respective interest in partnership earnings regardless of whether these earnings are distributed in whole or in part, used by the partnership to purchase capital assets, or simply added to the capital of the partnership. Thus, in an I.R.S. investigation, the target is the individual partner - not the firm.

There are certain taxes (e.g., social security, license, etc.) which are imposed on and paid by the partnership. But I believe in this case we are concerned with federal income taxes.

The recent trend has been toward incorporation of medical partnerships and a good many law firms. The mere act of incorporation immunizes records from the Fifth Amendment privilege. Does this suggest that the records of an unincorporated law firm or partnership of physicians likewise should be denied the right to assert the privilege? It is so argued in the SG's brief.

I think the Clay case is close and will welcome your views.

L.F.P.jr.

[RE 2/25/74]

Supreme Court of the United States

Memorandum

----------, 19.....

Suppose Bellin had voluntarily surrendered records.

Could they be used vs other Ptners

Beller's counsel answered "yes".

[RE 2/25/7

Supreme Court of the United States

Memorandum

----------, 19.....

Suppose records had not been in possession of any particular ptner - but in a common file room

Suppose tax fraud ~~case~~ suit vs one of other ptners - Mr Wolf for example -

Sarner (for Petr)

Boyd in controlling - a ptship was involved. Subpena is addressed to Petr. Thus ~~under~~ the personal compulsion absent in Couch

Also relies on White

Thus is an income tax investigation.

(~~Denied~~ Denied emphatically that other partners had consented to production of records. But Rehnquist cited appendix which apparently contradicts Sarner).

Wallace (S.G)

Records belong to pltf/ship.

The production order - supporting a G/J subpoena.

In Boyd, Ct did extend to production of personal papers in possession & useful involving compulsion. Boyd did not address issue in this case - whether privilege extends to other than personal records.

The privilege does not extend to in rem proceedings - only to person.

In Wilson v U.S. (corp. records) & Hale v Henkle (also corp records) - Ct. held corp's have no 5th Amend privilege. But in Wilson the custodian claimed ~~to~~ he could ~~not~~ assert the privilege as to corp. records in his possession because they would incriminate him personally. Ct. rejected this argument.

No. 73-190, Bellis v. United States Conf. 2/27/74

Affirm 8 to 1

The Chief Justice Affirm

White is relevant but not controlling.

No dif. in principle bet. 3 man ptship & S & Commerce.

Douglas, J. Reverse

Bona fide 5th amend. claim.

Any ~~partner~~ partner who has possession may invoke 5th

Brennan, J. Affirm

Ptship not like a Union.

While Pa has held that ptship is not an entity, it is never held an aggregation.

Not a Cencle Q.

Records are those of the aggregation — not the individual ptner.

Stewart, J. Affirm

Agree with Brennan

White, J. Affirm

White & Wilson are close - agree with Brennan

Marshall, J. Affirm

Blackmun, J. Affirm

Powell, J. Affirm

Some of the distinctions that have been made on basis of the "personal" nature of right are difficult analytically.

But I agree with Brennan

Rehnquist, J. Affirm

I would not join without a note indicating my disagreement with the 1st ¶ on p. 7. As I recall our discussion of this case, you may have a different view

JCJ jr

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

1st DRAFT

Circulated: MAY 3 1974

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-190

Isadore H. Bellis, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1974]

Received 5/7

Agree with most of opn - but not with parts of it. See my letter of 5/7 to Marshall. If changes are not made, I may simply concur in results.

Joined by Stewart Brennan

Douglas

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records.

Until 1969, petitioner Isadore Bellis was the senior partner in Bellis, Kolsby & Wolf, a law firm in Philadelphia. The firm was formed in 1955 or 1956. There were three partners in the firm, the three individuals listed in the firm name. In addition, the firm had about six employees: two other attorneys who were associated with the firm, one parttime; three secretaries; and a receptionist. Petitioner's secretary doubled as the partnership's bookkeeper, under the direction of petitioner and the firm's independent accountant. The firm's financial records were therefore maintained in petitioner's office during his tenure at the firm.

Bellis left the firm in late 1969 to join another law firm. The partnership was dissolved, although it is apparently still in the process of winding up its affairs. Kolsby and Wolf continued in business together as a new partnership, at the same premises. Bellis moved

to new offices, leaving the former partnership's financial records with Kolsby and Wolf, where they remained for more than three years. In February or March of 1973, however, shortly before issuance of the subpoena in this case, petitioner's secretary, acting at the direction of petitioner or his attorney, removed the records from the old premises and brought them to Bellis' new office.

On May 1, 1973, Bellis was served with a subpoena directing him to appear and testify before a federal grand jury and to bring with him "all partnership records currently in your possession for the partnership of Bellis Kolsby & Wolf for the years 1968 and 1969." Petitioner appeared on May 9, but refused to produce the records, claiming, *inter alia*, his Fifth Amendment privilege against self-incrimination. After a hearing before the District Court on May 9 and 10, the court held that petitioner's personal privilege did not extend to the partnership's financial books and records, and ordered their production by May 16.[1] When petitioner reappeared before the grand jury on that date and again refused to produce the subpoenaed records, the District Court held him in civil contempt, and released him on his own recognizance pending an expedited appeal.

On July 9, 1973, the Court of Appeals affirmed in a *per curiam* opinion. *In re Grand Jury Investigation*, 483 F. 2d 961 (CA3 1973). Relying on this Court's decision in *United States* v. *White*, 322 U. S. 694 (1944), the Court of Appeals stated that "the privilege has always been regarded as personal in the sense that it applies only to an individual's words or personal papers," and thus held that the privilege against self-incrimination did not apply to "records of an entity such as a

[1] Although the wording of the subpoena was arguably broad enough to encompass them, the District Court expressly excluded any client files from the scope of its order.

partnership which has a recognizable juridical existence apart from its members." *Id.*, at 962. After MR. JUSTICE WHITE had stayed the mandate of the Court of Appeals on August 1, we granted certiorari, 414 U. S. 907 (1973), to consider this interpretation of the Fifth Amendment privilege and the applicability of our *White* decision in the circumstances of this case. We affirm.

It has long been established, of course, that the Fifth Amendment privilege against self-incrimination protects an individual from compelled production of his personal papers and effects as well as compelled oral testimony. In *Boyd* v. *United States*, 116 U. S. 616 (1886), we held that "any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime" would violate the Fifth Amendment privilege. *Id.*, at 630; see also *id.*, at 633–635; *Wilson* v. *United States*, 221 U. S. 361, 377 (1911). The privilege applies to the business records of the sole proprietor or sole practitioner as well as to personal documents containing more intimate information about the individual's private life. *Boyd* v. *United States*, *supra*; *Couch* v. *United States*, 409 U. S. 322 (1973); *Hill* v. *Philpott*, 445 F. 2d 144 (CA7), cert. denied, 404 U. S. 991 (1971); *Stuart* v. *United States*, 416 F. 2d 459, 462 (CA5 1969). As the Court explained in *United States* v. *White*, *supra*, at 698, "[t]he constitutional privilege against self-incrimination . . . is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him." See also *Curcio* v. *United States*, 354 U. S. 118, 125 (1957); *Couch* v. *United States*, *supra*, at 330–331.

On the other hand, an equally long line of cases has established that an individual cannot rely upon the

privilege to avoid producing the records of a collective entity which are in his possession in a representative capacity, even if these records might incriminate him personally. This doctrine was first announced in a series of cases dealing with corporate records. In *Wilson* v. *United States*, 221 U. S. 361 (1911), the Court held that an officer of a corporation could not claim his privilege against self-incrimination to justify a refusal to produce the corporate books and records in response to a grand jury subpoena duces tecum directed to the corporation. A companion case, *Dreier* v. *United States*, 221 U. S. 394 (1911), held that the same result followed when the subpoena requiring production of the corporate books was directed to the individual corporate officer. In *Wheeler* v. *United States*, 226 U. S. 478 (1913), the Court held that no Fifth Amendment privilege could be claimed with respect to corporate records even though the corporation had previously been dissolved. And *Grant* v. *United States*, 227 U. S. 74 (1913), applied this principle to the records of a dissolved corporation where the records were in the possession of the individual who had been the corporation's sole shareholder.

To some extent, these decisions were based upon the particular incidents of the corporate form, the Court observing that a corporation has limited powers granted to it by the State in its charter, and is subject to the retained "visitorial power" of the State to investigate its activities. See, *e. g.*, *Wilson* v. *United States*, *supra*, 221 U. S., at 382–385. But any thought that the principle formulated in these decisions was limited to corporate records was put to rest in *United States* v. *White*, 322 U. S. 694 (1944). In *White*, we held that an officer of an unincorporated association, a labor union, could not claim his privilege against self-incrimination to justify his refusal to produce the union's records pursuant to a grand jury subpoena. *White* announced the

general rule that the privilege could not be employed by an individual to avoid production of the records of an organization, which he holds in a representative capacity as custodian on behalf of the group. *Id.*, at 699–700. Relying on *White*, we have since upheld compelled production of the records of a variety of organizations over individuals' claims of Fifth Amendment privilege. See, *e. g.*, *United States* v. *Fleischman*, 339 U. S. 349, 357–358 (1950) (Joint Anti-Fascist Refugee Committee); *Rogers* v. *United States*, 340 U. S. 367, 371–372 (1951) (*Communist Party of Denver*); *McPhaul* v. *United States*, 364 U. S. 372, 380 (1960) (Civil Rights Congress). See also *Curcio* v. *United States*, 354 U. S. 118 (1957) (local labor union).

These decisions reflect the Court's consistent view that the privilege against self-incrimination should be "limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records." *United States* v. *White*, *supra*, at 701. *White* is only one of the many cases to emphasize that the Fifth Amendment privilege is a purely personal one, most recent among them being the Court's decision last Term in *Couch* v. *United States*, 409 U. S. 322, 327–328 (1973). Relying on this fundamental policy limiting the scope of the privilege, the Court in *White* held that "the papers and effects which the privilege protects must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity." 322 U. S., at 699. Mr. Justice Murphy reasoned that "individuals, when acting as members of a collective group, cannot be said to be exercising their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations." *Ibid.*

Since no artificial organization may utilize the personal privilege against self-incrimination, the Court found that it follows that an individual acting in his offical capacity on behalf of the organization may likewise not take advantage of his personal privilege. In view of the inescapable fact that an artificial entity can only act to produce its records through its individual officers or agents, recognition of the individual's claim of privilege with respect to the financial records of the organization would substantially undermine the unchallenged [illegible] that the organization itself is not entitled to claim any Fifth Amendment privilege, and largely frustrate legitimate governmental regulation of such organizations. Mr. Justice Murphy put it well

> "The scope and nature of the economic activities of incorporated and unincorporated organizations and their representatives demand that the constitutional power of the federal and state governments to regulate those activities be correspondingly effective. The greater portion of evidence of wrongdoing by an organization or its representatives is usually to be found in the official records and documents of that organization. Were the cloak of the privilege to be thrown around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible. The framers of the constitutional guarantee against compulsory self-disclosure, who were interested primarily in protecting individual civil liberties, cannot be said to have intended the privilege to be available to protect economic or other interests of such organizations so as to nullify appropriate governmental regulations.' *Id.*, at 700 (citations omitted).

See also *Wilson* v. *United States*, *supra*, at 384–385.

The Court's decisions holding the privilege inapplicable to the records of a collective entity also reflect a second, though obviously interrelated policy underlying the privilege, the protection of an individual's right to a "private enclave where he may lead a private life." *Murphy* v. *Waterfront Comm'n*, 378 U. S. 52, 55 (1964). We have often recognized that the Fifth Amendment was intended to permit the individual to construct for himself a sphere of personal privacy around his private life—his thoughts, his feelings, his writings, and his possessions—into which the Government cannot enter over his objection. See, *e. g., Griswold* v. *Connecticut*, 381 U. S. 479, 484 (1965); *Couch* v. *United States, supra,* at 327, 335–336; *id.*, at 349–350 (dissenting opinion); cf. *Warden* v. *Hayden*, 387 U. S. 294, 302–303 (1967). Protection of individual privacy was the major theme running through the Court's decision in *Boyd,* see, *e. g.,* 116 U. S., at 630, and it was on this basis that the Court in *Wilson* distinguished the corporate records involved in that case from the private papers at issue in *Boyd.* See 221 U. S., at 377, 380.

But a substantial claim of privacy or confidentiality cannot often be maintained with respect to the financial records of an organized collective entity. Control of such records is generally strictly regulated by statute or by the rules and regulations of the organization, and access to the records is generally guaranteed to others in the organization. In such circumstances, the custodian of the organization's records lacks the control over their content and location and the right to keep them from the view of others which would be characteristic of a claim of privacy and confidentiality. Mr. Justice Murphy recognized the significance of this in *White;* he pointed out that organizational records "[u]sually, if not always, . . . are open to inspection by the members," that "this right may be enforced on appropriate occasions by

? ? ?

In my view, it is a very far-reaching notion to assume that the 5th A is designed to protect a privacy interest. There is language to that effect here and therefore, but I think it incorrect. I would not join this ft.

available legal procedures," and that "[t]hey therefore embody no element of personal privacy." 332 U. S., at 699–700. And here lies the modern-day relevance of the visitorial powers doctrine relied upon by the Court in *Wilson* and the other cases dealing with corporate records; the Court's holding that no privilege exists "where, by virtue of their character and the rules of law applicable to them, the books and papers are held subject to examination by the [state]," 221 U. S., at 382, can easily be understood as a recognition that corporate records do not contain the requisite element of privacy or confidentiality essential for the privilege to attach.

The analysis of the Court in *White*, of course, only makes sense in the context of what the Court described as "organized institutional activity." 322 U. S., at 701. This analysis presupposes the existence of an organization which is recognized as an independent entity apart from its individual members. The group must be relatively well-organized and structured, and not merely a loose, informal association of individuals. It must maintain a distinct set of organizational records, and recognize rights in its members of control and access to them. And the records subpoenaed must in fact be organizational records held in a representative capacity and not documents in which the individual has a significant personal interest. In other words, it must be truly meaningful to say that the records demanded are the records of the organization rather than those of any individual, and to fairly describe the individual's possession as being in a representative capacity, as custodian on behalf of the organization, rather than in a personal capacity.

The Court in *White* had little difficulty in concluding that the demand for production of the official records of a labor union, whether national or local, in the custody of an officer of the union, met these tests. See *id.*, at 701–703. The Court observed that a union's existence

Is this A necessary? Is it an attempt to decide future cases. I think it merits some scrutiny.

in fact, if not in law, was "as perpetual as that of any corporation," that the union operated under formal constitutions, rules, and by-laws, and that it engaged in a broad scope of activities in which it was recognized as an independent entity. The Court also pointed out that the official union books and records were distinct from the personal books and records of its members, that the union restricted the permissible uses of these records, and that it recognized its members' rights to inspect them. Although the Court was aware that the individual members might legally hold title to the union records, the Court characterized this interest as "nominal" rather than a significant personal interest in them.

We think it is similarly clear that partnerships may and frequently do represent organized institutional activity so as to preclude any claim of Fifth Amendment privilege with respect to the partnership's financial records. Some of the most powerful private institutions in the Nation are conducted in the partnership form. Wall Street law firms and stock brokerage firms provide significant examples. These are often large, impersonal, highly structured business enterprises of essentially perpetual duration. The personal interest of any individual partner in the financial records of a firm of this scope is obviously highly attenuated. It is inconceivable that a brokerage house with offices from coast to coast handling billions of dollars of investment transactions annually should be entitled to immunize its records from SEC scrutiny solely because it operates as a partnership rather than in the corporate form. Although none of the reported cases have involved a partnership of quite this magnitude, it is hardly surprising that all of the courts of appeals which have addressed the question have concluded that *White*'s analysis requires rejection of any claim of privilege in the financial records of a large business enterprise conducted in the partnership form. *In re*

Mal Brothers Contracting Co., 444 F. 2d 615 (CA3), cert. denied, 404 U. S. 857 (1971); *United States* v. *Silverstein*, 314 F. 2d 789 (CA2), cert. denied, 374 U. S. 807 (1963); *United States* v. *Wernes*, 157 F. 2d 797, 800 (CA7 1946). See also *United States* v. *Onassis*, 125 F. Supp. 190, 205–210 (D. C. 1954). Even those lower courts which have held the privilege applicable in the context of a smaller partnership have frequently acknowledged that no absolute exclusion of the partnership form from the *White* rule generally applicable to unincorporated associations is warranted. See, *e. g.*, *United States* v. *Cogan*, 257 F. Supp. 170, 173–174 (SDNY 1966); *In re Subpoena Duces Tecum*, 81 F. Supp. 418, 421 (ND Cal. 1948).

In this case, however, we are required to explore the outer limits of the analysis of the Court in *White*. Petitioner argues that in view of the modest size of the partnership involved here, it is unrealistic to consider the firm as an entity independent of its three partners; rather, he claims, the law firm embodies little more than the personal legal practice of the individual partners. Moreover, petitioner argues that he has a substantial and direct ownership interest in the partnership records, and does not hold them in a representative capacity.[2]

I would argue that the size of the partnership is immaterial. So long as the records are really those of the partnership, I think they may be obtained. Of course, partnership records are more likely to be mingled with personal records if the partnership is small.

[2] The petitioner also argues that we have already decided the issue presented in this case, and held that the Fifth Amendment privilege could be claimed with respect to partnership records, in the *Boyd* case. It is true that the notice to produce involved in *Boyd* was in fact issued to E. A. Boyd & Sons, a partnership. See 116 U. S., at 619. However, at this early stage in the development of our Fifth Amendment jurisprudence, the potential significance of this fact was not observed by either the parties or the Court. The parties treated the invoice at issue as a private business record, and the contention that it might be a partnership record held in a representative capacity, and thus not within the scope of the privilege, was not raised. The Court therefore decided the case on the premise that it

Despite the force of these arguments, we conclude that the lower courts properly applied the *White* rule in the circumstances of this case. While small, the partnership here did have an established institutional identity independent of its individual partners. This was not an informal association or a temporary arrangement for the undertaking of a few projects of short-lived duration. Rather, the partnership represented a formal institutional arrangement organized for the continuing conduct of the firm's legal practice. The partnership was in existence for nearly 15 years prior to its voluntary dissolution.[11] Although it may not have had a formal constitution or bylaws to govern its internal affairs state

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involved the "compulsory production of a man's private papers." *Id.*, at 622. It was only after *Boyd* had held that the Fifth Amendment privilege applied to the compelled production of documents that the question of the extension of this principle to the records of artificial entities arose. We do not believe that the Court in *Boyd* can be said to have decided the issue presented today. See *United States* v. *Onassis*, 125 F. Supp. 190, 208 (D. C. 1954).

In any event, the Court in *Boyd* did not inquire into the nature of the Boyd & Sons partnership or the capacity in which the invoice was acquired or held. Absent such an inquiry, we are unable to determine how our decision today would affect the result of *Boyd* on the facts of that case. See p. —, *infra*.

[11] Petitioner properly concedes that the dissolution of the partnership does not afford him any greater claim to the privilege than he would have if the firm were still active. Brief for petitioner, at 32, n. 12. Under Pennsylvania law, dissolution of the partnership does not terminate the entity; rather it continues until the winding up of the partnership affairs is completed. 59 Pa. Stat. Ann. § 2 (Purdon's 1964), which has not yet occurred in this case. Moreover, this Court's decision have made clear that the dissolution of a corporation does not give the custodian of the corporate records any greater claim to the Fifth Amendment privilege. *Wheeler* v. *United States*, *supra*, 226 U. S., at 489–490. *Grant* v. *United States*, *supra*, 227 U. S., at 80. We see no reason why the same should not be true of the records of a partnership after its dissolution.

partnership law imposed on the firm a certain organizational structure in the absence of any contrary agreement by the partners;[4] for example, it guaranteed to each of the partners the equal right to participate in the management and control of the firm, 59 Pa. Stat. Ann. § 51 (e) (Purdon's 1964), and prescribed that majority rule governed the conduct of the firm's business, *id.*, § 51 (h).[5] The firm maintained a bank account in the partnership name, had stationery using the firm name on its letterhead, and, in general, held itself out to third parties as an entity with an independent institutional identity.[6] It employed six persons in addition to its partners, including two other attorneys who practiced law on behalf of the firm, rather than as individuals on their own behalf. It filed separate partnership returns for federal tax purposes, as required by § 6031 of the Internal Revenue Code.[6] State law permitted the firm to be sued, 12 Pa. Stat. Ann. Rule 2128 (Purdon's 1967), and to hold title to property, 59 Pa. Stat. Ann. § 13 (3), in the partner-

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[4] The record in this case is quite sketchy, and it is unclear whether the partnership here had adopted a formal partnership agreement. Petitioner apparently had a 45% interest in the profits of the firm, which suggests that there may have been such an agreement. However, there is no indication that any such agreement made any material change in the provisions of state law regarding the management and control of the firm or the rights of the other partners with respect to the firm's financial records. In any event, the existence of a formal partnership agreement would merely reinforce our conclusion that the partnership is properly regarded as an independent entity with a relatively formal organization.

[5] Pennsylvania has adopted the provisions of the Uniform Partnership Act, which is also in force in 40 other States and the District of Columbia.

[6] As we observed only last Term, a "partnership is regarded as an independently recognizable entity apart from the aggregate of its partners" for a number of purposes under the Internal Revenue Code. *United States* v. *Basye*, 410 U. S. 441, 448 (1973).

ship name, and generally regarded the partnership as a distinct entity for numerous other purposes.[7]

Equally important, we believe that petitioner is holding the subpoenaed partnership records primarily in a representative capacity, and that the representative aspect of his possession predominates over whatever direct personal interest he may have in the records.[8] It

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[7] Of course, state and federal law do not treat partnerships as distinct entities for all purposes. But we think that partnerships bear enough of the indicia of legal entities to be treated as such for the purpose of our analysis of the Fifth Amendment issue presented in this case. The fact that partnerships are not viewed solely as entities is immaterial for this purpose. See *United States* v. *White*, *supra*, 322 U. S., at 697.

[8] Petitioner argues that as a partner in the firm, he has an interest in the firm's records as co-owner which entitles him to claim the privilege against self-incrimination. But such a co-ownership interest exists in a partnership of any size. Moreover, the same ownership interest is presented in the case of a labor union or other unincorporated association. The Court's decision in *White* clearly established that the mere existence of such an ownership interest is not in itself sufficient to establish a claim of privilege. See also *Wheeler* v. *United States*, *supra*, 226 U. S., at 489–490; *Grant* v. *United States*, *supra*, 227 U. S., at 79–80.

Petitioner also argues that the partnership is not the subject under investigation by the grand jury, so that it is not the target of the inquiry. Assuming that this is true, it does not give petitioner any greater claim to the privilege. We have rejected this same argument in holding that the privilege cannot be maintained with respect to corporate records, in words fully applicable here:

"Nor is it an answer to say that in the present case the inquiry before the grand jury was not directed against the corporation itself. The appellant had no greater right to withhold the books by reason of the fact that the corporation was not charged with criminal abuses. That, if the corporation had been so charged, he would have been compelled to submit the books to inspection, despite the consequences to himself, sufficiently shows the absence of any basis for a claim on his part of personal privilege as to them; it could not depend upon the question whether or not another was accused." *Wilson* v. *United States*, *supra*, 221 U. S., at 385.

is important to emphasize that the subpoenaed documents do not relate to any legal matter on which petitioner may have worked himself, or to anything else in which petitioner may have had any direct personal involvement. Although such work would have been performed in a formal sense on behalf of the firm, petitioner's argument that realistically this was only his personal legal practice might in this context be persuasive. But the District Court here excluded any such documents from the scope of its order. See n. 1, *supra*. Instead, the documents which petitioner has been ordered to produce are merely the financial books and records of the partnership. These reflect the receipts and disbursements of the entire firm, including income generated by and salaries paid to the employees of the firm and the financial transactions of the other partners.

Petitioner holds these records subject to the rights granted to the other partners by state partnership law. Petitioner has no direct ownership interest in the records; rather, under state law, they are partnership property and petitioner's interest in partnership property is a derivative interest subject to significant limitations. See *Ellis* v. *Ellis*, 415 Pa. 412, 415-416, 203 A. 2d 548, 549-550 (1964). Petitioner has no right to use this property for other than partnership purposes without the consent of the other partners. 59 Pa. Stat. Ann. § 72 (2)(a). Petitioner is of course accountable to the partnership as a fiduciary, *id.*, § 54 (1), and his possession of the firm's financial records is especially subject to his fiduciary obligations to the other partners. Indeed, Pennsylvania law specifically provides that "every partner shall at all times have access to and may inspect and copy any of [the partnership books]." *Id.*, § 52.[9] To facilitate this

[9] Significantly, the Court in *White*, in pointing out that union records were generally open to inspection by the members, 322 U. S.,

right of access, petitioner was required to keep these financial books and records at the firm's principal place of business, at least during the active life of the partnership. *Ibid.* The other partners in the firm were—and still are—entitled to enforce these rights through legal action by demanding production of the records in a suit for a formal accounting. *Id.*, § 55.[10]

It should be noted also that petitioner was content to leave these records with the other members of the partnership at their principal place of business for more than three years after he left the firm. This fact provides additional support for our conclusion that it is the organizational character of the records and the representative aspect of petitioner's present possession of them which predominates over his belatedly discovered personal interest in them. Moreover, the Government contends that the other partners in the firm had agreed to turn the records over to the grand jury before discovering that petitioner had removed them from their offices, and that they made an unavailing demand upon petitioner to return the records. Thus, petitioner's present possession of these records may well be in violation of state law and the rights of the other members of the partnership, which certainly drains a good deal of the force from petitioner's claim of privilege.

Petitioner relies heavily on language in the Court's opinion in *White* which suggests that the "test" for determining the applicability of the Fifth Amendment privilege in this area is whether the organization "has a char-

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at 699–700, relied upon *Guthrie* v. *Harkness*, 199 U. S. 148, 153 (1905), where the Court observed that "the members of an ordinary partnership [have the same right] to examine their company's books."

[10] To implement these rights, Pennsylvania law permits any partner to bring suit against the partnership, and the partnership to sue any partner. 12 Pa. Stat. Ann. Rule 2129.

acter so impersonal in the scope of it membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only." 322 U. S., at 701. We must admit our agreement with the Solicitor General's observation that "it is difficult to know precisely what situations the formulation in *White* was intended to include within the protection of the privilege." Brief for the United States, at 21. The Court in *White,* after stating its test, did not really apply it, nor has any of the subsequent decisions of this Court. On its face, the test is not particularly helpful in the broad range of cases, including this one, where the organization embodies neither "purely . . . personal interests" nor "group interests only," but rather some combination of the two.

In any event, we do not believe that the Court's formulation in *White* can be reduced to a simple proposition based solely upon the size of the organization. It is well settled that no privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be. *Grant* v. *United States, supra,* 227 U. S. 74; *Fineberg* v. *United States,* 393 F. 2d 417, 420 (CA9 1968); *Hair Industry, Ltd.* v. *United States,* 340 F. 2d 510 (CA2 1965); cf. *George Campbell Painting Corp.* v. *Reid,* 392 U. S. 286 (1968). Every State has now adopted laws permitting incorporation of professional associations, and increasing numbers of lawyers, doctors, and other professionals are choosing to conduct their business affairs in the corporate form rather than the more traditional partnership. Whether corporation or partnership, many of these firms will be independent business entities whose financial records are held by a member of the firm in a representative capacity. In these circumstances, the applicability of the privilege should not turn on an in-

substantial difference in the form of the business enterprise. See *In re Grand Jury Subpoena Duces Tecum*, 358 F. Supp. 661, 668 (Md. 1973).

What the Court's "test" in *White* does suggest, however, is that there may still be instances where the individual's direct personal interest in records of a group entity predominates over the representative aspect of his possession. As noted above, this might well be true if the subpoenaed documents were the individual's own work product. This might also be a different case if it involved a small family partnership, see *United States* v. *Slutsky*, 352 F. Supp. 1105 (SDNY 1972), *In re Subpoena Duces Tecum*, 81 F. Supp. 418, 421 (ND Cal. 1948), or, as the Solicitor General suggests, Brief for the United States, at 22–23, if there were some other pre-existing relationship of confidentiality among the partners. In these situations the closeness of the relationships within the partnership and the strong identification of the individual with the group may justify a finding that the personal interest of the individual should prevail. See *United States* v. *Onassis*, 125 F. Supp. 190, 210 (D. C. 1954). But in the circumstances of this case, it is the petitioner's possession of the partnership's financial records in a representative capacity which predominates, and compels our holding that his personal privilege against self-incrimination is inapplicable.

Affirmed.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

I agree fully with both of these observations. jcf jr

I agree also

May 4, 1974

Re: No. 73-190 - Bellis v. United States

Dear Thurgood:

I agree with much of your proposed opinion in this case, and of course with the result. I do have serious difficulties with two passages in the present third draft, and wonder if you would give consideration to modifying or deleting them.

On page 7, you state:

> "We have often recognized that the Fifth Amendment was intended to permit the individual to construct for himself a sphere of personal privacy around his private life -- his thoughts, his feelings, his writings, and his possessions -- into which the Government cannot enter over his objection. See, e.g., Griswold v. Connecticut, 381 U.S. 479, 484 (1965); Couch v. United States, supra, at 327, 335-336; id., at 349-350 (dissenting opinion);"

This seems to me a more expansive and less precise statement of this aspect of the Fifth Amendment than the cases cited with warrant. Bill Douglas in Griswold simply speaks generally about a right of "privacy", and Lewis Powell in Couch says that the privilege "respects a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation." It seems to me when you extend "sphere" to

a man's "writings and his possessions" and omit any reference to the fact that the privilege is directed to the extraction of "self-condemnation", you have broadened the principle further than any of our cases to date has done.

On page 8, you say that the record must "in fact be organizational records held in a representative capacity and not documents in which the individual has a significant personal interest. In other words, it must be truly meaningful to say that the records demanded are the records of the organization rather than those of any individual, and to fairly describe the individual's possession as being in a representative capacity, as custodian on behalf of the organization, rather than in a personal capacity." Almost identical language appears on page 14 and again on page 17. I certainly agree that an individual holding personal records in a personal capacity could claim whatever privilege the Fifth Amendment gives him and that the government could not rely on White to obtain them. But it seems to me that your language suggests that even though the records are in fact those of a corporation or partnership, if an individual holding them has a "significant personal interest" in them, or if he holds them "in a personal capacity", a different result might be reached here. I do not see how an individual can possess corporate records "in a personal capacity", and in the case of purely financial records such as this, I do not know what you mean when you say that the case might be different if the individual possessing them "has a significant personal interest" in them. Presumably every individual has a significant personal interest in not being incriminated by corporate records in his possession, but since we are affirming the judgment of the Third Circuit here I take it that is not the type of interest to which you refer. I am puzzled by the meaning of this language, and think that perhaps lower courts may be, too.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 6, 1974

RE: No. 73-190 Bellis v. United States

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1974

Re: No. 73-190, Bellis v. United States

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

May 7, 1974

No. 73-190 Bellis v. United States

Dear Thurgood:

I agree with the suggestions made by Bill Rehnquist in his letter to you of May 4.

The Constitution itself specifies no general right of "personal privacy", and we have been careful not to enunciate any such right in broad and sweeping terms. Rather, an individual's interest in privacy has been recognized on a case-by-case basis as an appendage - where appropriate - to a constitutional right.

It seems to me that the paragraph on p. 7 of your proposed opinion comes fairly close to enunciating a new and far-reaching declaration of constitutional rights.

I also am inclined to agree with Bill's comments in the last paragraph of his letter. The language in question seems addressed primarily to situations not presently before the Court.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 10, 1974

Re: No. 73-190 - Bellis v. United States

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to Conference

P. 8, 13, 14, 16, 17

To: The Chief Justice
Mr. Justice Douglas
Mr Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: _____

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-190

Isadore H. Bellis, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1974]

Join in view of changes as requested.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether a partner in a small law firm may invoke his personal privilege against self-incrimination to justify his refusal to comply with a subpoena requiring production of the partnership's financial records.

Until 1969, petitioner Isadore Bellis was the senior partner in Bellis, Kolsby & Wolf, a law firm in Philadelphia. The firm was formed in 1955 or 1956. There were three partners in the firm, the three individuals listed in the firm name. In addition, the firm had about six employees: two other attorneys who were associated with the firm, one parttime; three secretaries; and a receptionist. Petitioner's secretary doubled as the partnership's bookkeeper, under the direction of petitioner and the firm's independent accountant. The firm's financial records were therefore maintained in petitioner's office during his tenure at the firm.

Bellis left the firm in late 1969 to join another law firm. The partnership was dissolved, although it is apparently still in the process of winding up its affairs. Kolsby and Wolf continued in practice together as a new partnership, at the same premises. Bellis moved

to new offices, leaving the former partnership's financial records with Kolsby and Wolf, where they remained for more than three years. In February or March of 1973, however, shortly before issuance of the subpoena in this case, petitioner's secretary, acting at the direction of petitioner or his attorney, removed the records from the old premises and brought them to Bellis' new office.

On May 1, 1973, Bellis was served with a subpoena directing him to appear and testify before a federal grand jury and to bring with him "all partnership records currently in your possession for the partnership of Bellis, Kolsby & Wolf for the years 1968 and 1969." Petitioner appeared on May 9, but refused to produce the records, claiming, *inter alia*, his Fifth Amendment privilege against compulsory self-incrimination. After a hearing before the District Court on May 9 and 10, the court held that petitioner's personal privilege did not extend to the partnership's financial books and records, and ordered their production by May 16.[1] When petitioner reappeared before the grand jury on that date and again refused to produce the subpoenaed records, the District Court held him in civil contempt, and released him on his own recognizance pending an expedited appeal.

On July 9, 1973, the Court of Appeals affirmed in a *per curiam* opinion. *In re Grand Jury Investigation*, 483 F. 2d 961 (CA3 1973). Relying on this Court's decision in *United States* v. *White*, 322 U. S. 694 (1944), the Court of Appeals stated that "the privilege has always been regarded as personal in the sense that it applies only to an individual's words or personal papers" and thus held that the privilege against self-incrimination did not apply to "records of an entity such as a

[1] Although the wording of the subpoena was arguably broad enough to encompass them, the District Court expressly excluded any client files from the scope of its order.

partnership which has a recognizable juridical existence apart from its members." *Id.*, at 962. After MR. JUSTICE WHITE had stayed the mandate of the Court of Appeals on August 1, we granted certiorari, 414 U. S. 907 (1973), to consider this interpretation of the Fifth Amendment privilege and the applicability of our *White* decision in the circumstances of this case. We affirm.

It has long been established, of course, that the Fifth Amendment privilege against compulsory self-incrimination protects an individual from compelled production of his personal papers and effects as well as compelled oral testimony. In *Boyd* v. *United States,* 116 U. S. 616 (1886), we held that "any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime" would violate the Fifth Amendment privilege. *Id.*, at 630; see also *id.*, at 633–635; *Wilson* v. *United States,* 221 U. S. 361, 377 (1911). The privilege applies to the business records of the sole proprietor or sole practitioner as well as to personal documents containing more intimate information about the individual's private life. *Boyd* v. *United States, supra, Couch* v. *United States,* 409 U. S. 322 (1973); *Hill* v. *Philpott,* 445 F. 2d 144 (CA7), cert. denied, 404 U. S. 991 (1971); *Stuart* v. *United States,* 416 F. 2d 459, 462 (CA5 1969) As the Court explained in *United States* v. *White, supra,* at 698, "[t]he constitutional privilege against self-incrimination . . . is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him." See also *Curcio* v *United States,* 354 U. S. 118, 125 (1957), *Couch* v. *United States, supra,* at 330–331.

On the other hand, an equally long line of cases has established that an individual cannot rely upon the

privilege to avoid producing the records of a collective entity which are in his possession in a representative capacity, even if these records might incriminate him personally. This doctrine was first announced in a series of cases dealing with corporate records. In *Wilson* v. *United States,* 221 U. S. 361 (1911), the Court held that an officer of a corporation could not claim his privilege against compulsory self-incrimination to justify a refusal to produce the corporate books and records in response to a grand jury subpoena duces tecum directed to the corporation. A companion case, *Dreier* v. *United States,* 221 U. S. 394 (1911), held that the same result followed when the subpoena requiring production of the corporate books was directed to the individual corporate officer. In *Wheeler* v. *United States,* 226 U. S. 478 (1913), the Court held that no Fifth Amendment privilege could be claimed with respect to corporate records even though the corporation had previously been dissolved. And *Grant* v. *United States,* 227 U. S. 74 (1913), applied this principle to the records of a dissolved corporation where the records were in the possession of the individual who had been the corporation's sole shareholder.

To some extent, these decisions were based upon the particular incidents of the corporate form, the Court observing that a corporation has limited powers granted to it by the State in its charter, and is subject to the retained "visitorial power" of the State to investigate its activities. See, *e. g., Wilson* v. *United States, supra,* 221 U. S., at 382–385. But any thought that the principle formulated in these decisions was limited to corporate records was put to rest in *United States* v. *White,* 322 U. S. 694 (1944). In *White,* we held that an officer of an unincorporated association, a labor union, could not claim his privilege against compulsory self-incrimination to justify his refusal to produce the union's records pursuant to a grand jury subpoena. *White* an-

nounced the general rule that the privilege could not be employed by an individual to avoid production of the records of an organization, which he holds in a representative capacity as custodian on behalf of the group. *Id.*, at 699–700. Relying on *White*, we have since upheld compelled production of the records of a variety of organizations over individuals' claims of Fifth Amendment privilege. See, *e. g.*, *United States* v. *Fleischman*, 339 U. S. 349, 357–358 (1950) (Joint Anti-Fascist Refugee Committee); *Rogers* v. *United States*, 340 U. S. 367, 371–372 (1951) (*Communist Party of Denver*); *McPhaul* v. *United States*, 364 U. S. 372, 380 (1960) (Civil Rights Congress). See also *Curcio* v. *United States*, 354 U. S. 118 (1957) (local labor union).

These decisions reflect the Court's consistent view that the privilege against compulsory self-incrimination should be "limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records." *United States* v. *White*, *supra*, at 701. *White* is only one of the many cases to emphasize that the Fifth Amendment privilege is a purely personal one, most recent among them being the Court's decision last Term in *Couch* v. *United States*, 409 U. S. 322, 327–328 (1973). Relying on this fundamental policy limiting the scope of the privilege, the Court in *White* held that "the papers and effects which the privilege protects must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity." 322 U. S., at 699. Mr. Justice Murphy reasoned that "individuals, when acting as members of a collective group, cannot be said to be exercising their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations." *Ibid.*

Since no artificial organization may utilize the personal privilege against compulsory self-incrimination, the Court found that it follows that an individual acting in his official capacity on behalf of the organization may likewise not take advantage of his personal privilege. In view of the inescapable fact that an artificial entity can only act to produce its records through its individual officers or agents, recognition of the individual's claim of privilege with respect to the financial records of the organization would substantially undermine the unchallenged rule that the organization itself is not entitled to claim any Fifth Amendment privilege, and largely frustrate legitimate governmental regulation of such organizations. Mr. Justice Murphy put it well:

> "The scope and nature of the economic activities of incorporated and unincorporated organizations and their representatives demand that the constitutional power of the federal and state governments to regulate those activities be correspondingly effective. The greater portion of evidence of wrongdoing by an organization or its representatives is usually to be found in the official records and documents of that organization. Were the cloak of the privilege to be thrown around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible. The framers of the constitutional guarantee against compulsory self-disclosure, who were interested primarily in protecting individual civil liberties, cannot be said to have intended the privilege to be available to protect economic or other interests of such organizations so as to nullify appropriate governmental regulations." *Id.*, at 700 (citations omitted).

See also *Wilson* v *United States*, *supra*, at 384–385.

The Court's decisions holding the privilege inapplicable to the records of a collective entity also reflect a second, though obviously interrelated policy underlying the privilege, the protection of an individual's right to a "private enclave where he may lead a private life." *Murphy* v. *Waterfront Comm'n*, 378 U. S. 52, 55 (1964). We have recognized that the Fifth Amendment "respects a private inner sanctum of individual feeling and thought"—an inner sanctum which necessarily includes an individual's papers and effects to the extent that the privilege bars their compulsory production and authentication—and "proscribes state intrusion to extract self-condemnation." *Couch* v. *United States, supra*, at 327. See also *Griswold* v. *Connecticut*, 381 U. S. 479, 484 (1965). Protection of individual privacy was the major theme running through the Court's decision in *Boyd*, see, *e. g.*, 116 U. S., at 630, and it was on this basis that the Court in *Wilson* distinguished the corporate records involved in that case from the private papers at issue in *Boyd*. See 221 U. S., at 377, 380.

But a substantial claim of privacy or confidentiality cannot often be maintained with respect to the financial records of an organized collective entity. Control of such records is generally strictly regulated by statute or by the rules and regulations of the organization, and access to the records is generally guaranteed to others in the organization. In such circumstances, the custodian of the organization's records lacks the control over their content and location and the right to keep them from the view of others which would be characteristic of a claim of privacy and confidentiality. Mr. Justice Murphy recognized the significance of this in *White*; he pointed out that organizational records "[u]sually, if not always, . . . are open to inspection by the members," that "this right may be enforced on appropriate occasions by

available legal procedures," and that "[t]hey therefore embody no element of personal privacy." 332 U. S., at 699–700. And here lies the modern-day relevance of the visitorial powers doctrine relied upon by the Court in *Wilson* and the other cases dealing with corporate records; the Court's holding that no privilege exists "where, by virtue of their character and the rules of law applicable to them, the books and papers are held subject to examination by the [state]," 221 U. S., at 382, can easily be understood as a recognition that corporate records do not contain the requisite element of privacy or confidentiality essential for the privilege to attach.

The analysis of the Court in *White*, of course, only makes sense in the context of what the Court described as "organized institutional activity." 322 U. S., at 701. This analysis presupposes the existence of an organization which is recognized as an independent entity apart from its individual members. The group must be relatively well-organized and structured, and not merely a loose, informal association of individuals. It must maintain a distinct set of organizational records, and recognize rights in its members of control and access to them. And the records subpoenaed must in fact be organizational records held in a representative capacity. In other words, it must be fair to say that the records demanded are the records of the organization rather than those of the individual under *White*.

The Court in *White* had little difficulty in concluding that the demand for production of the official records of a labor union, whether national or local, in the custody of an officer of the union, met these tests. See *id.*, at 701–703. The Court observed that a union's existence in fact, if not in law, was "as perpetual as that of any corporation," that the union operated under formal constitutions, rules, and by-laws, and that it engaged in a

broad scope of activities in which it was recognized as an independent entity. The Court also pointed out that the official union books and records were distinct from the personal books and records of its members, that the union restricted the permissible uses of these records, and that it recognized its members' rights to inspect them. Although the Court was aware that the individual members might legally hold title to the union records, the Court characterized this interest as "nominal" rather than a significant personal interest in them.

We think it is similarly clear that partnerships may and frequently do represent organized institutional activity so as to preclude any claim of Fifth Amendment privilege with respect to the partnership's financial records. Some of the most powerful private institutions in the Nation are conducted in the partnership form. Wall Street law firms and stock brokerage firms provide significant examples. These are often large, impersonal, highly structured enterprises of essentially perpetual duration. The personal interest of any individual partner in the financial records of a firm of this scope is obviously highly attenuated. It is inconceivable that a brokerage house with offices from coast to coast handling billions of dollars of investment transactions annually should be entitled to immunize its records from SEC scrutiny solely because it operates as a partnership rather than in the corporate form. Although none of the reported cases has involved a partnership of quite this magnitude, it is hardly surprising that all of the courts of appeals which have addressed the question have concluded that *White*'s analysis requires rejection of any claim of privilege in the financial records of a large business enterprise conducted in the partnership form. *In re Mal Brothers Contracting Co.*, 444 F. 2d 615 (CA3), cert. denied, 404 U. S. 857 (1971); *United States* v.

Silverstein, 314 F. 2d 789 (CA2), cert. denied, 374 U. S. 807 (1963); *United States* v. *Wernes*, 157 F. 2d 797, 800 (CA7 1946). See also *United States* v. *Onassis*, 125 F. Supp. 190, 205–210 (D. C. 1954). Even those lower courts which have held the privilege applicable in the context of a smaller partnership have frequently acknowledged that no absolute exclusion of the partnership form from the *White* rule generally applicable to unincorporated associations is warranted. See, *e. g.*, *United States* v. *Cogan*, 257 F. Supp. 170, 173–174 (SDNY 1966); *In re Subpoena Duces Tecum*, 81 F. Supp. 418, 421 (ND Cal. 1948).

In this case, however, we are required to explore the outer limits of the analysis of the Court in *White*. Petitioner argues that in view of the modest size of the partnership involved here, it is unrealistic to consider the firm as an entity independent of its three partners; rather, he claims, the law firm embodies little more than the personal legal practice of the individual partners. Moreover, petitioner argues that he has a substantial and direct ownership interest in the partnership records, and does not hold them in a representative capacity.[2]

[2] The petitioner also argues that we have already decided the issue presented in this case, and held that the Fifth Amendment privilege could be claimed with respect to partnership records, in the *Boyd* case. It is true that the notice to produce involved in *Boyd* was in fact issued to E. A. Boyd & Sons, a partnership. See 116 U. S., at 619. However, at this early stage in the development of our Fifth Amendment jurisprudence, the potential significance of this fact was not observed by either the parties or the Court. The parties treated the invoice at issue as a private business record, and the contention that it might be a partnership record held in a representative capacity, and thus not within the scope of the privilege, was not raised. The Court therefore decided the case on the premise that it involved the "compulsory production of a man's private papers." *Id.*, at 622. It was only after *Boyd* had held that the Fifth Amend-

Despite the force of these arguments, we conclude that the lower courts properly applied the *White* rule in the circumstances of this case. While small, the partnership here did have an established institutional identity independent of its individual partners. This was not an informal association or a temporary arrangement for the undertaking of a few projects of short-lived duration. Rather, the partnership represented a formal institutional arrangement organized for the continuing conduct of the firm's legal practice. The partnership was in existence for nearly 15 years prior to its voluntary dissolution.[3] Although it may not have had a formal constitution or bylaws to govern its internal affairs, state partnership law imposed on the firm a certain organizational structure in the absence of any contrary agreement

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ment privilege applied to the compelled production of documents that the question of the extension of this principle to the records of artificial entities arose. We do not believe that the Court in *Boyd* can be said to have decided the issue presented today. See *United States* v. *Onassis*, 125 F. Supp. 190, 208 (D. C. 1954).

In any event, the Court in *Boyd* did not inquire into the nature of the Boyd & Sons partnership or the capacity in which the invoice was acquired or held. Absent such an inquiry, we are unable to determine how our decision today would affect the result of *Boyd* on the facts of that case. See p. 17, *infra*.

[3] Petitioner properly concedes that the dissolution of the partnership does not afford him any greater claim to the privilege than he would have if the firm were still active. Brief for petitioner, at 31 n. 12. Under Pennsylvania law, dissolution of the partnership does not terminate the entity, rather it continues until the winding up of the partnership affairs is completed, 59 Pa. Stat. Ann. § 92 (Purdon's 1964), which has not yet occured in this case. Moreover, this Court's decision have made clear that the dissolution of a corporation does not give the custodian of the corporate records any greater claim to the Fifth Amendment privilege. *Wheeler* v. *United States, supra*, 226 U. S., at 489–490; *Grant* v. *United States, supra*, 227 U. S., at 80. We see no reason why the same should not be true of the records of a partnership after its dissolution.

by the partners;[4] for example, it guaranteed to each of the partners the equal right to participate in the management and control of the firm, 59 Pa. Stat. Ann. § 51 (e) (Purdon's 1964), and prescribed that majority rule governed the conduct of the firm's business, *id.*, § 51 (h).[5] The firm maintained a bank account in the partnership name, had stationery using the firm name on its letterhead, and, in general, held itself out to third parties as an entity with an independent institutional identity. It employed six persons in addition to its partners, including two other attorneys who practiced law on behalf of the firm, rather than as individuals on their own behalf. It filed separate partnership returns for federal tax purposes, as required by § 6031 of the Internal Revenue Code.[6] State law permitted the firm to be sued, 12 Pa. Stat. Ann. Rule 2128 (Purdon's 1967), and to hold title to property, 59 Pa. Stat. Ann. § 13 (3), in the partner-

[4] The record in this case is quite sketchy, and it is unclear whether the partnership here had adopted a formal partnership agreement. Petitioner apparently had a 45% interest in the profits of the firm, which suggests that there may have been such an agreement. However, there is no indication that any such agreement made any material change in the provisions of state law regarding the management and control of the firm or the rights of the other partners with respect to the firm's financial records. In any event, the existence of a formal partnership agreement would merely reinforce our conclusion that the partnership is properly regarded as an independent entity with a relatively formal organization.

[5] Pennsylvania has adopted the provisions of the Uniform Partnership Act, which is also in force in 40 other States and the District of Columbia.

[6] As we observed only last Term, a "partnership is regarded as an independently recognizable entity apart from the aggregate of its partners" for a number of purposes under the Internal Revenue Code. *United States* v. *Basye*, 410 U. S. 441, 448 (1973).

ship name, and generally regarded the partnership as a distinct entity for numerous other purposes.[7]

Equally important, we believe it is fair to say that petitioner is holding the subpoenaed partnership records in a representative capacity.[8] The documents which

[7] Of course, state and federal law do not treat partnerships as distinct entities for all purposes. But we think that partnerships bear enough of the indicia of legal entities to be treated as such for the purpose of our analysis of the Fifth Amendment issue presented in this case. The fact that partnerships are not viewed solely as entities is immaterial for this purpose. See *United States* v. *White, supra,* 322 U. S., at 697

[8] Petitioner argues that as a partner in the firm, he has an interest in the firm's records as co-owner which entitles him to claim the privilege against self-incrimination. But such an ownership interest exists in a partnership of any size. Moreover, the same ownership interest is presented in the case of a labor union or other unincorporated association. The Court's decision in *White* clearly established that the mere existence of such an ownership interest is not in itself sufficient to establish a claim of privilege. See also *Wheeler* v. *United States, supra,* 226 U. S., at 489–490; *Grant* v. *United States, supra,* 227 U. S., at 79–80

MR. JUSTICE DOUGLAS argues in dissent that the partnership as an entity is not under investigation by the grand jury, rather that petitioner is the target of the inquiry. Assuming that this is true, it does not give petitioner any greater claim to the privilege. We have rejected this same argument in holding that the privilege cannot be maintained with respect to corporate records, in words fully applicable here

"Nor is it an answer to say that in the present case the inquiry before the grand jury was not directed against the corporation itself. The appellant had no greater right to withhold the books by reason of the fact that the corporation was not charged with criminal abuses. That, if the corporation had been so charged, he would have been compelled to submit the books to inspection, despite the consequences to himself, sufficiently shows the absence of any basis for a claim on his part of personal privilege as to them; it could not depend upon the question whether or not another was accused." *Wilson* v. *United States, supra,* 221 U. S., at 385.

petitioner has been ordered to produce are merely the financial books and records of the partnership.[9] These reflect the receipts and disbursements of the entire firm, including income generated by ~~the~~ salaries and paid to the employees of the firm and the financial transactions of the other partners. Petitioner holds these records subject to the rights granted to the other partners by state partnership law. Petitioner has no direct ownership interest in the records; rather, under state law, they are partnership property, and petitioner's interest in partnership property is a derivative interest subject to significant limitations. See *Ellis* v. *Ellis*, 415 Pa. 412, 415–416, 203 A. 2d 547, 549–550 (1964). Petitioner has no right to use this property for other than partnership purposes without the consent of the other partners. 59 Pa. Stat. Ann. § 72 (2)(a). Petitioner is of course accountable to the partnership as a fiduciary, *id.*, § 54 (1), and his possession of the firm's financial records is especially subject to his fiduciary obligations to the other partners. Indeed, Pennsylvania law specifically provides that "every partner shall at all times have access to and may inspect and copy any of [the partnership books]." *Id.*, § 52.[10] To facilitate this right of access, petitioner was required to keep these

[9] Significantly, the District Court here excluded any client files from the scope of its order. See n. 1, *supra*. A different case might be presented if petitioner had been ordered to produce files containing work which he had personally performed on behalf of his clients, even if these files might for some purposes be viewed as those of the partnership.

[10] The Court in *White*, in pointing out that union records were generally open to inspection by the members, 322 U. S., at 699–700, relied upon *Guthrie* v. *Harkness*, 199 U. S. 148, 153 (1905), where the Court observed that "the members of an ordinary partnership [have the same right] to examine their company's books."

financial books and records at the firm's principal place of business, at least during the active life of the partnership. *Ibid.* The other partners in the firm were—and still are—entitled to enforce these rights through legal action by demanding production of the records in a suit for a formal accounting. *Id.*, § 55.[11]

It should be noted also that petitioner was content to leave these records with the other members of the partnership at their principal place of business for more than three years after he left the firm. Moreover, the Government contends that the other partners in the firm had agreed to turn the records over to the grand jury before discovering that petitioner had removed them from their offices, and that they made an unavailing demand upon petitioner to return the records. Whether or not petitioner's present possession of these records is an unlawful infringement of the rights of the other partners, this provides additional support for our conclusion that it is the organizational character of the records and the representative aspect of petitioner's present possession of them which predominates over his belatedly discovered personal interest in them.

Petitioner relies heavily on language in the Court's opinion in *White* which suggests that the "test" for determining the applicability of the Fifth Amendment privilege in this area is whether the organization "has a character so impersonal in the scope of it membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only." 322 U. S., at 701. We must admit our agree-

[11] To implement these rights, Pennsylvania law permits any partner to bring suit against the partnership, and the partnership to sue any partner. 12 Pa. Stat. Ann. Rule 2129.

ment with the Solicitor General's observation that "it is difficult to know precisely what situations the formulation in *White* was intended to include within the protection of the privilege." Brief for the United States, at 21. The Court in *White*, after stating its test, did not really apply it, nor has any of the subsequent decisions of this Court. On its face, the test is not particularly helpful in the broad range of cases, including this one, where the organization embodies neither "purely . . . personal interests" nor "group interests only," but rather some combination of the two.

In any event, we do not believe that the Court's formulation in *White* can be reduced to a simple proposition based solely upon the size of the organization. It is well settled that no privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be. *Grant* v. *United States*, *supra*, 227 U. S. 74; *Fineberg* v. *United States*, 393 F. 2d 417, 420 (CA9 1968); *Hair Industry, Ltd.* v. *United States*, 340 F. 2d 510 (CA2 1965); cf. *George Campbell Painting Corp.* v. *Reid*, 392 U. S. 286 (1968). Every State has now adopted laws permitting incorporation of professional associations, and increasing numbers of lawyers, doctors, and other professionals are choosing to conduct their business affairs in the corporate form rather than the more traditional partnership. Whether corporation or partnership, many of these firms will be independent entities whose financial records are held by a member of the firm in a representative capacity. In these circumstances, the applicability of the privilege should not turn on an insubstantial difference in the form of the business enterprise. See *In re Grand Jury Subpoena Duces Tecum*, 358 F. Supp. 661, 668 (Md. 1973).

This might be a different case if it involved a small family partnership, see *United States* v. *Slutsky*, 352 F.

Supp. 1105 (SDNY 1972); *In re Subpoena Duces Tecum*, 81 F. Supp. 418, 421 (ND Cal. 1948), or, as the Solicitor General suggests, Brief for the United States, at 22–23, if there were some other pre-existing relationship of confidentiality among the partners. But in the circumstances of this case, the petitioner's possession of the partnership's financial records in what can be fairly said to be a representative capacity compels our holding that his personal privilege against compulsory self-incrimination is inapplicable.

Affirmed.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1974

Re: No. 73-190 - Bellis v. United States

Dear Thurgood:

Please join me in your opinion for the Court in this case.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

May 21, 1974

No. 73-190 Bellis v. United States

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1974

Re: 73-190 - Bellis v. U. S.

Dear Thurgood:

Please join me.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1974

Dear Thurgood:

Re: No. 73-190 - Bellis v. United States

Please join me in your circulation of

May 21.

Sincerely,

Harry

Mr. Justice Marshall

Copies to the Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
					3/4/74			
join TM 5/22/74	Dissent 2nd draft 5-6-74	join TM 5-6-74	join TM 5/7/74 but agree with LFP + WHR 5-8-74	join TM 5-10-74	1st draft 5-3-74 2nd draft 5-6-74	join TM 5/22/74	join TM 5/21/74	letter to TM 5-7-74 join TM 5-21-74
	3rd draft 5-8-74				3rd draft 5/6/74 4th draft 5-8-74 5th draft 5-21-74			
					No. 73-190 Bellis v. U. S.			