

The Burger Court Opinion Writing Database

Colonnade Catering Corp. v. United States

397 U.S. 72 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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CHAMBERS OF
THE CHIEF JUSTICE

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

February 10, 1970

Re: Colonnade Catering Corp. v. U. S.

MEMORANDUM TO THE CONFERENCE:

When I first received Justice Douglas' proposed opinion it had me almost persuaded because of its narrow basis and thrust. However, his elimination of the constitutional issues carried me back to the controlling statutes with the result indicated in the attached dissent. The case is not important in itself but it may well have unanticipated impact on other inspection statutes.

If four will join me I would be happy to convert this into a majority opinion!

W E B
W. E. B.

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

To: Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Fortas
 Mr. Justice Marshall

No. 108 - Colonnade Catering Corporation v. United States

MR. CHIEF JUSTICE BURGER, dissenting.

From: The Chief Justice

Circulated: 2/10/70

Since my basis of disagreement with the majority varies

Recirculated:

somewhat from that of Mr. Justice Black, I set it forth separately.

I assume we could all agree that the search in question must be held valid, and the contraband discovered subject to seizure and forfeiture, unless (a) it is "unreasonable" under the Constitution or (b) it is prohibited by a statute imposing restraints apart from those in the Constitution. The majority sees no constitutional violation; I agree.

The controlling statutes set out in notes 1 and 2 of the majority opinion affirmatively define the conditions and times when agents may enter premises and inspect. Under 26 U.S.C. 5146(b) agents may enter to inspect "any distilled spirits, wines or beer kept or stored by such dealer on such premises." The time when this may be done is fixed as "during business hours." Section 7606 of 26 U.S.C. set forth in note 2 of the majority opinion provides that agents may enter any building where taxable articles are kept, "so far as it may be necessary for the purpose of examining said articles or objects."

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

CHAMBERS OF
THE CHIEF JUSTICE

February 11, 1970

Re: No. 108 - Colonnade Catering Corp. v. U. S.

Dear Hugo:

I had intended my dissent to reflect that I join
yours and I will amend the first sentence to do so plainly.


W. E. B.

Mr. Justice Black

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1970

Re: No. 108 - Colonnade Catering Corp. v. U. S.

Dear Hugo:

Since I agree with your opinion and now recite that more clearly, I wish to be shown as joining on the face of your opinion. If you and Potter both decide to join mine I will amend my opinion accordingly.


W.E.B.

Mr. Justice Black

cc: Mr. Justice Stewart

Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
THE CHIEF JUSTICE

Attached by
paper clip to
your left.

Colonnade

Dear Hugo.

I have read
the two dissents again and
I think we touch enough
of different points to
justify both. Love

cc: Mr. Justice Black ✓
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 108.—OCTOBER TERM, 1969

From: The Chief Justice

Circulated: _____

The Colonnade Catering Corp.,
Petitioner,
v.
United States. } On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

Recirculated: 2/24/70

[February 25, 1970]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACK and MR. JUSTICE STEWART join, dissenting.

I join in the dissenting opinion of MR. JUSTICE BLACK; however since my position goes somewhat beyond his discussion I add my views separately.

I assume we could all agree that the search in question must be held valid, and the contraband discovered subject to seizure and forfeiture, unless (a) it is "unreasonable" under the Constitution or (b) it is prohibited by a statute imposing restraints apart from those in the Constitution. The majority sees no constitutional violation; I agree.

The controlling statutes set out in notes 1 and 2 of the majority opinion affirmatively define the conditions

to: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Teras~~
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

No. 108.—OCTOBER TERM, 1969

Circulated: _____

The Colonnade Catering Corp., } On Writ of Certiorari
Petitioner, } to the United States
v. } Court of Appeals for
United States. } the Second Circuit.

Circulated: 2/24/70

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The controlling statutes set out in notes 1 and 2 of the majority opinion affirmatively define the conditions and times when agents may enter premises and inspect. Under 26 U. S. C. § 5146 (b) agents may enter to inspect "any distilled spirits, wines or beer kept or stored by such dealer on such premises." The time when this may be done is fixed as "during business hours." Section 7606 of 26 U. S. C. set forth in note 2 of the majority opinion provides that agents may enter any building where taxable articles are kept, "so far as it may be necessary for the purpose of examining said articles or objects."

The government agents needed neither a warrant nor these statutes to secure entry to this place of business

The Chief No. 108 - Colonnade Catering Corp. v. United States

Mr. Justice Brandeis

Mr. Justice Harlan

Mr. Justice Brennan

Mr. Justice Stewart

Mr. Justice White

Mr. Justice Fortas

Mr. Justice Marshall

MR. JUSTICE BLACK, dissenting.

Petitioner brought proceedings under the Federal Rules

of Criminal Procedure for the return of liquor seized by federal

Mr. Black, J.

dated: FEB 6 1970

circulated:

agents. Those rules provide that "[a] person aggrieved by an

unlawful search and seizure may move the district court ... for the

return of the property ... so obtained on the ground that (1) the property

was illegally seized without a warrant" Fed. R. Crim. Proc. 41(e)

(emphasis added). As I read that provision, it requires petitioner to show

that the seizure in this case was illegal, either because it violated the

Fourth Amendment, or because it was in violation of some law passed

by Congress. In my opinion neither requirement has been met and therefore

petitioner is not entitled to a return of the seized liquor.

There can be no doubt that the retail liquor business has

historically been subjected to strict governmental scrutiny for many

centuries both in this country and in England. The Court sets out a little

of the history of that regulation in its opinion. I therefore agree that

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

2

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated:

No. 108.—OCTOBER TERM, 1969

Recirculated FEB 10 1970

The Colonnade Catering Corp., } On Writ of Certiorari
Petitioner, } to the United States
v. } Court of Appeals for
United States. } the Second Circuit.

[February —, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

Petitioner brought proceedings under the Federal Rules of Criminal Procedure for the return of liquor seized by federal agents. One of those rules provides that "[a] person aggrieved by an *unlawful* search and seizure may move the district court . . . for the return of the property . . . so obtained on the ground that (1) the property was *illegally* seized without a warrant" Fed. Rule Crim. Proc. 41 (e). (Emphasis added.) As I read that provision, it requires petitioner to show that the seizure in this case was illegal, either because it violated the Fourth Amendment, or because it was in violation of some law passed by Congress. In my opinion neither requirement has been met and therefore petitioner is not entitled to a return of the seized liquor.

There can be no doubt that the retail liquor business has historically been subjected to strict governmental scrutiny for many centuries both in this country and in England. The Court sets out a little of the history of that regulation in its opinion. I therefore agree that there is nothing unreasonable, as that term is used in the Fourth Amendment, in permitting officers to go into an open, public tavern, and upon finding something that indicates a flagrant violation of the law to pursue their examination to see whether a violation is actually occur-

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10: 1. Mr. Justice Douglas
 Mr. Justice Harlan
 ✓ Mr. Justice Brennan
 Mr. Justice Stewart
 . Justice White
 Justice Fort
 . Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 108.—OCTOBER TERM, 1969

Circulated: _____

The Colonnade Catering Corp.,
 Petitioner,
 v.
 United States.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the Second Circuit.

Re-circulated: FEB 12 1970

[February —, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

Petitioner brought proceedings under the Federal Rules of Criminal Procedure for the return of liquor seized by federal agents. One of those rules provides that "[a] person aggrieved by an *unlawful* search and seizure may move the district court . . . for the return of the property . . . so obtained on the ground that (1) the property was *illegally* seized without a warrant" Fed. Rule Crim. Proc. 41 (e). (Emphasis added.) As I read that provision, it requires petitioner to show that the seizure in this case was illegal, either because it violated the Fourth Amendment, or because it was in violation of some law passed by Congress. In my opinion neither requirement has been met and therefore petitioner is not entitled to a return of the seized liquor.

There can be no doubt that places which sell liquor to the public have historically been subjected to strict governmental scrutiny for many centuries both in this country and in England. The Court sets out a little of the history of that regulation in its opinion. I therefore agree that there is nothing unreasonable, as that term is used in the Fourth Amendment, in permitting officers to go into an establishment that provides alcoholic beverages to the public, and upon finding something that indicates a flagrant violation of the law to pursue their examination to see whether a violation is actually occur-

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

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Teras~~
Mr. Justice Marshall

4

SUPREME COURT OF THE UNITED STATES

No. 108.—OCTOBER TERM, 1969

From: Black, J.

Circulated: _____

The Colonnade Catering Corp., } On Writ of Certiorari
Petitioner, } to the United States
v. } Court of Appeals for
United States. } the Second Circuit.

circulated: 2-19-70

[February —, 1970]

MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE
and MR. JUSTICE STEWART join, dissenting. //

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February 24, 1970

Dear Chief,

Re: No. 108 - Colonnade Catering v. U.S.

Please join me in your dissenting opinion
in the above case.

Sincerely,

H. L. B.

The Chief Justice

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

2

SUPREME COURT OF THE UNITED STATES

Douglas, J.
11/30/70

No. 108.—OCTOBER TERM, 1969

The Colonnade Catering Corp., } On Writ of Certiorari
Petitioner, } to the United States
v. } Court of Appeals for
United States. } the Second Circuit.

[February —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, a licensee in New York, authorized to serve alcoholic beverages and also the holder of a federal retail liquor dealer's occupational stamp tax, 26 U. S. C. § 5121 (a), brought this suit to obtain the return of seized liquor and its suppression as evidence. The District Court granted the relief. The Court of Appeals reversed. 410 F. 2d 197. The case is here on a petition for writ of certiorari which we granted, to review the decision in light of *Camara v. Municipal Court*, 387 U. S. 523, and *See v. City of Seattle*, 387 U. S. 544.

Petitioner runs a catering establishment. A federal agent, member of the Alcohol and Tobacco Tax Division of the Internal Revenue Service, was a guest at a party on petitioner's premises and noted a possible violation of the federal excise tax law. When the federal agents later visited the place, another party was in progress. They noticed that liquor was being served. Without the manager's consent they inspected the cellar. Then they asked the manager to open the locked liquor storeroom. He said that the only person authorized to open that room was one Rozzo, petitioner's president, who was not on the premises. Later Rozzo arrived and refused to

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice~~
Mr. Justice Marshall

pc

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: _____

No. 108.—OCTOBER TERM, 1969

Recirculated: 2-7

The Colonnade Catering Corp., } On Writ of Certiorari
Petitioner, } to the United States
v. } Court of Appeals for
United States. } the Second Circuit.

[February —, 1970]

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To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan ✓
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall

pp 3, 6

4

SUPREME COURT OF THE UNITED STATES

No. 108.—OCTOBER TERM, 1969

Circulated: _____

Re-circulated: 3-18

The Colonnade Catering Corp., } On Writ of Certiorari
 Petitioner, } to the United States
 v. } Court of Appeals for
 United States. } the Second Circuit.

[February —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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February 4, 1970

Re: No. 103 - Colomnade v. United States

Dear Bill:

I agree with your opinion.

Sincerely,

J. M. H.

Mr. Justice Douglas

CC: The Conference



Handwritten:
The Court will hear the case
on 2/10/70

Stamp:
RECEIVED
FEB 10 1970
LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 9, 1970

RE: No. 108 - Colonnade Catering Corporation
v. United States.

Dear Bill:

I agree with your opinion in the above
case.

Sincerely,

Bill

W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 9, 1970

No. 108, Colonnade Catering Corp.

Dear Hugo,

I am glad to join your dissenting
opinion in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Black

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 24, 1970

No. 108 - Colonnade Catering v. U.S.

Dear Chief,

I am glad to join your dissenting opinion
in this case.

Sincerely yours,

P.S.
✓

The Chief Justice

Copies to the Conference

February 9, 1970

Re: No. 108 - The Colonnade Catering
Corp. v. United States

Dear Bill:

Please join me,

Sincerely,

B.R.V.

Mr. Justice Douglas

cc: The Conference



Veronica M. O'NEILL

RECEIVED FEBRUARY 1970

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 3, 1970

Re: No. 108 - Colonnade Catering Corp. v. U. S.

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference