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PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

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WASHINGTON, D.C. 20540

CAPTION: UNITED STATES, Petitioner v. A PARCEL OF LAND,
BUILDINGS, APPURTENANCES AND
IMPROVEMENTS, KNOWN AS 92 BUENA VISTA
AVENUE, RUMSON, NEW JERSEY, ET AL.

CASE NO: 91-781

PLACE: Washington, D.C.

DATE: October 13, 1992

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 UNITED STATES, :

4 Petitioner :

5 v. : No. 91-781

6 A PARCEL OF LAND, BUILDINGS, :

7 APPURTENANCES AND IMPROVEMENTS, :

8 KNOWN AS 92 BUENA VISTA :

9 AVENUE, RUMSON, NEW JERSEY, :

10 ET AL. :

11 - - - - - X

12 Washington, D.C.

13 Tuesday, October 13, 1992

14 The above-entitled matter came on for oral
15 argument before the Supreme Court of the United States at
16 11:03 a.m.

17 APPEARANCES:

18 AMY L. WAX, ESQ., Assistant to the Solicitor General,
19 Department of Justice, Washington, D.C.; on behalf
20 of the Petitioner.

21 JAMES A. PLAISTED, ESQ., Roseland, New Jersey; on behalf
22 of the Respondent.

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

2 (11:03 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 91-781, United States v. A Parcel of Land.

5 Ms. Wax, you may proceed.

6 ORAL ARGUMENT OF AMY L. WAX

7 ON BEHALF OF THE PETITIONER

8 MS. WAX: Thank you, Mr. Chief Justice, and may
9 it please the Court:

10 This case concerns the scope of the statutory
11 innocent owner defense to a forfeiture of property under
12 21 U.S.C. 881(a)(6), the statute authorizing civil in rem
13 forfeiture of proceeds of illegal drug transactions.

14 The Government's position in this case is that
15 someone like Respondent Beth Ann Goodwin who receives a
16 gift of drug profits and uses that money to purchase real
17 property cannot a defense to forfeiture that is only
18 available to innocent owners because that person does not
19 own the property.

20 Under Federal forfeiture statutes, title to
21 property vests irreversibly in the Government when the act
22 giving rise to forfeiture is committed. The United States
23 owns the property from that point forward, and its
24 interests cuts off all rights, including ownership rights,
25 for anyone who subsequently acquires the property.

1 QUESTION: Then the innocent owner defense is
2 available only to someone in the chain of title before the
3 forfeiture occurs?

4 MS. WAX: Precisely, Your Honor. Someone has to
5 have a preexisting, valid ownership interest before the
6 acts giving rise to forfeiture occur so that someone like
7 Ms. Goodwin is really in no better position, someone who
8 receives the gift of drug profits, than someone who
9 receives stolen money, a gift of stolen property. That
10 person has no right to the property as against its true
11 owner however innocently it was acquired.

12 So, in this case Respondent Beth Ann Goodwin is
13 not the owner of the \$200,000 in drug profits that she
14 received from her companion, Mr. Brenna, nor does she own
15 the residence that she purchased with that money.

16 QUESTION: May I ask there? What about the
17 person who sold her the residence and has the purchase
18 price? Who owns the purchase price?

19 MS. WAX: Well, Your Honor, our position -- that
20 is a -- really an entirely different question.

21 QUESTION: Well, I don't know. It's the same
22 money. The money went to buy the house, and that's --
23 used Government money, and then the person who sold the
24 house received that money. It would seem to me that
25 person is receiving Government property.

1 MS. WAX: Your Honor, the answer to that
2 question lies we believe not in construction of the
3 innocent owner defense, but in what the word "proceeds"
4 means. If there is a bilateral transaction, such as her
5 buying the house from somebody and that person receiving
6 the money, the question is does the word "proceeds" cover
7 both sides of that bilateral, full-value transaction, or
8 does it only cover one side. We think that a reasonable
9 construction of the word "proceeds" would cover just the
10 house that she received and not necessarily the money that
11 the particular seller received.

12 QUESTION: Well, what if the drug dealer bought
13 a house --

14 MS. WAX: Yes.

15 QUESTION: -- then sold it, and gave the
16 proceeds to his companion who then bought another house?

17 MS. WAX: Okay.

18 QUESTION: Would that be a different case?

19 MS. WAX: No. In that case, when the drug
20 dealer bought the house, he got a house which, in effect,
21 was substituted for his original profits.

22 QUESTION: Right.

23 MS. WAX: That's proceeds as far as we're
24 concerned. That's derivative assets, and that is
25 proceeds --

1 QUESTION: So, the house is proceeds, and what
2 about the money that the seller of that house got?

3 MS. WAX: That -- we think a fair construction
4 of proceeds is that that's not proceeds.

5 In light of -- in the civil statute, in light of
6 the narrow innocent owner defense, we think that the word
7 "proceeds" arguably does not cover the money that goes to
8 a seller if it's a bona fide transaction, there's no
9 collusion, it's in good faith, and there's full value.

10 So, Your Honor, what I'm trying to say is that
11 if there's help for bona fide purchasers in this statute,
12 we don't think the help lies in twisting the innocent
13 owner defense to apply to after-acquirers of property or
14 persons who acquire their interest after the offense takes
15 place.

16 QUESTION: Well, Ms. Wax, would your -- how does
17 your theory play out in terms of any mortgage that has
18 been put on the house?

19 MS. WAX: Right.

20 QUESTION: Does the Government take the property
21 subject to the mortgage or not?

22 MS. WAX: Well, Your Honor, I think that if the
23 mortgage -- the answer would be, under the theory I just
24 stated, probably no in the sense that if the mortgage is a
25 true business-like mortgage by just any old bank or --

1 QUESTION: Yes. It's a -- it's an ordinary
2 lending institution that had no way of knowing --

3 MS. WAX: Right.

4 QUESTION: -- that the proceeds used to make the
5 down payment were those of a drug transaction.

6 MS. WAX: Right. Well, there are three answers
7 to that mortgagee. The first answer, as reflected in my
8 answer to Justice Stevens is, it may well be that the lien
9 or the lien interest that mortgagee holds is not really
10 proceeds if he gave cash to the person who owned the
11 house. I mean, that would seem to follow.

12 So, what in effect I'm saying, Justice O'Connor,
13 is that to the extent that mortgagees and lienors and
14 other true bona fide purchasers are concerned about what
15 our position is in this case, they may well be fighting
16 the battle on the wrong front. They're trying --

17 QUESTION: But do I take it that you submit the
18 case to us on the theory that the Government concedes that
19 a bona fide purchaser exception is read into the statute
20 insofar as the definition of proceeds is concerned?

21 MS. WAX: We certainly think that's possible,
22 Your Honor, that that -- the issue of a comprehensive
23 theory of proceeds is not directly presented by this
24 situation because Ms. Goodwin's house is proceeds under a
25 narrow theory, under a broad theory, under any plausible

1 theory.

2 QUESTION: Ms. Wax, let me understand what the
3 Government's position is now. If I get money in an
4 illegal transaction and buy a house with that money --

5 MS. WAX: Right.

6 QUESTION: -- the house is covered. Right?

7 MS. WAX: Definitely.

8 QUESTION: But if the house is then sold for
9 cash, that cash is not covered.

10 MS. WAX: No. The cash is covered.

11 QUESTION: The house continues to be covered all
12 the way down the line. Right?

13 MS. WAX: Well, I think what we're -- the cash
14 is covered because I originally bought the house with my
15 drug profits.

16 QUESTION: Yes.

17 MS. WAX: That house is covered.

18 QUESTION: Right. Then the house is --

19 MS. WAX: The house is proceeds.

20 QUESTION: The house is proceeds. Right.

21 MS. WAX: Right.

22 QUESTION: Then the house is sold and it's
23 converted back into cash.

24 MS. WAX: Right. I sell the house and I receive
25 for that house cash.

1 QUESTION: Right.

2 MS. WAX: Okay? That cash is proceeds because
3 it is what I'm receiving, in effect, in exchange for my
4 drug profits down the line.

5 QUESTION: Sure.

6 MS. WAX: I am benefitted --

7 QUESTION: The same would be true of the person
8 that I sold the house to, though. Suppose I sell the
9 house, instead of keeping it. I get -- from the
10 transaction I get cash.

11 MS. WAX: Right.

12 QUESTION: I buy a house with the cash.

13 MS. WAX: Right.

14 QUESTION: I then sell the house to somebody.
15 You say the cash I get back would be proceeds to me.

16 MS. WAX: Yes.

17 QUESTION: The house is still covered. Why
18 isn't the sale of that house proceeds to the person who
19 sells the house?

20 MS. WAX: Okay.

21 QUESTION: It isn't as I understand you. Right?

22 MS. WAX: Well, Your Honor, I think what's
23 confusing people is that under conventional tenets of
24 forfeiture law, once a thing becomes tainted, a res
25 becomes tainted, it's tainted forever. Okay? And that's

1 one of the predicates of our argument in this case.

2 What I'm saying is it's possible that through
3 the definition of the word "proceeds," what proceeds
4 means, in effect, Congress sort of negated that to the
5 extent that if there's a full-value exchange -- if the
6 Government can go after one-half of that full-value
7 exchange, in effect, the taint is purged from the other
8 half. I guess that's what I'm saying, but that's a matter
9 of the meaning of the word "proceeds," not a wholesale
10 suspension of the common law conventions of forfeiture.

11 And the reason why it's important that there not
12 be a wholesale suspension in this case is that that
13 convention is not suspended when assets migrate from the
14 original drug dealer into the hands of a person who
15 receives it as a gift.

16 QUESTION: Have we ever applied the relation-
17 back doctrine, relation-back forfeiture, to anything
18 except physical property --

19 MS. WAX: Well --

20 QUESTION: -- in contradistinction to cash?

21 MS. WAX: Well, Caplin & Drysdale concerns
22 section 853(c), which is the criminal forfeiture provision
23 that deals with proceeds, cash, and in that case, of
24 course, the question was whether money that the drug
25 dealer wanted to pay to his lawyer, whether the relation-

1 back provision applied to that, and the Court said
2 absolutely, positively it applies to that. The minute the
3 cash is generated through a drug transaction, it belongs
4 to the United States, and you know, to quote the Court,
5 there's no right to give someone else's money to a third
6 party. So, yes. The answer is yes in Caplin & Drysdale.

7 QUESTION: Is -- oh, go ahead.

8 QUESTION: Excuse me. But that -- it was still
9 in the hands of the dealer. I'm talking about have we
10 ever followed the money to a later person and said that
11 the forfeiture of that money subsists?

12 MS. WAX: Well, I'm not aware right off the top
13 of my head of a case in which this Court has. Certainly
14 it has been common practice in the courts of appeals.

15 QUESTION: I'm not aware that we've done it.

16 Have we ever followed that money to the purchase
17 of real estate and then followed the real estate the rest
18 of the way down the line when the real estate was not part
19 of the initial proceeds?

20 MS. WAX: Not in any case of this Court that I'm
21 aware of.

22 But, Your Honor, to -- you have to go back to
23 the words of the statute to see that there's nothing
24 unusual or disturbing about that. The whole -- the
25 statute was designed -- that was the whole purpose of the

1 statute, to enable the Government to take assets that are
2 substituted for the original drug profits. That's the
3 meaning of the proceeds traceable to an exchange language
4 in 881(a)(6).

5 And the reason for that is if the Government
6 couldn't do that, then someone, a drug dealer, could take
7 his profits and essentially shelter them by just putting
8 them through one transaction. He'd just have to buy
9 something with the profits, and then the Government
10 couldn't touch it. So, it must be the case that the
11 Government can take the thing that the person who holds
12 the profits buys with those profits, the Jaguar, the fur
13 coat, the diamond ring, the house, whatever --

14 QUESTION: In the hands of the wrongdoer, yes,
15 but it's something else to follow it all the way down the
16 chain from then on.

17 MS. WAX: Well, Your Honor --

18 QUESTION: As I say, we've never -- to my
19 knowledge, we've never done that except in the case where
20 the offending property itself is involved, not cash.

21 MS. WAX: But, Your Honor, we clearly -- the
22 statute clearly allows you to do that here because the
23 statute says that all things of value furnished in
24 exchange for drugs are forfeitable. It doesn't say all
25 things of value that are in the hands of a drug dealer.

1 It doesn't qualify it based on, you know, whose in
2 possession, and certainly --

3 QUESTION: Ms. --

4 MS. WAX: -- black letter forfeiture law is it
5 doesn't matter who holds --

6 QUESTION: Ms. Wax, does that mean -- I just
7 want to be sure, and I think that it really doesn't matter
8 in this case that the woman is a donee. It would be the
9 same case if she had been a physician who had performed an
10 operation on this man and got paid in the same sum of
11 money and then used the proceeds.

12 MS. WAX: The answer to that is no. Those
13 people --

14 QUESTION: Well, why not?

15 MS. WAX: -- are in different positions.

16 QUESTION: But why isn't that precisely the same
17 proceeds that went to the doctor? Because if you -- is it
18 you have to be a donee and not a purchaser? Is that the
19 difference?

20 MS. WAX: Okay, well, I guess we're saying yes
21 to that, Your Honor. We're saying that if we construe
22 the word "proceeds" so that it doesn't keep propagating
23 endlessly --

24 QUESTION: Proceeds are only proceeds that are
25 received by way of gift?

1 MS. WAX: In this case --

2 QUESTION: Well, is that -- am I right or not on
3 that? I don't now why that --

4 MS. WAX: No.

5 QUESTION: Well, your lawyer case --

6 MS. WAX: The answer is no.

7 QUESTION: -- seemed to be a categorical answer
8 that if it's a third party that is an innocent -- has no
9 knowledge of the taint on the money, that you can trace
10 it.

11 MS. WAX: Proceeds can be two sorts of things,
12 Your Honor. They can be something that's tainted and then
13 is given by gift where there's no full-value bilateral
14 exchange.

15 QUESTION: But I don't understand why the full
16 value matters if the criminal has transferred Government
17 property to the doctor in payment of a debt. I don't know
18 why that's different than giving the property to his
19 sister or brother or companion.

20 MS. WAX: It's different for the following
21 reason. If you give the profits to someone else or the
22 proceeds to someone else and that means that the
23 Government can no longer -- the fact that you're giving it
24 to someone else means the Government can no longer take
25 it, that would undermine the whole purpose of the statute

1 simply by giving --

2 QUESTION: But why not on the sale too? I don't
3 understand. If you give it to the church, you can trace
4 it, but if you -- but if it -- but if it's a -- I don't
5 understand --

6 MS. WAX: Okay.

7 QUESTION: -- in terms of the language of the
8 statute. I understand the distinction, of course, but --
9

10 MS. WAX: Right.

11 QUESTION: May I make a suggestion?

12 MS. WAX: Yes, Your Honor.

13 QUESTION: Aren't you implicitly saying that at
14 least -- excuse me -- at least one set of identifiable
15 proceeds has got to survive?

16 MS. WAX: Precisely.

17 QUESTION: You said in the case of the BFP
18 example of the sale of the house that you recognize the
19 transaction as, in effect, converting the house back into
20 money. The proceeds become the money again in the hands
21 of the drug dealer who sells it because you've got one set
22 of proceeds there.

23 But when you get into a bona fide purveyor of
24 services, you can't take the services. And you, in
25 effect, are saying there's got to be something that we can

1 get our hands on, and therefore, when the doctor performs
2 the surgery, you can't take the surgery and sell it on the
3 market. So, therefore, you still go after the money.

4 But if the doctor, in fact, had been the
5 purchaser of the house, you would say, okay, the doctor
6 gets the house free and clear and the proceeds become the
7 money that he paid for the house again in the hands of the
8 drug dealer.

9 But your overriding interpretive criterion seems
10 to be there's got to be something left that we can get our
11 hands on. If there is, we will not claim multiple -- a
12 multiplicity of proceeds. If there isn't, we'll claim a
13 physical proceeds no matter what the bona fides of the
14 transaction is.

15 MS. WAX: Your Honor, I couldn't have said it
16 better myself.

17 (Laughter.)

18 MS. WAX: The point is there has got to --

19 QUESTION: Well, do you really want to say that,
20 though?

21 MS. WAX: We think that that is a fair reading
22 of the word -- we're not talking about the innocent owner
23 defense here, which is the subject of this case. I'm
24 interpreting the word "proceeds," and I'm giving what I
25 think might be a reasonable construction of the word

1 "proceeds" in light of an innocent owner defense that cuts
2 off the rights of after-acquirers of property.

3 And we -- the Government is not standing here
4 claiming both sides of every transaction that involves
5 proceeds, so that proceeds propagates endlessly throughout
6 the whole economy. We think that what Congress probably
7 meant by proceeds was that body of assets that's the
8 surrogate for the original profits no matter how many
9 exchanges it goes through.

10 QUESTION: Well, suppose a legitimate
11 businessman goes in debt to a bank, and he has never been
12 in the drug business before, but he's really squeezed.
13 And so, he -- he's going to get into an illegal enterprise
14 and pay off his debts, and he gets in the drug business.
15 And he makes a lot of money, and he takes that money,
16 which I take it belongs to the Government, and pays off
17 the bank. Can the -- is it the Government's position that
18 the -- you can get the money back from the bank?
19 Completely legitimate debt at the outset. He -- they
20 weren't financing his drug business.

21 MS. WAX: That's a hard one.

22 QUESTION: They were financing his manufacturing
23 concern.

24 MS. WAX: That's a really difficult case there.
25 It's sort of like I think the case --

1 QUESTION: It's -- if -- the money is surely the
2 proceeds of the drug business, and they -- and it's
3 traceable right to the bank.

4 MS. WAX: Right, right. Well, in that case,
5 there isn't a body of assets that the Government can go
6 after. So --

7 QUESTION: Well, what about with the doctor?

8 MS. WAX: I mean, in the hands of the person who
9 originally --

10 QUESTION: Well, what about the doctor? The
11 money is in the hands of the doctor, just like the money
12 is in the hands of the bank.

13 MS. WAX: Right. That's the hard case, Your
14 Honor, and I think we might have to answer it by saying
15 it's a little bit like when the drug dealer smokes his
16 marijuana. I mean, it has gone up in smoke and --

17 QUESTION: So, what's your answer to the hard
18 case, the bank?

19 MS. WAX: Well, I think on the -- I think to be
20 consistent, we might have to say that since the bank -- I
21 mean, it gave value in the sense that it gave him a
22 discharge of his debts, maybe not in the form that we
23 could take, but it did give the full value if it was a
24 bona fide -- you know, course of business exchange --

25 QUESTION: Well, certainly --

1 MS. WAX: -- that the bank would have a good
2 argument that we couldn't take the money from them.

3 QUESTION: It -- certainly it had an interest.
4 It certainly acquired the debt long before the fellow ever
5 got in the drug business, but they didn't acquire any lien
6 on the money.

7 MS. WAX: I think, Your Honor, that we would try
8 and get the money. The drug dealer got benefit when he
9 paid off his debts, and we would try and get the money
10 from him if we could because he received value. That
11 would be our policy not just as a matter of statutory
12 construction --

13 QUESTION: Well, but the money was paid to the
14 bank.

15 And would you go back again to the bank that
16 puts a mortgage on a house that somehow was acquired with
17 some drug proceeds?

18 MS. WAX: Okay. Let's take a case where a --
19 cash was paid for a house. The cash was drug profits, in
20 fact, as in this case. And then the person who owns the
21 house takes out a mortgage as a home equity loan on the
22 house. Actually that did happen in this case. The bank
23 gives her cash and it takes back a security interest.

24 I think that on our theory, the proceeds would
25 attach to one-half of the transaction. We could go after

1 the cash or, you know, the value of the house that
2 represents it if she put it into the house, and then the
3 bank wouldn't be holding an interest that's proceeds. So,
4 once again, I'm saying that --

5 QUESTION: Well, you would take the position
6 that the house belongs to the Government.

7 MS. WAX: Yes.

8 QUESTION: But does it take just the equity, and
9 is it free and clear of the mortgage, or is it not?

10 MS. WAX: It would take that part of the
11 equity --

12 QUESTION: What happens to the mortgage?

13 MS. WAX: -- that was not represented by the
14 mortgage.

15 QUESTION: You do not take the position that it
16 takes it free and clear of the mortgage.

17 MS. WAX: In that case, if we were to apply
18 proceeds -- well, let me back up. The mortgagee would
19 have to establish a few things in order to get out from
20 under the word "proceeds". I think they'd have to
21 establish that they gave, you know, full value, that the
22 loan was legitimate, that kind of thing. And then they'd
23 have a good argument that their interest wasn't proceeds,
24 or in any event, they would get remission under the
25 remission and mitigation regulations.

1 QUESTION: You're assuming --

2 QUESTION: If it did that, then the Government
3 would get only the drug dealer's down payment out of the
4 house, so to speak, and the purchase money mortgage would
5 not go to the Government.

6 MS. WAX: Well, no. The money that the person
7 who took the mortgage, the mortgagor, the money that they
8 received in cash in exchange for the security interest,
9 the Government would go after that.

10 QUESTION: Some of these examples have been
11 perhaps repetitive, but they do have little factual
12 variations. Suppose that a drug dealer puts a \$10,000
13 down payment on a house --

14 MS. WAX: Right.

15 QUESTION: -- with money that is the proceeds of
16 drug operations.

17 MS. WAX: Right.

18 QUESTION: But in order to finance the full
19 purchase of the house, he gets a purchase money mortgage
20 from an innocent bank, say, in the amount of \$250,000.

21 MS. WAX: Right.

22 QUESTION: Now, in a forfeiture proceeding,
23 what's the outcome there?

24 MS. WAX: Okay, that's a different case from the
25 one Justice O'Connor presented. That's a case where we

1 have clean money and dirty money mixed together --

2 QUESTION: Okay.

3 MS. WAX: -- to purchase an asset.

4 QUESTION: What's the outcome?

5 MS. WAX: And the Government's position is that
6 we get the value of the house to the extent of the dirty
7 money and not of the clean money, and the mortgagee gets
8 -- you know, when we sell the house, they get back their
9 clean money as long as the drug dealer didn't make his
10 mortgage payments with dirty money.

11 QUESTION: Supposing the house doesn't sell for
12 the full amount of the down payment plus the purchase
13 money mortgage. Who gets priority?

14 MS. WAX: I believe that the answer is that each
15 entity, the Government to the extent they have an
16 interest, the mortgage -- the mortgagee to the extent they
17 do, take the loss proportionately on that decline in the
18 equity of the house.

19 QUESTION: Ms. Wax, could I come back to Justice
20 O'Connor's hypothetical? It seems to me you made the
21 answer easy by assuming that the woman, when she sold the
22 -- when she mortgaged the house, put the money into the
23 house or put the money in the bank. And, therefore, you
24 say, we'd go after the money, and the bank would still
25 have its mortgage in the real estate. But that isn't

1 really what happens normally, of course. She didn't put
2 the money in the house or in the bank. She spent it on
3 men, women, and song -- or men -- wine, men, and song.

4 (Laughter.)

5 QUESTION: And it's all gone. Then what does
6 the Government do?

7 MS. WAX: Well --

8 QUESTION: Then the Government goes after the
9 bank's interest in the house, doesn't it?

10 MS. WAX: The Government -- what we're
11 essentially saying here is that as a matter of -- first of
12 all, when a bona fide mortgagee comes in and claims their
13 interest in a house, as a routine matter, as a matter of
14 policy, we pay them off.

15 QUESTION: I'm talking law, not policy. I know
16 you're very generous and you wouldn't do it.

17 (Laughter.)

18 QUESTION: But your contention is, is it not,
19 that you would have the power to do it under your reading
20 of this statute?

21 MS. WAX: Well, I think that the reading -- the
22 construction we've given you of the word "proceeds" --
23 under that construction, I think that the bank could well
24 claim that we don't have the power because they've given
25 full value for their interest back to the original owner

1 of the profits.

2 QUESTION: Well, that --

3 MS. WAX: And we have to go after that.

4 QUESTION: That's a new position then. It
5 doesn't matter whether there are any proceeds that can be
6 substituted for the real estate at all. You're saying a
7 BFP always prevails.

8 MS. WAX: No.

9 QUESTION: And the BFP doesn't prevail when the
10 BFP is a doctor.

11 MS. WAX: No, we're not saying that. Let me
12 give you an example why we're not saying that.

13 QUESTION: Well, I don't understand what you are
14 saying then.

15 MS. WAX: We retain the right to trace proceeds
16 into third party hands sometimes when there has been an
17 exchange. For example, suppose Mr. Brenna in this case
18 took his \$200,000 and gave it to his brother-in-law for a
19 Jaguar that was only worth \$30,000. We would reserve the
20 right to trace the \$170,000 that represents the
21 difference, the difference between that amount and the
22 value of the Jaguar, into his brother-in-law's hands
23 because essentially it's a gift just like here it's a gift
24 to Ms. Brenna. The drug profits were a gift to her. We
25 can follow them into her hands. There's nothing in the

1 statute that prevents us from doing that, Your Honor.

2 QUESTION: Isn't it a lot easier simply to read
3 the word "owner" to mean the person who would be the owner
4 but for this provision?

5 MS. WAX: Your Honor, we can't read --

6 QUESTION: All these problems disappear, and I
7 must say I'm -- I just don't understand what the
8 Government's position is at this point. I'm very confused
9 about when you get it, when you follow it, when you don't
10 follow it.

11 MS. WAX: Your Honor, you do not follow assets
12 into the hands of a donee, okay, because it's the same
13 assets. They haven't changed. They've just moved. So,
14 when she received that money, she had profits. When she
15 bought the house, she had proceeds. She was not the owner
16 of either one of those because the Government took title
17 to them when the forfeitable acts were committed, and that
18 is our position. So, she is cut off.

19 QUESTION: (Inaudible) applies even if she was
20 the doctor who performed the services (inaudible). The
21 language of the statute doesn't draw this distinction.

22 MS. WAX: Well, not in the innocent owner
23 defense, Your Honor. We agree with that. The innocent
24 owner defense does not draw --

25 QUESTION: (Inaudible.) What statutory language

1 do you rely on to differentiate between the doctor who was
2 paid for an operation on the one hand and a donee on the
3 other?

4 MS. WAX: Well, we think that the word -- we
5 have to construe the word "proceeds". What does the word
6 "proceeds" mean? That's what we --

7 QUESTION: If the proceeds -- if it's without
8 consideration, but it's not if there was consideration?

9 MS. WAX: Well, the point is proceeds is the
10 body of assets equivalent in value to the original
11 profits. Okay? The question is --

12 QUESTION: They belong to the Government under
13 your -- what you say in your brief anyway.

14 MS. WAX: Well, all --

15 QUESTION: They belong to the Government at the
16 time they pay the doctor's bill or they pay off the
17 preexisting debt.

18 MS. WAX: We're only suggesting, Your Honor,
19 that every transaction doesn't necessarily double,
20 quadruple.

21 QUESTION: Well, I'm not saying it doubles, but
22 it certainly singles under your -- the doctor is paid for
23 an operation he performed 10 years ago with drug proceeds,
24 honest debt. Are those proceeds or aren't they?

25 MS. WAX: Well, he gave good value. He gave it

1 in services.

2 QUESTION: I understand, but are they proceeds
3 or aren't they?

4 MS. WAX: I think under the theory that we've
5 advanced of the word "proceeds," they may not be. They
6 probably wouldn't be.

7 QUESTION: That's certainly not what your brief
8 says.

9 MS. WAX: No, Your Honor. We don't say anything
10 that contradicts this position in our briefs.

11 QUESTION: You do. You say that it's the
12 Government's property at the time it came -- if they
13 caught them right at the time when they're handing in the
14 check, you'd definitely say that's Government money. You
15 can't pay that bill. But if you catch the doctor two days
16 later, after he has deposited it in the bank, it's no
17 longer Government money.

18 MS. WAX: We only say that with regard to
19 recipients of gifts, Your Honor, and if you look at our
20 brief, that's what we say. We don't say anything about
21 bona fide purchasers.

22 QUESTION: Yes, but your theory fitting into the
23 language of the statute doesn't draw a distinction as I
24 understand it.

25 MS. WAX: We're only saying that the word

1 "proceeds" may draw a distinction, but the innocent owner
2 defense doesn't draw a distinction between the two.
3 That's -- we discuss the innocent owner defense. We say
4 that with respect to recipients of gifts, that it remains
5 proceeds, and we don't say anything about bona fide
6 purchasers except for that in that case --

7 QUESTION: The reason you say it's proceeds is
8 because you say it became Government property at the time
9 of the drug transaction.

10 MS. WAX: Exactly, and that's -- but what we're
11 saying is that the word "proceeds" --

12 QUESTION: You're saying you can use Government
13 property to pay off debts, but you can't give it away.
14 That's your position.

15 MS. WAX: If what you get back is something that
16 -- because what you get back is something that the
17 Government can take. You can use the --

18 QUESTION: No, but in the doctor position, you
19 don't get something back. The Government can't take the
20 appendix scar.

21 (Laughter.)

22 MS. WAX: Well, that's true and that's the case
23 that is the hard case. And we have to reconcile that with
24 the proceeds language. I admit that's the hard case, but
25 when -- but the bona fide purchasers who actually give

1 value back to a drug dealer, there's something that we can
2 take, as you yourself said, Justice Souter.

3 I'd like to reserve the rest of my time.

4 QUESTION: Very well, Ms. Wax.

5 Mr. Plaisted.

6 ORAL ARGUMENT OF JAMES A. PLAISTED

7 ON BEHALF OF THE RESPONDENT

8 MR. PLAISTED: Yes, Your Honor. Mr. Chief
9 Justice, may it please the Court:

10 My name is Jim Plaisted, and I represent the
11 respondent, Beth Ann Goodwin.

12 If I may, I don't believe any of the many older
13 cases that this Court has rendered decision in has ever
14 construed an innocent owner provision nor proceeds. In
15 fact, I mean, it is fascinating, if I may for a moment.

16 If you go back to Chief Justice Marshall's
17 opinion in Grundy and Thornburgh, you find that in that
18 case, he talks about proceeds. He talks about many of the
19 things that have come up here. And what he says in his
20 efforts to protect an innocent owner, a bona fide
21 purchaser, in that case, which he did, which he says,
22 look, this statute which was -- it's different because it
23 doesn't say proceeds, but it says the ship, which was
24 falsely registered, is forfeit or its value is forfeit.
25 And then they sued the purchaser for the proceeds that he

1 had transferred the ship for, and Justice Marshall said
2 the statute doesn't have "proceeds" in it.

3 And we don't have a statute that has proceeds in
4 it for another 160 years or so, until we start to get
5 these most recent criminal statute. He -- and civil
6 statutes or quasi-criminal statutes, as this Court often
7 calls them.

8 What he also says is that in such a statute --
9 and the way he protected the innocent owner there, despite
10 the fact that none of these older statutes ever have
11 innocent owner provisions either -- he protected the
12 innocent owner, the bona fide purchaser, by saying, well,
13 the Government had an election in this case.

14 And that's -- I thought I detected a fair shift
15 in the Government's positions from the brief, but at the
16 least they leave themselves with an election. And they
17 leave themselves with an election to go after proceeds in
18 different people's hands.

19 That concept threatens house transactions where
20 there is a person who is involved in drugs in the chain of
21 title for later purchasers. It threatens resales of cars
22 that also are sometimes and often involved in the drug
23 trade and then later are resold.

24 And so, Congress, when it adopted this provision
25 about traceability in this particular statute -- and I

1 presume in the others -- it adopted as well a protective
2 device so that we didn't have unfair takings from people
3 who were innocent. And what they said -- and it's a --
4 it's not statement simply from somebody on the floor.
5 It's not a -- just one of the House reports. In the joint
6 statement -- because this was a bill that was passed in
7 the House, and then the Senate's words were put into it in
8 this particular pertinent provisions, that is, with
9 respect to the innocent owner provision and I believe with
10 respect to proceeds as well when it was adopted in 1978.

11 They said a couple things that reflect what is
12 the intent of Congress. And if I can read it. It does
13 appear in the U.S. Code and Congressional Administrative
14 Reports at 9522. They said due to the penal nature of
15 forfeiture statutes, it's the intent of these provisions
16 that the property will be forfeit only if there's a
17 substantial connection between the property and the
18 criminal activity. And then they went on and, more
19 pointedly for our purposes here, said finally, it should
20 be pointed out that no property would be forfeited under
21 the Senate amendment to the extent of the interest of any
22 innocent owner of the property.

23 And then they said the term "owner" should be
24 broadly construed and interpreted to include any person
25 with a cognizable or legal equitable interest in the

1 property, and then, as if to add a final sentence that
2 addresses our issues here, said specifically the property
3 would not be subject to forfeiture unless the owner of
4 such property knew or consented to the fact that -- and
5 the second thing is -- that the property was proceeds
6 traceable to an illegal exchange, in essence, saying the
7 person has to know.

8 QUESTION: Well, none of that makes a donee an
9 innocent owner.

10 MR. PLAISTED: It makes them innocent, Your
11 Honor. The question is are they covered, isn't it?

12 QUESTION: You have to do some interpolation.

13 MR. PLAISTED: Okay. You have to say are they
14 and should they be covered by that innocent owner
15 provision. Should a donee be covered?

16 And if I may, I thought -- one example about a
17 donation -- and we think that is the basis this case
18 should be decided on, that is, the interpretation of this
19 statute and that phrase. And we submit donees, mere
20 donees, although I don't agree she is one -- but we submit
21 that mere donees do fall within that protection and that
22 Congress intended them to. For example --

23 QUESTION: If she isn't a donee, what is she?

24 MR. PLAISTED: I'm sorry, Your Honor.

25 QUESTION: If she's not a donee, what --

1 MR. PLAISTED: Well, Your Honor, I mean, it is a
2 complicated relationship. She had a long-term
3 relationship with this man.

4 QUESTION: Yes, indeed.

5 MR. PLAISTED: He lived with her. She cooked
6 for him. She cleaned for him.

7 QUESTION: And the determination of innocence is
8 yet to come, isn't it, even if you prevail here?

9 MR. PLAISTED: That's true. There -- I mean,
10 the remand was a remand back to the district court for
11 further proceedings. So, yes, we -- the statute puts the
12 burden on the innocent owner to demonstrate their
13 innocence, and so that is true.

14 But in terms of donees, for example, if Brenna
15 had taken the money, the \$200,000, that was used to buy
16 the -- buy it and given it to the church or a charity, I
17 submit it wouldn't serve the other purpose of this statute
18 which the Government cited in its cert petition and is in
19 a Senate report one iota.

20 The other purpose of this statute is as -- and
21 they quote a Senate report -- today few in Congress or the
22 law enforcement community fail to recognize that the
23 traditional criminal sanctions of fine and imprisonment
24 are inadequate to deter and punish the enormously
25 profitable and dangerous trade in drugs. To forfeit that

1 money from the church or the charity, although they are
2 even more clearly a mere donee, would not further
3 deterrence, would not further -- would not punish a drug
4 offender one iota or one whit. It wouldn't advance the
5 only other real purpose of this statute at all.

6 If, for example -- it becomes even clearer --
7 let's say Brenna had bought --

8 QUESTION: What if the drug dealer gave the
9 money to his brother? Now, you can say forfeiting it from
10 his brother isn't going to advance the purpose of the
11 statute, and yet, clearly if this statute means anything,
12 it means that -- at least to me, that if he gives it to
13 his brother, it's subject to forfeiture.

14 MR. PLAISTED: Your Honor, the test that
15 Congress chose to couple with what was a very broad
16 forfeiture provision, this traceable concept, was to focus
17 on innocence. With respect to a brother or someone else
18 who perhaps participated with the individual in the bad
19 acts, probably the result would be it would be forfeited.
20 But that is -- would be determined at a trial on the
21 question that is often at a trial. Is he innocent?

22 QUESTION: Well, where are you getting this
23 congressional intent that you're talking about? From the
24 statute?

25 MR. PLAISTED: From the -- what I referenced

1 was, one, the Senate report saying it was deter crime and
2 then, secondly, from the -- I'm sorry.

3 QUESTION: Yes. Where do you get it out of the
4 statute?

5 MR. PLAISTED: The statute says -- it uses the
6 words that you won't forfeit property from one -- from an
7 owner by reason of an act committed -- that the owner --
8 established by the owner to have been committed without
9 his knowledge, meaning without his knowledge, and that's
10 why it's called innocent owner.

11 QUESTION: To have been committed. So, if I
12 commit the fraudulent act and I take the proceeds and I
13 give it to my brother and I say, brother of mine, I've
14 committed a fraudulent act, these are the proceeds, take
15 them and run, he is an innocent owner under this
16 provision. Right?

17 MR. PLAISTED: No.

18 QUESTION: Because my act was committed -- he
19 can establish that the act to have been committed without
20 his knowledge or consent.

21 MR. PLAISTED: No, I don't believe he would be
22 under those circumstances. I think --

23 QUESTION: Read the language again, would you?

24 MR. PLAISTED: Yes, Your Honor.

25 QUESTION: To the extent of the interest of an

1 owner by reason of any act or omission -- that would be
2 the crime --

3 MR. PLAISTED: Right.

4 QUESTION: -- established by that owner to have
5 been committed or omitted without the knowledge or consent
6 of that owner. The brother in that case could say this
7 act was committed without my knowledge or consent. I
8 didn't know anything about it when it was committed.

9 MR. PLAISTED: When -- what I would take issue
10 with is applying the concept of when it was committed as
11 opposed to when he receives the proceeds. And so --

12 QUESTION: But it says to have been committed
13 without his consent, not that he was not aware of the fact
14 of its commission. It said it was -- he has to establish
15 that it was committed without his knowledge or consent.
16 That's a very strange innocent owner.

17 QUESTION: I suppose the question is whether
18 those words modify "establish" or modify "committed".

19 QUESTION: Established?

20 QUESTION: If they establish that he didn't have
21 the knowledge at the time (inaudible) established it.

22 MR. PLAISTED: I --

23 QUESTION: I think there's an argument as to
24 what you mean as to (inaudible).

25 MR. PLAISTED: I think, Your Honor, the logical

1 test would be, especially when you're dealing with
2 proceeds because proceeds -- this house -- for example, at
3 the time the illegal act was committed in 1981, this house
4 was a stranger to that transaction. No one, the people
5 who owned it or the people who are not of record here who
6 sold it to Ms. Goodwin sometime thereafter, the people who
7 -- it had nothing to do with it.

8 QUESTION: Let me just ask you. What's your
9 position as -- on the meaning of the statute? Do you
10 think in the hypothetical case of an act performed without
11 the knowledge of the ultimate owner, the woman here, but
12 she found out about the act before the time of the gift,
13 would she be able to plead innocent ownership in your
14 view?

15 MR. PLAISTED: In my view, no, Your Honor. I
16 mean, I think the logical time to apply it is the time of
17 the gift, the time of the receipt.

18 QUESTION: Well, that's very logical, but we
19 have -- so, you're arguing logic the same way the United
20 States is. I wish somebody would try to apply the
21 language of the statute.

22 MR. PLAISTED: But, Your Honor, if I may, in
23 terms of when you're talking about proceeds, proceeds like
24 something like this -- it necessarily -- I mean, the house
25 didn't have anything to do with the transaction at all at

1 the time the illegal acts were committed. It wasn't
2 involved. It later becomes arguably tainted by the
3 purchase with funds.

4 And so when you are applying that concept, which
5 is the full scope of this particular statute -- it's a
6 statute designed to cover items exchanged for drugs and
7 proceeds traceable thereto -- the only time that it would
8 seem logical to assess the knowledge test would be at the
9 time of the gift. Proceeds necessarily, as they
10 transmute, are afterwards. The knowledge would have to
11 -- would seem to be tested and logically tested at that
12 time, not at the earlier time when they have nothing to do
13 with it. And so, that's where and why I contend that.

14 Your Honor, with respect to, for example, this
15 particular property, if -- let me -- the reason I say and
16 submit to this Court that there is no difference between
17 donees and bona fide purchasers -- and the United States
18 seems to have conceded that some purchasers qualify as
19 innocent owners under this statute -- is there's no
20 distinction in the statute at all between bona fide
21 purchasers and innocent owners. The test that Congress
22 chose to enunciate was a lack of knowledge test, not a
23 test of bona fide purchase.

24 I submit they chose that test for a reason.
25 They were drafting a very broad, very far-reaching

1 forfeiture statute, and to make sure there were not
2 unlawful takings, to make sure there were not unfair
3 takings, they drafted a test that focused on innocence.
4 And that is what the joint statement seems to indicate.

5 QUESTION: You can also say that the test they
6 drafted, Mr. Plaisted, tends to be a retrospective one by
7 the use of the language "to have been committed" or
8 "committed".

9 MR. PLAISTED: Yes, Your Honor, and with respect
10 to proceeds, then that would often make sense.

11 In terms of -- as I had understood the
12 Government's argument previously, I thought they were
13 saying they did have the right to elect to go after even
14 bona fide purchasers in some instance, and even if it is
15 only in limited instances, it creates an anomaly and a
16 problem when you construe the criminal statute which
17 protects bona fide purchasers specifically. Congress knew
18 how to protect bona fide purchasers alone when they wanted
19 to, and they said so.

20 And when you put next to it the civil statute
21 -- and the reason I say that is because the civil statute
22 is a statute addressed to in rem actions. It is a statute
23 that if a person who is under indictment and has made a
24 bona fide sale -- if the Government can no longer reach
25 that asset under the criminal statute, under the civil

1 statute, if the Government elects to do so, and if their
2 construction of the innocent owner provision stands, and
3 if they do have the right to go after those things, they
4 can impact, detract from, and I had thought completely
5 override the bona fide purchaser provision in the criminal
6 statute. And so, the only way to make sense of both
7 together is to understand that the civil statute has been
8 drafted to be much more far-reaching and the protection is
9 more far-reaching.

10 With respect to --

11 QUESTION: If we interpreted the word "owner" in
12 that last provision, to the extent of the interest of an
13 owner, to mean someone who has somehow cancelled out the
14 United States' claim by having paid money for it so that
15 all -- the United States could go and reclaim any gifts at
16 all, you'd have to show that some value was given.

17 MR. PLAISTED: You --

18 QUESTION: I don't see anything terrible about
19 that. Why should the brother who, even if he didn't know
20 about the illegal transaction -- why should he keep the
21 ship that was ill-gotten?

22 MR. PLAISTED: There are two parts to that,
23 Judge, and -- Justice. I'm sorry.

24 QUESTION: No problem.

25 MR. PLAISTED: There are two parts to that.

1 First, the question about the brother. Normally what is
2 going to happen with the brother is he's going to know,
3 and that's not a real problem. But with respect to the
4 construction --

5 QUESTION: Let's assume he doesn't. Let's
6 assume he doesn't know. Why shouldn't the United States
7 still be able to take the house back?

8 MR. PLAISTED: Because we're construing --

9 QUESTION: Easy come, easy go. He didn't pay
10 anything for it. What's the harm?

11 MR. PLAISTED: I would submit, Your Honor, that
12 the legislature when they drafted it, said the term
13 "owner" -- and in joint statement -- what I would point to
14 is the joint statement of Congress where they said
15 construe "owner" broadly, give it meaning to include any
16 person with any cognizable, legal, or equitable interest
17 in the property seized.

18 QUESTION: Well, I say he has no cognizable,
19 legal, or equitable interest if he takes something that
20 would otherwise belong to the United States without him
21 paying any value for it. A bank who mortgaged it could
22 recover or somebody who bought it could recover, but he's
23 not an owner if he got as a gift.

24 MR. PLAISTED: Your Honor, can -- you can take
25 that position. I don't think that's what Congress

1 intended.

2 QUESTION: (Inaudible). Suppose the defendant
3 has set up an irrevocable trust for his minor children,
4 age 2 and 3, and it's irrevocable and it's a gift to the
5 children, but it just happens to be in trust. And you say
6 that that is protected by the innocent owner.

7 MR. PLAISTED: It may be. I'm confident the
8 Government would attack it on a number of grounds and
9 would have a trial on the issues. Is it a sham? Did he
10 retain any control? Is there any way he gets any benefit
11 from it?

12 QUESTION: No. Any lawyer would say that he has
13 no control over that trust.

14 MR. PLAISTED: Your Honor, I --

15 QUESTION: Let's just assume that.

16 MR. PLAISTED: If you assume that it was found
17 as a matter of fact that he did, indeed, have no control
18 over it, it was totally irrevocable --

19 QUESTION: As a matter of law.

20 MR. PLAISTED: -- and there was no way he could
21 reach it or --

22 QUESTION: That's right.

23 MR. PLAISTED: -- influence the trustees or any
24 of those other factual questions, then I would have to
25 concede that he could probably do that under this statute.

1 QUESTION: He could do it.

2 MR. PLAISTED: He could do it.

3 QUESTION: And the Government could not recover
4 the funds that are in trust.

5 MR. PLAISTED: See, where I take issue with --

6 QUESTION: Is that right?

7 MR. PLAISTED: I agree that if all those things
8 are conceded, that would have to be the answer.

9 But what would happen practically is the
10 Government would not agree with that, and they probably
11 would have a great plethora of facts to show he had some
12 control. He was getting some benefit. It was something
13 that --

14 QUESTION: Well, if the guy has enough money to
15 set up this trust, he's got enough money to buy a -- hire
16 a good lawyer and take very substantial advantage or make
17 sure that he has no control over it, and thereby he
18 supports his little children with the proceeds from drug
19 money.

20 MR. PLAISTED: That may be the very answer
21 there, Your Honor, in that if he is escaping another
22 obligation, the Government would attempt to seize the
23 value that he was -- of the obligation he was escaping, as
24 I think we heard from the Government. They would say he
25 has an obligation to support his children. He no longer

1 has to do that.

2 QUESTION: Well, he gave this house away to
3 avoid a palimony suit.

4 (Laughter.)

5 MR. PLAISTED: That may be an obligation too,
6 and again, it is something that -- that's what trials are
7 about, and that is what one would decide at a hearing --

8 QUESTION: But he has got no obligation --

9 MR. PLAISTED: -- as to whether or not he had
10 gotten the benefit.

11 QUESTION: He has got no obligation to make
12 either his pal or his children millionaires, and that's
13 still the consequence of the Chief's example, isn't it?

14 MR. PLAISTED: Yes. And to the extent that the
15 example asks you to assume that it is absolute, it's
16 irrevocable, there's no benefits to him as to the excess
17 over and above things, I concede that that under this
18 statute, the way Congress drafted it, would be something
19 that could happen.

20 QUESTION: Safely. Could happen -- he could
21 safely set it up.

22 MR. PLAISTED: I -- Your Honor, I have grave
23 doubts that the Government would accept it or that it
24 would be safe, but it could happen.

25 But I don't -- I think what happened when

1 Congress adopted the test they adopted was they opted for
2 a very far-reaching test, one that gives them the right to
3 attack all such transactions as traceable and then
4 enunciated a test which was innocence of knowledge as to
5 those facts that one would have a trial over on those very
6 issues. And so, to the extent Congress chose the test and
7 chose the parameters, I think you -- yes, it could happen,
8 but by the same token, I think the Government would
9 contest it, and if they had any facts that suggested it
10 was anything otherwise, they would prevail.

11 And so, while it is a possibility, I don't think
12 it is of such consequence that it warrants overriding what
13 does appear in the joint statement a fairly clear
14 expression of intent to protect innocent recipients which
15 can include very, very admirable recipients. You could
16 have an example where if Brenna had, for example,
17 purchased this house and had given it to the United Way
18 and they used it to help rehabilitate drug addicts, the
19 forfeiture of that property would do -- would undercut the
20 other purpose of this program. They are certainly
21 innocent, and if you read the statute --

22 QUESTION: Well, I --

23 MR. PLAISTED: I'm sorry, Your Honor.

24 QUESTION: I suppose that if -- even if you took
25 the bona fide purchaser for value approach in defining an

1 owner, I suppose that you could make an argument that this
2 -- the lady involved in this case gave some value.

3 MR. PLAISTED: You could.

4 QUESTION: And in most States, you would say --
5 or in a lot of States, it would be jointly held property.

6 MR. PLAISTED: That's true. It would -- in
7 normal -- if she was married in New Jersey, it would have
8 been jointly held if it had been held in both their names,
9 for example.

10 QUESTION: May I ask one question here? This
11 section 6 of 881 does include in part instrumentalities,
12 as well as proceeds, as I understand it. Securities used
13 are intended to be to facilitate any violation of the
14 chapter. Does that -- is there another section also
15 dealing with instrumentalities?

16 MR. PLAISTED: I believe 7 does, Your Honor. I
17 don't have the statute --

18 QUESTION: Part of 6 seems to deal with --
19 securities used as instrumentalities.

20 MR. PLAISTED: Yes, and 4 -- section -- and 4 -
21 - there's another section as well that deals with
22 conveyances, for example, specifically, and they too have
23 separate protections for innocent owners. But to the
24 extent this statute is and does create the proceeds
25 concept, which is where the majority of the cases under

1 this section are litigated, the conveyances and the other
2 sections cover other aspects of it.

3 QUESTION: 7 deals I guess generally with the
4 problem of property owned by someone other than the
5 criminal enterprise before the transactions that gave rise
6 to the justification for forfeiture. In other words, if
7 you own a boat and you lend it to somebody and they engage
8 in a drug transaction, the boat would be forfeitable, but
9 not if the owner of the boat had no idea what was being
10 done with it. That's what that --

11 MR. PLAISTED: That's one of the other sections,
12 yes.

13 QUESTION: But the proceeds has a whole
14 different problem.

15 MR. PLAISTED: Your Honor, I would -- as I had
16 understood the Government's brief, they were taking the
17 position -- if look at footnote 8, they had suggested in
18 footnote 8 that the innocent owner provision had meaning
19 only for people who took before the illegal transaction
20 not for anybody after. And so, if one reads 8, the
21 Government's brief suggested that they were, in fact,
22 reserving the right to attack bona fide purchasers for
23 value.

24 If that was or if they are even reserving the
25 right to opt for that, then there is no meaning to the

1 innocent owner clause. I mean, it becomes meaningless.
2 The example in 8 where they posit, well, it's -- and it
3 starts midway down through footnote 8 where they posit it
4 is possible for funds to be entrusted to a person and that
5 person subsequently uses them to engage in a drug
6 transaction without the owner's knowledge. The sum of
7 money might be turned over to a friend for investment.
8 So, A turns it over to B, a banker or a broker. The
9 banker or the broker uses it instead for drugs, and then
10 the Government later seizes proceeds. The Government
11 posited in that case that that gave meaning to innocent
12 owner because the ownership was before the illegal acts,
13 and from that at least we drew that they were attacking
14 all bona fide purchasers or at least reserving the right
15 to.

16 If they are doing that, that particular section
17 provides -- when you read it, you never find an example
18 like that in any case cited to this Court. And we
19 suggested that in our brief and challenged the Government
20 to provide one, and they did not. But if you think about
21 that, the example they proffer, it has no meaning either.
22 If A gives the money to B, B uses it, and the Government
23 seizes it, A going to the Government and saying, well, B
24 owes me money that I entrusted him to and you happened to
25 have seized proceeds from this fellow, turn them over to

1 me, a private citizen has no right of tracing. He has a
2 debt owed from B, but he can't go claim that against the
3 Government, and I would submit that's why there are no
4 cases. It is -- if not meaningless, it's virtually
5 meaningless.

6 And I would ask this Court not to give that
7 construction to this clause. Congress chose the words
8 when they know -- when they wanted to express bona fide
9 purchaser, they said so, and they said it in the criminal
10 statute. In this particular statute, they made a very
11 broad statute, a statute that is far broader than the
12 criminal statute. And they said innocent owners are
13 protected.

14 QUESTION: I don't know how that problem of an
15 individual having no right to trace funds just exists with
16 respect to the Government -- Government's example and
17 doesn't exist later down the line where you would apply
18 the same clause to funds that have been taken by the
19 Government. Why doesn't the same problem exist for you?
20 I don't see why that's the Government's problem.

21 MR. PLAISTED: I'm not sure I understand, Your
22 Honor.

23 QUESTION: Well, you say that the private owner
24 of funds cannot trace funds. Only the Government can
25 trace funds for some reason. Right? That's how you shoot

1 down the Government's argument, assuming this only applies
2 to funds. Of course, it applies to other things of value
3 as well, ships and so forth.

4 But just speaking of funds, why doesn't the same
5 problem exist under your theory later on? Funds are --

6 MR. PLAISTED: What they were saying was that
7 later on innocent owners could not take because if they're
8 taking after the date of the criminal act, they take
9 nothing. And so, if this example doesn't have meaning,
10 innocent owner has no meaning.

11 QUESTION: Your client takes the funds, puts
12 them -- takes them over to the bank, gives them to the
13 bank.

14 MR. PLAISTED: Right.

15 QUESTION: The Government seizes them from the
16 bank.

17 MR. PLAISTED: Right.

18 QUESTION: How can she get them back? She can't
19 because you say private individuals can't trace funds.
20 Only the Government can trace funds.

21 MR. PLAISTED: What I'm saying is she can't
22 enforce against the Government --

23 QUESTION: Right.

24 MR. PLAISTED: -- a third party, her debt from
25 B, and I agree. And so all I was saying was that this

1 example breathes no meaning into innocent owner at all
2 because it is meaningless.

3 Thank you very much.

4 QUESTION: Thank you, Mr. Plaisted.

5 Ms. Wax, you have a minute remaining.

6 REBUTTAL ARGUMENT OF AMY L. WAX

7 ON BEHALF OF THE PETITIONER

8 MS. WAX: Your Honor, Justice Scalia was right,
9 that we haven't focused very much on the language of the
10 statute. So, it's that to which I'd like to turn right
11 now.

12 The term "proceeds" applies to the house, Ms.
13 Ann -- Ms. Goodwin's house in this case. There can be no
14 question about that. Now, since it applies, this house
15 and the money used to buy that house, I should say,
16 belonged to the United States at the time that it was
17 generated through an illegal transaction, and that follows
18 from section 881(h) of the statute vesting title in the
19 United States in all assets described in Subsection
20 (a)(6), all things of value, all proceeds traceable to
21 such an exchange, including the subcategory of assets that
22 is ultimately exempted from forfeiture because it belongs
23 to an innocent owner.

24 Now, since the United States gets title to that
25 property upon commission of illegal acts, she cannot be

1 owner.

2 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Wax.

3 The case is submitted.

4 (Whereupon, at 12:02 p.m., the case in the
5 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of: 91-781

United States, Petitioner v. A Parcel of Land, Buildings,

Appurtenances and Improvements, Known as 92 Buena Vista Avenue, Rumson,

New Jersey, et al.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY *Lona M. May*

(REPORTER)