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Supreme Court of the United States

October Term, 1968

In the Matter of:

UNITED STATES OF AMERICA,

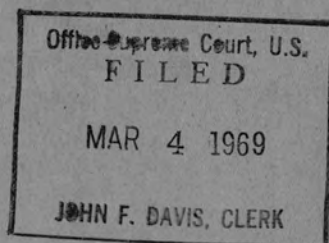
Petitioner

vs.

UNITED STATES COIN AND CURRENCY, etc.

Claimant-Respondent.

Docket No. 477



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facsimile means is prohibited under the
order form agreement.

Place Washington, D. C.

Date February 25, 1969

1st Arg't.

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

1	<u>ORAL ARGUMENT OF:</u>	<u>P</u> <u>A</u> <u>G</u> <u>E</u>
2	Philip A. Lacovara, Esq.,	
3	on behalf of Petitioner	2

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 - - - - - x
4 United States of America, :

5 Petitioner, :

6 v. :

No. 477

7 United States Coin and Currency, etc. :

8 Claimant-Respondent. :
9 - - - - - x

10 Washington, D. C.

Tuesday, February 25, 1969.

11 The above-entitled matter came on for argument at

12 2:20 p.m.

13 BEFORE:

14 EARL WARREN, Chief Justice
15 HUGO L. BLACK, Associate Justice
16 WILLIAM O. DOUGLAS, Associate Justice
17 JOHN M. HARLAN, Associate Justice
18 WILLIAM J. BRENNAN, JR., Associate Justice
19 POTTER STEWART, Associate Justice
20 BYRON R. WHITE, Associate Justice
21 ABE FORTAS, Associate Justice
22 THURGOOD MARSHALL, Associate Justice

23 APPEARANCES:

24 PHILIP A. LACOVARA, Esq.
25 Office of the Solicitor General
Department of Justice
Washington, D. C.
(pro hac vice).

ANNA R. LAVIN
53 West Jackson Boulevard
Chicago, Illinois 60604
(Counsel for claimant-Respondent)

1 P R O C E E D I N G S

2 MR. CHIEF JUSTICE WARREN: No. 477, United States
3 versus United States Coin and Currency, et cetera.

4 THE CLERK: Counsel are present for No. 477.

5 MR. CHIEF JUSTICE WARREN: Mr. Claiborne.

6 MR. CLAIBORNE: Mr. Chief Justice, and may it please
7 the Court.

8 Philip Lacovara is a member of the bar of the highest
9 court of the State of New York and an assistant to the Solicitor
10 General. I move his admission for the purpose of arguing this
11 case.

12 MR. CHIEF JUSTICE WARREN: Your motion is granted,
13 Mr. Claiborne.

14 Mr. Lacovara.

15 ORAL ARGUMENT OF PHILIP A. LACOVARA, ESQ.

16 ON BEHALF OF PETITIONER

17 MR. LACOVARA: Mr. Chief Justice, and may it please
18 the Court.

19 This Internal Revenue Forfeiture Case is here on
20 writ of certiorari issued on the Government's petition to
21 review a judgment of the Court of Appeals for the Seventh
22 Circuit holding that a claim with the privilege against self-
23 incrimination under principles announced last term by this
24 Court in Marchetti and Grosso decisions precludes forfeiture
25 of property used in violation of the Wagering Tax Act.

1 The factual background of the case can be stated
2 briefly. As a result of investigation by the Internal Revenue
3 Service and the Federal Bureau of Investigation into non-pari
4 mutuel betting at Sportsman Park Race Track in Cicero, Illinois,
5 in the summer of 1963.

6 Federal agents, pursuant to a warrant arrested Donald
7 Angelini, the claimant in this case at Sportsman's Park on
8 August 24, 1963.

9 When Mr. Angelini was taken to be booked it was found
10 that in his pockets he held \$8,674, the Respondent money in
11 this case. Mr. Angelini was subsequently indicted and con-
12 victed on two counts for violating the Wagering Tax Act and/or
13 he was sentenced to 60 days in prison and \$2500 fine.

14 Over his objection that an application of the Act to
15 him violated his privilege against self-incrimination, the
16 Seventh Circuit affirmed in October of 1965 in this court denied
17 certiorari.

18 In the meantime, February 1964, the Government insti-
19 tuted this present proceeding, a libel in rem, against the
20 money that had been seized from Mr. Angelini when he was
21 arrested.

22 At the trial on this libel, the Government produced
23 approximately a dozen Internal Revenue and Federal Bureau of
24 Investigation agents who testified their observations of non-pari
25 mutuel betting at Sportsman's Park and to Mr. Angelini's role

1 in it.

2 It was also stipulated that although Mr. Angelini
3 had registered as a gambler for the fiscal years 1957 and 1958,
4 he had not applied for or obtained the \$50 Wager and Occupational
5 Tax for the period covering August 1963.

6 The District Judge, jury trial not having been
7 demanded made findings of fact and conclusions of law in which
8 he agreed that an illicit wagering business had been conducted
9 at Sportsman's Park and that no person receiving wagers,
10 non-pari mutuel wagers at the Park had paid the \$50 occupational
11 tax and he further found that the Respondent money in this case
12 had been used in the course of that violation of the Internal
13 Revenue laws.

14 Accordingly, under Section 7302 of the Internal
15 Revenue Code the money in this case was forfeited to the United
16 States.

17 The Seventh Circuit affirmed, again over self-
18 incrimination objections and the case was pending here on writ
19 of certiorari when this court decided, Marchetti and Grosso
20 last term.

21 Shortly thereafter the petition was granted and the
22 case remanded to the Seventh Circuit for reconsideration in
23 light of Marchetti and Grosso.

24 On remand, the Seventh Circuit, without further
25 briefing or argument, determined that the principles announced

1 by the Court did indeed apply to the forfeiture of property
2 used in violation of the Wagering Tax Act and it reversed the
3 decree of forfeiture because the Sixth Circuit subsequently
4 explicitly rejected the Seventh Circuit's ruling in this case
5 and held that the forfeiture provisions that are here in
6 question are remedial rather than penal, that the privilege
7 does not constitute a substantive defense in this type of in rem
8 action.

9 The Government, therefore, petitioned for certiorari
10 to resolve the conflict among the Circuits.

11 Our position is that the critical difference between
12 a criminal proceeding such as the proceedings involved in
13 Marchetti and Grosso and an in rem forfeiture which is directed
14 both in form and in substance against depending property and is
15 remedial rather than punitive serves to distinguish Grosso and
16 Marchetti and in spirit and letter of the Fifth Amendment from
17 proceedings like the present one.

18 Our contention is that the heart of the decision below
19 wherein lies critical error was the assertion by the Seventh
20 Circuit that the application of the general forfeiture statutes
21 in the Internal Revenue Code, in circumstances like these, have
22 as their only purpose the punishment of individuals for violation
23 of the Wagering Tax Act.

24 The Court said, "Since it is a practical matter,
25 Marchetti and Grosso establish that individuals cannot be

1 punished criminally for that sort of conduct; it follows that
2 they may not be punished indirectly by forfeiture.

3 While we would be prepared to reject the logic that
4 the indirect consequences intolerable simply because direct
5 criminal prosecution is also barred, we think the basic error
6 that the Court committed was in asserting without any discussion
7 whatsoever that the basic purpose, the only purpose the Seventh
8 Circuit said of forfeitures like the present one is a penal
9 purpose.

10 On the contrary we submit a review of the historical
11 and legal aspects of Internal Revenue Forfeitures establishes
12 that they are not penal. They are not directed either in
13 essence or in objective at punishing an individual for his
14 violation of the Internal Revenue Code.

15 They are not designed to penalize anyone for his
16 invocation of the privilege against self-incrimination. Rather
17 we submit, they are remedial in the sense that they provide an
18 alternative for assuring an adequate flow of revenue into the
19 Treasury.

20 We say that historically this is true because this
21 court, relying on past English decisions, has consistently
22 differentiated Internal Revenue Forfeitures under the statutes
23 from the common-law type of forfeiture which attached directly
24 to an individual upon his criminal conviction, a felon's goods
25 that common law would forfeit and all that the crown needed to

1 do to obtain his property was to demonstrate that he had been
2 convicted of a crime.

3 On the contrary, this court itself carefully pointed
4 out in the Boyd decision on which the claimant principally
5 relies and on which the court below termed controlling, Internal
6 Revenue forfeitures which have dated in this country from the
7 First Revenue Act of 1789, are directed at a different purpose.

8 Their object is not criminal punishment as the Court
9 found in the particular forfeiture statute in Boyd was, but
10 merely at remedying a default upon the Treasury, a nonpayment
11 of a valid tax.

12 We start in this case by assuming that the Court in
13 Marchetti and Grosso did not hold that the Wagering Tax Act is
14 invalid in the sense that it does not impose civil liability
15 for the tax.

16 We think that this is a fair assumption because in
17 our view the Court went to great pains to point out that nothing
18 in the decision was to extinguish civil liability even in the
19 face of the privilege but was simply to preclude criminal
20 punishment in the face of a proper invocation of the privilege.

21 MR. CHIEF JUSTICE WARREN: Very well.

22 (Whereupon, at 2:30 p.m. the Court recessed, to
23 reconvene at 10 a.m. Wednesday, February 26, 1969.)

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