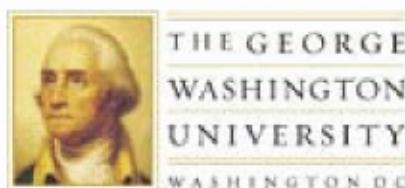


The Burger Court Opinion Writing Database

United States v. U.S. Coin & Currency
401 U.S. 715 (April 5, 1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

December 17, 1970

Re: No. 5 - United States v. United States Coin and Currency

Dear Byron:

Join me in your opinion.

Regards,



W. E. B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 25, 1971

No. 5 -- United States v. U. S. Coin and Currency

Dear Byron:

Please join me in the above.

Regards,

Mr. Justice White
cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 13, 1971

Re: Retroactivity Holds in Marchetti, Chimel, On Lee

Dear John:

Your April 9 suggestion is excellent, but I would set up a faster schedule -- all of each group at one conference and dispose of them in three conferences. I doubt they will give us too much trouble but all the more reason to clear the decks early.

Accordingly I suggest we discuss the "Marchetti Cases" this Friday; the "On Lee Cases" on the 22nd, and the "Chimel Cases" on the 30th.

Regards,

W.R.H.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 13, 1971

Re: Retroactivity Holds in Marchetti, Chimel, On Lee

MEMORANDUM TO THE CONFERENCE:

Since my earlier memo today on the above I have discussed the "timetable" with John Harlan and we agree now on the schedule I proposed amended by commencing on April 22, followed by the conferences on April 30, and May 14.

Regards,

WRB

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1

SUPREME COURT OF THE UNITED STATES

Black, J.
No. 5—OCTOBER TERM, 1970 Circulated: NOV 23 1970

United States, Petitioner, On Writ of Certiorari to the
v. United States Court of
United States Coin and Appeals for the Seventh
Currency, Etc. Circuit.

Recirculated:

[December —, 1970]

MR. JUSTICE BLACK, dissenting.

On January 29, 1968, we held in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), that a congressional enactment that required persons engaged in gambling in violation of state law to make reports of their criminal activities compelled them to incriminate themselves in violation of the Fifth Amendment. Long before those decisions, Donald J. Angelini was engaged in the business of accepting wagers in Cicero, Illinois. He failed to register with the District Director of Internal Revenue as a gambler and failed to pay the special occupational tax on gamblers required by federal law. Had Angelini registered as required, he would have incriminated himself under Illinois laws prohibiting wagering. Angelini was arrested by federal agents who seized \$8,674 in cash which he had in his possession at the time of his arrest. He was convicted of failing to register and to pay the occupational tax. Thereafter, the Government instituted forfeiture proceedings against the \$8,674. In 1964 the United States District Court for the Northern District of Illinois found that the money was the proceeds of illegal gambling and entered judgment for the Government. After we remanded Angelini's case to the Court of Appeals for reconsideration in light of *Marchetti* and *Grosso*, the Court of Appeals reversed the forfeiture judgment, on the ground that Angelini had been compelled to incriminate himself.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES: SIRTH. J.

No. 5—OCTOBER TERM, 1970

Circulated:

United States, Petitioner, On Writ of Certiorari to the
v. United States Court of
United States Coin and Appeals for the Seventh
Currency, Etc. Circuit.

Recirculated: 12-7-70

[December —, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, dissenting.

On January 29, 1968, we held in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), that a congressional enactment that required persons engaged in gambling in violation of state law to make reports of their criminal activities compelled them to incriminate themselves in violation of the Fifth Amendment. Long before those decisions, Donald J. Angelini was engaged in the business of accepting wagers in Cicero, Illinois. He failed to register with the District Director of Internal Revenue as a gambler and failed to pay the special occupational tax on gamblers required by federal law. Had Angelini registered as required, he would have incriminated himself under Illinois laws prohibiting wagering. Angelini was arrested by federal agents who seized \$8,674 in cash which he had in his possession at the time of his arrest. He was convicted of failing to register and to pay the occupational tax. Thereafter, the Government instituted forfeiture proceedings against the \$8,674. In 1964 the United States District Court for the Northern District of Illinois found that the money was the proceeds of illegal gambling and entered judgment for the Government. After we remanded Angelini's case to the Court of Appeals for reconsideration in light of *Marchetti* and *Grosso*, the Court of Appeals reversed the forfeiture judgment, on the ground that Angelini had been compelled to incriminate himself.

February 19, 1971

MEMORANDUM FOR THE CONFERENCE

Re: No. 5 - United States v. U. S.
Coin and Currency, etc.

This case was originally assigned
to Mr. Justice White. I am now re-
assigning it to Mr. Justice Harlan.

H. L. B.

The Chief Justice
✓Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

WB

TM

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 2, 1971

Dear John,

Re: No. 5 - United States v. United States Coin
and Currency, Etc.

Please note the following at the end of your
opinion in this case:

"MR. JUSTICE BLACK concurs in the
result and in substantially all of the
opinion except in so far as it distinguishes
Linkletter v. Walker, 381 U. S. 618 (1965),
and its progeny. He continues to adhere
to the view that these cases were wrongly
decided and should now be overruled."

Sincerely,

H. L. B.


Mr. Justice Harlan

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 3, 1971

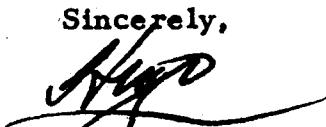
Dear John:

Re: No. 5 - United States v. United States Coin and
Currency, etc.

I would be glad to join your opinion in this case if you
could add the following addenda:

Mr. Justice Black concurs in the Court's judgment
and the opinion so far as it goes. He would go
further and now overrule Linkletter v. Walker,
381 U.S. 618 (1965), and its progeny.

Sincerely,


H. L. B.

Mr. Justice Harlan

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1

SUPREME COURT OF THE UNITED STATES

No. 5.—OCTOBER TERM, 1970

11/19/70

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. } Circuit.

[November —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

On our remand the Court of Appeals said:

"The prospect of a felony conviction involved in *Marchetti* of course has a greater coercive effect than the possible loss of money involved herein. On the other hand, the prospect of losing in excess of \$8,000 has a substantial coercive effect. In this respect, the landmark case of *Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746, is controlling. *Boyd* was a civil forfeiture action in which the claimant was given a choice between producing a possibly incriminating document and forfeiting the property. The Court held that such a choice was impermissible under the Fourth and Fifth Amendments. . . .

"The only apparent purpose of 26 U. S. C. § 7302, as applied here, is to punish violators of Sections 4411 and 4412 of the Internal Revenue Code by taking away money used in committing the violations. . . . As a practical matter, *Marchetti* means that such violations are no longer punishable directly. It follows that they should not be punished indirectly through forfeiture." 393 F. 2d 499, 500.

I would adhere to *Boyd* and affirm the Court of Appeals.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March first
1971

Dear John:

In No. 5 - United States v. United
States Coin and Currency, which you
circulated on February 27, 1971,
please note that I join your opinion.
It is indeed an excellent job.

William O. Douglas

Mr. Justice Harlan

CC: Mr. Chief Justice
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

FEB 27 1971

No. 5.—OCTOBER TERM, 1970

Recirculated:

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. } Circuit.

[March —, 1971]

MR. JUSTICE HARLAN delivered the opinion of the Court.

After Donald J. Angelini had been convicted for failing to register as a gambler and to pay the related gambling tax required by federal law, 26 U. S. C. §§ 4411, 4412, 4901, the United States instituted these forfeiture proceedings to obtain \$8,674 which Angelini had in his possession at the time of his arrest. The District Court for the Northern District of Illinois found that the money was being used in a bookmaking operation in violation of these internal revenue laws and ordered forfeiture under 26 U. S. C. § 7302 which provides:

"It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws . . . and no property rights shall exist in any such property. . . ."

When the Court of Appeals affirmed, we granted certiorari, 390 U. S. 204, and remanded the case for further consideration in the light of our decisions in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), which precluded the criminal conviction of gamblers who properly assert their privilege against self-incrimination as a ground for their failure to comply with these aspects

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated MAR 4 1971

No. 5.—OCTOBER TERM, 1970

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States Coin and | Appeals for the Seventh
Currency, Etc. | Circuit.

[March —, 1971]

MR. JUSTICE HARLAN delivered the opinion of the Court.

After Donald J. Angelini had been convicted for failing to register as a gambler and to pay the related gambling tax required by federal law, 26 U. S. C. §§ 4411, 4412, 4901, the United States instituted these forfeiture proceedings to obtain \$8,674 which Angelini had in his possession at the time of his arrest. The District Court for the Northern District of Illinois found that the money was being used in a bookmaking operation in violation of these internal revenue laws and ordered forfeiture under 26 U. S. C. § 7302 which provides:

"It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws . . . and no property rights shall exist in any such property. . . ."

When the Court of Appeals affirmed, we granted certiorari, 390 U. S. 204, and remanded the case for further consideration in the light of our decisions in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), which precluded the criminal conviction of gamblers who properly assert their privilege against self-incrimination as a ground for their failure to comply with these aspects

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

From: Harlan, J.

Circulated:

Recirculated

MAR 3 1 1971

SUPREME COURT OF THE UNITED STATES

No. 5.—OCTOBER TERM, 1970

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. } Circuit.

[April —, 1971]

MR. JUSTICE HARLAN delivered the opinion of the Court.

After Donald J. Angelini had been convicted for failing to register as a gambler and to pay the related gambling tax required by federal law, 26 U. S. C. §§ 4411, 4412, 4901, the United States instituted these forfeiture proceedings to obtain \$8,674 which Angelini had in his possession at the time of his arrest. The District Court for the Northern District of Illinois found that the money was being used in a bookmaking operation in violation of these internal revenue laws and ordered forfeiture under 26 U. S. C. § 7302 which provides:

“It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws . . . and no property rights shall exist in any such property. . . .”

When the Court of Appeals affirmed, we granted certiorari, 390 U. S. 204, and remanded the case for further consideration in the light of our decisions in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), which precluded the criminal conviction of gamblers who properly assert their privilege against self-incrimination as a ground for their failure to comply with these aspects

1pp. 8,9

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

April 9, 1971

Dear Chief:

The Clerk's Office has distributed to the Brethren a list of all cases held for our decisions involving the "retro-activity" of Marchetti (Nos. 5, 36) and Chimel (Nos. 51, 81, 82) and also the validity of On Lee (No. 13). It is formally denominated as List 6 for the April 16 Conference. The list contains 25 "Marchetti cases;" 33 "On Lee cases;" and 36 "Chimel cases." Undoubtedly, there will be a few cases which the Conference voted to hold for our recent decisions in the foregoing cases, but which the Clerk's Office overlooked in the initial compilation of this list.

Omitting the April 16 Conference, the Court is scheduled to hold 6 additional Conferences. I suggest that the Clerk be instructed to relist the cases on List 6 over the course of these 6 remaining Conferences as follows:

April 23 (or 22)	- The first 18 "Chimel cases"
April 30	- The final 18 "Chimel cases"
May 14	- The first 17 "On Lee cases"
May 21	- The final 16 "On Lee cases"
May 28	- The first 15 "Marchetti cases"
June 4	- The remaining 10 "Marchetti cases" and any other cases held for Nos. 5, 13, 36, 51, 81 or 82 that subsequently appear.

Sincerely,



The Chief Justice

CC: The Conference

P. S.: The foregoing suggestions are prompted by our course in the "death cases," which it seems to me is working out very well.

*Circulated
2-5-71*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 5.—OCTOBER TERM, 1970

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. } Circuit.

[February —, 1971]

MR. JUSTICE BRENNAN, dissenting.

In this case the Court holds that the Government may continue indefinitely to enforce criminal penalties against individuals who had the temerity to engage in conduct protected by the Bill of Rights so long as the punishment was imposed prior to the day that this Court held the conduct protected. Specifically, it decides that notwithstanding our holding in *Marchetti*¹ and *Grosso*² that proper assertion of the privilege against self-incrimination provides an absolute defense to prosecution under the federal wagering tax statutes, the United States may nevertheless confiscate Donald Angelini's money because Angelini refused to incriminate himself by registering the bookmaking operation in which the money was used. I believe that this result has no more support in reason than it does in our cases. I would hold this aspect of *Marchetti* and *Grosso* fully retroactive and affirm the judgment of the Court of Appeals.³

¹ *Marchetti v. United States*, 390 U. S. 39 (1968).

² *Grosso v. United States*, 390 U. S. 62 (1968).

³ I express no opinion on the separate question whether *Marchetti* and *Grosso* should be retroactively applied to govern cases where an individual, instead of standing on his Fifth Amendment privilege, has provided the information required under the federal wagering tax statutes. Cf. *Mackey v. United States*, *ante*, at — (BRENNAN, J., concurring in judgment).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 1, 1971

RE: No. 5 - United States v. U.S. Coin & Currency

Dear John:

As I mentioned this Noon, I am very happy to join you in the above. I shall not write separately.

Sincerely,


W.J.B. Jr.

Mr. Justice Harlan

cc: The Conference

March 1, 1951

RE: No. 5 - United States v. U.S. Coin & Currency

Dear John:

The small point I mentioned is at page 2 of your opinion. It's the sentence, "The statute commanded that gamblers submit special registration statements and tax returns that contained information which could well incriminate them in many circumstances." In No. 36 - Mackey v. United States, my emphasis was that Marchetti was written in the context of wagering tax statutes which presented a real and substantial danger of subjecting the registrant to criminal prosecution for his gambling activities. I think your "in many circumstances" is not inconsistent with my view in Mackey, but there would be no question whatever if you substituted for your "in many circumstances" something like "under state and federal gambling laws."

As I told you, I'll leave the decision entirely to you and gladly accept it.

Sincerely,

Mr. Justice Harlan

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

circulated: 3-30-71

No. 5.—OCTOBER TERM, 1970

Recirculated:

United States, Petitioner, } On Writ of Certiorari to the
v. United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. Circuit.

[April —, 1971]

MR. JUSTICE BRENNAN, concurring.

I join the opinion of the Court. The dissent would have us hold that the Government may continue indefinitely to enforce criminal penalties against individuals who had the temerity to engage in conduct protected by the Bill of Rights before the day that this Court held the conduct protected. Any such holding would have no more support in reason than it does in our cases.

I

Frank recognition of the possible impact of retroactive application of constitutional decisions on the administration of criminal justice has led this Court to establish guidelines to determine the retroactivity of "constitutional rules of criminal procedure." *Stovall v Denno*, 388 U. S. 293, 296 (1967). Since "each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice," the "retroactivity or non-retroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based." *Johnson v. New Jersey*, 384 U. S. 719, 728 (1966). But although "[t]he extent to which a condemned practice infects the integrity of the truth-determining process at trial is a 'question of probabilities,' "

[e]

Circulated
3-30-71

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 5.—OCTOBER TERM, 1970

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. | Circuit.

[April —, 1971]

MR. JUSTICE BRENNAN, concurring.

I join the opinion of the Court. The dissent would have us hold that the Government may continue indefinitely to enforce criminal penalties against individuals who had the temerity to engage in conduct protected by the Bill of Rights before the day that this Court held the conduct protected. Any such holding would have no more support in reason than it does in our cases.

I

Frank recognition of the possible impact of retroactive application of constitutional decisions on the administration of criminal justice has led this Court to establish guidelines to determine the retroactivity of "constitutional rules of criminal procedure." *Stovall v Denno*, 388 U. S. 293, 296 (1967). Since "each constitutional rule of criminal procedure has its own distinct functions, its own background of precedent, and its own impact on the administration of justice," the "retroactivity or non-retroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based." *Johnson v. New Jersey*, 384 U. S. 719, 728 (1966). But although "[t]he extent to which a condemned practice infects the integrity of the truth-determining process at trial is a 'question of probabilities,' "

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1970

5 - United States v. U. S. Coin & Currency

Dear Byron,

I am glad to join the opinion you have
written for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 30, 1971

No. 5 - U. S. v. U. S. Coin and Currency, Etc.

Dear Byron,

I am glad to join your dissenting opinion
in this case.

Sincerely yours,

P.S.,
P.J.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 14, 1971

#5

Re: Cases held for Coin and Currency,
Williams-Elkanich, and White

Dear Chief,

The timetable proposed in your second memorandum of April 13 seems entirely satisfactory to me.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

3

From: White, J.

SUPREME COURT OF THE UNITED STATESdated: 11-18-70
Recirculated:

No. 5.—OCTOBER TERM, 1970

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States Coin and | Appeals for the Seventh
Currency, Etc. | Circuit.

[November —, 1970]

MR. JUSTICE WHITE announced the opinion of the Court.

In 1964, Donald J. Angelini was convicted for failing to register as a gambler and to pay the related gambling tax required by federal statutes. 26 U. S. C. §§ 4411, 4412, 4901.¹ The United States then instituted these forfeiture proceedings to obtain \$8,674 in cash which was in Angelini's possession at the time of his arrest in 1963. The District Court for the Northern District of Illinois found that the money had been used in a bookmaking operation in violation of the internal revenue laws and ordered forfeiture under 26 U. S. C. § 7302.²

The Court of Appeals affirmed, 379 F. 2d 946 (CA7 1967), but we vacated that judgment and remanded the

¹ Angelini was sentenced on a two-count indictment to 60 days in prison and a \$2,500 fine, but sentence on the second count was suspended and he was placed on probation for three years commencing at the expiration of the 60-day prison term. The conviction was affirmed on appeal, *United States v. Angelini*, 346 F. 2d 278 (CA7), and certiorari was denied. 382 U. S. 838 (1965).

² 26 U. S. C. § 7302 provides in relevant part:

"It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. . . ."

Substantially rewritten

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

4

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 5.—OCTOBER TERM, 1970

Recirculated: 12-17-70

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States Coin and } Appeals for the Seventh
Currency, Etc. } Circuit.

[January —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

Mackey v. United States, ante, was a prosecution for income tax evasion. Gambling tax returns which had been filed as commanded by statute were introduced to show a likely source of unreported income. Under *United States v. Kahriger*, 345 U. S. 22 (1953), and *Lewis v. United States*, 348 U. S. 419 (1955), these returns were admissible; under *Marchetti* and *Grosso*, which overruled *Kahriger* and *Lewis*, the Government could not have used them as part of its case-in-chief. We held that *Marchetti* and *Grosso* were not to be applied retroactively and that Mackey's habeas corpus petition was to be judged by pre-existing law. The issue before us now is whether *Marchetti-Grosso* must nevertheless govern the validity of forfeiture proceedings instituted and completed prior to January 29, 1968, the date of those decisions.

I

In 1964, Donald J. Angelini was convicted for failing to register as a gambler and to pay the related gambling tax required by federal statutes. 26 U. S. C. §§ 4401,

To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

circulated: 3-25-71

No. 5.—OCTOBER TERM, 1970

Recirculated:

United States, Petitioner, | On Writ of Certiorari to the
 v. | United States Court of
 United States Coin and | Appeals for the Seventh
 Currency, Etc. | Circuit.

[January —, 1971]

MR. JUSTICE WHITE, dissenting.

I

None of Angelini's rights under the Fifth Amendment were violated when this forfeiture proceeding was begun and concluded in the District Court. In violation of the Internal Revenue Code, Angelini had failed to register as a gambler and to pay the related gambling tax; he was subject to criminal penalties for the default; and *United States v. Kahrigers*, 345 U. S. 22 (1953), and *Lewis v. United States*, 348 U. S. 419 (1955), had specifically held that the statutory obligation to file and pay was not compulsory self-incrimination proscribed by the Fifth Amendment. The Amendment at that time afforded Angelini no defense either to a criminal charge for refusal to register and pay or to a forfeiture proceeding based on the same offenses.

After affirmance of the forfeiture judgment in the Court of Appeals, however, our decisions in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), intervened. *Kahrigers* and *Lewis* were overruled. Obligatory filing and payment were held violative of the Fifth Amendment. It followed that failure to comply with the statute thereafter could not be punished by law. Angelini now claims the

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr.~~ Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

STYLISTIC CHANGES THROUGHOUT.

~~SEE PAGES:~~

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 5.—OCTOBER TERM, 1970

Recirculated: 4-1-71

United States, Petitioner, On Writ of Certiorari to the
v. United States Court of
United States Coin and Appeals for the Seventh
Currency, Etc. Circuit.

[April —, 1971]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN join, dissenting.

I

None of Angelini's rights under the Fifth Amendment were violated when this forfeiture proceeding was begun and concluded in the District Court. In violation of the Internal Revenue Code, Angelini had failed to register as a gambler and to pay the related gambling tax; he was subject to criminal penalties for the default; and *United States v. Kahriger*, 345 U. S. 22 (1953), and *Lewis v. United States*, 348 U. S. 419 (1955), had specifically held that the statutory obligation to file and pay was not compulsory self-incrimination proscribed by the Fifth Amendment. The Amendment at that time afforded Angelini no defense either to a criminal charge for refusal to register and pay or to a forfeiture proceeding based on the same offenses.

After affirmance of the forfeiture judgment in the Court of Appeals, however, our decisions in *Marchetti v. United States*, 390 U. S. 39 (1968), and *Grosso v. United States*, 390 U. S. 62 (1968), intervened. *Kahriger* and *Lewis* were overruled. Obligatory filing and payment were held violative of the Fifth Amendment. It followed that failure to comply with the statute thereafter could not be punished by law. Angelini now claims the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 8, 1971

MEMORANDUM FOR THE CONFERENCE

Re: Cases Held for Williams and Elkanich, Mackey, Coin
and Currency and White

Just to get the ball rolling, I attach my reactions to the cases, which according to my records, have been held for Williams and Elkanich, Mackey and White. I also cover the Coin and Currency holds since many of them on my notes were also held for Mackey. JMH will pardon, I hope, my trespassing his territory.

I shall supplement as necessary if the Clerk lists additional holds.

These suggestions have been made without going again to case records. Cert memoranda have been used which with some exceptions noted purport to cover the critical facts.


B.R.W.

April 12, 1971

Dear Chief:

John's suggestion with respect
to the retroactivity holds is satis-
factory with me.

Sincerely,

B.R.W.

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 15, 1971

Re: No. 5 - United States v. U. S. Coin & Currency

Dear John:

Please join me.

Sincerely,



T.M.

Mr. Justice Harlan

cc: The Conference

February 11, 1971

**Re: No. 5 - U.S. v. U.S. Coin
and Currency**

Dear Byron:

I assume that your statement on page 1 as to the cutoff date's being the completion of the forfeiture proceeding prior to January 28, 1968, is purposeful. The Government, as I recall, argued for the earlier date of the seizure itself and did so on the theory that title to the seized property went over at that time. I could go that far if I had to. This case does not require that we go that far and if your focusing on the completion of the forfeiture proceeding was purposeful, I am content.

It looks now as though the opinion will not command a court.

Sincerely,

HAB

Mr. Justice White

February 11, 1971

Re: No. 5 - U. S. v. U. S. Coin and Currency

Dear Byron:

Please join me in your opinion proposed for
this case.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

March 29, 1971

Re: No. 5 - U. S. v. U. S. Coin and Currency

Dear Byron:

By all means, please join me in your dissent.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference