Supreme Court of the United States

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OCTOBER TERM 1970

In the Matter of:

CLARENCE WILLIAMS,	**Docket No.** 81
Petitioner,	
vs.	
UNITED STATES OF AMERICA,	
Respondent.	

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C O N T E N T S

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

CLARENCE WILLIAMS,

Petitioner,

vs. No. 81

UNITED STATES OF AMERICA,

Respondent.

Washington, D. C.,

Wednesday, October 21, 1970.

The above-entitled matter came on for argument at 1:18 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

APPEARANCES:

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Counsel for Petitioner

JAMES VAN R. SPRINGER, ESQ.,
Office of Solicitor General,
Department of Justice

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will now hear argument in Case No. 81, Williams vs. United States.

Mr. Florence, you may proceed whenever you are ready.

ARGUMENT OF HENRY J. FLORENCE, ESQ.,

ON BEHALF OF PETITIONER

MR. FLORENCE: Thank you, Mr. Chief Justice.

Mr. Chief Justice, and may it please the Court, the Williams case involves two questions which are presented to the Court. One involves again the question of Chimel and retroactivity, and I believe the U.S. Government has agreed that there is no question about it, that this search did in fact violate the dictate of Chimel. But because of the second question presented, namely -- which we presented all the way along -- namely, the fact that this search was a mere pretext and violated even pre-Chimel law. We will have to go into the facts themselves.

Again, it should be noted that this is a direct appeal from a conviction in federal court. The facts are such that on March 9, 1967, the defendant was alleged to have sold heroin to a federal narcotics agent. A warrant was issued approximately three weeks later. During this period of time, there was constant surveillance made of the residence in question and nothing was observed of an extraordinary nature

except the fact that it appeared that two people were living there, the defendant and a woman who, again, turned out to be a common law wife, were obviously living in the residence itself.

Later on, evidence indicated that the utility bills and so forth were in the name of the woman. There was nothing found in the name of the man himself.

After the warrant was obtained, a meeting was held in which involved approximately, at least nine police officers. There is testimony in the motion to suppress that there were specific discussions that occurred about the manner in which they were going to search the house. In other words, the police had full intentions of arresting the defendant in his home and thereupon searching the house.

Now, this particular evidence is contradicted by testimony of three other police officers who denies this happened, but we still have the discrepancy between the testimony of two of the police officers.

Q But there is a finding on it?

A The court, the Ninth Circuit, specifically found that they would believe the majority of most of the police officers and specifically held that this was not the intention of the police in their findings.

Q Then you are not raising any question about that finding or are you?

A Yes, I am still raising a question about the finding, Mr. Chief Justice.

The nine police officers proceeded to the home of the defendant where they knocked on the door and was observed in the living room of the house in his underclothing eating some dinner. The lady in question was also -- opened the door for the police, upon their knock. There was no forceful entry required.

Q They had an arrest warrant?

A An arrest warrant only, no search warrant at all.

Q Did the arrest warrant call for the rest of not only the petitioner but also of Arlene Jackson?

A No, it did not, Mr. Justice Stewart.

Q Although she did become a co-defendant, didn't she?

A She became a co-defendant and later the Ninth Circuit again dismissed the conviction as to her.

Q Dismissed her conviction. But the arrest warrent did not name her?

A Did not name her.

Q I see.

A Upon entering the house, the officers immediately without delay went into the other rooms of the house. In fact, there is testimony that they came in through the

back door and through the side doors and so forth. And they proceeded to search the residence for approximately two hours. In a three-bedroom house, in the northeast bedroom of the house, they found a container, a large can in a closet, in which turned out to contain heroin and from which both parties in the house were charged with the crime of possession of heroin.

Q You said a three-bedroom house. What is the rest of the description of the house? How many rooms were there?

A There was a storage room which was searched immediately joining the house. There was a kitchen, a living room, dining room combination also that was searched.

Q You have got about --

A Six rooms.

Q -- six or seven rooms there.

A Including the bathroom -- as near as we could determine, there were nine police officers involved in this particular case.

At the motion to suppress, which was argued on January 12, in the U.S. District Court in Phoenix, Arizona, we specifically objected to the admissibility of the evidence on the grounds that it was a search that went far beyond the dictates of Harris and Rabinowitz. We also argued that the search was a mere pretext, and in fact our whole motion to suppress

was based upon this premise.

Again, when we appealed the conviction to the Ninth Circuit, we again specifically alluded to the fact of the pretext and the fact that it was our feeling that the search violated Rabinowitz and Harris.

When the Chimel case came out, the Ninth Circuit specifically requested further memoranda with reference to the retroactivity of Chimel, and after making that finding they specifically found that the search involved did violate Chimel; however, they said it was not retroactive and therefore they affirmed the conviction of the defendant and we came up here on certiorari and here is why we are here.

The first issue I would like to present to the Court on retroactivity, it would seem to be that we have a situation where if Mr. Williams -- if Mr. Chimel had not been so fortunate as to arrive here before the Supreme Court of the United States before us, we might very well be here today arguing the same matters that were argued in front of the Court by Chimel and very well have a ruling consistent with Chimel that this was an illegal search and seizure. And in effect, by refusing to give retroactivity to this particular case on a direct appeal from a federal court, we are creating an inequity in the law in that we are differentiating between merely because a man has not been as fast as someone else in coming up here to the Supreme Court of the United States.

It is felt that all the cases in which -- and this is what the Supreme Court has heard many times -- in which all the cases in which strictly a prospective application has been made, our case is of new law, new areas. And again we submit that in this particular case -- and Chimel is not a new area in that it just in effect advises law enforcement authorities of what is reasonable, what is a reasonable search incidental to an arrest.

Harris came out and then the Court later on, in Trupiano, specifically overruled Harris and again specifically held that the search incidental to an arrest should be strictly construed. Rabinowitz -- in the language of Rabinowitz, it specifically holds that Rabinowitz is to be considered on its facts, that the reasonableness of a search is to be considered by all the facts and circumstances arriving at that particular situation. And I would submit to the Court that the facts and situations in this particular case were such that the fact situation -- that we did not violate, so to speak, the dictates of Rabinowitz in this particular search.

In Rabinowitz, there was a one-room officer, there was an arrest warrant, the search was for an hour and a half, and there was a public place with exclusive possession on the part of Rabinowitz.

In our particular case, we had a private home, the government was not able to establish who owned the home or who

actually had possession of the home. The search lasted for over two hours, with an arrest warrant, and approximately seven rooms were search. I would say that this particular case, in fact situation, is closer to Von Cleef in which the Supreme Court specifically held that it was an illegal search pursuant to the Harris-Rabinowitz rule, and for that reason that the Court should deem that retroactivity should not be applied in this case, that it would reverse the decision of the Ninth Circuit based upon the fact that it was an illegal search, even without the ruling of Chimel.

I believe that again the question of retroactivity, the closest case I can really come to it is the Spinelli case in which I think there is no doubt about it, that no one argues as to retroactivity in Spinelli. I think Spinelli again took the search warrant in a narcotics case and expressed what would be required, what is required to show probable cause to a magistrate. I believe Chimel has merely stated what is necessary, what is probable cause, what is the basis for a search incidental to an arrest, and the similarity between the two are quite close. Neither one sets up new law, such as the Desist opinion, which in effect says that Katz will not be required retroactive, and it is quite clear that before Katz electronic eavesdropping was allowed, although the Court was starting to mitigate in many aspects, but still was allowed, and this particular decision just threw it out completely.

I think Mr. Miller has covered that in his appendix, which we also cited in our brief, quite excellently, and I would submit to the Court that in view of the fact that this was a direct appeal, in view of the fact that we specifically argued Chimel two years before Chimel ever came out, that in effect if the Court denied our request at this time, then in effect what the Court would have to say is if the Ninth Circuit or in effect if the lower court had granted our motion and the government in some way in a motion to suppress, which they have a right to appeal, could come up and say -- object to it and argue that it was not a valid ruling by the trial court, I think this would be ludicrous. And yet because the trial court, so to speak, goofed, did not follow the law the way it should have done, because we arrived approximately a year after Chimel before this august Court, we are faced with a different decision.

I don't think and I don't feel that this is equal protection under the law that is being given to Mr. Williams.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Florence.

Mr. Springer.

ARGUMENT OF JAMES VAN R. SPRINGER, ESQ.,

ON BEHALF OF THE UNITED STATES

MR. SPRINGER: Mr. Chief Justice, may it please the Court, as I indicated at the outset of my argument in the last

case, our position in the present case, the Williams case, is quite simply that the conviction should be affirmed because the evidence in question was obtained by a search that was legal under the law at the time of the search, before Chimel was decided, and Chimel should not be applied retroactively so as to illegitimize that search, and we don't argue here, as we did in Elkanich, that there was any special combination of exigent circumstances that would now justify this search without a warrant.

At the outset, I think we can fairly easily dispose of the petitioner's argument that the Court need not reach the retroactivity question in this case --

Q May I ask if you if the government is taking a position that the search warrants are reasonable?

A The search was reasonable under the law in effect at the time of the search and, as Mr. Justice Stewart has --

Q Forgetting the time and retroactivity, in which I have had some interest from time to time, what do you say about the search of itself?

A If we were here arguing Chimel, again we would argue that it was reasonable, Mr. Justice Black. However, I think we do not --

Q This case --

A -- we do not concede that --

Q In this case?

A Yes, Mr. Justice -- we do concede, however, that under the principle of Chimel, if it applies, we cannot really justify this earch --

Q I thought you accepted the principle of Chimel, depending on whether the circumstances showed it to be reasonable? How can one case be an express decision for holding the same way in another where the circumstances are different?

A If I understand the question, Mr. Justice, we do submit that there are circumstances present in Elkanich going to reasonableness under post-Chimel standards which are simply not there to be argued from in this present Williams case, but the circumstances of the search are quite different in the two cases. And in light of the precedent of Chimel, as I say, we are not arguing -- we are arguing only retroactivity here --

Q Does that mean one who believes, as I do, as indicated in Linkletter, to the conclusion that he must reverse this case on his idea of retroactivity should not be applied or should be applied retroactively?

A I think, certainly, Mr. Justice Black, given the decision in Chimel and giving your views as stated in Linkletter, this case would have to be reversed. And, of course, we --

Q And I understand the government is abandoning

any attack on the search and agreeing in effect for this case that under the circumstances it was unconstitutional.

A Yes, we are, Mr. Justice Black, and we believe that --

Q Of course, with what the facts are in the Chimel case itself, that wouldn't -- I mean, given those views, that wouldn't lead to reversal of this case, would it?

A That is certainly true.

Q Let me put it --

A If the two cases, if each case had been -- if Linkletter had been decided the other way, as you urged, Mr. Justice Black, and if Chimel had been decided the other way --

Q As I also urged.

A -- as you also urged --

Q That is on retroactivity?

A Well, in Chimel on the reasonableness of the search --

Q Oh, yes.

A -- we would be --

Q Let me put it to you --

A -- the government would be arguing that this was a traditional reasonable search.

Q Let me put it to you in any way, Mr. Springer. If we were today arguing Chimel and this case, do you think they would both have the same disposition?

A I think probably so, without having obviously gone the same depth into the record in Chimel, Mr. Chief Justice. I think the searches are quite similar, both in scope and circumstances.

Q What you would be arguing, I suppose, would be, if you were up here with Chimel only, you would be arguing that Chimel ought to be overruled, isn't that the nub of it?

A Yes, we would, Mr. Justice Harlan, but we have frankly not interpreted the grant of certiorari --

Q No.

A -- in this case in that light.

Q That is your position, though, really?

A Yes. But for the sake of argument hereafter in this case, I think, I am assuming that Chimel is the law.

Q Well, what I don't understand about that is -- I understood you to tell me in the last case that your position is that the search was not unreasonable; under the circumstances it was not unconstitutional.

A That is certainly so, and if we had --

Q Well, if the circumstances in this case are different to the circumstances in the last case --

A Yes, they are --

Q Then why would you have to overrule that case to say that the circumstances as far as the facts are concerned, to say that here we decide the reasonableness in a

different way?

A Well, the problem is that the facts of this case are very much like the Chimel case two years ago --

Q I understand they are very much alike, but frequently, I would suppose, the slightest deviation in facts might make something unreasonable which was about those facts which would have made it reasonable.

A Well, we do not argue that there is such a difference between the facts of Chimel and the facts of this case. We are simply not taking that position in the present case, that it is different from Chimel --

Q Then I don't understand why you can say you are arguing that each case is to be tested by the reasonableness under the circumstances.

A Yes, but, on the other hand, Mr. Justice Black, this is a basic principle to the approach that the Court has taken, the majority of the Court has taken in retroactivity cases, and their approach that we are here arguing, that there are sub-principles of reasonableness that have emerged over the years at various times with reasonable clarity. For example, we --

Q You mean rigid principles to determine whether something is reasonable?

A No, certainly not absolute rigid principles, Mr. Justice Black, but principles nonetheless on which police

officers, for example, have based their behavior. For example, the Rabinowitz rule, that if there is an arrest you may search within certain limits the place of the arrest.

Q I had supposed that a question of reasonableness was to be determined under the facts and circumstances of each case, separate, wholly on the circumstances of that case. Is that right or not?

A I think, certainly as an ultimate principle that is so, but it certainly is true that the precedents are of some value, I think, both to the courts and particularly to police officers --

Q The precedents are of some value, but if you are going to have each one decided on the basis of reasonableness under the circumstances, I suppose there has never been any two cases where the circumstances were identical in any case.

A I certainly think that is true, though there are --

Q All right.

A -- some cases where the circumstances are substantially the same as in others and, of course, that is a judging problem in determining which circumstances are enough like others to lead to the same result.

Q Mr. Springer, I take it your claim firmly is, however, that under Chimel law the search was good?

A Yes, it is, Mr. Justice White, again, because, as I indicated, this search was very much like the Chimel search which the Court in Chimel itself indicated would have been all right under the prior law. I think there can be no question, as Mr. Florence suggested, with an issue as to the ownership of this house. The police had been observing Williams for some time and had seen him, both the police and the federal narcotics agents, and had seen him come and go repeatedly from this house at hours which would indicate that he was living there. And I think they didn't need to search the title. It was enough to know that this was his apparent residence and perhaps even that wouldn't be necessary.

Q Do you think, under pre-Chimel law, that if you arrested a man for stealing television sets and you arrested him in his own house and you had probable cause to believe the television sets might be there, that you could search for the television sets but could also search sealed envelopes found in a drawer?

A Well --

Q Under pre-Chimel law?

A -- Mr. Justice White, we do not have to make that argument in this case. Of course, that was the decision in the Harris case, which Rabinowitz had said -- was at least revived or continued to be good law after Rabinowitz, and I think clearly until the Chimel decision two terms ago. This

search, however, was a considerably more focused search.

Q Yes.

A It was a search which was aimed at looking, again as in the last case, for marked currency which had been used in the sale on which the arrest was based and was in fact found, and the search for narcotics which also was found. So it was not a general exploratory search or the kind of mass seizure, for example, that the Court found in the Von Cleef case, decided at the same time as Chimel.

As to the argument that the officers had a bad motive because they had allegedly discussed searching at the meeting, I think, as the Chief Justice suggested, that was a factual question which was resolved by both courts below. The only evidence of discussion of search -- and the evidence doesn't go beyond that, there is certainly no evidence that the officers planned the arrest as a pretext for search.

Q Mr. Springer, is there any explanation why you needed nine officers to arrest one man?

A I think the real explanation -- and I am speculating, of course -- is that there were three jurisdictions involved here. There were federal narcotics agents, there were state liquor and narcotics agents, and local police. I think some of it may have been the niceties of cooperation.

Q And each one of them needed three?

A I think each of those jurisdictions had an

interest in this, and --

Q Yes, but each one had three. That is the only way you can get nine.

A Yes, I believe, there were more than one of each, in any event.

Q Then I assume -- there was no explanation in the record why --

A Why it was necessary --

Q -- other than the fact that there were three jurisdictions.

A No, it was not clear. There are some suggestions in the record that some of the officers had more passive and others had more active roles. Some of them may well simply have been standing around watching.

Q Is there any way to assume from that that you needed nine in order to search the house rather than to make the arrest?

A Certainly not --

Q You couldn't draw that assumption?

A -- Mr. Justice Marshall, though I think the evidence suggests that Mr. Williams was a substantial narcotics dealer, given the right and obligation, in fact, of law enforcement officers to provide against contingencies, they might well, when they went to his house, have come up against a substantial number of people. They didn't know what to

expect, so that may be the justification for what may seem like excessive manpower.

Q I understand that the government had this place under surveillance and knew when he came and went. Well, wouldn't they know how many people were in there?

A Well, I think, actually, on the evening of the arrest, they had gotten the warrant late in the afternoon, they were looking for him all evening. They traveled around, they didn't know where he was --

Q But they were watching that place.

A Yes, Mr. Justice, but --

Q And they knew how many people were in there. I am still worried about nine people to arrest one man.

A Well, I admit that I have no compelling answer for that, but it is certainly true that he wasn't there when they arrived. He arrived while they were watching the house. He might well have arrived with a car full of confederates, for all that the agents could foresee.

Q Well, why didn't they arrest him in the street?

A I think the facts suggest, Mr. Justice Marshall -- and I don't have the exact layout of the house -- as far as I can tell from the record, he drove up the driveway and it was only a matter of the distance perhaps from you to me between the car and the house, and I think it was not unreasonable for the officers to wait until he got into the

house, and I think they probably couldn't have done anything else. After all, they wanted to -- it took them a few seconds to evaluate what had happened to decide whether this was the man they wanted or not.

Q I don't suppose it would be reasonable, to be held constitutionally unreasonable these days for officers to take enough men to protect themselves if there is somebody there ready to shoot them.

A I certainly think it would not be unreasonable, Mr. Justice Black.

So this case does boil down, I think, to a simple question whether Chimel should be retroactive as to cases that were on direct appeal, as this case was, when Chimel was decided. Of course, we think the situation is governed by the Court's express decision in the Desist case, which was also a direct appeal case and, therefore, we think that a decision to reverse in this case would have to depend upon an overruling of Desist which, like this case, was a Fourth Amendment case.

Q Whatever rules ultimately are adopted for this retroactivity problem, you draw no distinction between direct appeal and collateral review?

A No, we do, as the court did not, Mr. Justice Harlan.

Q Yes, Well, I just wanted to make sure of that.

A In Desist, we stand on Desist as being

reasonable, and we think that Desist, as Desist said, in the majority opinion, reflects appropriately the purpose of a new Fourth Amendment rule, such as the Katz rule or the Chimel rule in this case which, of course, is, as the Court has said a number of times, to prevent and not to repair. The Court said this in the Elkanich decision, that the purpose of a Fourth Amendment principle is to deter illegal police behavior so that we think that in determining what impact a new rule should have in a particular case, the focus should be upon the police behavior in question.

If a new rule were to have effect on searches that had taken place while the old rule was in effect, the justification in any kind of practical terms, we think, would have to be that the Court intended to penalize law enforcement officials for activity which they had no reason to think was in the least bit illegal or unreasonable at the time they carried it out and, given the need, as I suggest, of law enforcement officials to have workable rules, almost rules of thumb, that thousands of policemen and other officials throughout the country can apply, we think that their reliance upon such rules should not be retroactively punished.

In terms of the effects on cases, I think it is constructive to consider both the circumstances of this case and of Elkanich. If this search, the searches in these two cases are held to have been unreasonable and their fruits are

excluded from evidence, there is no way that these cases can be reconstructed. If evidence was illegally seized, there is no way that the police, that I can think of, that the police can after the fact now or any time get a warrant and go back and seize the same evidence, and these both happened to be cases, like a good many of these I think, where without this evidence it would have been very hard for the government to prove its case.

On the other hand, in the case where there is other proof, there is the traditional kind of burden upon the administration of justice, which the Court has considered to be pertinent in its other retroactivity cases. The problem of --

Q Let's suppose though that a probable cause for the search and the officer doesn't get a warrant when he should have, and the case is reversed, the conviction is reversed. You say that officers cannot then get a warrant to seize the same material?

A I think it is awfully hard, when you know perhaps in the situation --

Q When there is clearly probable cause.

A Well, in this case we haven't contended that there was probable cause. If there was probable cause, there is all that much more probable cause for having found it.

Q You mean you don't claim here there was probable cause for search for anything?

A I think it could be argued that we haven't bitten off that particular point here. Here the problem is that there was no evidence connecting Williams' narcotics dealings in any way with his home. Now, of course, it is reasonable in narcotics cases, in heroin cases to think that a trafficker may well be keeping narcotics in his home, and I don't think we would abandon the argument in any future case, but that by itself, the fact that a known narcotics trafficker was living in that house, that that might not in itself be a basis for probable cause. We are not, however, arguing it in this case where the case has not come up in those terms through the lower courts.

Q How long had the police known that this was his base of operations or one of his bases of operations? Didn't you indicate --

A Well, they had known that he was -- well, the sale on which the arrest warrant was based was the 9th of March, which was about three weeks before the arrest and the search. I think there is evidence that at least the local police had been observing Williams' comings and goings from that place for a matter of months before that, though there is nothing in the record to suggest any connection between that house and the narcotics dealings, though they were familiar with the fact that he lived there.

We suggest, therefore, that the Court should stand

by its conclusion that the rational cutoff point in any search and seizure case at least for retroactivity purposes is the date of the police activity which the new rule determines to be illegal. I think, upon analysis, this turns out to be the most rational fairest cutoff point that could be evolved.

To be sure, it has been suggested that turning down a man whose case was on direct review at the time the new rule was laid down, is in a sense unfair to him because one man who comes to this Court one day gets relief and a man who comes to the Court in the same posture the next day does not.

On the other hand, I don't think it has been suggested that the man who came the day before, as Chimel did for example, should be given relief simply because of the fact that he was in this Court at about the same time as Chimel. And, of course, he is penalized perhaps because his lawyer, if he had one, didn't draft his petition perhaps as artistically as Chimel did or for some reason or other the Court happened to take a later case rather than an earlier one.

Also I think it has to be now recognized that how long a particular case remains pending under direct review is the product, a number of factors which don't necessarily reflect upon fairness, a more affluent defendant or a defendant with a less responsible lawyer may have -- or a better or worse lawyer, depending on the circumstances, may have for one reason or another kept his case alive on direct review with

arguments that have nothing to do perhaps with the new rule to which he becomes the beneficiary just because perhaps his case had been kept alive on the basis of arguments that might have been plainly frivolous.

And of course the states of the dockets of the various courts of appeals around the country, again, are factors which have nothing to do with the fairness of whether one defendant should be in jail or another one should be out. So it seems to us, as it did to the Court in Desist, that the fairest most rational dividing point is the date of the activity upon which the new rule focuses, and if the new rule focuses upon pretrial investigatory activity, as many of the new rules the Court has considered do, the cutoff date should be the date of the activity that was carried out in reliance on the whole rule.

Q Your argument too is that the environment of a man whose particular case is cited?

A Yes, that does, Mr. Justice Blackmun. Of course, I believe, I think, that -- and some Justices at least, if not the Court have suggested -- that any new rule could be made wholly prospective. There is at least no constitutional barrier to doing that though, as the opinion in Stovall vs. Denno, which considered this, suggested there may be -- in fact are jurisprudential reasons for not doing that, but since the problem of simple incentive of lawyers to bring cases raising

new principles, the further consideration that the Court has over the years considered that its decisions are best made when they are required and made in terms of the facts of a particular record.

I think it is a little harsh and rigid to say that because the Court has chosen not to make new law in that wholly prospective way, that it must therefore give relief to everybody whose case was on direct review, either in this Court or some other court, at the time of the new decision, because -- and as I have suggested -- in terms of the practicalities and in terms of the hundreds or thousands of defendants who are in prison around the country, that is not a very fair or, I would submit, rational dividing line.

I might just say a word about the point that both Mr. Florence and petitioner in Elkanich raised as to what the government says the principle is upon which the Court is to determine whether there is a retroactivity question or not.

I think it is not a fair reading of our argument to say that we have concocted the magical term "landmark," and that it is only landmark cases which we argue would not be retroactive. I think the question of whether there is a retroactivity question, which may in some cases be a hard one, though I don't think it is here, has to be made in terms of the practical question whether there has been a substantial change in the rules by which, in the Fourth Amendment context for

example, police behavior has been moulded and could reasonably moulded, or in the case of matters occurring at trial, whether there has been a substantial change in a rule that has been used for the guidance of trial court.

In each case, as all of these retroactivity considerations, it must be considered in terms of the practicality of the situation.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Springer. Do you have anything further, Mr. Florence?

MR. FLORENCE: Nothing further, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Thank you. The case is submitted.

(Whereupon, at 1:56 o'clock p.m., argument in the above-entitled case was concluded.)

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