

# The Burger Court Opinion Writing Database

*Donaldson v. United States*

400 U.S. 517 (1971)

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

January 12, 1971

Re: No. 65 - Donaldson v. U. S.

Dear Harry:

Please join me.

Regards,

WRB

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

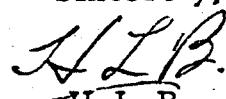
January 12, 1971

Dear Harry,

Re: No. 65 - Donaldson v. U. S.

I agree.

Sincerely,

  
H. L. B.

Mr. Justice Blackmun

cc: Members of the Conference

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

**SUPREME COURT OF THE UNITED STATES**

Item: Douglas, J.

No. 65.—OCTOBER TERM, 1970

Circulated: 1/12/71

Kevin L. Donaldson, fka  
 Merton H. Sweet,  
 Petitioner,  
 v.  
 United States et al.

On Writ of Certiorari to the  
 United States Court of Ap-  
 peals for the Fifth Circuit.

[January —, 1971]

MR. JUSTICE DOUGLAS, concurring.

The petitioner is the subject of an investigation by the Intelligence Division of the Department of Internal Revenue which seeks to obtain information regarding financial transactions between the petitioner-taxpayer and the Acme Circus Operating Company. Summons have been served on Acme and its accountant, Mr. Mercurio, pursuant to 26 U. S. C. § 7602,<sup>1</sup> in order to obtain

<sup>1</sup> "For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

"(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

"(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

"(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry."

1, > footnotes omitted

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

Douglas, J.

No. 65.—OCTOBER TERM, 1970

Kevin L. Donaldson, fka  
Merton H. Sweet,  
Petitioner,  
v.  
United States et al.

Argued: 1/12/71  
Decided: 1/12/71

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Fifth Circuit.

[January —, 1971]

MR. JUSTICE DOUGLAS, concurring.

The petitioner is the subject of an investigation by the Intelligence Division of the Department of Internal Revenue which seeks to obtain information regarding financial transactions between the petitioner-taxpayer and the Acme Circus Operating Company. Summonses have been served on Acme and its accountant, Mr. Mercurio, in order to obtain testimony and to review records relating to petitioner. The petitioner is attempting to prevent Acme and Mercurio from complying with the summonses and to prevent the Federal District Court from enforcing those summonses. He sought to intervene in the enforcement proceedings, alleging that he has a vital interest in the litigation and that the summonses are not enforceable because they were issued improperly, to gather information for a criminal prosecution. The Government challenged his right to intervene. The District Court denied his motion to intervene and enforce the summonses but stayed its mandate. The Court of Appeals affirmed but continued the stay pending disposition by this Court. As yet there has been no hearing before the special agent, and this Court rules only that such a hearing may proceed on the summonses issued.

On these facts, I concur with the Court's decision. There is nothing in the language of § 7602 to limit the issuance of summonses to civil investigations. The

January 20, 1971

Re: No. 65 - Donaldson v. United States

Dear Harry:

I agree with your opinion, and am glad to join it.

Sincerely,

J. M. H.

Mr. Justice Blackmun

CC: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. January 20, 1971

RE: No. 65 - Donaldson v. United States

Dear Harry:

After spending probably too much time on this case I've concluded that I should ask you to add a note at the foot of your opinion as follows:

"Mr. Justice Brennan, believing that under the facts of this case petitioner has established no right to intervene, concurs in the result."

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 12, 1971

No. 65 - Donaldson v. United States

Dear Harry,

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

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 12, 1971

Re: No. 65 - Donaldson v. United States

Dear Harry:

Please join me in your opinion in this  
case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 13, 1971

Re: No. 65 - Donaldson v. United States

Dear Harry:

Please join me.

Sincerely,



T.M.

Mr. Justice Blackmun

cc: The Conference

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

2

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1/11/71

No. 65.—OCTOBER TERM, 1970 Recirculated:

Kevin L. Donaldson, fka  
Merton H. Sweet,  
Petitioner,  
v.  
United States et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[January —, 1971]

MR. JUSTICE BLACKMUN.

We are here concerned with problems arising in connection with the issuance and judicial enforcement of an internal revenue summons directed to someone other than the individual taxpayer.

Kevin L. Donaldson, formerly known as Merton H. Sweet, apparently was once employed by, or was a performer for, Acme Circus Operating Company, Inc., dba Clyde Beatty-Cole Bros. Circus.<sup>1</sup> Mr. Donaldson (sometimes referred to herein as the "taxpayer") is an individual whose income tax returns for the calendar years 1964-1967, inclusive, are under investigation by the Internal Revenue Service.

On September 12 and 13, 1968, Special Agent John P. Grady, purportedly acting under the authority of § 7602 of the Internal Revenue Code of 1954, 26 U. S. C. § 7602,<sup>2</sup>

<sup>1</sup> The record does not specifically support the fact of Donaldson's employment by, or performance for, Acme. In the context of the case, however, this is implied and, obviously, the investigation is directed to the ascertainment of the fact.

<sup>2</sup> "§ 7602. Examination of books and witnesses

"For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability

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

3rd DRAFT

From: Blackmun, J.

**SUPREME COURT OF THE UNITED STATES**

No. 65.—OCTOBER TERM, 1970

Recirculated: 1/21/71

Kevin L. Donaldson, fka  
Merton H. Sweet,  
Petitioner,  
v.  
United States et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[January —, 1971]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

We are here concerned with problems arising in connection with the issuance and judicial enforcement of an internal revenue summons directed to someone other than the individual taxpayer.

Kevin L. Donaldson, formerly known as Merton H. Sweet, apparently was once employed by, or was a performer for, Acme Circus Operating Company, Inc., dba Clyde Beatty-Cole Bros. Circus.<sup>1</sup> Mr. Donaldson (sometimes referred to herein as the "taxpayer") is an individual whose income tax returns for the calendar years 1964-1967, inclusive, are under investigation by the Internal Revenue Service.

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<sup>2</sup> "§ 7602. Examination of books and witnesses

"For the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability