

# The Burger Court Opinion Writing Database

## *United States v. Bisceglia*

420 U.S. 141 (1975)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated DEC 18 1974

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

No. 73-1245

United States et al.,  
Petitioners,  
v.  
Richard V. Bisceglia.

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

[December —, 1974]

MR. CHIEF JUSTICE BURGER delivered the opinion of  
the Court.

We granted certiorari to resolve the question whether  
the Internal Revenue Service has statutory authority to  
issue a "John Doe" summons to a bank or other depository  
to discover the identity of a person who has had bank  
transactions suggesting the possibility of liability for un-  
paid taxes.

I

On November 6 and 16, 1970, the Commercial Bank of  
Middlesboro, Kentucky, made two separate deposits with  
the Cincinnati Branch of the Federal Reserve Bank of  
Cleveland, each of which included \$20,000 in \$100 bills.  
The evidence is undisputed that the \$100 bills were  
"paper thin" and showed signs of severe disintegration  
which could have been caused by a long period of  
storage under abnormal conditions. As a result the bills  
were no longer suitable for circulation and they were  
destroyed by the Federal Reserve in accord with estab-  
lished procedures. Also in accord with regular Federal  
Reserve procedures, the Cincinnati Branch reported these  
facts to the Internal Revenue Service.

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

2nd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Related: \_\_\_\_\_

No. 73-1245

Recirculated: JAN 30 1975

United States et al.,  
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[December —, 1974]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve the question whether the Internal Revenue Service has statutory authority to issue a "John Doe" summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting the possibility of liability for unpaid taxes.

I

On November 6 and 16, 1970, the Commercial Bank of Middlesboro, Kentucky, made two separate deposits with the Cincinnati Branch of the Federal Reserve Bank of Cleveland, each of which included \$20,000 in \$100 bills. The evidence is undisputed that the \$100 bills were "paper thin" and showed signs of severe disintegration which could have been caused by a long period of storage under abnormal conditions. As a result the bills were no longer suitable for circulation and they were destroyed by the Federal Reserve in accord with established procedures. Also in accord with regular Federal Reserve procedures, the Cincinnati Branch reported these facts to the Internal Revenue Service.

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 22, 1975

Re: Cases Held for 73-1245 - United States v. Bisceglia

MEMORANDUM TO THE CONFERENCE:

Two petitions for certiorari were held pending the outcome of the above-styled case. I propose that they be disposed of as follows:

1. 73-1175 - Berkowitz and A&M Berk Tax Service, Inc. v. United States (I will vote to deny)

This case arises out of the IRS's Tax Preparers Project, whereby commercial tax preparing services are selected at random and visited by undercover agents posing as customers. In this case the IRS determined that the return prepared for its agent by petitioner Tax Service did not accurately reflect the financial data furnished and the preparer's signature was not affixed as required by Treasury Regulation § 1.605.1. It therefore issued a "John Doe" summons to the Tax Service and its proprietor seeking the names, addresses and Social Security numbers of their 1971 customers for the purpose of determining if other returns had been improperly prepared. When petitioners refused to comply, this enforcement proceeding was commenced in the United States District Court for the Eastern District of Pennsylvania.

The District Court enforced the summons, concluding that it was "limited to the specific information directly related to the investigation of the tax liabilities of [petitioners'] clients" and that a legitimate investigation was being conducted. App. at A11-A12. The Third Circuit affirmed per curiam. In their petition for certiorari petitioners raise a host of claims, most of which are based upon factual allegations regarding the motive of the IRS in initiating the Tax Preparers Project and the inferences to be drawn from the improperly prepared return and were resolved adversely to petitioners by the District Court. Moreover, in light of the District Court's findings, Bisceglia forecloses petitioner's argument that the summons was unenforceable because the investigation had not yet focused upon particular named persons.

73-1245  
Wm. Taylor  
Oct 74

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 10, 1975

Dear Potter:

Please join me in your  
dissenting opinion in UNITED STATES  
v. BISCEGLIA, No. 73-1245.

WOD/Sandra

WILLIAM O. DOUGLAS

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

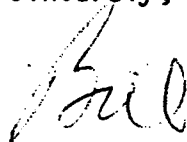
December 19, 1974

RE: No. 73-1245 United States v. Bisceglia

Dear Chief:

I agree.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 19, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1245, United States v. Bisceglia

I expect to circulate a dissenting opinion in  
this case in due course.

P.S.  
P.S.

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

From: Stewart, J.

No. 73-1245

Circulated: JAN 7 1975

United States et al.,  
Petitioners,  
v.  
Richard V. Bisceglia.

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

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

[January —, 1975]

MR. JUSTICE STEWART, dissenting.

The Court today says that it "recogniz[es] that the authority vested in tax collectors may be abused," *ante*, p. 5, but it is nonetheless unable to find any statutory limitation upon that authority. The only "protection from abuse" that Congress has provided, it says, is "making federal district courts the sole means of enforcing an Internal Revenue Service summons," *ante*, p. 9. But that, of course, is no protection at all, unless the federal courts are provided with a measurable standard when asked to enforce a summons. I agree with the Court of Appeals that Congress has provided such a standard, and that the standard was not met in this case. Accordingly, I respectfully dissent from the opinion and judgment of the Court.

Congress has carefully restricted the summons power to certain rather precisely delineated purposes:

"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." 26 U. S. C. § 7602.



✓ —  
1,318,9

✓  
The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Stewart, J.

5th DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

Re-circulated: FEB 11 1975

No. 73-1245

United States et al.,  
Petitioners,  
v.  
Richard V. Bisceglia. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Sixth Circuit.

[January —, 1975]

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

The Court today says that it "recogniz[es] that the authority vested in tax collectors may be abused," *ante*, p. 5, but it is nonetheless unable to find any statutory limitation upon that authority. The only "protection from abuse" that Congress has provided, it says, is "placing the federal courts between the government and the person summoned," *ante*, p. 10. But that, of course, is no protection at all, unless the federal courts are provided with a measurable standard when asked to enforce a summons. I agree with the Court of Appeals that Congress has provided such a standard, and that the standard was not met in this case. Accordingly, I respectfully dissent from the opinion and judgment of the Court.

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"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." 26 U. S. C. § 7602.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 19, 1974

Re: No. 73-1245 - United States v. Bisceglia

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 30, 1974

Re: No. 73-1245 -- United States et al. v. Richard V. Bisceglia

Dear Chief:

Please join me.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference

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

SUPREME COURT OF THE UNITED STATES Blackmun, J.

No. 73-1245

Circulated: 1/7/75

Recirculated:

United States et al.,  
Petitioners,  
v.  
Richard V. Bisceglia. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Sixth Circuit.

[January —, 1975]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion and its judgment, and add this word only to emphasize the narrowness of the issue at stake here. We decide today that the Internal Revenue Service has statutory authority to issue a summons to a bank in order to ascertain the identity of a person whose transactions with that bank strongly suggest liability for unpaid taxes. Under the circumstances here, there was an overwhelming probability, if not a certitude, that one individual or entity was responsible for the deposits. The uniformly decrepit condition of the currency and the amount, combined with other unusual aspects, gave the Service good reason, and, indeed, the duty to investigate. The Service's suspicion as to possible liability was more than plausible.\* The summons was closely scrutinized and appropriately narrowed in scope by the United States District Court.

The summons, in short, was issued pursuant to a genuine investigation. The Service was not engaged in reaching some general problem; its mission was not exploratory. The distinction between an investigatory and a more general exploratory purpose has been stressed

\*The Service may not have reached "first base," see *ante*, at 2 n. 1, but it had been at bat before, and it knew both the game and the ball park well.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

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

No. 73-1245

Recirculated: 1/8/75

United States et al.,  
Petitioners,  
v.  
Richard V. Bisceglia.

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

[January —, 1975]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE  
POWELL joins, concurring.

I join the Court's opinion and its judgment, and add this word only to emphasize the narrowness of the issue at stake here. We decide today that the Internal Revenue Service has statutory authority to issue a summons to a bank in order to ascertain the identity of a person whose transactions with that bank strongly suggest liability for unpaid taxes. Under the circumstances here, there was an overwhelming probability, if not a certitude, that one individual or entity was responsible for the deposits. The uniformly decrepit condition of the currency and the amount, combined with other unusual aspects, gave the Service good reason, and, indeed, the duty to investigate. The Service's suspicion as to possible liability was more than plausible.\* The summons was closely scrutinized and appropriately narrowed in scope by the United States District Court.

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\*The Service may not have reached "first base," see *ante*, at 2 n. 1, but it had been at bat before, and it knew both the game and the ball park well.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 27, 1974

No. 73-1245 United States v. Bisceglia

Dear Chief:

Please join me.

Sincerely,

*L. F. Powell*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 7, 1975

No. 73-1245 U.S. v. Bisceglia

Dear Harry:

Please join me in your concurrence.

Sincerely,

*Lewis*

Mr. Justice Blackmun

CC: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 7, 1975

Re: No. 73-1245 - United States v. Bisceglia

Dear Chief:

Please join me.

Sincerely,  
WHR

The Chief Justice

Copies to the Conference