

In the  
**Supreme Court of the United States**

UNITED STATES ET AL., )

PETITIONERS )

V. )

RICHARD V. BISCEGLIA )

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C

No. 73-1245

Washington, D. C.

November 11, 12, 1974

Pages 1 thru 44

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## IN THE SUPREME COURT OF THE UNITED STATES

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 PETITIONERS :  
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 v. : No. 73-1245  
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 RICHARD V. BISCEGLIA :  
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Washington, D. C.

Monday, November 11, 1974  
 Tuesday, November 12, 1974

The above-entitled matter came on for argument  
 at 2:52 o'clock p.m. on Monday, November 11, 1974 and  
 was adjourned at 3:00 o'clock p.m. until 10:02 a.m. the  
 following day, Tuesday, November 12, 1974

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
 WILLIAM O. DOUGLAS, Associate Justice  
 WILLIAM J. BRENNAN, JR., Associate Justice  
 POTTER STEWART, Associate Justice  
 BYRON R. WHITE, Associate Justice  
 THURGOOD MARSHALL, Associate Justice  
 HARRY A. BLACKMUN, Associate Justice  
 LEWIS F. POWELL, JR., Associate Justice  
 WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

STUART A. SMITH, ESQ., Office of the Solicitor General,  
 Department of Justice, Washington, D. C. 20530  
 for the Petitioners

WILLIAM A. WATSON, ESQ., 1911 1/2 Cumberland Avenue.,  
 Middlesboro Kentucky 40965

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-1245.

Mr. Smith, you may proceed whenever you are ready.

ORAL ARGUMENT OF STUART A. SMITH, ESQ.,

ON BEHALF OF UNITED STATES ET AL

MR. SMITH: Mr. Chief Justice, and may it please the Court:

This case comes here on the government's petition for a writ of certiorari to the United States' Court of Appeals for the Sixth Circuit. It arises from the issuance of an Internal Revenue summons in the course of an investigation by the Internal Revenue Service into a series of unusual currency transactions.

Specifically, the question, a statutory one, is whether the Internal Revenue Service has power to issue a summons in order to discover the identity of a person who may be liable for unpaid taxes.

The bank involved, where the unusual currency transactions occurred, is the Commercial Bank of Middlesboro, Kentucky, of which Respondent Bisceglia is a vice-president.

The facts are basically simple and undisputed.

In November, 1970, the Commercial Bank deposited on two separate occasions \$20,000 in 100-dollar bills with

the Federal Reserve Bank in Cincinnati, which is a branch of the Federal Reserve Bank of Cleveland.

These bills, as the testimony characterized them in the District Court, were "tissue-paper thin," which suggested a long period of storage in perhaps an unusual place.

Under regular Federal Reserve procedures, the matter was reported by the Federal Reserve Bank of Cincinnati to the Internal Revenue Service.

The deposit of such a large amount of cash was unusual in this context and it was especially unusual for the bills to be badly worn. For example, testimony developed that during the first ten months of this year in 1970, the Commercial Bank of Middlesboro had only deposited with the Federal Reserve Bank of Cincinnati, 218 \$100 bills and here, within a two-week period in November, 1970, it deposited an additional 400 of them.

QUESTION: Mr. Smith, are you implying, then, that the situation might be different had this been New York City and one of the major banks there?

MR. SMITH: Well, I am suggesting that in the context of this case that such a large amount of cash was unusual and, perhaps, I think the Internal Revenue Service might not have been alerted in the context of a large commercial center such as New York. But I don't think that



that --- I don't think that the facts -- the fact that this case might arise in New York would limit the statutory power of the Internal Revenue Service.

QUESTION: Incidentally, there were were other bills than the hundreds, weren't there?

MR. SMITH: I think there were only four -- my impression is that there were only 400 \$100 bills, a total of \$40,000. But these were the -- this was the --

QUESTION: This hit the regulation because there --

MR. SMITH: Exactly, because these were regulations that the Federal Reserve maintained prior to the enactment of the Bank Secrecy Act which the Court considered last term in the California Banker's Association case. But the Federal Reserve procedures were to report this to the Internal Revenue Service.

Now, from the Internal REvenue Service's point of view, this event suggested that substantial transactions had occurred outside normal financial channels. In fact, the supervisor of the currency section of the Federal Reserve Bank in Cincinnati testified that it was his recollection the only comparable situation where bills were so badly worn as to be tissue-paper thin, that the sizing of the paper had completely disintegrated and they were difficult to count, had occurred in the situation where a cash horde had been stored in milk cans which, in turn, had been buried

in concrete.

Now, this kind of situation suggested to the Internal Revenue Service that the recipient of this cash horde may well have received it in a manner -- and had not satisfied a tax liability on it.

Now, the possibilities are numerous. It could be an amount of money that was received and hidden away for which income tax was not paid on.

It could have been a horde of someone who died and estate taxes may not have been paid upon it.

It could have been a gift of someone, in which case the donor may not have paid the gift tax on it.

The course of these possibilities, which are, we believe, reasonable to the Internal Revenue Service, the Internal Revenue Service commenced an investigation and in the course of that investigation, it issued a summons to the Commercial Bank of Middlesboro and to Mr. Bisceglia specifically to produce all records in connection with the deposit of this matter that may shed some light on the deposit of this matter.

Now, because the tax -- because the identity of the taxpayer was unknown in this instance, the IRS summons was drawn, "In the Matter of the Tax Liability of John Doe." But it was fully contemplated that once the identity of John Doe was established to the Service's satisfaction, that

the Service would then commence an audit of the taxpayer or the depositor's or transferor's tax returns and inquire as to the means of acquisition of this cash horde and to determine whether all tax liabilities had been satisfied on it and the bank refused to comply with the summons, so the United States commenced this action, which was on a petition for enforcement of the summons under Section 7604 of the Internal Revenue Code.

After holding --

QUESTION: Why was the action brought against this individual, Mr. Bisceglia, or whatever his name is?

MR. SMITH: He was an officer of the bank who --

QUESTION: He was a trust officer, wasn't he?

MR. SMITH: He was a trust officer of the bank, but he had supervisory power over the records.

QUESTION: And he says he doesn't know anything about this.

MR. SMITH: Well, he personally did not have any knowledge of the -- the Respondent argues that --

QUESTION: My real question is, why didn't you bring it against the bank? Why did you bring it against this individual, this trust officer?

MR. SMITH: Well, my impression was that this officer of the bank was singled out as someone who had the supervisory power over the records who could produce them.



The summons asked for two things. It asked for production of records, which Mr. Bisceglia I think undisputably had power to direct the Internal Revenue Service to examination and it also asked the testimony.

Now, the Respondents make a point of the fact that Mr. Bisceglia could not have testified as to these circumstances, but we think that the production of the records is the key here.

MR. CHIEF JUSTICE BURGER: We'll resume there in the morning.

[Whereupon, at 3:00 o'clock p.m., the Court was adjourned until 10:00 o'clock a.m. the following day.]

