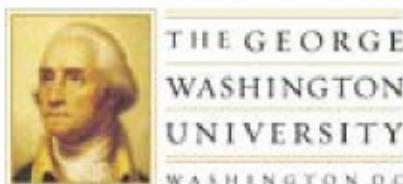


# The Burger Court Opinion Writing Database

*United States v. Park*

421 U.S. 658 (1975)

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



To: Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Frankfurter  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: The Clerk of the Court  
MAY 21 1975

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-215

United States, Petitioner, v. John R. Park, } On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether jury instructions in the prosecution of a corporate officer under § 301 (k) of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. § 331 (k), were appropriate under *United States v. Dotterweich*, 320 U. S. 277 (1943).

Acme Markets, Inc., is a national retail food chain with approximately 36,000 employees, 874 retail outlets, 12 general warehouses, and four special warehouses. Its headquarters, including the office of the president, respondent Park, who is chief executive officer of the corporation, are located in Philadelphia, Pennsylvania. In a five-count information filed in the United States District Court for the District of Maryland, the Government charged Acme and respondent with violations of the Federal Food, Drug, and Cosmetic Act. Each count of the information alleged that the defendants had received food that had been shipped in interstate commerce and that, while the food was being held for sale in Acme's Baltimore warehouse following shipment in interstate commerce, they caused it to be held in a building accessible to rodents and to be exposed to contamination by rodents. These acts were alleged to have re-

HAB

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
THE CHIEF JUSTICE

June 6, 1975

file

Re: Case held for No. 74-215 - United States v. Park

MEMORANDUM TO THE CONFERENCE:

Only one case, on cert from CA 7, was held for Park:

No. 74-142 - H. B. Gregory Co. v. United States (I will vote: DENY).

Petitioners, a corporation and its president and treasurer, were charged in an information with four counts of having caused four different foods to become adulterated, in violation of 21 U.S.C. § 331(k). Count I charged that bags of cornmeal were adulterated because they consisted of a filthy substance (rodenta excreta), under § 342(a)(3), and because they were held under insanitary warehouse conditions whereby they may have become contaminated, under § 342(a)(4). The remaining three counts charged that three other types of food were adulterated because they were held under insanitary warehouse conditions whereby they may have become contaminated. The evidence at petitioners' non-jury trial established that the foods in question had been shipped in interstate commerce and were being held for sale in the company's warehouse. An FDA inspector testified concerning a five-day inspection of the warehouse. The testimony abundantly established adulteration as charged. The inspector also testified that in conversation petitioner Gregory, president and treasurer of the company, acknowledged that he was in charge of the sanitation program and specifically the rodent control program in the warehouse, and that he was at the warehouse on a daily basis. The inspector observed Gregory giving employees directions concerning the storage of food materials and the loading of trucks. Finally, he stated that Gregory had expressed the feeling that the building was too old to be made rodent proof.

Petitioners rested without presenting any evidence. The District Court found them guilty on all counts; petitioner corporation was sentenced to a fine of \$1,000 on each count, and Gregory was sentenced to a fine of \$500 on each count. CA 7 affirmed. Judge Campbell, being of the view that Counts II, III, and IV alleged but one offense, would have vacated two of the fines imposed on each petitioner.

Petitioners contend that, with respect to Count I, the Government failed to prove that the amount of rodent excreta exceeded the tolerances established pursuant to § 406 of the Act, 21 U.S.C. § 346, and that since Counts II - IV were premised on the same insanitary conditions, they alleged but one offense. In addition, petitioner Gregory argues that it was improper to hold him individually accountable, asserting a conflict with CA 4's decision in Park, and that the District Court improperly threatened him with imprisonment if he should commit another offense.

Petitioner Gregory's conviction was clearly proper under Dotterweich and Park. Gregory's operation was small and he had direct and immediate responsibility for the rodent control program and was present at the warehouse on a daily basis. In this sense, it is a much easier case for allowing the judgment to stand than Park. Of petitioners' remaining contentions, only that with respect to the duplicity of the information appears at all meritorious. However, since there is no conflict, I will vote to deny.

Regards,

WRB

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 4, 1975

Dear Chief:

In United States v. Park, 74-215, please join me.

William O. Douglas

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 4, 1975

RE: No. 74-215 United States v. Park

Dear Chief:

I agree.

Sincerely,

*Bill*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 22, 1975

No. 74-215 - U. S. v. Park

Dear Chief,

I shall shortly circulate a dissenting opinion in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

From: \_\_\_\_\_  
MAY 27 1975  
Circ. \_\_\_\_\_

Received \_\_\_\_\_

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 74-215**

United States, Petitioner, v. John R. Park. } On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1975]

**MR. JUSTICE STEWART, dissenting.**

Although agreeing with much of what is said in the Court's opinion, I dissent from the opinion and judgment, because the jury instructions in this case were not consistent with the law as the Court today expounds it.

As I understand the Court's opinion, it holds that in order to sustain a conviction under § 301 (k) of the Food, Drug, and Cosmetic Act the prosecution must at least show that by reason of an individual's corporate position and responsibilities, he had a duty to use care to maintain the physical integrity of the corporation's food products. A jury may then draw the inference that when the food is found to be in such condition as to violate the statute's prohibitions, that condition was "caused" by a breach of the standard of care imposed upon the responsible official. This is the language of negligence, and I agree with it.

To affirm this conviction, however, the Court must approve the instructions given to the members of the jury who were entrusted with determining whether the respondent was innocent or guilty. Those instructions did not conform to the standards that the Court itself sets out today.

The trial judge instructed the jury to find Park guilty if it found beyond a reasonable doubt that Park "had a

*Revised and refiled  
May 27 1975*

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1975

Re: No. 74-215 - United States v. Park

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

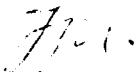
May 28, 1975

Re: No. 74-215 -- United States v. John R. Park

Dear Potter:

Please join me in your dissent.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 26, 1975

Re: No. 74-215 - United States v. Park

Dear Chief:

Please join me.

Sincerely,

*Harry*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

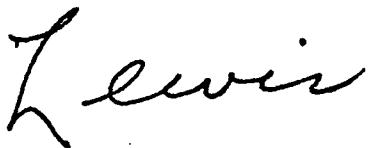
May 28, 1975

No. 74-215 United States v. Park

Dear Potter:

Please join me in your dissent.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 2, 1975

Re: No. 74-215 United States v. Park

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference