

# The Burger Court Opinion Writing Database

## *Toussie v. United States*

397 U.S. 112 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

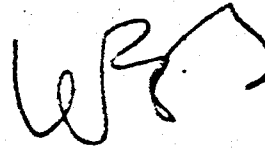
CHAMBERS OF  
THE CHIEF JUSTICE

February 19, 1970

Re: No. 441 - Toussie v. U. S.

Dear Byron:

I join in your dissent.



W. E. B.

Mr. Justice White

cc: The Conference

*J. Agre*

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

**SUPREME COURT OF THE UNITED STATES**

From: Black, J.

No. 441.—OCTOBER TERM, 1969

Circulated: FEB 12 1970

Robert I. Toussie,  
Petitioner,  
v.  
United States.

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

Recirculated: \_\_\_\_\_

[February —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

Petitioner Robert Toussie was convicted, after a jury trial, of failing to register for the draft. His conviction was affirmed by the Court of Appeals, 410 F. 2d 1156 (C. A. 2d Cir.), and we granted certiorari, 396 U. S. 875 (1969). For the reasons hereafter set forth we conclude that this prosecution was barred by the statute of limitations and therefore reverse the conviction.

Section 3 of the Universal Military Training and Service Act, 65 Stat 76, provides that:

“Except as otherwise provided in this title, it shall be the duty of every male citizen . . . who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.”<sup>1</sup>

<sup>1</sup> 50 U. S. C. App. § 453. This Act was amended by the Military Selective Service Act of 1967, 62 Stat. 604, but those amendments did not change this provision. Failure to perform this duty is punishable by fine, imprisonment, or both. 50 U. S. C. App. § 462 (a).

RECEIVED  
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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

From: Black, J.

SUPREME COURT OF THE UNITED STATES

dated: \_\_\_\_\_

No. 441.—OCTOBER TERM, 1969

Recirculated **FEB 18 1970**

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Petitioner, } On Writ of Certiorari to the United  
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[February —, 1970]

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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

SUPREME COURT OF THE UNITED STATES

No. 441.—OCTOBER TERM, 1969

From: Black, J.

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v. } States Court of Appeals for the  
United States. } Second Circuit. Circulated: \_\_\_\_\_

[February —, 1970]

*2 copies  
WOOD*

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U. S. DEPT. OF COMMERCE

February 14, 1970

Re: No. 441 - Towne v. U.S.

Dear Hugo:

I agree with your opinion.

Sincerely,

J. M. H.

Mr. Justice Black

CC: The Conference

**February 24, 1970**

**Re: No. 441 - Toussie v. United States**

**Dear Hugo:**

**This, as straightforwardly recognized in your opinion, is a very close case and I have been bothered by it considerably. After mature reflection, I have decided to withdraw from your opinion and to join Brother White who, I am persuaded, has the better of the argument. Needless to say I leave you with reluctance.**

**Sincerely,**

**J. M. H.**

**Mr. Justice Black**

**CC: The Conference**

**Dear Byron:**

**Please join me in your dissent. I have one suggestion to put to you: Hugo's opinion takes the flat position that a continuing offense cannot be found in the absence of express statutory language, whereas the Model Penal Code correctly, I think, takes the view that there is only a presumption against continuing offenses. It seems to me that it would strengthen your opinion if you indicated such a thought at some appropriate point in your opinion. The two places that occur to me would be either after the point in the last paragraph of your opinion from which footnote 19 is dropped, or at the end of the second paragraph of the opinion.**

**Sincerely,**

**J. M. H.**

February 24, 1970

Re: No. 441 - Toussie v. United States

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Sincerely,

J. M. H.

Mr. Justice Black

CC: The Conference



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

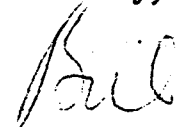
February 16, 1970

RE: No. 441 - Toussie v. United States

Dear Hugo:

I agree with your opinion in the above  
case.

Sincerely,

  
W. J. B. Jr.

Mr. Justice Black

cc: The Conference

RECORDED FROM THE COLLECTIONS OF THE FEDERAL BUREAU OF INVESTIGATION

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1970

No. 441 - Toussie v. U. S.

Dear Hugo,

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

Sincerely yours,

P.S.  
/

Mr. Justice Black

Copies to the Conference

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

1

SUPREME COURT OF THE UNITED STATES: White, J.

No. 441.—OCTOBER TERM, 1969

Circulated: 2-17-70

Recirculated: \_\_\_\_\_

Robert I. Toussie,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Second Circuit.

[February —, 1970]

MR. JUSTICE WHITE, dissenting.

The general statute of limitations provides in pertinent part that "except as otherwise expressly provided by law, no person shall be prosecuted . . . unless the indictment is found . . . within five years next after such offense shall have been committed." 18 U. S. C. § 3282. The majority holds that this statute bars petitioner's prosecution, shortly before his 26th birthday, for failing ever to have registered for the draft. That conclusion, I submit, is supported by neither the language, the purpose, or the history of the applicable Selective Service Acts.

It is at once clear that nothing is gained by stressing that the general statute of limitations applies "except as otherwise expressly provided by law." The question in this case is not whether the five-year statute applies, but when it begins to run. That question in turn depends on what the "offense" is for which petitioner is being tried, and when it was that he committed that offense. In the typical case, an offense is complete as soon as every element in the crime occurs, and the statute of limitations begins to run from that date. But in the case of a "continuing offense," the crime is not exhausted for purposes of the statute of limitations as long as the proscribed course of conduct continues. *United States v. Corés*, 356 U. S. 405, 409 (1958); *United States v.*

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

pp 1-6, 12

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 441.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_

Recirculated: 2-20-7

Robert I. Toussie, }  
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v. } States Court of Appeals for the  
United States. } Second Circuit.

[February —, 1970]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE joins, dissenting.

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BB 1,3,12

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

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 441.—OCTOBER TERM, 1969

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[February —, 1970]

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 18, 1970

Re: No. 441 - Toussie v. United States

Dear Hugo:

Please join me.

Sincerely,



T.M.

Mr. Justice Black

cc: The Conference

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