

# The Burger Court Opinion Writing Database

*Dunn v. United States*

442 U.S. 100 (1979)

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

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CHAMBERS OF  
THE CHIEF JUSTICE

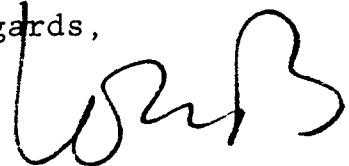
May 26, 1979

Dear Thurgood:

Re: 77-6949 Dunn v. U.S.

I join.

Regards,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 3, 1979

RE: No. 77-6949 Dunn v. United States

Dear Thurgood:

I agree.

Sincerely,

*Bril*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 3, 1979

Re: 77-6949 - Dunn v. United States

Dear Thurgood:

Although I tentatively expressed a different view during our Conference discussion, I am glad to join your opinion for the Court.

Sincerely yours,

C.S.  
P.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 17, 1979

Re: No. 77-6949 — Robert Dunn v. United States

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Dear Thurgood:

My dissent here will be a silent one --  
strictly graveyard.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

- - - P. 1, 3, 11

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

From: Mr. Justice Marshall

Circulated: 2 MAY 1979

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-6949

Robert Dunn, Petitioner, v. On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.  
United States.

[May —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Title IV of the Organized Crime Control Act of 1970, 18 U. S. C. § 1623, prohibits false declarations made under oath "in any proceeding before or ancillary to any court or grand jury of the United States."<sup>1</sup> This case turns on the scope

<sup>1</sup> In pertinent part, 18 U. S. C. § 1623 provides:

"(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—  
"(1) each declaration was material to the point in question, and

"(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

"In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcil-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 3, 1979

Re: No. 77-6949 - Dunn v. United States

Memorandum to the Conference

Please substitute the attached page 2 for  
the one in draft 2 circulated today.

Sincerely,

*J.M.*

T.M.

P. 2, 7-11, 13

3 MAY 1979

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-6949

Robert Dunn, Petitioner, | On Writ of Certiorari to the United  
v. | States Court of Appeals for the  
United States. | Tenth Circuit.

[May —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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"(1) each declaration was material to the point in question, and  
"(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

"In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcil-

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

(H)

May 7, 1979

Re: No. 77-6949 - Dunn v. United States

Dear Thurgood:

Please join me.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 2, 1979

77-6949 Dunn v. United States

Dear Thurgood:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 24, 1979

Re: No. 77-6949 - Dunn v. United States

Dear Thurgood:

My dissent, as Byron's, will be of the graveyard variety.  
Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 4, 1979

Re: 77-6949 - Dunn v. United States

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference