

# The Burger Court Opinion Writing Database

## *Alfred Dunhill of London, Inc. v. Republic of Cuba*

425 U.S. 682 (1976)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University in St. Louis

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

April 21, 1975

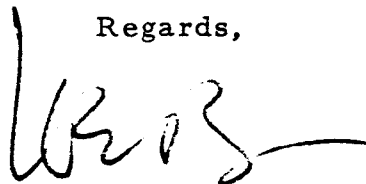
Re: 73-1288 - Dunhill v. Cuba

MEMORANDUM TO THE CONFERENCE:

Given the present posture of this case  
I would prefer to set it for reargument rather than  
try to sort out the multiple shadings expressed so far.  
It is a very important area and in a changing world,  
I believe, the doctrine needs a hard look.

I vote to set for reargument.

Regards,




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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 28, 1975

Dear Byron:

My zig-zag course in  
73-1288, DUNHILL v. REPUBLIC OF  
CUBA leads me to join your dissenting  
opinion.

  
William O. Douglas

Mr. Justice White

cc: Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 10, 1975

RE: No. 73-1288 Dunhill of London v. Republic of Cuba, et al.

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 11, 1975

Re: No. 73-1288, Alfred Dunhill v. Cuba

Dear Thurgood,

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

Sincerely yours,

P.S.  
/

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 10, 1975

Re: No. 73-1288 - Alfred Dunhill of London Inc.  
v. Republic of Cuba

Dear Thurgood:

In due course I shall circulate a dissent  
in this case.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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: 3-19-

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[March —, 1975]

MR. JUSTICE WHITE, dissenting.

The central issue presented by this case is whether the judgment below is erroneous in light of *First National City Bank v. Banco Nacional de Cuba*, 406 U. S. 759 (1972) (*Citibank*). The second question concerns the type and amount of evidence to establish that an act of state has in fact occurred. Because in my view the majority has failed to provide an adequate rationale for distinguishing *Citibank* and, in answering the evidentiary question, has effected an unjustifiable extension of the act of state doctrine, I respectfully dissent.

### I

Although there was no majority opinion in *Citibank*, there was a common strain running through the three opinions written by those in the majority, although expressed in different ways and with differing emphases. That common thread was that there are indeed conditions when an act of state is not free from examination in the courts of this country. The main rationale of *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398 (1964)—that the judiciary should avoid intruding into questions of foreign relations committed to the responsibility of the Executive—does not always require or permit the courts to stop short of performing their tradi-

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 1, 12-13

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

From: White, J.

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc.,	} On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
Petitioner,	
<i>v.</i>	
The Republic of Cuba et al.	

[March —, 1975]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The central issue presented by this case is whether the judgment below is erroneous in light of *First National City Bank v. Banco Nacional de Cuba*, 406 U. S. 759 (1972) (*Citibank*). The second question concerns the type and amount of evidence to establish that an act of state has in fact occurred. Because in my view the majority has failed to provide an adequate rationale for distinguishing *Citibank* and, in answering the evidentiary question, has effected an unjustifiable extension of the act of state doctrine, I respectfully dissent.

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✓ —  
STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 1, 12-13

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.

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[April —, 1975]

MR. JUSTICE WHITE, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE REHNQUIST join, dissenting.

The central issue presented by this case is whether the judgment below is erroneous in light of *First National City Bank v. Banco Nacional de Cuba*, 406 U. S. 759 (1972) (*Citibank*). The second question concerns the type and amount of evidence required to establish that an act of state has in fact occurred. Because in my view the majority has failed to provide an adequate rationale for distinguishing *Citibank* and, in answering the evidentiary question, has effected an unjustifiable extension of the act of state doctrine, I respectfully dissent.

### I

Although there was no majority opinion in *Citibank*, there was a common strain running through the three opinions written by those in the majority, albeit expressed in different ways and with differing emphases. That common thread was that there are indeed conditions under which an act of state is not immune from examination in the courts of this country. The main rationale of *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 298 (1964)—does the judiciary should avoid intruding into questions of foreign relations committed to the responsibility of the Executive—does not always require or permit the courts to stop short of performing their tradi-

10. The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

## SUPREME COURT OF THE UNITED STATES

Circulated: FEB 6 19

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No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
 v.  
 The Republic of Cuba et al. } On Writ of Certiorari to the  
 United States Court of  
 Appeals for the Second  
 Circuit.

[February --, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case requires us once again to examine the reach of the act of state doctrine in barring entry of a judgment in United States courts against a foreign sovereign. Like our other recent cases on this subject, it arises out of the nationalization of private investments by the Cuban Government in 1960.

## I

For our present purposes the factual setting of this case may be summarized relatively briefly.<sup>1</sup> Prior to 1961 petitioner Dunhill and two other firms, Saks and Co., and Faber, Coe & Gregg, Inc., were large importers of Havana cigars for the United States market. They purchased cigars principally from five Cuban manufacturers whom they paid through New York banks acting as the sellers' agents. On September 15, 1960, the Cuban Government "intervened," or nationalized the five Cuban firms and ousted their Cuban owners, most of whom fled to the United States. In their stead the government

<sup>1</sup> A full statement of the facts relevant to all the various aspects of this litigation as it then stood appears in the opinion of the District Court, 345 F. Supp. 527 (1972).

Wm. Douglas  
 Oct 74

3  
4  
6  
10

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

From: Marshall, J.

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Recirculated: **MAR 24 1975**

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc.,	} On Writ of Certiorari to the
Petitioner,	
<i>v.</i>	
The Republic of Cuba et al.	United States Court of Appeals for the Second Circuit.

[February —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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<sup>1</sup> A full statement of the facts relevant to all the various aspects of this litigation as it then stood appears in the opinion of the District Court, 345 F. Supp. 527 (1972).

Wm. Douglas, Jr. 74

To: The Chief Justice

Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Marshall, J.

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

Recirculated: MAR 28 197

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
 v.  
 The Republic of Cuba et al.

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

[February —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the  
 Court.

This case requires us once again to examine the reach of the act of state doctrine in barring entry of a judgment in United States courts against a foreign sovereign. Like our other recent cases on this subject, it arises out of the nationalization of private investments by the Cuban Government in 1960.

## I

For our present purposes the factual setting of this case may be summarized relatively briefly.<sup>1</sup> Prior to 1961 petitioner Dunhill and two other firms, Saks and Co., and Faber, Coe & Gregg, Inc., were large importers of Havana cigars for the United States market. They purchased cigars principally from five Cuban manufacturers whom they paid through New York banks acting as the sellers' agents. On September 15, 1960, the Cuban Government "intervened," or nationalized the five Cuban firms and ousted their Cuban owners, most of whom fled to the United States. In their stead the government

<sup>1</sup> A full statement of the facts relevant to all the various aspects of this litigation as it then stood appears in the opinion of the District Court, 345 F. Supp. 527 (1972).

Wm. Douglas, Jr. 11/11

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 6, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1288, Alfred Dunhill of London, Inc. v.  
Republic of Cuba

I no longer stand against reargument in this case and will neither oppose nor write against it. I would suggest, however, that the reargument be directed to the present vitality of the Sabbatino case.

We were wrong in limiting the argument in the Dunhill case. All we have accomplished in this case is to break the record established in Topco.

T.M.

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6-351

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 3, 1975

Re: No. 73-1288 - Alfred Dunhill of London, Inc. v. Cuba

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

2

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 10, 1975

No. 73-1288 Dunhill v. Republic of  
Cuba

Dear Thurgood:

As I voted with the minority, I will await the  
dissent.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

To: The Chief Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

1st DRAFT

SUPREME COURT OF THE UNITED STATES Powell, J.

Circulated: APR 8 1975

No. 73-1288

Reconsidered: \_\_\_\_\_

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Second  
Circuit.

[April —, 1975]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

I agree that we are presented with a sufficient indication of the Cuban Government's exercise of sovereign authority to call into question the propriety of judicial consideration of Dunhill's claim. I therefore join in Part II of the Court's opinion, but not in the judgment.

A determination that an act of state has occurred does not lead necessarily to the conclusion that Dunhill's claim is nonjusticiable in our courts. See *First National City Bank v. Banco Nacional de Cuba*, 406 U. S. 759, 775 (1972) (POWELL, J., concurring); *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398, 439 (1964) (WHITE, J., dissenting). In my view, the act of state doctrine should not preclude judicial resolution of this controversy.

The federal judiciary has a responsibility to afford a forum to persons who properly invoke the judicial processes for the resolution of controversies. Equally apparent, the act of state doctrine compromises this responsibility out of deference to the political branches of government. But whether the circumstances call for such deference is a matter for the judiciary to decide.

I concur in much of Part II of MR. JUSTICE WHITE's opinion, as the views expressed therein are generally in



P. 1

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

From: Powell, J.

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

Circulated APR 14 1975

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Second  
Circuit.

[April —, 1975]

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The federal judiciary has a responsibility to afford a forum to persons who properly invoke the judicial processes for the resolution of controversies. Equally apparent, the act of state doctrine compromises this responsibility out of deference to the political branches of government. But whether the circumstances call for such deference is a matter for the judiciary to decide.

I concur in much of Part I of Mr. Justice White's opinion, as the views expressed therein are generally in

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 20, 1975

Re: No. 73- 1288 - Dunhill v. Republic of China

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

*WRW*

Mr. Justice White

Copies to the Conference