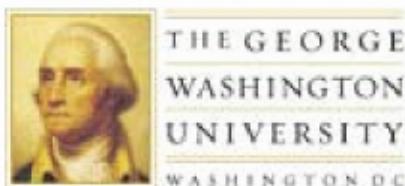


# The Burger Court Opinion Writing Database

*Iannelli v. United States*

420 U.S. 770 (1975)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

March 21, 1975

Re: No. 73-64 - Iannelli v. United States

Dear Lewis:

I join in your proposed opinion.

1  
Regards,  
WB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 24, 1975

Dear Lewis:

In IANNELLI v. U.S., 73-64 I shall  
circulate a dissent in due course.

*WOP/SP*

William O. Douglas

Mr. Justice Powell

cc: The Conference

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

2nd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

circulate: 3-4

No. 73-64

Recirculate: \_\_\_\_\_

Robert E. Iannelli et al.,  
Petitioners, } On Writ of Certiorari to the  
v. } United States Court of Appeals for the Third Circuit.  
United States.

[March —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

The eight petitioners in this case were tried, along with other codefendants, on a multiple-count indictment alleging the commission of various offenses in connection with gambling activities. Petitioners were convicted both of participating in an "illegal gambling business," 18 U. S. C. § 1955, and of conspiring to commit that offense, 18 U. S. C. § 371. On both statutory and constitutional grounds, I would hold that the simultaneous convictions under both statutes cannot stand.

I

In my view the Double Jeopardy Clause forbids simultaneous prosecution under § 1955 and § 371. Wharton's Rule in its original formulation was rooted in the double jeopardy concern of avoiding multiple prosecutions. *Carter v. McClaughry*, 183 U. S. 365, 394-395, and later cases<sup>1</sup> confine the double jeopardy protection to prohibiting cumulative punishment of offenses that are absolutely identical, but I would not extend those cases so as to permit both convictions in this case to stand.

The evidence against petitioners consisted largely of conversations that involved gambling transactions. The

<sup>1</sup> E. g., *Morgan v. Devine*, 237 U. S. 672, 641; *Pinkerton v. United States*, 328 U. S. 640, 644; *Gore v. United States*, 357 U. S. 386.

STRUCTURAL CHANGES THROUGHOUT.  
SEE FIGURES: 2, 4, 6, 7

From: DC

## 4th DRAFT

**Circulate:**

**SUPREME COURT OF THE UNITED STATES.**

No. 73-64

Robert E. Iannelli et al.,  
Petitioners,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[March --, 1975]

MR. JUSTICE DOUGLAS, dissenting.

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<sup>1</sup> *E. g., Morgan v. Devine*, 237 U. S. 632, 641; *Pinkerton v. United States*, 328 U. S. 640, 643-644; *Gore v. United States*, 357 U. S. 386.

To: The Chief Justice ✓  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
— Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: brownan, J.

Circulated: MAR 12 1975

1st DRAFT

Recirculated:

**SUPREME COURT OF THE UNITED STATES**

No. 73-64

Robert E. Iannelli et al.,  
Petitioners,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[March —, 1975]

MR. JUSTICE BRENNAN, dissenting.

In *Bell v. United States*, 349 U. S. 81 (1955), this Court held that in criminal cases, "When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity." *Id.*, at 83. I agree with MR. JUSTICE DOUGLAS that "§ 1955 is . . . most sensibly viewed as a statute directed at conspiracy in a particular context," *ante*, p. —, and that the statute is at best silent on whether punishment for both the substantive crime and conspiracy was intended. In this situation, I would invoke *Bell's* rule of lenity. I therefore dissent.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 20, 1975

No. 73-64 - Iannelli v. U. S.

Dear Lewis,

I do not plan to write a dissent in this case, but shall wait to see what, if anything, is written in dissent before casting a final vote.

Sincerely yours,

P. S.  
J.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 14, 1975

Re: No. 73-64, Iannelli v. U.S.

Dear Bill,

I would appreciate your adding my name to Thurgood's as joining Part II of your dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

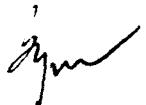
March 5, 1975

Re: No. 73-64 - Iannelli v. United States

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 13, 1975

Re: No. 73-64 -- Robert E. Iannelli v. United States

Dear Bill:

Will you please add to your opinion the following note:

"Mr. Justice Marshall joins Part II of this opinion."

Sincerely,



T. M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 24, 1975

Re: No. 73-64 - Ianelli v. United States

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

From: Powell, J.

Circulated: FEB 19 1975

## 1st DRAFT

Recirculated:

**SUPREME COURT OF THE UNITED STATES**

No. 73-64

Robert E. Iannelli et al.,  
Petitioners,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[February —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case requires the Court to consider Wharton's Rule, a doctrine of criminal law enunciating an exception to the general principle that a conspiracy and the substantive offense that is its immediate end are discrete crimes for which separate sanctions may be imposed.

1

Petitioners were tried under a six-count indictment alleging a variety of federal gambling offenses. Each of the eight petitioners, along with seven unindicted co-conspirators and six codefendants, was charged with conspiring<sup>1</sup> to violate and violating 18 U. S. C. § 1955, a federal gambling statute making it a crime for five or more persons to conduct, finance, manage, supervise, direct, or

<sup>1</sup> The general conspiracy statute under which this action was brought, 18 U. S. C. § 371, provides in pertinent part:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both. . . ."

To: The Chief Justice  
Mr. Justice Jenkins  
Mr. Justice H. C. Swan  
Mr. Justice J. C. D. Hart  
Mr. Justice J. C. D. Hart  
~~Mr. Justice J. C. D. Hart~~  
Mr. Justice J. C. D. Hart  
Mr. Justice J. C. D. Hart

### From the Editor

Glossary

Keedooch Lake MAR 3 1975

SUPREME COURT OF THE UNITED STATES

No. 73-64

Robert E. Iannelli et al.,  
Petitioners,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[February —, 1975]

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<sup>1</sup> The general conspiracy statute under which this action was brought, 18 U. S. C. § 371, provides in pertinent part:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both. . . ."

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 8, 1975

FILE COPY  
PLEASE RETURN  
TO FILE

Cases Held for No. 73-64 Iannelli v. U.S.

MEMORANDUM TO THE CONFERENCE:

The following cases were held for Iannelli v. United States, No. 73-64. In each case the court of appeals resolved the Wharton's Rule issue in a manner consistent with our disposition in Iannelli. I will therefore vote to deny that question in each of the petitions. Many of the petitions present additional issues that will be discussed separately. In no case have I found an issue that I consider certworthy.

\* \* \* \* \*

No. 73-175, Fein et al v. United States  
No. 73-5115, Kessler v. United States Cert to CA2

In addition to the Wharton's Rule contention, these petitions present claims related to the propriety of a wiretap. Kessler also questions the constitutionality of the federal gambling statute.

Petitioners claim that the executive authorization failed to satisfy the standards of the Omnibus Crime Control and Safe Streets Act, but the wiretap operation was personally approved by Attorney General Mitchell who initialed an authorization memorandum. Thereafter, Mr. Peterson's signature was affixed to letters and judicial applications by a lower level official of the Department of Justice. This procedure was approved in United States v. Chavez, 416 U.S. 562 (1974) and was correctly decided in this case.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

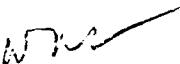
March 11, 1975

Re: No. 73-64 - Iannelli v. United States

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference