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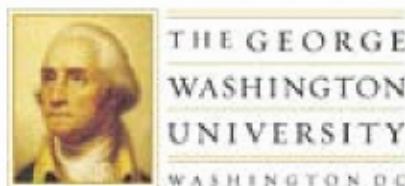
*United States v. Biswell*

406 U.S. 311 (1972)

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

May 9, 1972

No. 71-81 --- U. S. v. Biswell

Dear Byron:

Please join me.

Regards,

WB B

Mr. Justice White

Copies to Conference

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• The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Powell  
Mr. Rehnquist

THEODORE, J.

4/22/22

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SUPREME COURT OF THE UNITED STATES

No. 71-81

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Loarn Anthony Biswell. } peals for the Tenth Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

As Mr. Justice Clark, writing for the three-judge panel in the Tenth Circuit Court of Appeals said, the Federal Gun Control Act, 18 U. S. C. § 923 (g), has a provision for inspection that is "almost identical" with the one in *Colonnade Catering Corp. v. United States*, 397 U. S. 72.

The present one provides:

“ . . . The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition, . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept and (2) any firearms or ammunition kept or stored by such dealer . . . .” 18 U. S. C. § 923(g).

The one in *Colonnade* provided:

"The Secretary or his delegate may enter during business hours the premises . . . of any dealer for the purpose of inspecting or examining any records or other documents required to be kept . . . under this chapter . . . ." 26 U. S. C. § 5146 (b).

In *Colonnade* the agents broke down a door to get in. Here they overpowered the owner who said, "[i]f that is the law, I guess it is all right." If we apply the test of "consent" that we used in *Bumper v. North Carolina*, 391 U. S. 543, we would affirm this judgment.

THE HISTORY OF CONGRESS

13

To : The City Justice  
Mr. Justice Buchanan  
Mr. Justice Smart  
Mr. Justice Miller  
Mr. Justice Marshall  
Mr. Justice Cunningham  
Mr. Justice  
Mr. Justice

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-81

From : Boyle, J.

### Chloralose:

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Appeals  
Loarn Anthony Biswell. } for the Tenth Circuit.

[May 15, 1972]

MR. JUSTICE DOUGLAS, dissenting.

As Mr. Justice Clark, writing for the three-judge panel in the Tenth Circuit Court of Appeals said, the Federal Gun Control Act, 18 U. S. C. § 923 (g), has a provision for inspection that is "almost identical" with the one in *Colonnade Catering Corp. v. United States*, 397 U. S. 72.

The present one provides:

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The Court legitimates this inspection scheme because of its belief that, had respondent been a dealer in liquor instead of firearms, such a search as was here undertaken would have been valid under the principles of *Colonnade*. I respectfully disagree. *Colonnade*, of course, rested heavily on the unique historical origins of governmental

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

7/13/72 ✓  
: Douglas, J.

## SUPREME COURT OF THE UNITED STATES

No. 71-81

United States, Petitioner, } On Writ of Certiorari to the  
v. { United States Court of Appeals for the Tenth Circuit.  
Loarn Anthony Biswell.

[May 15, 1972]

MR. JUSTICE DOUGLAS, dissenting.

As Mr. Justice Clark, writing for the three-judge panel in the Tenth Circuit Court of Appeals said, the Federal Gun Control Act, 18 U. S. C. § 923 (g), has a provision for inspection that is "almost identical" with the one in *Colonnade Catering Corp. v. United States*, 397 U. S. 72.

The present one provides:

"... The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition, ... dealer ... for the purpose of inspecting or examining (1) any records or documents required to be kept and (2) any firearms or ammunition kept or stored by such dealer ..." 18 U. S. C. § 923 (g).

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The Court legitimates this inspection scheme because of its belief that, had respondent been a dealer in liquor instead of firearms, such a search as was here undertaken would have been valid under the principles of *Colonnade*. I respectfully disagree. *Colonnade*, of course, rested heavily on the unique historical origins of governmental

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 3, 1972

RE: No. 71-81 - United States v. Biswell

Dear Byron:

I agree with the Per Curiam you have  
prepared in the above.

Sincerely,



Mr. Justice White

cc: The Conference

*byr. having joined*  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 21, 1972

71-81 - United States v. Biswell

Dear Byron,

I am glad to join your opinion for the Court in this case, and I see no reason whatsoever why your name should not be on it.

Sincerely yours,

*P.S.*

Mr. Justice White

Copies to the Conference

8  
1st circulation  
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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

Circulated: 4-20-72

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

No. 71-81

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Loarn Anthony Biswell. | peals for the Tenth Circuit.

[April —, 1972]

PER CURIAM.

The Gun Control Act of 1968, 18 U. S. C. § 923, authorizes official entry during business hours into "the premises (including places of storage) of any firearms or ammunition . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept . . . and (2) any firearms or ammunition kept or stored by such . . . dealer . . . at such premises."<sup>1</sup> 18 U. S. C. § 923 (g). Respondent,

<sup>1</sup> "Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary [of the Treasury] may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for the inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer or collector at such premises. Upon the request of any State or any political sub-

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*joined*  
*pk 5, 6*

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

From: White, J.

2nd DRAFT

Circulated:

**SUPREME COURT OF THE UNITED STATES**

Circulated: *4-29-72*

No. 71-81

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Loarn Anthony Biswell. } peals for the Tenth Circuit.

[April —, 1972]

PER CURIAM.

The Gun Control Act of 1968, 18 U. S. C. § 923, authorizes official entry during business hours into "the premises (including places of storage) of any firearms or ammunition . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept . . . and (2) any firearms or ammunition kept or stored by such . . . dealer . . . at such premises."<sup>1</sup> 18 U. S. C. § 923 (g). Respondent,

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(B)   
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 pp 1, 4

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

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

RE: White, J.

Circulated:

Recirculated: 5-12-72

## SUPREME COURT OF THE UNITED STATES

United States, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Appeals for the Tenth Circuit.  
 Loarn Anthony Biswell. |

[May 15, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Gun Control Act of 1968, 82 Stat. 1213, 18 U. S. C. § 921 *et seq.*, authorizes official entry during business hours into "the premises (including places of storage) of any firearms or ammunition . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept . . . and (2) any firearms or ammunition kept or stored by such . . . dealer . . . at such premises."<sup>1</sup> 18 U. S. C. § 923 (g). Respondent,

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 20, 1972

Re: No. 71-81 - United States v. Biswell

Dear Byron:

Please join me in your per curiam.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Submitted: 4/24/72

No. 71-81

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

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Loarn Anthony Biswell. } peals for the Tenth Circuit.

[May —, 1972]

MR. JUSTICE BLACKMUN, concurring in the result.

Had I been a member of the Court when *Colonnade Catering Corp. v. United States*, 397 U. S. 72 (1970), was decided, I would have joined the respective dissenting opinions of Mr. Justice Black and of THE CHIEF JUSTICE, 397 U. S., at 79 and 77. I therefore concur in the result here.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 24, 1972

Re: No. 71-81 United States v. Biswell

Dear Byron:

Please join me in your per curiam.

Sincerely,

L. F. P.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 24, 1972

Re: 71-81 - United States v. Biswell

Dear Byron:

Please join me in your Per Curiam opinion in this  
case.

Sincerely,

WW

Mr. Justice White

Copies to the Conference