

## Supreme Court of the United States

October Term, 1968

Office-Supreme Court, U.S.  
FILED

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JOHN F. DAVIS, CLERK

In the Matter of:

Docket No. 44

WILLIAM SKINNER, AUGUST R. GUELDNER  
AND ALTON J. CHARBONNET,

Petitioner

VS.

STATE OF LOUISIANA,

Respondent.

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Place Washington, D. C.

Date December 10, 1968

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C O N T E N T S

ORAL ARGUMENT OF

PAGE

GEORGE M. LEPPERT, ESQ.,  
On behalf of Petitioners

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LOUISE KORNS, ESQ.,  
On behalf of Respondent

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GEORGE M. LEPPERT, ESQ.,  
On behalf of Petitioners

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM, 1968

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4 WILLIAM SKINNER, AUGUST R. GUELDNER :  
and ALTON J. CHARBONNET, :  
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Petitioners, :

No. 44

vs. :

STATE OF LOUISIANA, :

Respondent. :

Washington, D. C.,

Tuesday, December 10, 1968.

The above-entitled case came on for oral argument  
before:

EARL WARREN, Chief Justice

HUGO LAFAYETTE BLACK, Associate Justice

WILLIAM ORVILLE DOUGLAS, Associate Justice

JOHN M. HARLAN, Associate Justice

WILLIAM J. BRENNAN, JR., Associate Justice

POTTER STEWART, Associate Justice

BYRON RAYMOND WHITE, Associate Justice

ABE FORTAS, Associate Justice

THURGOOD MARSHALL, Associate Justice

- - -

1 APPEARANCES:

2 G. WRAY GILL, SR, ESQ., and GEORGE M. LEPPERT, ESQ.,  
3 1707 Pere Marquette Building,  
New Orleans Louisiana; and

4 ROBERT S. LINK, JR., ESQ.,  
5 National Bank of Commerce Building,  
6 New Orleans, Louisiana  
Attorneys for Petitioners.

7 JACK P. F. GREMILLION, ESQ.,  
Attorney General of the State of Louisiana;  
8 JIM GARRISON, ESQ.,  
District Attorney for the Parish of Orleans; and  
9 LOUISE KORNS, ESQ.,  
Assistant District Attorney for the Parish of Orleans,  
10 Attorneys for the Respondent.

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P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 44, William Skinner, et al, petitioners, vs. Louisiana.

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Leppert.

ORAL ARGUMENT OF GEORGE M. LEPPERT, ESQ.,

ON BEHALF OF PETITIONERS

MR. LEPPERT: Mr. Chief Justice, Your Honors, Associate Justices, I represent the three petitioners in this case who were convicted in a marijuana prosecution, which Petitioner Skinner received ten years, Gueidner sixteen years, and Charbonnet, the Negro defendant, received fifty years. Although we are talking about strictly legal features here, it is necessary to present some of the highlights of the facts.

Mr. Skinner, who received ten years, was never shown to have been a user or an addict or a seller or a vendor or a pusher of narcotics in any way. He engaged in a -- he was successfully engaged in two second-hand automobile places in New Orleans, and it was admitted by the narcotics agent that they undertook initially to make a case against one of his employees; they were not after Skinner at all. And failing in that they finally built a case against him, along with Gueidner, his salesman, and Charbonnet, who is alleged to be the pusher.

Now, the indictment information charged a single transaction.

1 with two counts, on May 21, 1965, a sale of about \$10 worth  
2 of marijuana cigarettes and possession of the same cigarettes.  
3 The manner in which Skinner became involved in this is set  
4 forth clearly in the preliminary hearing and in the trial,  
5 and the merits. It amounted to a plea of entrapment, but we  
6 are not urging that because that is a factual issue, but it is  
7 necessary to understand this.

8 The undercover agent, Fullington, had gotten as a cover  
9 job the position of finance manager of a company which said  
10 yes or no on the loans used by Mr. Skinner in his business.  
11 He ingratiated himself with Mr. Skinner, he went out to the  
12 race track with him, got up to put up money for bets and  
13 finally, when he had gotten that far in his confidence, he  
14 informed him that he wanted to get some marijuana for a  
15 friend of his and it was set up, according to the state's  
16 testimony, to be delivered on the night of May 21, at which  
17 time it allegedly took place on the lot, on Skinner's lot.

18 Then, under the Louisiana system evidence, which is very  
19 broad, the state was allowed to bring in another transaction  
20 on May 28, involving another \$13 worth of marijuana, which  
21 allegedly took place on the same lot, through a meeting with  
22 Charbonnet set up in the same way.

23 Q Between the same parties?

24 A Yes, sir. Now, under this Louisiana system evidence  
25 which was allowed to be brought in, they were also permitted

1 to bring in another transaction which neither Skinner nor  
2 Gueldner had any connection with, in which the agent said  
3 that after he got the second bit of marijuana, he told  
4 Charbonnet he wanted to get some heroin. He said that  
5 Charbonnet on that same day went somewhere else in another  
6 part of the city and got some heroin. On that original  
7 transaction these other two transactions were added, one in  
8 which two defendants had nothing to do with and one in which  
9 they had no connection with except the fact that it was  
10 started on the automobile lot.

11 Now, we won this case originally by a vote of five-to-two  
12 in the State Supreme Court on the theory that the Court had  
13 erroneously given a full-blown conspiracy charge, whereas  
14 there was a separate conspiracy case and it was tried by the  
15 other court, the trial court, and it went further in saying  
16 that the admission in evidence of conspiracy statements could  
17 be used against them. But he gave a full-blown partnership  
18 theory of conspiracy. We won it five-to-two, and on rehearing  
19 they reversed themselves and ruled six-to-one against us, and  
20 then denied all of the other.

21 I am not stressing that point now because I believe that  
22 procedure was wrong. I do not demand that be included. And  
23 we come therefore to the main point, the two points which we  
24 face here. The defendant Charbonnet, the indigent Negro,  
25 thirty-two years old, was arrested and had a series of court

1 appointed counsel. He had three counsel appointed before my  
2 associate, Mr. Link, finally got into the case. He stayed in  
3 jail nearly a year. He had a bail bond of \$50,000, and nobody  
4 did anything for him. Now, it is misleading to state that  
5 none of these three counsel did anything because of illness.  
6 The only thing about illness of previous counsel is that in  
7 passing reference in the motions which indicates that at some  
8 time one of them was ill. There is no evidence about any con-  
9 tinued illness, certainly no suggestion that all three were  
10 ill. Nobody did anything for him.

11 Finally, after the case, while he was still in jail, and  
12 while he had no notice of anything that was going on, so far  
13 as that, no notice of hearings. There were extensive hearings,  
14 finally, on behalf of Mr. Gill, of my office. He tried the  
15 case for Charbonnet and Gueldner, and Mr. Link finally tried  
16 it for Charbonnet. Skinner, not Charbonnet, excuse me.

17 There was a motion for preliminary examination, a motion  
18 to quash, a motion to suppress, and a motion on a bill of par-  
19 ticulars. As we note in our brief, there were some forty-five  
20 pages of testimony taken which right to the case. Now, under  
21 the Louisiana system of ordinary hearings, the preliminary  
22 hearing serves as the basis of presenting evidence under  
23 Article 265. This evidence can further be used later, as it  
24 was used. It was a part of the case. And, moreover, as the  
25 Court noted, these preliminary hearings were taken in

1 connection with the taking of a motion for a bill of particu-  
2 lars, so it was exploratory. But Charbonnet had nobody there  
3 and he languished in jail while all of this went on. And,  
4 then, finally, when Mr. Link got into the case, got his bond  
5 reduced and got him out of jail, Charbonnet was faced with  
6 this situation: He wanted a copy of the transcript of all of  
7 these motions, and he then knew what had happened. And in  
8 that motion it is apparent that the state had made an error  
9 as to the vendee in one of these transactions. They were  
10 allowed to amend it virtually on the eve of trial. They had  
11 said it was sold to a different agent, Fullington instead of  
12 Hebert. But eventually they didn't want to disturb that and  
13 he could not have got a preliminary hearing as a matter of  
14 right because under the Louisiana system, under Article 292,  
15 the Code of Criminal Procedure, the granting of preliminary  
16 hearings is the grant of a right only before the information  
17 for the indictment, and the state said he had waited before  
18 doing it. It is obvious that after having heard all of that  
19 testimony, and after the trial court said that he had no in-  
20 terest in those motions anyway, because he didn't file them,  
21 the chances are about one out of a thousand that it would  
22 have been granted, so Mr. Link did not file and he relied on  
23 the error which was in there, which was cured by an amendment.

24 Now, the third area that even if we were in error as to  
25 Charbonnet, that we had no standing to challenge it, that

1 Skinner and Gueldner hear it, it is our position that those  
2 motions would have been a real hearing had this man been  
3 there. The record shows that the state officers were inter-  
4 viewing this man in jail, trying to get a statement out of  
5 him, obviously trying to get him to turn state's evidence.

6 We were not representing him, we couldn't talk to him.  
7 For all we knew, he might have been state's evidence. And  
8 the most significant thing that when we came to the trial --  
9 this is where they were going to hit us right between the yes  
10 -- for the first time they come in with this completely unre-  
11 lated heroin transaction in which Charbonnet alone was in-  
12 volved with Hebert, the agent. So we contend that that alone  
13 was really prejudicial, and, moreover, if this was a part of  
14 the trial, if this preliminary evidence had heard evidence for  
15 the trial, which affects the three co-defendants, we were  
16 entitled to have Charbonnet there and we might have found out  
17 something about it, because the court said that he was going  
18 to consider all of that evidence in connection with those  
19 petitions, so it was exploratory.

20 So the next point -- I would like to save myself ten  
21 minutes for rebuttal -- the problem of the all-night session  
22 and the sleeping jurors, this case started at 10:30 in the  
23 morning, my associate, Mr. Gill, is a man 68 years old, was  
24 suffering from diabetes and other complications which were  
25 testified to by -- and he is able, as the record shows, to

1 try for a normal day but, as the record shows, at 11:40 he  
2 begged the Court to recess, at 11:40 at night. They had been  
3 going all day, hammer and tong, and he asked -- he said, "I  
4 am sick, you know I am sick," and I am quoting it all from the  
5 brief, "please give us a recess." He was given a three-minute  
6 recess and he extended -- he was generously extended to thirty-  
7 five minutes, and then they ran until 3:00 o'clock in the  
8 morning. At 3:00 o'clock they recessed, came back at 9:30  
9 and argued the case.

10 Q Evidence was concluded that night?

11 A Yes, sir. I think they technically rested that  
12 night, but there was no more testimony that night. The only  
13 thing that went on the next morning was the argument.

14 Q Was the defense still free to go forward with more  
15 evidence the next morning, if it had wanted to?

16 A That is my interpretation, yes, sir. Then it was  
17 brought out that two of the jurors were sleeping. There was  
18 considerable testimony pro and con on that. We quoted the  
19 sources of it, it covers many pages. The most significant  
20 thing is that two very strong witnesses that were put on in  
21 the process, Mr. Marchese, in the face of the court's attitude  
22 of the possibility of anybody sleeping in the case, he took  
23 the stand and he said it sure looked like they were sleeping.  
24 Then there was one little sentence I would like you to read  
25 from one of the witnesses, one of the other witnesses who

1 responded to the District Attorney's very aggressive cross-  
2 examination. He was trying to get him to say he doubted if  
3 they were sleeping or not, and the answer was this: "Answer:  
4 When somebody's eyes are closed and his head is hanging down,  
5 he has to be woke up, I would raw the conclusion he is  
6 sleeping." If somebody has to wake him up, obviously he is  
7 sleeping.

8 (Laughter.)

9 The prosecutor chided, "That is the judgment of you, it  
10 has no opinion in it."

11 Answer: "If he wasn't sleeping, why did he have to be  
12 woke up?"

13 (Laughter.)

14 Q Was there any finding of fact on that?

15 A I am sorry, sir, I didn't hear.

16 Q Is there any finding of fact on that?

17 A Sir, the finding of fact by the Supreme Court -- well,  
18 first of all, the District Court finds that nobody was asleep.  
19 The Supreme Court --

20 Q The District Court found that nobody was asleep?

21 A There was nobody definitely asleep, no, sir. Of  
22 course, we contend you don't have to find they are asleep. It  
23 requires something more than twelve long bodies and we cer-  
24 tainly didn't have it.

25 Now, one other thing before I close on that one point,

1 before I --

2 Q But you are claiming prejudice --

3 A Yes, sir.

4 Q -- because they were sleeping, that is an important  
5 question to us.

6 A Yes, sir. I am glad you brought that up. I want to  
7 bring in the additional point of prejudice in it, if I may.  
8 Mr. Gill, after the trial, put on his doctor with his extensive  
9 medical problem, how he had to be put in a hospital later, as  
10 a result of this. And the question arose as to how there was  
11 prejudice. And the Supreme Court, the State Supreme Court  
12 took the position that it couldn't have been prejudiced by  
13 much because Mr. Gill kept on talking and kept on making ob-  
14 jections and, finally, on the face of the record he might have  
15 been tired but there was no prejudice.

16 But there is strong inferences in the record that there  
17 was gross prejudice here, for two reasons: Number one, as  
18 noted in the motion for rehearing in the State Supreme Court,  
19 he forgot in his exhaustion and his diabetic condition, he  
20 forgot to put on the principal witness to prove that the  
21 automobile where this marijuana was supposed to have been  
22 stashed didn't belong to the defendant Skinner. He forgot it.

23 Q Well, what possible difference could that have  
24 made, then?

25 A Sir?

1 Q What possible difference could that have made on the  
2 issue of the guilt of the defendant, that is the ownership of  
3 the automobile?

4 A It could have because it was a divided jury, an  
5 eleven-to-one jury.

6 Q No, what possible relevance could the ownership of  
7 the automobile have had on the guilt or innocence of the de-  
8 fendant?

9 A It could have had a lot.

10 Q How?

11 A Because there might have been a question of whether  
12 he had anything to do with it. He never took the stand --

13 Q Well, this was a lot. There were a lot of automo-  
14 biles and the marijuana was hidden in the --

15 A Yes, sir.

16 Q -- under the seat of one of the automobiles.

17 A Yes.

18 Q And what possible difference does it make whose --  
19 to whom the automobile belonged?

20 A I think it does, though. I submit my argument be-  
21 cause it was circumstantial evidence entirely and there was a  
22 sharp conflict in another bill as to whether the thing hap-  
23 pened at all. There was a factual --

24 Q Do you say that Mr. Gill was still disadvantaged the  
25 next day?

1 A Yes, sir.

2 Q That his behavior the next day was not up to par?

3 A Yes, sir, and I want to add this one point.

4 Q Because he could have put this witness on the next  
5 day.

6 A That is the day he forgot to do it. He closed with-  
7 out doing it. The next morning I think they had a right to do  
8 it and he didn't put him on.

9 Now, this other evidence in there, here is a veteran  
10 lawyer, forty years of political experience, strictly criminal,  
11 who gets up -- and this is in the record -- in his argument,  
12 he starts talking about another type of drug which was involved  
13 in another case, an amphetamine, one of these benny drugs, and  
14 he says, "That is the same thing my doctor gives me. I took  
15 one this morning." He was wondering and the state objected.  
16 I think it is clear-cut evidence that the man was not up to  
17 par and this was exactly what his doctor said, that after  
18 going twelve hours, a man at that age and in that condition,  
19 his efficiency was practically nil.

20 MR. CHIEF JUSTICE WARREN: Mrs. Korn.

21 ORAL ARGUMENT OF LOUISE KORNS, ESQ.,

22 ON BEHALF OF RESPONDENT

23 MRS. KORNS: Mr. Chief Justice and members of the  
24 Court, before beginning argument, I would like to inquire of  
25 the Court, is the Court interested in this third point on

1 which it granted certiorari, the conspiracy charge to the jury,  
2 or is this Court interested only in the two points which  
3 petitioners have briefed?

4 When this Court granted certiorari, three points were  
5 presented to this Court as allegations of error in the Court  
6 below. One of them was that the trial judge charged the jury  
7 in this case on the law of conspiracy, although conspiracy was  
8 not commonly charged in the bill of information.

9 Now, although petitioners urged this strongly in their  
10 application for certiorari, in their brief in this Court they  
11 don't brief this point, they say they don't think this Court  
12 is interested in it. Now, we brief it very strongly. How-  
13 ever, if this Court is not interested in it, naturally,  
14 Louisiana will not argue it.

15 Q Well, I think you had better state your case.

16 A Very well, Your Honor, I will answer all three of  
17 the points, then.

18 As far as the facts of the case go, I will just briefly  
19 recapitulate what Mr. Leppert said, that this charge runs out  
20 of a May 21 sale of heroin on Skinner's Motor Mart to state  
21 undercover agent Ben Fullington. Undercover agent Fullington  
22 testified that he went to Skinner's Motor Mart that day, met  
23 Skinner and Gueldner, told them he was interested in getting  
24 some marijuana, said either Gueldner or Skinner placed a  
25 telephone call, told the undercover agent he could have the

marijuana later that day. Fullington testified that he returned to the motor lot around 8:00 that evening, was introduced by either Skinner or Guelnder to Charbonnet, the third accused in this case, that Charbonnet told the agent "the stuff," as they call the marijuana, "is in that Lincoln parked on the lot," that Fullington went and got a matchbox of marijuana out of the Lincoln, paid Charbonnet \$20.

Now, a week later, on the 28th of May, undercover agent Russell Hebert, who was working in close collaboration with Ben Fullington on this case -- the testimony shows that this week later, that Guelnder phoned Russell Hebert and told him that the connection that he had spoken to him about was at the lot and would sell him marijuana, that Russell Hebert went to the lot and was introduced to Charbonnet on this date a week later, that Charbonnet took him into the office, sold him nine marijuana cigarettes, yet he also testified that he had told -- Hebert also testified that he told Guelnder a day or so before this meeting that he was interested in contacts with selling either heroin or marijuana.

On this second date, May 28, after Charbonnet had sold Hebert the nine marijuana cigarettes in the office at the motor lot, he said "how about some heroin," and Charbonnet said, "I will get you some. Let's get in my car." They went in Charbonnet's car to a spot away from the motor lot, there Charbonnet obtained some heroin which he sold to Guelnder,

1 then on Charbonnet's instructions, Gueldner drove Charbonnet  
2 back to Skinner's lot. On this date Skinner and Gueldner were  
3 at the lot, Gueldner had spoken to him about getting heroin,  
4 and after the sale of heroin Charbonnet was taken, at  
5 Charbonnet's directions, back to Skinner's lot.

6 Now, Louisiana will first discuss the absence of  
7 Charbonnet from the preliminary motions, while hearing the  
8 preliminary motions filed by the other two accused. These  
9 three men were arrested on July 30. Skinner and Gueldner  
10 employed Mr. Gill to represent them. Charbonnet appeared with  
11 the other two for arraignment, had no lawyer, the court  
12 entered a plea of not guilty for him, told him to return in a  
13 few days to determine counsel.

14 The September Betsy storm came in there somewhere -- any-  
15 way, the court proceedings were delayed. But, anyway, the  
16 court appointed the first lawyer to represent Charbonnet some-  
17 time around the end of September. Unlike the allegations,  
18 contrary to the contention made by my opponents, a year did  
19 not elapse between the arrest of Charbonnet and his retention  
20 of Mr. Link here, six months elapsed. Charbonnet was arrested  
21 around the first of August, entered on the 30th of July, he  
22 retained Mr. Link on the 18th of January of the following year.

23 During that six-month period the court appointed three  
24 lawyers for Mr. Charbonnet, none of them did anything for him,  
25 however, Mr. Link concedes in his motion that he filed later

1 that it was because of illness -- in fact, one of them died,  
2 Mr. Bently Byrnes, who was a prominent lawyer. I don't know  
3 Mr. Monie's full name myself, personally, but I do know that  
4 Mr. Bently Byrnes and Mr. Bernard Burk, a competent lawyer  
5 who take care of their clients, the allegation is that they  
6 were sick. There is nothing in the record to show they were  
7 not sick.

8 Q Mrs. Korn's, is there anything in the record to show  
9 that Charbonnet waived his right to be at these hearings?

10 A No, sir, there is nothing, Your Honor, but his posi-  
11 tion is --

12 Q But the judge said "you come back," and then com-  
13 mitted him to jail?

14 A After doing this, Mr. Justice, Charbonnet had a  
15 lawyer all of that time, but because of illness these lawyers  
16 could not, did not file pleadings on his behalf, nor did  
17 Skinner and Gueldner notify Charbonnet or his lawyers that  
18 they had filed these motions.

19 Now, why don't Louisiana concede that it would have been  
20 better if Charbonnet had been present at those pretrial hear-  
21 ings on Skinner and Gueldner? There is no doubt about it.  
22 Our contention is if this Court should give Charbonnet a new  
23 trial because of his absence from these motions, he would be  
24 in no better position than the trial judge placed him in at this  
25 trial, for this reason:

1        These hearings were held on behalf of Skinner and Gueldner.  
2        Before the trial, sixty days before the trial, Charbonnet en-  
3        gaged Mr. Link to represent him. Mr. Link went into court at  
4        this time and filed a motion, set out on page 11 of Louisiana's  
5        brief, a written notice in which Mr. Link said -- pointed out  
6        to the Court that because of illness the three lawyers whom  
7        the Court had appointed to represent Charbonnet had been unable  
8        to do anything for him, therefore, this motion reads,  
9        permission is asked that this order of the Court to permit  
10       Charbonnet's attorney, Mr. Link, to determine whether if neces-  
11       sary to file supplemental motions on Charbonnet's behalf, and  
12       a minimum of thirty days be granted in order for defense counsel  
13       to properly study and evaluate the record already taken in these  
14       matters in order to file such pleadings as may be necessary on  
15       behalf of your defendant. And he asked the Court to enable  
16       him, to do justice to Charbonnet, to furnish him with the  
17       transcripts of all pleadings and testimony which had been taken  
18       in the case. That very day the trial judge ordered the Court  
19       Reporter to furnish Mr. Link with the whole -- the entire  
20       transcript of the proceedings that had gone on before. He  
21       ordered the trial delayed for at least thirty days to permit  
22       Mr. Charbonnet's attorney, Mr. Link, to file pleadings on  
23       behalf of Charbonnet.

24       In fact, the trial was delayed sixty days, because con-  
25       tinuances were asked for after that. So Mr. Link had all of

1 the transcripts of the testimony, all of the motions. He filed  
2 not one single thing on behalf of Charbonnet. As a matter of  
3 fact, he did two things which show clearly that he didn't think  
4 his client had been -- in fact, three things -- and that he  
5 sort of adopted the proceedings and said that they were on the  
6 basis that Charbonnet's life had been fully protected. These  
7 are the things he did:

8 On the first day of trial, Mr. Link moved -- and the record  
9 will show this -- as the trial was about to proceed, Mr. Link  
10 asked the Court that all motions previously filed and all bills  
11 of exceptions reserved be allowed to include his client,  
12 Charbonnet. The Court ordered it to be. Anyway, under Louisiana  
13 law, joint defendants, when one reserves the bill they auto-  
14 matically -- he asked all of these motions to be attributed to  
15 Charbonnet, and the Court ordered it done.

16 Moreover, as Your Honors will see in the written bills  
17 themselves, the five written bills which were reserved to the  
18 overruling of these motions, all recite during the trial of  
19 this case Skinner, Guelldner and Charbonnet file motion to  
20 quash, motion for a preliminary hearing, which overruled and  
21 <sup>w</sup>we reserved these bills.

22 Q Mrs. Korn, I missed something that you said there.  
23 Did you say that under Illinois law, when one joint defendant  
24 files a motion --

25 A Louisiana law.

1 Q I mean Louisiana law -- when one joint defendant  
2 files a motion, that is considered as if it were filed --

3 A Not motion, Your Honor, bill of exceptions.

4 Q It applies only to a bill of exceptions?

5 A Yes. But Mr. Link here adopted all of the motions  
6 and failed to file any of his own, never objected before trial  
7 that his client had been in any way prejudiced, in fact had  
8 not when he had been given all of this stuff; not only that,  
9 he used the transcript of the pretrial proceedings to attempt  
10 to impeach witnesses at the trial.

11 Now, Louisiana's position is this: It was too bad that  
12 Charbonnet was not at those preliminary hearings, we concede  
13 that. But unless this Court is going to hold that double  
14 jeopardy has set in and Charbonnet can never, never be tried  
15 because of this mishap, then how can Charbonnet be put in a  
16 better position if this Court gives him a new trial than he  
17 was already in, because he had the transcript of the proceed-  
18 ings, all of the pleadings, he was given sixty days to file  
19 any motions of his own, he adopted these pleadings as his own,  
20 he used the transcripts at the trial to cross-examine the  
21 witnesses. The two witnesses who appeared at these pretrial  
22 hearings, Russell Hebert and Fullington, appeared again in  
23 the trial of the case -- so we don't have the Pointer situation  
24 here at all. We don't have the Pointer situation because the  
25 two, the only two witnesses who did appear at the preliminary

1 hearings appeared at the trial, was cross-examined by Mr. Link,  
2 using the testimony of pretrial to try to impeach them. So,  
3 Louisiana, as I said before and will say for the last time,  
4 if this Court should give Charbonnet a new trial because of  
5 his absence, and unfortunately we concede it, from these pre-  
6 liminary hearings, after the trial judge did everything in his  
7 power to repair the damage, and Mr. Link never before trial  
8 complained that his client was injured, then Louisiana doesn't  
9 see how he can be helped any further unless this Court says  
10 that double jeopardy has set in and we can never try this man.  
11 And I will skip any further argument on that point unless some  
12 of the members of this Court would like a further discussion  
13 of it, that particular point.

14 Q Did the Louisiana Court say anything about this point?

15 A Yes, they said that they didn't see how Charbonnet  
16 had been damaged by this point, because these motions were  
17 filed. I will tell you, Your Honors, a few more things that  
18 are on my mind since I said I had finished arguing.

19 There was a motion to suppress filed, and I concede that  
20 if this motion to suppress had been a valid motion, it would  
21 be a problem here, but it turned out although a search warrant  
22 was sworn out in this case and the motion to suppress was  
23 based on the search warrant, as a matter of fact the motion  
24 to suppress fell flat on its face because it became immediately  
25 clear after a couple of minutes of the motion to suppress that

1 the police officers who had searched Skinner's Motor Mart,  
2 under the search warrant, had found nothing. You see, the  
3 evidence which was introduced at the trial in this case was  
4 the marijuana which was bought by the undercover agents in  
5 the transaction, so when -- and when the police officers  
6 searched Skinner's Motor Mart, under a search warrant, after  
7 arresting these three men, they found nothing in the motor  
8 lot, therefore Mr. Gill withdrew his motion to suppress be-  
9 cause it became moot. There was nothing to suppress. So  
10 the absence of Charbonnet -- the fact -- I concede that if the  
11 motion to suppress had been filed in the case involving the  
12 three-joint defendants, and one of them wasn't present there,  
13 and the evidence was later introduced against them at the  
14 trial, I concede that we would have a problem. That didn't  
15 happen here.

16 So the preliminary hearing that was held applied only to  
17 Skinner and Guelnder, and whether Louisiana had made out a  
18 prima facie case at the trial, it didn't affect Charbonnet at  
19 all. And the fact that Charbonnet wasn't present at these  
20 early meetings, is Louisiana's position, is unfortunate but  
21 we feel the trial judge did everything in his power to repair  
22 this, as much as anything that can be done to repair, and that  
23 Charbonnet couldn't be in any better position in a new trial  
24 than he was in here, because of what the judge did before  
25 trial to bring him up to date, as it was, give him time to

1 review the pleadings and to file his own.

2 Now, I will go on to the discussion of the late hours and  
3 the --

4 Q Just to get it straight, Mr. Gill represented two  
5 defendants and --

6 A Skinner and Guedner.

7 Q -- and Mr. Link represented --

8 A Charbonnet.

9 Q -- Charbonnet?

10 A Yes.

11 Q And no one suggested there was anything wrong with Mr.  
12 Link at the trial?

13 A Oh, no, Mr. Link has done very well by Mr. Charbonnet.  
14 He represented him very well. I think Mr. Link was right. I  
15 mean there was no reason to file any of these extra motions on  
16 Charbonnet's behalf because he had all the pleadings, he had  
17 all the testimony, he had everything which the other accused  
18 had gotten in the pretrial -- for the purposes of discovery,  
19 you might say. He kind of knew the State's case because the  
20 testimony he had, taken on the preliminary examination and so  
21 forth, and that is clearly why he didn't go and just refile  
22 the same motions on behalf of Charbonnet, or I imagine that's  
23 why.

24 Now, as far as the late hours of the trial go, Your Honors,  
25 Louisiana's position on this is that we just don't feel like

1 a two-day trial like this -- the jury didn't -- they didn't  
2 finish selecting a jury to around 3:00 o'clock in the after-  
3 noon on the first day of the trial, March 21st. Then testimony  
4 was heard until 6:00, and there was a two-hour recess for  
5 dinner, so the jury came back around 8:00.

6 The State put on its case the rest of the night until  
7 midnight. At about 11:30 the State rested, and this is at the  
8 time that Mr. Gill asked for a continuance in the case.

9 Q A continuance or a recess?

10 A A recess until the next morning.

11 Q Yes.

12 A Yes, sir. The trial judge said, "No, Mr. Gill, let's  
13 finish with the evidence tonight." Then the defense took a  
14 recess of thirty-five minutes and came back in and put on its  
15 case until quarter of three. At quarter to three the defense  
16 rested.

17 Q Is this a very usual practice in Louisiana?

18 A I would say that it is not an everyday occurrence,  
19 but it is not all that unusual, especially this judge, Judge  
20 Decker, likes to keep his docket going, and --

21 Q Well, he certainly must.

22 (Laughter.)

23 A He does, and there had been lots of continuances in  
24 the case. Mr. Gill had gotten lots of continuances. You will  
25 see from the dialogue between Judge Becker and Mr. Gill, Judge

1 Becker says to him, "Mr. Gill, you have gotten continuance  
2 after continuance in this case. We are going to finish this  
3 matter today." And so --

4 Q Was this all in front of the jury?

5 A Yes, Your Honor, it was.

6 Q And it was objected to, as I remember the last line,  
7 Mr. Gill objected?

8 A I don't think --

9 Q He said something in the last sentence quoted in  
10 the --

11 A Yes, actually I think he did object at the trial,  
12 but I don't think that is one of the things that they have  
13 been complaining about in this case here. He had been com-  
14 plaining he wasn't getting his recess. He had been complain-  
15 ing that he was sick and that he was ineffective counsel be-  
16 cause he wasn't getting his recess.

17 Q Even if he were well, I wouldn't care to try cases  
18 at 3:00 o'clock in the morning.

19 A Well, the trial judge --

20 Q Would you?

21 A Well, the thing is that --

22 Q Well, would you? Would you?

23 A I wouldn't for one night, Your Honor, for one night  
24 meet for law examinations, for all kinds of things you go  
25 through, these things, I would say definitely -- as a matter

1 of fact, I think Your Honors can take judicial notice of the  
2 fact that getting just about six hours' sleep just one night,  
3 if anything, just sort of stimulates you sometimes. You are  
4 in the middle of a trial --

5 Q Would you mind if I don't take judicial notice of  
6 that, I mean persaonlly?

7 (Laughter.)

8 Q As I recall it, the judge said he knew that Mr. Link  
9 had been sick, didn't he?

10 A That Mr. Gill had been sick, he did.

11 Q Mr. Gill, yes.

12 A Mr. Gill -- the record shows, and Judge Becker noted,  
13 that Mr. Gill had been chronically ill but not seriously ill  
14 since 1954. This case had been continued several times because  
15 Mr. Gill was in the hospital. He was in the hospital -- he  
16 goes in and out of the hospital because he has these chronic  
17 conditions. Nevertheless, he functions, he doesn't want to  
18 give up his law practice, and he does a very good job, like in  
19 this case, as Your Honors will see, he put up seventeen  
20 witnesses and he cross-examined those witnesses in detail,  
21 and Mr. Link was sitting there by him the whole time and he  
22 never asked Mr. Link to help him. Mr. Link got up and made a  
23 few, you know, cross-examined the witnesses some, but Mr.  
24 Gill cross-examined them all, and then when the judge recessed  
25 the trial at 3:30 and said come back at 9:30 the next morning,

1 nobody complained that they wanted more sleep and said please  
2 don't make us come back 'til 10:30 or 11:30, 12:00, nobody  
3 complained.

4 The next morning Mr. Gill -- Mr. Gill claims six months  
5 later he had been sick that night. He didn't call his doctor.  
6 The doctor had been his doctor since 1954. He didn't call --  
7 he could have called him in that thirty-five minute recess  
8 that night. He didn't call him. He didn't bring him into  
9 court the next morning. He showed up, argued an hour and a  
10 half to the jury, the jury deliberated for two and a half  
11 hours, then -- nobody made any objection to sleeping jurors,  
12 nobody said anything about it. Nobody noticed it.

13 But on motion for a new trial, after the conviction,  
14 then Mr. Gill comes in and says, "I was sick, the jurors were  
15 asleep." The hearing was held six months later, and that is  
16 when Mr. Gill brought in the doctor to say how sick he had  
17 been that night. Now --

18 Q But the judge said he knew he was sick.

19 A Well, the judge --

20 Q Didn't he?

21 A -- knew he was chronically sick, Your Honor, but a  
22 lawyer who has a chronic condition, like Mr. Gill in diabetes,  
23 and functions all the time, anyway --

24 Q At 3:00 o'clock in the morning?

25 A If he is functioning all right. I mean I am sure

1 Judge Becker would have called a recess if he had seen Mr. Gill  
2 was faltering, but Mr. Gill -- you ought to have seen him in  
3 operation. He is a good lawyer. He is a good lawyer. I mean  
4 he is vigorous. Your Honors can see from the record, he  
5 doesn't falter at all. And we cited many cases -- I know that  
6 each case like this sort of has to stand on its own facts, but  
7 the jurisprudence of both the federal and state court seems to  
8 be that if a lawyer functions well, then his client's rights  
9 have been protected. I don't see how Mr. Gill -- I don't see  
10 how any lawyer could have done better than Mr. Gill did. I  
11 admit that it was a long hearing, and it was hard on everybody,  
12 but when you put on seventeen witnesses, cross-examine them,  
13 reserve five or six bills of exception, the very first bill  
14 that was won, he won, the first time in Louisiana State Supreme  
15 Court.

16 Q Couldn't a great deal of cross-examination of  
17 seventeen witnesses between 11:30 and quarter of three --

18 A Let's put it this way, Your Honor, the accused did  
19 not take the stand before the jury.

20 Q No, but seventeen witnesses --

21 A They were character witnesses, a lot of them, people  
22 to show who was at the lot. I think I mean Your Honors will  
23 determine, when you see this record, that these witnesses were  
24 cross-examined as much and more than fitted into the situation  
25 of the type of witnesses they were. In other words, they were

1 in there to say, a lot of them, character witnesses, that they  
2 had known Mr. Skinner and Mr. Gueldner and they had no record,  
3 and so forth. Each one, I think the record shows, was very --  
4 was explored to the fullest of what he could contribute to the  
5 defense of this case.

6 Q Mrs. Korn's, does Louisiana make a distinction on  
7 this point between the situation with Charbonnet and the  
8 situation of Skinner and Gueldner?

9 A In other words, for the --

10 Q On this late hour business?

11 A Yes, well during the oral argument, of course, during  
12 oral argument I remember an exchange between the court and  
13 counsel that if they should grant a new trial on this point,  
14 this couldn't apply to Charbonnet because his attorney was,  
15 you know, not sick and --

16 Q Do you press that here? Even if Skinner and Gueldner  
17 were entitled to a new trial on this point, that Charbonnet  
18 is --

19 A I haven't but right now I do.

20 Q I see.

21 A I neglected, yes, I did.

22 Q Mrs. Korn's --

23 A Yes, sir.

24 Q -- you answered a question earlier about these late  
25 trials in New Orleans, and I would like to be more specific.

1 Do you every once in a while have them run up to 3:00 o'clock  
2 in the morning?

3 A Your Honor --

4 Q Midnight?

5 A -- this was kind of late, yes. I think the reason  
6 this happened, the reason I think this happened was that the  
7 trial judge was afraid that if he granted a continuance at  
8 12:00 o'clock, after the State had put on its case, that maybe  
9 nobody would show up the next morning and he would have to de-  
10 clare a mistrial and start all over again, because this had  
11 been going on -- he had already granted, I think, five con-  
12 tinuances, the record shows, and I think he just decided --  
13 now, this is just my own view -- that if he granted a continu-  
14 ance, that if he granted a recess before the defense had put  
15 on its case, after the State had put on its whole case, that  
16 he was going to have no counsel the next morning and have to  
17 declare a mistrial.

18 Q Do you know of any other instance where one has gone  
19 until 3:00?

20 A I have heard of it around the court of some going on  
21 all night, Your Honor, but there is nothing here in the record  
22 on it, no evidence -- let's put it this way, defense did not  
23 make any attempt to show by putting on any kind of evidence --  
24 and therefore the State also did not -- to show whether this  
25 was a practice, of how often this had happened. They just

1 morning? Why didn't he show up the next morning with his  
2 doctor? Why was he able to act so vigorously in defending his  
3 client, arguing to the jury, and everything a lawyer should do?

4 Q Well, what must he have done, collapse in order to  
5 get --

6 A He could have acted inadequate. He could have --  
7 and, you know, Your Honor --

8 Q Counsel says he was inadequate, he even forgot to  
9 prove some things that he --

10 A Yes, the things he said they forgot to prove were  
11 completely immaterial, like what car the marijuana was stashed  
12 in.

13 Q It might seem so now, but it might not have seemed  
14 so in the court room.

15 A Your Honor, the way, when you read this record, when  
16 Charbonnet said the marijuana is in that car, he doesn't say  
17 the marijuana is in Skinner's car. He doesn't say I put it --  
18 he might have put it behind a bush some place.

19 Q I can't argue the facts because I don't want to.

20 A There is no -- the State didn't attempt to prove  
21 that the car was Skinner's, you see. I mean it was just a car  
22 where the marijuana was found. Nobody attempted to prove --  
23 this isn't one of the items of proof against Skinner, that it  
24 was found in his car. There is no evidence here that it was  
25 Skinner's car, so far as I see.

1 Q Do you know what hours the courts meet out in the  
2 country counties of Louisiana?

3 A No, Your Honor, I don't. I have talked to lawyers --  
4 I was talking last night to a lawyer who practices law in  
5 Maryland, and he tells me that it is not at all exceptional  
6 for trials there to go on until -- all night, even. Now, this  
7 doesn't happen night after night, but when you get a trial  
8 started and you have gotten the jury there, and the State has  
9 put on -- part of the case has been put on, they generally go  
10 on all night --

11 Q I am glad the practice is different in New Jersey,  
12 I will say.

13 A Well, this was a conversation I had, you know. As I  
14 say, there is no evidence in the record one way or the other  
15 to show how this fits in with common practice in -- their  
16 whole argument was that they weren't able to be effective  
17 counsel, and our whole argument was that the record shows they  
18 were effective counsel and we can't see how counsel could --

19 Q Didn't the judge have some trouble here? He seems  
20 to have confused this case with another one, at least the  
21 charge he made wasn't relevant to this case.

22 A Well, let's get on to the third point.

23 Q Is that the fact?

24 A No, it is not at all the fact. As a matter of fact,  
25 defense would like you to think that the judge was confused,

1 but the judge wasn't at all confused. As a matter of fact,  
2 if he hadn't charged the jury on the law of conspiracy, the  
3 accused would have been prejudiced for this reason: These  
4 three men were jointly charged with sale and possession of  
5 marijuana. Now, the actual delivery of the marijuana to the  
6 undercover agent took place just by Charbonnet. Although  
7 Skinner and Gueldner were on the lot and introduced the under-  
8 cover agents to Charbonnet, they were not there when the  
9 marijuana was actually handed to them. Therefore, during the  
10 trial of the case, Mr. Gill objected when Agent Fullington  
11 and Agent Hebert were testifying as to how they bought the  
12 marijuana from Charbonnet. Mr. Gill objected, "Your Honor,  
13 this act took place out of the presence of my clients." Well,  
14 saying this is a good argument, if there is just one defendant  
15 being tried because, as Your Honors know, you can only intro-  
16 duce against them the two statements or acts that were done  
17 in their presence. But the exception to this rule, and they  
18 recognize this exception in all jurisdictions, is that if a  
19 conspiracy is involved in the case you can -- and you can  
20 introduce acts of any of the conspirators. And that the jury  
21 was advised that a conspiracy exists, is imputable to every-  
22 body. In other words, three people could decide to murder or  
23 rob, one person could stay home all the time and the other  
24 person go out and do it. If you could prove that they con-  
25 spired to do this, the person who stayed home would be just

1 as guilty as the murderer, as the person who went and did the  
2 murder.

3 So in the instant case, the trial judge allowed in this  
4 evidence acts which took place out of Skinner's and Guelnder's  
5 presence, allowed it in because the State, the judge ruled,  
6 had made a prima facie showing of conspiracy, that a conspiracy  
7 existed between these three accused.

8 Now, when the trial judge came to charge the jury, he  
9 told them very succinctly --

10 Q Finish your little statement, Mrs. Korn, please.

11 A Yes -- that he told the jury, he told them about the  
12 law of conspiracy, and then he said -- it is set out on page  
13 28 of Louisiana's brief -- "Unless you are satisfied that a  
14 conspiracy has been established I charge you that the acts  
15 and declarations of one of the parties to the alleged conspiracy  
16 do not bind the other." Therefore, the State feels that he was  
17 protect -- in fact the State knows -- that he was protecting  
18 the rights of Skinner and Guelnder when he told them this,  
19 because if he hadn't told the jury this, it would have been  
20 the trial judge who would have decided that a conspiracy ex-  
21 isted. The trial judge would then have allowed evidence of  
22 the act out of the presence of Skinner and Guelner in and it  
23 would not have left it up to the jury whether to impute these  
24 acts to Skinner and Guelnder or not.

25 Q No conspiracy was charged, was there?

1 A No, sir, but it is well held in Louisiana and in  
2 other jurisdictions that when you indict two or more persons  
3 and conspiracy is involved --

4 Q Just as co-defendants for the substantive offense, is  
5 that right?

6 A It really is governing in the laws of evidence, Your  
7 Honor. It is because this very reason that I have said, so  
8 that you can -- because otherwise you couldn't -- if three  
9 people commit a crime all together at all times, you know you  
10 don't have the trouble, but if more than three people -- if  
11 two or more people commit a crime, generally they are not to-  
12 gether all the time, and unless you have this law governing  
13 the introduction of evidence which permits -- which says that  
14 the act and declarations of a conspirator are deemed to be  
15 consented to by his co-conspirators, whether he was present or  
16 not --

17 Q Mrs. Korns, may I ask you how long this gentleman  
18 has been a judge?

19 A Judge --

20 Q Do you know?

21 A Judge Becker?

22 Q Yes. Do you know?

23 A Yes.

24 Q The one who tried this case?

25 A Judge Becker was elected, I think, about three years

1 ago.

2 Q Do you know how old he is?

3 A He is in his sixties, Judge Black. I would say in  
4 his early sixties. He was a criminal lawyer before that, for  
5 a long time. As a matter of fact, I think he has argued cases  
6 before this Court. And he was elected -- well, let's say two  
7 to four years ago.

8 Q Mrs. Korns, under your practice who determines the  
9 sentence to be imposed? The jury or the judge?

10 A The judge does unless you say guilty as charged. We  
11 have in capital cases -- then the jury can bring in two  
12 verdicts, guilty as charged or guilty without capital punish-  
13 ment. Both of those I think are set, because guilty without  
14 capital punishment means life imprisonment. Under, say, this  
15 particular case --

16 Q Yes?

17 A -- the judge has a range of sentences set out by the  
18 statute which defines the crime of illegal possession of drugs,  
19 said that anyone, depending on the age of the person who sells,  
20 the age of the person who receives it, whether it is selling  
21 or possessing, the sentence ranges from, say, I think the  
22 minimum for sale is ten years, the minimum for possession is  
23 five years, and the maximum is set out also.

24 Q Well, here Mr. Charbonnet got a sentence of fifty  
25 years in the penitentiary for marijuana.

1 A Well, that is because he was double billed, or even  
2 triple billed.

3 Q And who set that, the jury or the judge?

4 A Well, double billing, again, especially to selling,  
5 in double billing, that might have been a minimum sentence.  
6 I am not sure, Your Honor.

7 Q Minimum sentence of fifty years for possession of  
8 marijuana?

9 A Well, this was because he was double billed, you see.  
10 This means --

11 Q What do you mean double billed?

12 A This means that -- you know, I think you all call it  
13 the --

14 Q Different counts?

15 A No, sir, no, sir, it means --

16 Q He had a record?

17 A He had a record, that's right, that's it.

18 Q Prior convictions?

19 A Prior convictions. Yes, sir, within a certain number  
20 of years of that conviction.

21 Q I see.

22 A And this record here will show, the bill of informa-  
23 tion, what we call double billing, goes in and recites that  
24 on such and such a date, maybe it is twice, I don't know --  
25 maybe this is the second or third time -- the accused was

1 found guilty and generally it would have to be within a time  
2 and have to be a felony and so forth as far as the defendant.  
3 And, then, under the statute setting out the habitual offender  
4 sentences, the sentences get pretty stiff.

5 Q It would, fifty years.

6 Q Fifty years.

7 A Well, in some assault and robbery statutes, you know,  
8 there is almost life imprisonment when you keep on with the  
9 third offense. But this ten years, you see, Skinner and  
10 Gueidner, for this same offense, got ten years. I think, if I  
11 am not wrong, that Charbonnet was a third offender. He might  
12 have been just second, but it was certainly because of that.

13 Q Is there any challenge here on the ground that that  
14 sentence is not valid?

15 A No, Your Honor. I think if Your Honors look at the  
16 statutes in the record, I don't think the statutes -- it may  
17 be that it was the minimum the judge could give under the  
18 number of previous offenses which had been -- of which he was  
19 guilty.

20 Thank you, Your Honors.

21 MR. CHIEF JUSTICE WARREN: Mr. Leppert? You have a  
22 little time left.

1 FURTHER ARGUMENT OF GEORGE M. LEPPERT, ESQ.,

2 ON BEHALF OF PETITIONERS

3 MR. LEPPER: Mr. Chief Justice, Your Honors, in reply  
4 to the questions of what the State Supreme Court's position  
5 was of the lack of representation of Charbonnet, I might say  
6 that it is covered most succinctly in about twenty lines in  
7 the factual background starting at 391 and the rationale is  
8 in about ten lines at the top of page 392, column one of 3047  
9 2d. And I will use half of my five minutes just to read that,  
10 if I may. Here is the whole disposition of that major argu-  
11 ment. The Court said:

12 "It is true that the minutes of court must show that the  
13 accused was present at every important stage of the trial for  
14 a felony, from the moment of his arraignment to the sentence,"  
15 citing a number of State cases.

16 But, if stated simpler, if defendant Charbonnet pleaded  
17 not guilty and was thereafter represented by counsel -- well,  
18 he was represented only in the sense that he had one on paper  
19 who never showed up for a period of -- she was correct, it  
20 wasn't a whole year, it was about seven months -- seven months,  
21 he was represented on paper only. Continuing with this:

22 "His counsel had not filed a motion and it is our conclu-  
23 sion that the inclusion was not imperative that he be present  
24 at the trial when a motion to suppress and dismiss, filed by  
25 the defendants Skinner and Guelnder. Charbonnet was neither

1 prejudiced nor in violation of his constitutional rights."

2 They didn't even go into the question of whether this is  
3 part of the trial.

4 Q Was any evidence offered that was taken in a search  
5 which was --

6 A It was extended, Mr. Justice Black, in connection  
7 with a motion for preliminary examination which under law  
8 could have been used at the trial.

9 Q I understood the lady today that there was no --  
10 the search did not get anything and nothing resulted.

11 A No, that was withdrawn. That was withdrawn. But  
12 there were between forty-five and fifty pages of testimony on  
13 the motion for a preliminary hearing and the motion for pre-  
14 liminary examination and a bill of particulars. There was ex-  
15 tensive evidence on it.

16 Q But none of it was ever offered at the trial?

17 A No, no evidence was offered, but I am saying that  
18 the motion --

19 Q Yes, but none of the testimony that was taken at  
20 those hearings was offered at the trial?

21 A Except insofar as it was repeated, no, it was not  
22 offered as such, no, sir. Now, in conclusion I want to give  
23 you the climate of this business of why we had to work that  
24 late at night.

25 Mr. Gill, in his motion for a new trial -- and it is all

1 in the medical testimony -- he pointed out -- the record, 331,  
2 Volume 2 -- that he was able to work normal hours, and he had  
3 just finished a case that went four hours before Judge Cox,  
4 the one who succeeded the first judge. And the trial judge  
5 say, "You are trying it with an old man who doesn't have  
6 anything." And a moment later he declared, record 331, "I  
7 succeeded a man you tried a case with, and his docket was in  
8 terrible shape. I cleared up the backlog he left. The only  
9 way I could do it is because I force lawyers to try cases,  
10 defense and state. That is the only way a judge is going to  
11 stay up on his docket."

12 Q Isn't this a pretty good philosophy --

13 A Yes, sir.

14 Q -- in this day when all the courts are congested?

15 A Yes, sir. We replied to that that there are limits  
16 and we stated on page 67 of our brief to the State Supreme  
17 Court, "The judicial docket which moves along blindly and  
18 inexorably as an assembly line may put out a body of oddly  
19 shaped judicial products."

20 Q That is a good sentence.

21 A And that is what we think we have here.

22 Q Incidentally, I notice, as I look at the calendar,  
23 this is on a Monday. The trial was on Monday and Tuesday.

24 A Sir?

25 Q The trial days were Monday and Tuesday, I think.

1 A I think that is correct.

2 Q Well, I suppose a judge would have a rather large  
3 calendar on a Monday, wouldn't he, to dispose of before come  
4 Friday?

5 A Yes, sir, but the record doesn't show any reason to  
6 move -- and as far as his previous continuances, the record is  
7 bare when you tie in with this previous matter. It is merely  
8 a supposition that Mr. Gill got a previous continuance. There  
9 were several that got them. One of them was the State when  
10 they amended their bill.

11 THE CLERK: The Court is now adjourned until to-  
12 morrow at 10:00 o'clock.

13 (Whereupon, at the conclusion of the above-entitled  
14 case, the Court was adjourned.)

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