The Burger Court Opinion Writing Database

Donovan v. Dewey

452 U.S. 594 (1981)

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

June 4, 1981

80-901, Donovan v. Dewey

Dear Thurgood:

I hope to join your opinion. However, I am a little concerned about the following sentence: "Unlike the statute at issue in Barlow's, the Mine Safety and Health Act applies to a single industry with a notorious history of serious accidents and unhealthful working conditions." Pages 8-9. The explicit legislative findings focus on the dangers of underground mines. Although "other mines" were mentioned, I have located no explicit legislative findings with respect to stone quarries. Stone quarries and underground mines are obviously not a "single industry" in common parlance, and they clearly have different technological and safety problems.

My concern would be alleviated if you could change "a single industry" to "industrial activity" in the sentence I have quoted and add something along the following lines at the end of footnote 7: "Although Congress did not make explicit reference to stone quarries in these findings, stone quarries were deliberately included in the scope of the statute. Since MSHA, unlike OSHA, is narrowly and explicity aimed at inherently dangerous industrial activity, the inclusion of stone quarries is presumptively equivalent to a finding of inherent dangerousness in the stone quarrying industry." The cite in footnote 8 should be to supra n.7 instead of n.8.

Regards,

WEB

Justice Marshall

/

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

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1981

80-901, Donovan v. Dewey

Dear Thurgood:

I join.

Regards,

WEB

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1981

RE: No. 80-901 Donovan v. Dewey, et al.

Dear Thurgood:

May I suggest that it may be desirable to delete from the last sentence of the first full paragraph on page 3, "and is contrary to the conclusions of the three Courts of Appeals that have considered this issue." Since this is an appeal from a district court invalidating a federal statute and not a petition for certiorari, doesn't section 1252 require simply that we observe that "we noted probable jurisdiction". This would mean moving the footnote sign 5 to the end of the sentence.

Sincerely,

Bill

Justice Marshall

(5)

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1981

RE: No. 80-901 Donovan v. Dewey, et al.

Dear Thurgood:

I agree.

Sincerely,

Bill

Justice Marshall

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 28, 1981

Re: No. 80-901, Donovan v. Dewey

Dear Thurgood,

I shall in due course circulate a dissenting opinion in this case.

Sincerely yours,

P.S.

Justice Marshall

Copies to the Conference

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

1st DRAFT

From: Justice Stewart

SUPREME COURT OF THE UNITED STATES

Circulated: 4 JUN 1981

No. 80-901

Recirculated: _____

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE STEWART, dissenting.

In *Frank* v. *Maryland,* 359 U. S. 360, the Court concluded that warrantless administrative inspections are not subject to the restrictions that the Fourth and Fourteenth Amendments place upon conventional searches. The *Frank* decision was overruled 8 years later in *Camara* v. *Municipal Court,* 387 U. S. 523, over the dissent of three Members of the Court, of whom I was one. I believed then that the *Frank* case had been correctly decided, and that warrantless health and safety inspections do not "require . . . the safeguards necessary for a search of evidence of criminal acts." *Frank, supra,* 359 U. S., at 372 (dissenting opinion).[1]

I must, nonetheless, accept the law as it is, and the law is now established that administrative inspections are searches within the meaning of the Fourth Amendment. As such, warrantless administrative inspections of private property without consent, are, like other searches, constitutionally invalid except in a few precisely defined circumstances. *Camara, supra,* 387 U. S., at 528–529. This principle was re-emphasized most recently in *Marshall* v. *Barlow's Inc.,*

[1] This is not to say that evidence of criminality seized in the course of a warrantless administrative inspection should not be excluded at a criminal trial.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1981

Re: 80-~~910~~ 901 - Donovan v. Dewey

Dear Thurgood,

To the extent that you suggest on pages 3 and 4 of your circulating draft that warrantless searches of residential property are presumptively invalid but that the rule is otherwise with respect to commercial property, I am in disagreement. As I understand our cases, the general rule is that warrants are required before business premises may be invaded for purposes of searching for contraband or evidence of crime. I also think that the ultimate test of reasonableness is applicable to warrantless searches of both kinds of property but that in applying that test, warrantless searches of business premises will be permitted in many circumstances that would not excuse securing a warrant to search a home.

In addition, I am not at all sure that requiring a warrant prevents unannounced entries as you indicate on page 8.

The changes necessary to satisfy me would not be extensive, but they may be sufficiently substantive that you would prefer not to make them. In that event, I shall write in concurrence.

Sincerely yours,

Byron

Justice Marshall

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1981

Re: 80-901 - Donovan v. Dewey

Dear Thurgood,

Please join me.

Sincerely yours,

Justice Marshall

Copies to the Conference

cpm

28 MAY 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-901

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether § 103 (a) of the Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), which authorizes warrantless inspections of underground and surface mines, violates the Fourth Amendment. Concluding that searches conducted pursuant to this provision are reasonable within the meaning of the Fourth Amendment, we reserve the judgment of the District Court for the Eastern District of Wisconsin invalidating the statute.

I

The Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 801 *et seq.*, requires the Secretary of Labor to develop detailed mandatory health and safety standards to govern the operation of the Nation's mines. 30 U. S. C. § 811 (1976 ed., Supp. III).[1] Section 103 (a) of the Act, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), provides that federal mine inspectors are to inspect underground mines at

[1] The Act supersedes the Federal Coal Mine Health and Safety Act of 1969, formerly 30 U. S. C. § 801 *et seq.* (1976), and repeals and replaces the Federal Metal and Nonmetallic Mine Safety Act of 1966, formerly 30 U. S. C. § 721 *et seq.* (1976).

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: _____

2nd DRAFT

Recirculated: 6-1-81

SUPREME COURT OF THE UNITED STATES

No. 80-901

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether § 103 (a) of the Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), which authorizes warrantless inspections of underground and surface mines, violates the Fourth Amendment. Concluding that searches conducted pursuant to this provision are reasonable within the meaning of the Fourth Amendment, we reserve the judgment of the District Court for the Eastern District of Wisconsin invalidating the statute.

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The Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 801 *et seq.*, requires the Secretary of Labor to develop detailed mandatory health and safety standards to govern the operation of the Nation's mines. 30 U. S. C. § 811 (1976 ed., Supp. III).[1] Section 103 (a) of the Act, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), provides that federal mine inspectors are to inspect underground mines at

[1] The Act supersedes the Federal Coal Mine Health and Safety Act of 1969, formerly 30 U. S. C. § 801 *et seq.* (1976), and repeals and replaces the Federal Metal and Nonmetallic Mine Safety Act of 1966, formerly 30 U. S. C. § 721 *et seq.* (1976).

3

3 JUN 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-901

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether § 103 (a) of the Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), which authorizes warrantless inspections of underground and surface mines, violates the Fourth Amendment. Concluding that searches conducted pursuant to this provision are reasonable within the meaning of the Fourth Amendment, we reverse the judgment of the District Court for the Eastern District of Wisconsin invalidating the statute.

I

The Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 801 *et seq.*, requires the Secretary of Labor to develop detailed mandatory health and safety standards to govern the operation of the Nation's mines. 30 U. S. C. § 811 (1976 ed., Supp. III).[1] Section 103 (a) of the Act, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), provides that federal mine inspectors are to inspect underground mines at

[1] The Act supersedes the Federal Coal Mine Health and Safety Act of 1969, formerly 30 U. S. C. § 801 *et seq.* (1976), and repeals and replaces the Federal Metal and Nonmetallic Mine Safety Act of 1966, formerly 30 U. S. C. § 721 *et seq.* (1976).

pp. 8, 9

9 JUN 1981

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–901

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether § 103 (a) of the Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), which authorizes warrantless inspections of underground and surface mines, violates the Fourth Amendment. Concluding that searches conducted pursuant to this provision are reasonable within the meaning of the Fourth Amendment, we reverse the judgment of the District Court for the Eastern District of Wisconsin invalidating the statute.

I

The Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 801 *et seq.*, requires the Secretary of Labor to develop detailed mandatory health and safety standards to govern the operation of the Nation's mines. 30 U. S. C. § 811 (1976 ed., Supp. III).[1] Section 103 (a) of the Act, 30 U. S. C. § 813 (a) (1976 ed., Supp. III), provides that federal mine inspectors are to inspect underground mines at

[1] The Act supersedes the Federal Coal Mine Health and Safety Act of 1969, formerly 30 U. S. C. § 801 *et seq.* (1976), and repeals and replaces the Federal Metal and Nonmetallic Mine Safety Act of 1966, formerly 30 U. S. C. § 721 *et seq.* (1976).

(4)

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1981

Re: 80-901 - Donovan v. Dewey

Dear Thurgood:

Please join me.

Sincerely,

HAB.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1981

80-901 Donovan v. Dewey

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1981

Re: No. 80-901 Donovan v. Dewey

Dear Thurgood:

I shall await further writing in this case, if such there be.

Sincerely,

WHR

Justice Marshall

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: 6/10/81

Recirculated: _____

Re: No. 80-901 Donovan v. Dewey

JUSTICE REHNQUIST, concurring in the result.

Our prior cases hold that, absent consent or exigent circumstances, the government must obtain a warrant to conduct a search or effect an arrest in a private home. Steagald v. United States, ___ U.S. ___ (1981); Payton v. New York, 445 U.S. 573 (1980). This case, however, involves the search of commercial property. Though the proprietor of commercial property is protected from unreasonable intrusions by governmental agents, the Court correctly notes that "legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment." Ante, at 3-4.

I do not believe, however, that the warrantless entry authorized by Congress in this case, §103(a) of the Federal Mine Safety and Health Act of 1977, can be justified by the Court's

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-901

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE REHNQUIST, concurring in the judgment.

Our prior cases hold that, absent consent or exigent circumstances, the government must obtain a warrant to conduct a search or effect an arrest in a private home. *Steagald* v. *United States,* — U. S. — (1981); *Payton* v. *New York,* 445 U. S. 573 (1980). This case, however, involves the search of commercial property. Though the proprietor of commercial property is protected from unreasonable intrusions by governmental agents, the Court correctly notes that "legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment." *Ante,* at 3–4.

I do not believe, however, that the warrantless entry authorized by Congress in this case, § 103 (a) of the Federal Mine Safety and Health Act of 1977, can be justified by the Court's rationale. The Court holds that warrantless searches of stone quarries are permitted because the mining industry has been pervasively regulated. But I have no doubt that had Congress enacted a criminal statute similar to that involved here—authorizing for example unannounced warrantless searches of property reasonably thought to house unlawful drug activity—the warrantless search would be struck down under our existing Fourth Amendment line of decisions.

(2)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 29, 1981

Re: 80-901 - Donovan v. Dewey

Dear Thurgood:

Please join me.

Respectfully,

JPS

Justice Marshall

Copies to the Conference

✓

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 10, 1981

Re: 80-901 - Donovan v. Dewey

Dear Thurgood:

After reading Potter's dissent and Bill Rehnquist's separate concurrence, I have decided to write a short concurring opinion. I expect to circulate it sometime tomorrow, but conceivably it will delay the case another week.

Respectfully,

JPS

Justice Marshall

Copies to the Conference

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

80-901 - Donovan v. Dewey

From: Mr. Justice Stevens

Circulated: JUN 11 '81

Recirculated: _____

JUSTICE STEVENS, concurring.

Like JUSTICE STEWART, I believe the Court erred in Camara v. Municipal Court, 387 U.S. 523, when it overruled Frank v. Maryland, 359 U.S. 360. See post, at 1 (dissenting opinion). I also share JUSTICE STEWART'S conviction that each of us has a duty to accept the law as it is; disagreement with the holding in a prior case is not a sufficient reason for refusing to honor it.[1] Unlike him, however, I also think the Court erred in Marshall v. Barlow's, Inc., 436 U.S. 307, when it concluded that Camara required it to invalidate the safety inspection program authorized by Congress in the Occupational Safety and Health Act. As I explained in my dissent in that case, neither the longevity of a regulatory program nor a businessman's implied consent to regulations imposed by the Federal Government determines the reasonableness of a congressional judgment that the public interest in occupational health or safety justifies a program of

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[1] See Florida Department of Health & Rehabilitative Services v. Florida Nursing Home Association, ___ U.S. ___, ___-___ (STEVENS, J., concurring).

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 12 '81

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-901

Raymond J. Donovan, Secretary of Labor, United States Department of Labor, Appellant, *v.* Douglas Dewey et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1981]

JUSTICE STEVENS, concurring.

Like JUSTICE STEWART, I believe the Court erred in *Camara* v. *Municipal Court*, 387 U. S. 523, when it overruled *Frank* v. *Maryland*, 359 U. S. 360. See *post*, at 1 (dissenting opinion). I also share JUSTICE STEWART's conviction that each of us has a duty to accept the law as it is; disagreement with the holding in a prior case is not a sufficient reason for refusing to honor it.[1] Unlike him, however, I also think the Court erred in *Marshall* v. *Barlow's, Inc.*, 436 U. S. 307, when it concluded that *Camara* required it to invalidate the safety inspection program authorized by Congress in the Occupational Safety and Health Act. As I explained in my dissent in that case, neither the longevity of a regulatory program nor a businessman's implied consent to regulations imposed by the Federal Government determines the reasonableness of a congressional judgment that the public interest in occupational health or safety justifies a program of warrantless inspections of commercial premises. See 436 U. S., at 336–339 (STEVENS, J., dissenting).

JUSTICE STEWART has cogently demonstrated that the ra-

[1] See *Florida Department of Health & Rehabilitative Services* v. *Florida Nursing Home Association*, — U. S. —, ——- (STEVENS, J., concurring).