In the

Supreme Court of the United States

WILLIAM N. ANDERSON, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 73-346
	)	
UNITED STATES OF AMERICA	)	

Washington, D.C.
March 19, 1974

Pages 1 thru 52

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Washington, D. C.
Tuesday, March 19, 1974

The above-entitled matter came on for argument at 11:36 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

DAVID GINSBURG, Esq., 1700 Pennsylvania Avenue, N.W., Washington, D. C. 20006; for the Petitioners.

LAWRENCE G. WALLACE, Esq., Office of the Solicitor General, Department of Justice, Washington, D. C. 20530; for the Respondent.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-346, Anderson v. United States.

Mr. Ginsburg, you may proceed when you are ready.

ORAL ARGUMENT OF DAVID GINSBURG, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. GINSBURG: Mr. Chief Justice, may it please the Court:

This case is here on certiorari to the Fourth Circuit. It arises in Logan County, West Virginia. The charging statute is Section 241 of 18 US Code, a conspiracy statute that has been before this Court many times before, most recently in Guest and Price, and before that in Classic and Williams and Screws.

The central issue, as we understand this case is whether an alleged conspiracy to cast fraudulent votes in a state primary election--in this particular case for the office of a county commissioner of Logan County, West Virginia--states a federal offense under Section 241. So far as we are aware, this question has not yet been ruled upon by this Court.

The government finds in the record a much simpler case. It contends that the indictment alleged and the evidence showed two separate conspiracy violations for casting and counting fraudulent votes, one, for the election of state and county officers; and the other for the election of

candidates for federa offices. And the government regards this case as ruled in effect by Saylor and Classic and Ingram, and I suspect would have the writ dismissed as improvidently granted. The facts are not complicated. The petitioners were indicted on January 12, 1971. The text of the indictment is in this white brief, our petition for certiorari to the Court.

There were five defendents; all of them were state officials. William Anderson was Clerk of the County Court of Logan County. John Browning, Clerk of the Circuit Court of Logan County, its intermediate state court. Ernest "Red" Hager was a deputy sheriff of Logan County. Bernard Smith was a West Virginia State Senator. And Earl Tomblin was the sheriff of Logan County.

Paragraph 6 in the indictment of appendix B states that the primary election was held in West Virginia on May 12, 1970, for the purpose of nominating candidates for two federal offices, the United States Senate and the U. S. representative, and--and I quite--"various state and county offices."

Q Single ballot?

MR. GINSBURG: On the single ballot, Your Honor.

In the context of the trial, the reference to the federal offices proved irrelevant. But we take no exception to this aspect, this statement of fact in the indictment.

Paragraph 9 describes the alleged conspiracy.

Q What page of the appendix?

MR. GINSBURG: It is beginning, I think, Your Honor, on page 1b, appendix B, paragraph 9. It is in this white petition for certiorari. I am looking on pages 2b and 3b.

Q Thank you.

MR. GINSBURG: Paragraph 9 describes the conspiracy. From May 1, 1970 to January 12, 1971, the date of the filing of the indictment, the five defendants are said to have conspired to dilute the vote of qualified voters, secured to them by the Constitution and laws of the United States, to vote for the aforesaid offices, that is, for the two federal offices and the various state and county offices, which are described in paragraph 6.

Paragraph 10 of the indictment ties the alleged conspiracy to a single precinct in Logan County, Mount Gay precinct that you will hear a good deal about. It asserts that conspiracy violated state law. There is no contest about that.

The evidence centers around what happened before and after May 12, 1970 in connection with the voting that took place at the Mount Gay precinct. There are no allegations in this case of racial bias. There is no charge that voting rights were in any way d enied or abridged or diluted because of race or color.

According to the testimony, these five defendants,

with the help of three election officials who were stationed in that Mount Gay precinct, set up the house. That merely means that the defendants, these five men, obtained the help and cooperation of three people within the precinct office to attain their purpose. Now, what was their purpose?

Their purpose was to secure the Democratic nomination for county commissioner of a man named Okey Hager who headed a slate for various state and local offices. Okey Hager was already the incumbent county commissioner, and he is the father of Ernest--that is, Red Hager--who is one of the defendants in this case.

There is testimony that a man named Cecil Elswick, who is one of those three people stationed in the Mount Gay precinct--and he was a co-conspirator granted immunity by the government--cast false and fictitious ballots on the voting machines at Mount Gay for the entire Hager slate. And he got rid of the poll slips, destroyed them, so that the number of voters could not be determined except from the machine tally.

The trial lasted 12 days. The transcript is neary two thousand pages long. And the five defendants were all found guilty under 241 and given provisional maximum sentences of ten years imprisonment.

I spoke of the Hager slate. What is the role of the federal officials in relation to the Hager slate? Okey Hager's major opponent for county commissioner was a man named Neal

Scaggs. hager and Scaggs each headed a nemocratic Party slate or faction. Repeatedly in its brief the government says that Senator Byrd and Congressman Hechler, who were seeking renomination in 1970, were on the Hager slate and that the Mount Gay precinct was set up to insure the nomination of all candidates, state and federal. We find no support in the record for this view.

So far as we can tell, neither Byrd nor Hechler was on the Hager slate or part of the Hager faction. And the alleged conspiracy of these five defendants was limited to certain state and county offices, including particularly--

Q Mr. Ginsburg, when you say the record, are you referring to the evidence actually introduced at the trial or to the evidence and the indictment?

MR. GINSBURG: In the evidence actually introduced at the trial, Your Honor.

There is some evidence that Cecil Elswick did cast unlawful votes for Byrd and Hechler in the Mount Gay precinct. But we have found no evidence in the record, Your Honor--and we have examined all of the government's record references--that Byrd and Hechler were the object of any conspiracy or that they were on the Hager slate at all.

Q Was there any impact? You suggest that there was no impact whatever with reference to the federal candidates?

MR. GINSBURG: Yes, I am about to go, Your Honor, into the statistics of what actually happened there.

This was a Democratic Party primary. Byrd and Hager were important incumbent federal officials seeking renomination. They were clearly supported--that is, Byrd and Hechler--by both factions. It happens that Neal Scaggs' slate is in the record, and there is no candidate for federal office on it. Yet in the 31 precincts that Scaggs won--that is, out of the 59 reporting precincts in Logan County--Byrd won by over 94 percent and Hechler by over 79 percent.

When we examine the returns for Logan County as a whole, counting all of the 59 precincts, including those won by Hager, we find that Byrd won by 95 percent and Hechler by some 82 percent. He went up by three percent in the county as a whole.

Your Honors, it would have been an absolute absurdity to set up a single precinct out of 59 in Logan County for Byrd, who was running statewide--55 counties in West Virginia, 60 precincts in the County of Logan--set up one precinct for Byrd or for Hechler. Hechler had a large congressional district, including eight counties. There was absolutely no political justification to set up Mount Gay for Byrd or He Hechler. Whatever conspiracy these defendants may have entered into, it had absolutely nothing to do with the candidates for federal office. For these defendants, the

contest was between Scaggs and Hager. Even the government's key witness, Cecil Elswick--and it was he who testified that he had put the illegal votes on the machine--he was very careful to separate Byrd and Hechler from the Hager slate. There are excerpts from Elswick's testimony in the government's brief. But each time that Elswick refers to Byrd and Hechler, and there are only two references, Your Honors, in the two thousand page transcript, he speaks of helping to win, and I quote,"for the Okey Hager slate" and for Byrd and Hechler. Wholly natural because Hager--the Red Hager who was one of the defendants in this case also happened to be the chairman of the county's Democratic Executive Committee.

We simply invite the Court to examine the government's transcript references. None of them, we believe--and we have examined them all--supports the government's conclusion that the Hager slate included Byrd and Hechler or that this conspiracy was in any way directed toward Byrd and Hechler .

Let us take a look at what happened at the trial. What was the government's theory at the trial below in the district court before Judge Field? Again, although the indictment included a reference to federal officials, indicated in the text of the indictment, the case was tried in the district court as a conspiracy to secure the Democratic nomination for county commissioner for Okey Hager. The assisstant U. S. attorney in his opening statement made this

clear. He repeated this again in his closing statement. And then when the case came up to the Fourth Circuit, the Fourth Circuit concluded--and I am quoting--"the true object and purpose of the alleged conspiracy was to secure the Democratic nomination of Okey Hager as county judge.

Q Mr. Ginsburg, if the government had proved the case it alleged in its indictment in paragraph 9, you would not be making the same arguments as you now make, I take it.

MR. GINSBURG: If the government had proved its case? Both as against the state and the officials? If it had proved any case against the federal officials, yes, Your Honor, we would not be making this argument.

Q You indicated--

MR. GINSBURG: We indicatex that in our brief.

Q You suggested a moment ago that the county party chairman who was part of this is one of the defendants.

MR. GINSBURG: He was indeed.

Q Is it not one of his functions to see to it that the incumbents of the party get the nomination?

MR. GINSBURG: Absolutely. And I would suppose that what this man did was to go out--that is, Hager, Red Hager as county chairman--go out and seek support for his candidates.

Q But the problem that he had here was that he was getting support in another way, was he not?

MR. GINSBURG: But not for this purpose. There is

absolutely no evidence in the record, Mr. Chief Justice, that indicates that the conspiracy was directed to the federal offices. They had only one interest. This was the county chairman's job, which was a very important job in that county controlled patronage--was a job of very considerable import in Logan County. And this was the subject of the conspiracy, not in any way, so far as the record indicates, anything having to do with Byrd and Hechler. And, as I said before, it would have been nonsense for these people to proceed to try to set up a single precinct in a large county for a man running statewide. It did not happen; it could not have happened as a practical political matter.

What did the Fourth Circuit do with this case? On the authority of Price and Guest, it affirmed. The Fourth Circuit felt that Section 241--we are presenting to the Court an issue of interpretation--covered the 14th Amendment rights, including voting rights, protected by the Equal Protection Clause. In effect, the Fourth Circuit held that in a primary where federal officers were also on the ballot, a conspiracy to cast fraudulent ballots for state office in which state election officials take part results in a denial of equal protection and violates Section 241, even though the conspiracy was not directed against federal office. That is the issue as we see it. And this is the first case we find of this sort that has come before the Court.

The question that I am raising and will consider now is whether Section 241 does cover State voting frauds.

Q Let us assume, as Mr. Justice Rehnquist suggests, that this indictment had centered on fraud in the Federal action. I take it you would say that 241 reaches that.

MR. GINSBURG: I would certainly agree, sir.

Q What is the constitutional right there that would trigger the application of 241?

MR. GINSBURG: Article 1, Sections 2 and 4, Your Honor.

Q That is the right to vote. I mean, it provides for the election?

MR. GINSBURG: Yes, the Court has ruled on this issue and it seems to me clear and settled.

Q Where has it ruled on it?

MR. GINSBURG: I beg your pardon?

Q Where has it ruled on that?

MR. GINSBURG: Oh, I think the Court has dealt with this before in Classic and before Classic in Saylor.

Q How about Oregon?

MR. GINSBURG: Yes, Your Honor.

Q So, it is not just an equal protection approach to 241?

MR. GINSBURG: No.

Q This is the substantive right to vote.

MR. GINSBURG: Exactly so, sir.

Q You say that is not involved here, and so we go to the State?

MR. GINSBURG: Exactly right, and this is what I am proceeding to consider, the 14th Amendment aspect of Section 241 as contrasted with the Article 1, Sections 2 and 4 aspects of 241.

Q Gray v. Sanders I guess had something to do with it.

MR. GINSBURG: Exactly.

This is a well plowed field. As the questioning has already indicated, and every lawyer who has read the decision knows, that this field is also well mined. Obviously the Congress did not intend the 1870 Act to apply to non-Federal elections unless some form of racial discrimination was involved. Indeed, it was convinced in 1870 -- and the history has shown in many decisions of this Court -- that at that time the Congress felt that it had no constitutional authority in this field. But today we do not question the existence of constitutional authority.

The question we are submitting to this Court is whether without congressional sanction, Section 241 should now by interpretation of this Court be extended to cover the Federal policing of State and local elections where racial discrimination is not shown and is not an issue. That I

believe is the central issue in this case.

So far, in my view, Your Honor, the Courts could extend Guest and Price to cover Anderson, although the indictment and the record in this particular case would, I think, present the Court with troublesome problems that I will come to in a moment.

We urge, however, that the Court leave the decision on Federal policing of State and local elections to the States and to the Congress where again racial bias is not shown. And there is ample legal justification for it. The Congress has considered this matter many times before, most recently I think in 1957, 1964, and again the Voting Rights Act of 1965. The legislative history is fully set forth in our brief.

There is no need for the Court to expand the jurisdiction of the Federal Court into this area which so far has been reserved to the States. The authority which the Government now seeks from this Court for its prosecuting attorneys has been deliberately and consistently withheld by the Congress. And it is peculiarly the kind of authority which lends itself to partisan and even geographically discriminatory political direction.

The States, we submit, must be given a full opportunity to come to grips with these issues of corruption. We have seen it in Maryland. We have seen it in New

Jersey, what has been happening. And even in West Virginia in this particular case, Your Honor, a State Grand Jury had been called and had come in to session, and it was the U.S. Attorney, as we understand it, who asked that the State Grand Jury not be convened and warned that if it were convened, the Government would seek an injunction to stop it.

Now, let me turn for a moment to the indictment again.

Paragraph 9 of the indictment charged the defendants with a conspiracy to injure the qualified voters of Logan County by denying them the right to have their votes fully counted by having their votes diluted.

Defendants moved to dismiss the indictment, and the motion was denied on the ground that the indictment adequately charged the defendants under Section 241. At trial the Government sought to prove a conspiracy that had as its object not the office of Senator or Representative but County Commissioner.

The indictment did not specify the State or county office which was the object of the conspiracy. The indictment did not suggest that the five defendants or their three co-conspirators were acting under color of State law. It did not identify the separate constitutional rights which were allegedly denied. And, as a practical matter, it failed

clearly to inform the defendants of the charges against them. And all of their subsequent motions for discovery and clarification were denied.

It was not until the trial began that the defendants and their counsel first learned that the alleged conspiracy involved a State office. And it was not until the fourth day of the trial did they know who the unnamed co-conspirators were and where the acts took place.

If in the indictment -- and this goes to a point, the question Mr. Justice Brennan asked -- the Government had at least separated the two alleged offenses in separate counts. The Court and the defendants would have been in a position to challenge the legal sufficiency of Section 241 in its application to State and county offices. And at the close of the Government's case, the sufficiency of the evidence in relation to the Federal charge. This was not done.

Here the Government was in the enviable position of being able to defend a motion to dismiss by arguing that a conspiracy to cast fraudulent votes in a Federal election clearly stated an offense under Section 241, and then proceed to try the case on the basis of a conspiracy to cast votes in an election for local office. And on appeal the Government would then be free to urge affirmance on whatever basis it felt emerged from the record.

Q Can you not move for judgment of acquittal at the close of the Government's case if they fail to prove the conspiracy they alleged in the indictment?

MR. GINSBURG: We did move to dismiss, Your Honor. It was overruled.

Section 241 is a conspiracy statute which required no overt act as an element of defense. I do not have to bring to the attention of this Court the kinds of problems which Justice Jackson dealt with and described in his separate opinion in Krulewitch.

In this indictment, Your Honors, we are defective. And it was not cured by the evidence brought out in the trial. It was substantively and substantially defective, and it was not a case of omitting any magic or talismanic words. It simply did not frame the issues which have already been framed by the questions of this Court. But there is still another problem that the Government fails to come to grips with.

The indictment charged that the defendants conspired to dilute votes in two Federal offices. This gets to the point that Mr. Justice Brennan inquired. The integrity of Federal elections is protected, as indicated by Sections 2 and 4 of Article 1. The integrity of State and local elections is protected by the 14th Amendment.

In Screws, one of the landmark cases of the Court

in this area, the Court held that in order to prevent serious doubts about unconstitutional vagueness in Section 242, a companion statute -- we are dealing here with 241, it was 242 in Screws -- where the term "willful" was used. The term willful, this Court said, in that section must be construed to mean a purpose to deprive a person of a specific constitutional right. And then it said that that issue must be submitted to the jury under appropriate instructions.

MR. CHIEF JUSTICE BURGER: We will resume there right after lunch.

(At 12:00 o'clock p.m. a luncheon recess was taken.)

AFTERNOON SESSION

MR. CHIEF JUSTICE BURGER: Mr. Ginsburg, are you going to continue or reserve?

MR. GINSBURG: I will continue; I will reserve 3 minutes, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Very well.

MR. GINSBURG: We are dealing here with an alleged voting fraud in Federal and State elections under separate constitutional provisions. These were the facts. Under Screws and Price combined, the Government was required to demonstrate specific intent to violate each of these provisions. And the District Court was required to submit these issues to the jury under its charge. The District Court, of course, failed to do that. The indictment failed to separate the constitutional provisions, and no such charge was made.

The essential problem was the defect in the indictment, and that obscurity was not cleared by the evidence that came in the trial. If this was a multiple conspiracy, as the Government contends, then neither the prosecutors nor the lawyers that tried the case nor the District Court that heard it nor the Fourth Circuit that reviewed it appreciated that fact.

I have one final point and that is on the matter of the relief we have requested. Under a very broad

Section 241 indictment the Government secured a conviction on the assumption that this Court had already ruled that 241 permits the Government, the Federal Government, to police State voting frauds. In asking this Court to reverse the judgment below, we are simply asking the Court not to extend the jurisdiction of Section 241 to local elections where no racial fraud is shown.

But we do recognize -- and this in response to questions that Mr. Justice White and Mr. Justice Rehnquist asked -- we do recognize that the Government might have presented evidence, if they had any, under the same indictment, showing a conspiracy by these five defendants to cast fraudulent votes in a Federal election. It did not do so. But if the Court concludes that the Government should now be given a chance to produce such evidence, if it has it, then we urge that the decision below be reversed on the issue of statutory interpretation and remanded for trial under appropriate instructions on the Federal issue.

Q Then your real quarrel is not with the indictment but with the proof adduced in support of it, is it not?

MR. GINSBURG: No, Your Honor, the indictment failed to separate these two constitutional provisions, and there was no evidence submitted in the trial on the Federal issue.

Our position is that the Government is entitled to its day in court, if it has such evidence, and the case can be sent back for trial on the Federal issue.

Q But only, of course, under your submission that they could on retrial.

MR. GINSBURG: Exactly so, sir.

Q This is not exactly the position that was taken in the Court of Appeals, is it?

MR. GINSBURG: Your Honor, let me be perfectly frank with this Court. It is quite clear that these issues are not sought to be brought out in the District Court. The case was tried without reference to it. It came to the Court of Appeals. The issue was not briefed in the Court of Appeals on oral argument. There began to be some awareness that there was a Federal issue and a problem of statutory interpretation. But the case was obscure and the issue has been finally delineated only before this Court.

Q Mr. Ginsburg, could I ask, as I read the Court of Appeals' opinion, they got to this question of State elections and said that 241 covered frauds in State elections because of an equal protection rationale. But they felt compelled to reach that question because of admissibility of evidence issue. Let us assume that this Court said the indictment was wholly proper because it was a Federal case, a Federal election. Then the conviction

would have been proper under normal circumstances to protect a Federal election. But then could you avoid the State election question? Or is everything tainted by the fact that there was an evidentiary question here, an admissibility of evidence question?

MR. GINSBURG: It seems to me that there is essentially for this Court, as far as we have been able to analyze the case -- and the record, as you have indicated, is obscure -- is that the Fourth Circuit really did rule on the issue of statutory interpretation, and it extended your decisions in Price.

Q But it did so in the name of passing on an admissibility of evidence question.

MR. GINSBURG: We failed to appreciate that point, Your Honor. I think, Your Honor, that the issue to which you have reference arises in this fashion. There was an argument before the Court of Appeals that the Federal election had been certified 15 days after the recount. And the defendants argued before the Court of Appeals orally that after the Federal election had been certified, no evidence of what had happened in any subsequent investigation should have been introduced. And the Court overruled that. They said yes, go ahead and introduce that evidence.

But the essential thrust, it seems to us, as we read the decision is that that Court passed on the issue that

evidence in this case having to do with a State election fell under the jurisdiction of Section 241.

Q Let us assume that the Court was wrong in its construction of 241 with respect to State elections. Then, I take it, this evidence they were talking about arguably was inadmissible.

MR. GINSBURG: Arguably.

Q Let us assume that it was inadmissible. That is an independent ground for reversal of the conviction, is it not?

MR. GINSBURG: If the evidence was improperly introduced, my view would be at that point that there would be no evidence in this record even having to do with the State elections.

Q The gravamen in this argument then is that since there was no contest over the votes for Federal offices, Federal jurisdiction over the conspiracy ended at that time. And the evidence of subsequent events that a contest hearing involving only a State office voted on at the same election was accordingly inadmissible. Let us assume that was inadmissible. Would that require that the election be reversed?

MR. GINSBURG: It would, in my view, because there would be no evidence in the record --

Q Whether they could have convicted your clients

for a fraud in a Federal election is not dispositive of the case. Because even if they could, apparently there was inadmissible evidence introduced. If the Court was wrong on 241 --

MR. GINSBURG: I do not quarrel with that analysis, as we see the case at the moment. The Government, at least as the case has presented it, both below and the intermediate court and here, as it finally reaches here, is simply that a Federal violation was charged and therefore we have the right to come in under Section 241. We say that a State voting fraud was conspiracy, was shown, if it was shown there, but had nothing to do with a Federal election and that statute should not be extended.

Q Is there no power in any Federal statute to guarantee the integrity of a State election? Let us assume that you had an off-year election and there were no Federal offices on the ballot at all, just local. Does not this statute seek to protect the integrity of the State electoral processes?

MR. GINSBURG: The Court, Your Honor, until now has deliberately refused, after the most mature consideration, to extend it so far. If it is done, this would be the first time in judicial history that Section 241 has sought to be applied.

Q I was speaking of power.

MR. GINSBURG: No doubt, Your Honor, regarding constitutional power. We raise no question that under the 14th Amendment, Section 5, the Congress can clearly reach it, and indeed they are debating it. They have debated it over the past ten years. There are bills pending today dealing with these problems. And there is no doubt too that the State could deal with it. And many States have dealt with it and effectively.

The issue really is whether this section should now by interpretation of this Court be extended without the sanction or prior consideration by the Congress.

Q It already has that reach if there were any discrimination in terms of voting rights.

MR. GINSBURG: Exactly right, sir. If there is racial discrimination, there is no doubt in our view -- we are not urging that point -- that Section 241 in our view would be applicable.

MR. CHIEF JUSTICE BURGER: Mr. Ginsburg, we will allow you 3 minutes rebuttal and adjust all the time accordingly.

Mr. Wallace?

ORAL ARGUMENT OF LAWRENCE G. WALLACE, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. WALLACE: Mr. Chief Justice, and may it please the Court, there are two questions presented in the petition

for certiorari in this case. One is whether Section 241 of Title 18 applies to primary elections for State officers. And the other is whether if it does so apply, an indictment under Section 241 must charge State action under color of State law. Those two questions were both decided by the Court of Appeals and are properly before the Court. And we have argued that they were correctly decided by the Court of Appeals.

But we also advance an argument that the Court of Appeals need not have reached those issues and this Court need not reach the issues, because the case involved the casting of fraudulent votes in a Federal as well as a State election.

There were some other arguments advanced with respect to the sufficiency of the indictment or with respect to the charges to the jury that, in our view, are not comprised within those questions presented and are not properly before the Court.

Q Mr. Wallace, you will mention whether you have to reach the State election issue based on this evidence question.

MR. WALLACE: I will, Your Honor, and I will be getting to that in just a moment.

Q Because that seems to be the way the Court of Appeals reached that question.

MR. WALLACE: It undoubtedly was the way the Court of Appeals reached the issue of 241's applicability to State elections. But we think unnecessarily under the Court of Appeals' own rulings.

Contrary to one remark made by counsel for the petitioner, the Government's theory in this case is not that there were two conspiracies. In our view, the entire case was tried and the indictment charged a theory of a single conspiracy to cast and have counted fraudulent votes for candidates running for Federal and State offices in the May 1970 West Virginia primary. No distinction was made by either the Government or the defense between the Federal and State offices during the entire course of the trial from beginning to end.

As the Court of Appeals' opinion itself points out, that issue first was brought into the case in the course of oral argument in the Court of Appeals.

We think the evidence as well as the allegations show that the conspiracy embraced the casting of false votes for Federal offices. We have set forth in our brief in the statement on pages 6 and 7 of our brief in a lengthy footnote, Footnote No. 11, the most relevant portions of the evidence dealing with the reach of the conspiracy through the casting of fraudulent votes for the Federal offices.

Cecil Elswick, who was the witness during this part

of the trial, was testifying about his activities, and he is the one who did the actual casting of the fraudulent votes in the Mount Gay Precinct. And his testimony, recounted on page 6, when he was asked what the petitioner Hager asked him to do in bringing him into the conspiracy, he answered that "He wanted me to go along with them. If I did not, he would cause me trouble. He was a deputy sheriff," the petitioner Hager.

"Did he tell you what he meant by going along with them?"

And the answer, "Go along and help win the Mount Gay Precinct on election day."

"Question: For whom?

"Answer: For the Okey Hager slate and Senator Byrd and Ken Hechler."

That was when Mr. Elswick was brought into the conspiracy and, as the Chief Justice, suggested the record does show that petitioner Hager was the chairman of the Democratic County Committee, and he may well have had an interest in maximizing the votes for the Federal candidates as well as for his father, who was running in the most hotly contested election.

Then the testimony goes on on page 7, as that footnote continues. Cecil Elswick testified that he in fact put fraudulent votes on the ballots at Mount Gay for the

Federal officials.

"Mr. Elswick, did you put any illegal votes on those machines that day?

"Yes, sir, we did.

"How many?

"I lost count at about 90. It was over a hundred. I lost count that evening, and we put more on after I lost count. So, it was over a hundred votes.

"Who were you putting those votes on there for?

"I was putting them on there for Senator Byrd and Ken Hechler and Okey Hager slate," etc.

And the evidence shows mathematically, as it is recounted on page 8 of our brief that fraudulent, false, fictitious votes were in fact cast for the Federal candidates. More votes were cast for each, Senator Byrd and Congressman Hechler, than there were voters who could have possibly voted in that precinct that day.

There is also on page 7 a footnote that references in the record to the Byrd slate which was apparently synonymous with the Hager slate. The Federal candidates were opposed in that election as the figures that counsel for the petitioner gave the Court indicate. They received a high percentage but not 100 percent of the vote in that primary.

We have here a situation in which possibly the

motivation, the motive of the conspiracy, was solely to win the election for the county court office that was at stake. This was not the theory of the defense. There was nothing introduced in evidence at the trial to show that the conspiracy was anything other than a conspiracy to cast votes for the Federal and State offices.

The entire thrust of the defense was that the Government's witnesses were not worthy of belief and that if there were a conspiracy, it was a conspiracy just among the three election officials at that precinct who admitted to being part of the conspiracy and to casting the false votes or standing by while they were cast. And perhaps what they were really trying to do was cast false votes for the husband of one of the three who was running for Justice of the Peace. That was the thrust of the defense.

There was nothing introduced at the trial to contradict that the conspiracy was a conspiracy to cast votes for the Federal as well as the State offices. And, indeed, it would be inherently incredible to think that they could conspire to stuff more than 100 ballots in a precinct of this size for the State offices alone, because it would be so conspicuous and so likely to arouse suspicion if the vote was that much less for the well known Federal candidates than for the State candidates, that it would obviously not be an effective way of proceeding. And there is some

indication in the record on page 44 of the printed appendix that this indeed may have been one of the reasons why the conspiracy embraced the Federal offices as well as the State ones.

Mr. Elswick testified about what petitioner Browning said to him at a meeting concerning what was to be done at the Mount Gay Precinct. And the question there on page 44, about 6 or 7 lines down, "You say Mr. Browning was at that meeting?

"Answer: Mr. Browning was at that meeting and when we walked outside the door there, he said, 'Cecil, put them on there, but don't put enough on there to get in any trouble.' He meant don't pull all the registration book or I could get in trouble and they could catch it easy."

Well, obviously that at least meant not to cast more votes than there were possible voters in the precinct.

Q He did not heed that admonition, I take it.

MR. WALLACE: He may not have anticipated the proof that would be offered of the number who did not in fact vote. But obviously if there were more than a hundred votes cast for the State offices and not for the Federal, the conspiracy would have little chance of succeeding.

And so the entire theory of the case was that this was a single conspiracy which involved the casting of fraudulent votes for both the Federal and State offices. And

the evidence introduced, while it showed that, it also tended to focus a great deal on what was the principal contest and the contest, the outcome of which was affected by the votes cast at this precinct, because county-wide the difference between the vote for Mr. Hager and the vote for Neal Scaggs, his opponent, was only a difference of 21 votes, and more than 100 fraudulent votes were cast for Mr. Hager, according to the allegations here, in this one precinct. This was enough to change the outcome. This was the dramatic aspect of the conspiracy and the aspect that had given rise to subsequent acts on the part of the conspirators to effectuate the counting of those ballots in the State contest proceedings.

Q In this statute does it make any difference whether the fraud affects the outcome?

MR. WALLACE: It does not, Mr. Chief Justice.

Q. The effort that fails is just as much a crime as one that succeeds.

MR. WALLACE: Even if the purpose was not to affect the outcome but just to falsify the votes. The holdings have been the right protected the voters in a Federal election as to an accurate count and to have their votes given their proper effect and weight in the election. As we know in political life, the magnitude of victory can be quite important in determining governmental policy even if they

do not change the outcome of who is elected to office.

The evidentiary question to which Mr. Justice White has alluded arose because the defendants contended at the trial that in its instructions -- and this was the only objection made to the trial court's instructions and preserved at the trial -- that the jury should have been instructed to disregard all evidence of acts that occurred after the results of the election had been certified approximately a week after the election day. There had been much evidence introduced at the trial concerning the contest proceedings about the results in the county court race, all of which occurred after the certification in an effort to upset the certification for the State office.

In the course of passing on whether that evidence was properly admitted -- and that is the controversy about whether evidence was improperly admitted -- the Court of Appeals held that it was properly admitted with respect to the conspiracy charge, confining itself to the conspiracy for State offices, because it held -- and this is on page 18-A of the appendix to the petition for certiorari -- because it held that the true object and purpose of the conspiracy charge, insofar as its question is concerned was to secure the Democratic nomination for Okey Hager as county judge, and that this conspiracy embraced the attempt to effectuate these returns throughout the contest proceeding and not end

with the formal certification of the results that were subject to being undone in the contest proceeding. So that the evidence that had been introduced concerning the continued efforts of the conspirators in furtherance of the objective of the conspiracy after the formal certification was properly admissible, the Court held.

Q Your theory then is that if the conspiracy embraced in the slightest way the casting of any fraudulent ballots for a Federal officer, that is enough to bring it under 241?

MR. WALLACE: Under the established holdings under 241.

Q What would be a Court of Appeals -- you probably do not know. Then there arose the question that even so, the evidence was inadmissible because 241 does not cover State elections.

MR. WALLACE: That is right. At oral argument in the Court of Appeals for the first time a contention was made that the casting of fraudulent votes for the Federal officers constituted something separate in all that 241 covered, and that as to that conspiracy, if it could be deemed a separate conspiracy, the certification was the cut-off for possible admission of evidence because no contest ensued with respect to the Federal offices.

This is the first time that any suggestion had been

made that this was more than one conspiracy. Every indication in the allegations in the trial was that it was a single conspiracy to cast and have counted votes for this slate of candidates, Federal and State alike.

Q The Court of Appeals then did reach the constructionist --

MR. WALLACE: The Court of Appeals for that reason, instead of holding that the evidence as to the acts of the conspirators in furtherance of the conspiracy insofar as they affected only the State returns, was properly admissible.

Q Because it was one conspiracy.

MR. WALLACE: Because it was one conspiracy. In sort of reaching that issue, the Court of Appeals held that 241 applies to a conspiracy just to affect State offices anyway, to cast fraudulent votes for State offices, and therefore it need not worry about --

Q What should we do if the Court was wrong in that view of 241? I am not saying it is, but assume it is wrong.

MR. WALLACE: We think --

Q Than do we have to remand to the Court of Appeals? You suggest we just reach the criminal conspiracy --

MR. WALLACE: No, we have suggested this as an alternative ground for affirmance. It is apparent on this record that this is a single conspiracy, an identical issue

really, except it did not involve the time gap that was involved in this case.

Q Mr. Wallace, do you submit an argument for or against the Court of Appeals interpretation of 241 as reaching local --

MR. WALLACE: We do submit an argument and the Court of Appeals decided that correctly, and that is our alternative contention here.

Q I understand that you are saying too that even if the different conspirators have different priorities in terms of the objective, that they were trading horses in effect and that each is then charged with the total action.

MR. WALLACE: The conspiracy embraced the casting of fraudulent votes as one of its objectives for the Federal offices, even though the motive may have been solely to get Okey Hager elected to the county court. The fact that the conspiracy embraced the casting of false votes for Federal offices is enough under this Court's decision in the Ingram case for a Federal jurisdiction to apply without reaching the question whether the statute reaches the conspiracy to affect the State offices, that aspect of the conspiracy. And surely it is of no moment to obvious Federal interests why it is more than 100 false votes were cast in the Federal election for the Federal offices. We analogized it in our brief to a conspiracy to rob a Federally

insured bank. It is just as much a crime, regardless of what it is that the conspirators were intending to use the proceeds for. And we see no difference here, that their motive may have been only to affect the outcome of the State election. They were conspiring to falsify the Federal election. That is what the deciding cases hold.

Q Do you have to go that far in view of the testimony -- I have forgotten the name of the man, but it is in Footnote 11 -- that it was for the slate of the senator, the congressman, and the local court? If the jury had a right to believe that, then you say that every member of the conspiracy is charged with that testimony?

MR. WALLACE: And that it was a single conspiracy to falsify returns for that slate in that one primary. The casting and the counting was all done in the one primary for the one slate of candidates. We do not see how this is really separable into more than one conspiracy. The suggestion that is made is that really they did it with respect to the Federal offices only to serve their purpose to win for the county court post, which really intertwines it into one conspiracy in their contention as well, as we understand their contention.

We do not see how there is a separate conspiracy here. At least, no one has raised that defense.

So, under the Court of Appeals' own holding --

Q This argument was probably made in the Court of Appeals, was it not?

MR. WALLACE: It arose in oral argument for the first time.

Q I know, but you must have made this same argument in the Court of Appeals, the single conspiracy.

MR. WALLACE: They did not pass on that.

Q The Court of Appeals reached a much more difficult, complicated question, it seems to me.

MR. WALLACE: It is not so difficult, after what this Court said in Price. In Price the Court unanimously held that 241 applies to all Federal constitutional rights.

Q I do not want to get into the merits of that. I just wondered, the Court of Appeals must have thought that the single conspiracy theory was not as sound as you might make it sound.

MR. WALLACE: I have not read the transcript of the oral argument before the Court of Appeals. I really do not know to what extent these issues are clarified.

Q They passed right on by that and reached this other question.

MR. WALLACE: Well, that is the way they chose to decide the case, and it is quite understandable, because in addition to the passages that we site from Guest and Price, there was in Price another passage which is very

indicative of this holding, and that is on page 805 of 383 U.S. in which the Court holds, "We cannot doubt that the purpose and effect of Section 241 was to reach assaults upon rights under the entire Constitution, including the 13th, 14th, and 15th Amendments, and not merely under part of it.

Q Neither of those cases dealt with voting in State elections.

MR. WALLACE: Neither of those cases dealt with that precise issue, but immediately before that sentence, there is a footnote saying in this historical context in the text it is hardly conceivable that Congress intended Section 241 to apply only to a narrow and relatively unimportant category of rights.

And then the footnote cites, among other cases, for example, United States v. Classic, parenthetical right to vote in Federal elections. It is quite obvious that the reasoning was that 241 embraces more than that, as it was the reasoning from the Mosley case on through the others under Section 241 that have dealt with voting rights.

The fact of the matter is that although Congress in 1870 may have had a limited conception of the Federal constitutional protection of voting rights, this has been expanded enormously since that statute was enacted, not only by interpretations of the 14th Amendment but by other

amendments to the Constitution, including the 17th Amendment providing for direct election of senators, the 19th Amendment --

Q Is not the question what Congress intended to cover by 241, not how the Constitution is construed today?

MR. WALLACE: That is what the Court addressed in all of these cases and decided in Mosley and in Price and in cases in between, that 241 was broadly written in generic terms to cover not only the rights that then existed but all rights that may come into fruition under the Constitution, including the rights under the 19th Amendment, the rights under the 24th Amendment, under the 26th Amendment, and under the 14th Amendment.

Q If they had put an exception in and said except voting rights, I suppose you would not make that argument.

MR. WALLACE: If they had put that exception in, of course.

Q You have got the legislative history as equivalent to an exclusion.

MR. WALLACE: That issue was thoroughly mooted in the majority and dissenting opinions in Mosley, in Classic, and in Saylor. And it seems to us that the Court has disposed of it.

Q What you are contending though would make

ballot stuffing in a school board election a Federal offense under 241.

MR. WALLACE: That is correct, Your Honor. Contrary to what the petitioners' counsel contends, that there is no need for this, this record itself suggest that there is a need for this. On page 31 of the appendix in which the testimony was about the false story was to be in the State proceedings which, as we have noted, came to naught in this case and these votes were not thrown out in the State proceedings, the bottom of page 31 the question was, "Did they tell you what the story was to be?

"Answer: Well, like Garrett Sullins voting, for one thing, and if we would stick together" in telling falsehoods about this, "we could not be convicted of nothing because we had the county court, the judge and the prosecuting attorney and the sheriff."

Q Whether one thinks there is a need for that, Mr. Wallace, on the basis of that testimony, I suppose depends upon one's view of the Federal system, whether every time you find a corrupt prosecuting attorney in a county you feel that the Federal Government ought to step in. I do not think that is beyond debate.

MR. WALLACE: It may not be beyond debate, but the holdings of what 241 means is that there is Federal protection for the constitutional rights of individuals under

the Federal Constitution. And certainly one of the most important of those rights is not to have his vote diluted improperly. This has been the whole thrust of the series of reapportionment cases, and if that is an improper dilution of one's vote, it is certainly an improper dilution to cancel it out through ballot box stuffing, in effect make it a half vote or a third of a vote.

Q I take it, Mr. Wallace, in a local election, on the hypothesis of Mr. Justice Rehnquist's question, in a local election if you had a woman candidate and the men who were in charge of the election machinery agreed among themselves they were only going to count one in three of the women's votes, on the assumption that most of them would vote for the woman candidate, that you say 241 would cover that?

MR. WALLACE: We say it would cover it, and the petitioners' theory is that it would not cover it even in a Federal election, because the Congress that enacted 241 thought prior to the adoption of the 19th Amendment that it did not have power to protect against sex discrimination. The same thing would be true about the poll tax that is protected against in the 24th Amendment and the 18-year-old vote that the 26th Amendment affords protection for.

The Court in this whole series of cases from Mosley through Price and Guest has rejected the idea that

241, which is written in generic terms to apply to all of these rights, has frozen the constitutional rights protected to those that existed in 1870.

Q Was Mosley a Federal election?

MR. WALLACE: Mosley was a Federal election, Your Honor.

Q Mr. Wallace, I did not understand the petitioner to say that 241 would not be applicable to a Federal election. Maybe I misunderstood what you just said.

MR. WALLACE: Ballot box stuffing in a Federal election, that is correct. That is his theory, that that could be protected, ballot box stuffing or racial discrimination in a Federal or State election.

Q But do you understand what he does not say 241 applies to in a Federal election?

MR. WALLACE: That would be the sex discrimination. The old holdings were that 241 did not apply under the Bathgate case in a Federal election to bribery of voters.

Q I misunderstood and the petitioners' counsel can speak for himself, but I had understood that for the purposes of this case at least he had acknowledged that a conspiracy for any kind of fraud in a Federal election would be covered by 241 and indeed a conspiracy to racially discriminate in a State election would be covered. But he will speak for himself.

MR. WALLACE: This is something that the Court would --

Q He does say that. I understood him that way, too.

MR. WALLACE: I do not. My understanding of his theory is that 241 must be interpreted in light of the powers that Congress thought it had in 1870. And if Congress at that time thought it could not protect against sex discrimination in Federal or State elections, then 241 would not cover it. That inquiry would have to be made.

Q How about the power to protect against ballot box stuffing in Federal elections?

MR. WALLACE: He is not asking the Court to overrule Saylor, and Saylor was a direct holding on that point, that it does cover ballot box stuffing in Federal elections. I do not want to make his contention for him and say what it is. But it seems to me that the theory of his case, as I understand it, because there is no other basis on which he is asking for the limitation of 241 and I do not see any other basis after Price and Guest on which he can ask for a limitation of 241 -- his theory has to be that it is limited to what Congress thought it had the right to protect against in 1870. It seems to us that the holding in Guest rejects that theory, because at that time it was even before Plessy v. Ferguson had been decided. But that certainly was

the governing principle of rights under the 14th Amendment at that time. And yet the holding in Guest was that in a series of cases beginning with Brown v. Board of Education, another constitutional principle had come to prevail and was embraced within the protection of Section 241.

So, I do not think that this necessarily seemed like the more difficult issue to the Court of Appeals. It seemed to them like something that had been decided in Guest and Price, and we agree with them that the essential thrust of Guest and Price is that 241 applies to these rights. This was thoroughly considered at the time. 241 had given the Court a great deal of trouble. And in a unanimous opinion in Price the Court concluded that 241 does apply to all rights under the 13th, 14th, and 15th Amendments, italicizing "all" in the Court's opinion as well as to all other constitutional rights.

Q But you still do not think it is necessary for us to reach that issue in this case?

MR. WALLACE: We see no need for it, because the decided cases involving voting frauds under 241, it seems to us, show that the statute protects against falsifying elections for Federal offices in the manner it was done here, and we do not think there was any ambiguity even about whether this was all one conspiracy.

Q We do have to dispose of that evidentiary

question in some way, and you suggest we do not do it the way the Court of Appeals did but on another ground.

MR. WALLACE: Yes, that you can merely hold -- the Court of Appeals did hold that the evidence with respect to the contest proceedings was properly admissible here because the conspiracy lasted this long, even though there was no longer any contest about the Federal offices. And our submission is that that holding was correct as far as it went and suffices to uphold this conviction. This is exactly the question that the Court of Appeals for the 8th Circuit had before it in a case called Devoe v. United States which is cited in a footnote at the bottom of page 15 of our brief, a case back in 103 F 2nd. And what the Court of Appeals for the 8th Circuit had to say in that case was -- I am quoting from page 588 now of 103 F 2nd -- "The Government's evidence was not at any time directed towards showing the existence of a number of separate and distinct conspiracies but was directed towards showing one general conspiracy which contemplated in part a false count and a false certification of the ballots cast for the congressional candidates. So much of the conspiracy has constituted a violation of the Federal law, was a part of the general plan or scheme of those engaged in the conspiracy. The contention that the Government should have been limited in its proof to only so much of the evidence as directly bore

upon the portion of the conspiracy which constituted the violation of Federal law is, we think, unsound."

The Court of Appeals in the present case could have used the exact same language in disposing of the case without reaching the issue whether 241 applies to a conspiracy that did not involve the casting of fraudulent votes for the Federal offices. We think the judgment should be affirmed on either of these grounds, and we leave to our brief the discussion of the adequacy of the indictment to allege action under color of law, if the Court reaches that issue.

MR. CHIEF JUSTICE BURGER: Mr. Ginsburg, you have 3 minutes left.

REBUTTAL ARGUMENT BY DAVID GINSBURG, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. GINSBURG: Mr. Chief Justice, may it please the Court:

The Government has said that this is a single conspiracy. And of course the indictment was so framed. This is one of the errors in the way the case was tried below. If I might point out to the Court in the appendix that is printed, page 54, I am now reading from the Government's closing statement in the summary of the evidence introduced in that case. This is Mr. King speaking: "I think from the evidence you can conclude by now that the theory behind the Government's case actually is that these votes were cast

and counted by going through the contest and all in order to get Okey Hager elected to the county court, in order to get Red Hager's father elected to the county court, that these defendants, along with others, got the votes cast and got the votes counted in the long, drawn out procedure that was involved over there."

There are other references in there.

The indictment charged a Federal offense. The attempted proof was a conspiracy to get Okey Hager elected County Commissioner.

Q What about that language that Mr. Wallace read to us, 6 and 7 of that brief?

MR. GINSBURG: This was the language, Mr. Justice Marshall, to which I had reference during the oral argument. I pointed out specifically -- and this was clearly understood at the time. The record in this case is a sociological document of what exists in Logan County, West Virginia. Pages 6 and 7 in one case for the Okey Hager slate he was casting votes and Senator Byrd and Hechler.

Q Who was putting those votes on there?

MR. GINSBURG: I was putting them on for Senator Byrd and Ken Hechler and the Okey Hager slate. There were two. The point was that they were all for Ken Hechler. They were all for Senator Byrd. And the problem was, did this conspiracy direct itself to Hechler and Byrd or was it

limited to the County Commissioner? Our submission on the record of this case -- check every citation that the Government has given to you -- is that the conspiracy was limited to this job of County Commissioner. It had nothing to do with Byrd and Hechler. They were all for Byrd and Hechler in Logan County, West Virginia. Ninety-five percent of the vote went for them.

Q Supposing you are right in that, Mr. Ginsburg, can you raise that under the questions that you have presented in your petition?

MR. GINSBURG: Yes, I think so, sir, because as we read the Court of Appeals' decision, to which we have had so much reference, the Court felt apparently as we do here that the submission of the Government was the submission of a case on the basis of a State fraud, and they felt it necessary to extend Section 241 to a local State fraudulent voting issue just on the issue of constitutional power. There is no question of ample constitutional power to deal with these matters, whether it has to do with sexual discrimination or the kinds of vote frauds that are dealt with in this case. The issue is whether Section 241 will now be extended by this Court into this area on this record.

Q Mr. Ginsburg, may I ask you one question. It may seem impossible in West Virginia under the circumstances,

but let us assume that one of these Federal candidates had lost the election by fewer than a hundred votes. Would your position be the same?

MR. GINSBURG: I think if the conspiracy -- my position would be the same on the record in this case. There is no doubt of that. Because the conspiracy that was shown, the only conspiracy that was shown under Section 241, the only evidence in the record -- and that would take you into a consideration of the evidence in the record -- and the only evidence in the record we can find is that when these people talked among themselves as to what they were going to do, they were talking about Okey Hager, and there was no consideration, no discussion, no effort to direct any concerted action in the election of Hechler and Byrd.

Q But people like that must have intended to have their acts have some impact on something besides Okey Hager, because they were voting for a slate and they necessarily -- necessarily -- were falsifying the returns in a Federal election.

MR. GINSBURG: Mr. Justice White, we have played with this necessary and probable consequences of their intended act, and we have tried to analyze it in those terms. But the reality is, as this record shows, the transcript, the 2,000 pages of it, that these people were concerned with something real to them, and that real was this County

Commissioner's job.

Q That may be so, but there was a very real impact flowing from their acts in a Federal election too. Just as many votes were falsified in the Federal election as there was in the State.

MR. GINSBURG: But the conspiracy was not for Federal office. The only conspiracy that was shown in the record was a conspiracy that was limited to the local office. The burden of proof is on the Government.

Q The one colloquy in Footnote 11 or 12 would seem to be cutting across that somewhat, where the man said he was assured that if they got the county sheriff, the county prosecutor, and the county judge, then nothing could happen to them, i.e., if there was any fraud beyond that, all the people in the State level, the local level, to deal with these problems were their men.

MR. GINSBURG: That was clearly the assumption, but the issues with which they were dealing, the only issues with which they were concerned, and indeed the only issue that was involved in the election context, was what? Okey Hager as County Commissioner. These were their concerns. They had no concern, no interest, in the problem of the Senate or the House.

Q Some of them did from their testimony.

MR. GINSBURG: No, but only as individuals, not

as conspirators. This is, I think, the central issue.

Q Were some of the votes illegally cast for Federal offices?

MR. GINSBURG: Clearly some votes were cast for Federal office by a man named Elswick who actually pulled the lever.

Q And he was a part of the conspiracy?

MR. GINSBURG: He was a member of one of the conspiracies; he was a co-conspirator, actually not a defendant. He was given immunity in this case. And the issue is whether he took his instructions from Hager, who was one of the defendants, or whether he took his instructions from the conspirators as such.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Ginsburg. Thank you, Mr. Wallace.

The case is submitted.

(Whereupon, at 1:56 o'clock, p.m., the case was submitted.)

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