

In the

Supreme Court of the United States

DANNY VINCENT,

APPELLANT,

v.

STATE OF TEXAS,

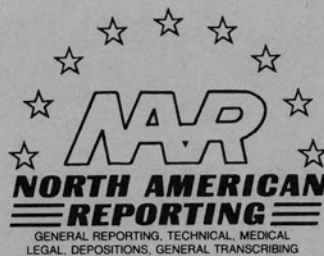
APPELLEE.

No. 79-5962

Washington, D.C.
November 5, 1980

Pages 1 thru 43

ORIGINAL



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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -:
3 DANNY VINCENT, :

4 Appellant, :

5 v. :

No. 79-5962

6 STATE OF TEXAS, :

7 Appellee. :

8 - - - - -:
9 Washington, D. C.

10 Wednesday, November 5, 1980

11 The above-entitled matter came on for oral ar-
12 gument before the Supreme Court of the United States at
13 11:04 o'clock a.m.
14

15 APPEARANCES:

16 ROBERT D. McCUTCHEON, ESQ., Lemon, Close, Atkinson, et al.,
17 Shearer & McCutcheon, P.O. Box 1066, Perryton,
Texas 79070; on behalf of the Appellant.

18 DOUGLAS M. BECKER, ESQ., Assistant Attorney General,
19 State of Texas, P.O. Box 12548, Capitol Station,
Austin, Texas 78711; on behalf of the Appellee.
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C O N T E N T S

ORAL ARGUMENT OF

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ROBERT D. McCUTCHEON, ESQ.,
on behalf of the Appellant

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DOUGLAS M. BECKER, ESQ.,
on behalf of the Appellee

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on behalf of the Appellant - Rebuttal

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MILLERS FALLS
EZERASE
COTTON CONTENT

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Vincent v. Texas.

Mr. McCutcheon, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF ROBERT D. McCUTCHEON, ESQ.,

ON BEHALF OF THE APPELLANT

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

This case is before this Court on direct appeal alleging the unconstitutionality of the Texas probation statute under the provisions of the decisions in Morrissey v. Brewer and Gagnon v. Scarpelli, insofar as they relate to the revocation of probation.

The issue in this case: Was Danny Vincent denied due process of law by reason of the failure of the State of Texas to grant him a preliminary hearing to determine probable cause as soon as reasonably possible after his arrest?

QUESTION: Now, you're going to tell us why that wasn't swallowed up by the subsequent developments, aren't you?

MR. McCUTCHEON: I'm sorry, Your Honor.

QUESTION: Why that lack, assuming that there was a lack, was not swallowed up and made irrelevant by the subsequent events?

MR. McCUTCHEON: Yes, Your Honor.

1 In the first instance, the State is alleging that
2 the subsequent events were these: number one, he admitted to
3 the arresting officer that he was driving while intoxicated
4 and that was a sufficient admission of a crime under the
5 State of Texas which was a violation of his probation, there-
6 fore obviating the necessity for a preliminary hearing as to
7 due cause. Secondly, he so admitted to his probation officer
8 at the time and immediately after his arrest, and the probation
9 officer observed him in an intoxicated state and concluded
10 from that that he had violated his probation conditions.
11 And third, that he was afforded a full-blown, evidentiary
12 judicial hearing at which the Court found that he had violated
13 his probation and that he had admitted on the stand that he
14 so violated it.

15 QUESTION: And did he admit on the stand also that
16 he had on the spot conceded he was intoxicated?

17 MR. McCUTCHEON: I believe that's true.

18 QUESTION: At the full hearing did it come out, what
19 he had said before?

20 MR. McCUTCHEON: Yes.

21 QUESTION: Well, what then can we do for your client?
22 We can't add 20 days to his life, presumably.

23 MR. McCUTCHEON: In terms of whether or not there
24 was probable cause to hold him and whether this Court should
25 either send it back for that hearing, I would probably concede,

1 although that's what this Court did in Gagnon v. Scarpelli,
2 that that would be an irrelevant and useless situation.
3 I think the Court is faced with this situation of evidence.

4 QUESTION: What else do you want?

5 MR. McCUTCHEON: I have also asked the Court to in
6 essence dismiss the probation proceedings.

7 QUESTION: Right.

8 MR. McCUTCHEON: By reason of the fact that the
9 State of Texas for the past eight years has consistently
10 refused to apply the mandates of this Court in due process
11 hearing. In other words he is now a person with a right, I
12 contend, without a remedy.

13 QUESTION: Well, do you have any complaint about the
14 revocation hearing on the proceeding?

15 MR. McCUTCHEON: Not the second stage hearing which
16 this Court talked about, the full-blown hearing; there was no
17 complaint at that hearing. We did make --

18 QUESTION: You have no complaint about it now?

19 MR. McCUTCHEON: No, none whatsoever.

20 QUESTION: Well, then, what good --

21 MR. McCUTCHEON: But we haven't complained about it.

22 QUESTION: -- would the preliminary hearing do you
23 under the Morrissey case?

24 MR. McCUTCHEON: In terms of what it would actually
25 do, what would happen is, if you remanded it for that probable

1 cause hearing, they would put on the same evidence that was
2 at the full-blown hearing, they would conclude there was
3 probable cause, and you'd have the hearing. So the practical
4 effect would be the same. But the constitutional effect is
5 that he has been denied at the time --

6 QUESTION: Well, would not the practical effect --
7 tell me what the practical effect would be?

8 MR. McCUTCHEON: Well, the practical effect is, at
9 the time that he was arrested and at the time from that point
10 until he had a counsel appointed and was out on bail, he was
11 held without a determination of probable cause under this
12 Court's mandates. Sure, looking back on it now, after two
13 years of history, there is not a whole lot that this Court can
14 do to rectify that violation of his probable cause. I think
15 the Court recognized that in *Gerstein v. Pugh*.

16 QUESTION: You're not saying, rectify the probable
17 cause?

18 MR. McCUTCHEON: No.

19 QUESTION: To rectify the lack of a probable cause
20 hearing?

21 MR. McCUTCHEON: Exactly.

22 QUESTION: There certainly was probable cause.

23 MR. McCUTCHEON: The fact of probable cause was
24 never attacked. The fact of denying the hearing was attacked.

25 QUESTION: What does *Gerstein v. Pugh* tell us about

1 that problem?

2 MR. McCUTCHEON: Gerstein v. Pugh, the only way that comes
3 in is, what do you do with a conviction which is based upon
4 an improper detention or an arrest without probable cause?
5 And that has told me that this Court up to now has said, we
6 are not going to void that conviction. However, there have
7 been cases in the lower courts --

8 QUESTION: Well, if we wouldn't void a conviction on
9 that ground, do you think we ought to void a parole revocation
10 on that ground?

11 MR. McCUTCHEON: In this case, yes.

12 QUESTION: And then what would happen? They'd have
13 another parole revocation hearing all over again?

14 MR. McCUTCHEON: Not on this particular violation,
15 no.

16 QUESTION: Why not?

17 MR. McCUTCHEON: If that conviction --

18 QUESTION: You mean that's dead and gone?

19 MR. McCUTCHEON: I think it would be; yes.

20 QUESTION: A revocation couldn't properly be based
21 upon that conduct? Is that what you're telling us?

22 MR. McCUTCHEON: I think in this situation that
23 would be the logical conclusion of what this Court would say,
24 yes.

25 QUESTION: Is this a class action?

1 MR. McCUTCHEON: No. It isn't.

2 QUESTION: And Gerstein v. Pugh was an appeal by the
3 state from an opinion of the three-judge district court, was
4 it not?

5 MR. McCUTCHEON: Yes. And it was a class action.

6 QUESTION: In other words, would you be satisfied
7 with prospective relief here?

8 MR. McCUTCHEON: I would be satisfied with my client,
9 first of all, having his probation revocation voided,
10 and secondly, if this Court decides from that point on that it
11 applies only to probation revocations which are on appeal
12 currently in Texas plus in the future, my client would have
13 no reason not to accept that ruling.

14 QUESTION: But as far as the law is concerned
15 if it were simply announced that dispensing with the first
16 hearing was not testified in this case but that no relief
17 flows from that, you would be sort of like Gagnon. At least
18 the law would be established. To the extent that you say
19 Texas just isn't obeying this, why there would be at least
20 a statement from this Court that it isn't.

21 QUESTION: But your client would wonder if he'd won
22 his case or not.

23 MR. McCUTCHEON: He'd won the battle but maybe lost
24 the war.

25 QUESTION: Well, I don't know; you might -- this is

1 not a 1983 suit, is it?

2 MR. McCUTCHEON: No.

3 QUESTION: But if you had waited and filed a 1983
4 suit and said I want some damages even if it's a peppercorn,
5 I want a declaratory judgment that I was wronged, and I want
6 damages, and I should get a penny at least.

7 MR. McCUTCHEON: That peppercorn might give
8 Mr. Vincent some moral satisfaction.

9 QUESTION: Well, at least it would be a --

10 MR. McCUTCHEON: But I think the State argues, and de-
11 pending on how this Court handles the question of prospectivity,
12 for example --

13 QUESTION: Do you think it's the function of this
14 Court to be handing out peppercorns or granting significant
15 relief?

16 MR. McCUTCHEON: I think it's the function of this
17 Court to enforce the Gagnon v. Scarpelli and grant significant
18 relief insofar as Mr. Vincent is concerned, and I think in
19 terms of whether it's prospective or not, we're not talking
20 about a situation like Gagnon v. Scarpelli or Morrissey v.
21 Brewer. Those cases have been on the books for eight years,
22 and the Texas Supreme Court has had three prior times to con-
23 sider those, and in each case -- the Texas Court of Criminal
24 Appeals -- and in each case it said, no, it does not apply,
25 and we are not going to follow it.

1 And so it's not a situation of this Court pronouncing
2 some new constitutional law.

3 QUESTION: Did they say that in here? Did they say
4 that here?

5 MR. McCUTCHEON: They simply said that in this case,
6 that Mr. Vincent's position has been adversely decided against
7 him in a prior case and cited the Whisenant v. State case.
8 That's all they said. It was a per curiam decision without --

9 QUESTION: And what did they say in the prior case?

10 MR. McCUTCHEON: In the Whisenant case they said
11 that Gagnon v. Scarpelli does not apply to Texas probation
12 revocation proceedings for several reasons: number one, we
13 made the distinction earlier between the suspension of imposi-
14 tion of sentence and the suspension of execution; number two,
15 Texas procedure provides more due process than Gagnon v.
16 Scarpelli; and third, that the probationer is entitled to
17 a mandatory 20-day hearing, and that obviates the necessity,
18 they believed, for a preliminary determination from appellants.

19 QUESTION: Mr. McCutcheon, according to my recollec-
20 tion there was recently filed in this case a motion to dismiss
21 the appeal, based upon the proposition that your client had
22 escaped before his case was decided by the Court of Criminal
23 Appeals of Texas, and that therefore that court didn't have
24 any jurisdiction and that we don't. Are you going to address
25 yourself, before you sit down, to that motion? Am I right in

1 recollecting that we postponed consideration of that motion --

2 MR. McCUTCHEON: That's correct. But it's not -- be-
3 cause I understood that --

4 QUESTION: -- to the hearing on the matter?

5 MR. McCUTCHEON: I understood that that motion
6 had been already overruled by this Court.

7 QUESTION: Oh, I see. Then I was wrong.

8 MR. McCUTCHEON: That was my understanding from
9 cocounsel. I had not intended to talk --

10 It seems to me that the point of analysis, in looking
11 at the State's position and the Court of Criminal Appeals
12 position, when this Court made the pronouncements in Morrissey
13 and Scarpelli, they were talking about -- you were talking
14 about --

15 QUESTION: Excuse me, Mr. McCutcheon?

16 MR. McCUTCHEON: -- minimum requirements -- yes?

17 QUESTION: Did you say you had information that we
18 had actually overruled that motion?

19 QUESTION: Didn't we just postpone it to this --

20 MR. McCUTCHEON: As I understood it, you're talking
21 about the motion to dismiss on escape?

22 QUESTION: Yes, sir.

23 MR. McCUTCHEON: As opposed to the original motion
24 to dismiss for lack of jurisdiction.

25 QUESTION: No, no, this is a motion based on his

1 escape, on his alleged escape.

2 MR. McCUTCHEON: I was informed by counsel for the
3 State this morning. I have no personal knowledge of that,
4 that that motion on escape, which was filed last week or so,
5 had already been overruled by this Court.

6 QUESTION: You mean by a formal order? I don't
7 recall that.

8 MR. McCUTCHEON: All I was told, that it had been
9 overruled.

10 QUESTION: We postponed it to the merits.

11 QUESTION: That had been my recollection but I was --

12 MR. McCUTCHEON: Well, I understood that the motion
13 that was postponed to the merits was the original motion to
14 dismiss that was filed right after I --

15 QUESTION: The motion was denied, we're informed.
16 You're correct.

17 MR. McCUTCHEON: All right.

18 QUESTION: Where is your client?

19 MR. McCUTCHEON: My client is in the correctional facil-
20 ity in the State of Colorado. He has been later subsequently con-
21 victed of forgery charges. The Appendix set forth in the State's
22 motion to dismiss is substantially correct as to what happened.

23 QUESTION: When was your last communication with him?

24 MR. McCUTCHEON: Right after I received the State's
25 Motion to Dismiss on the grounds of escape.

1 QUESTION: This recent one?

2 MR. McCUTCHEON: Yes. The State would have this
3 Court focus on -- and I think the Court of Criminal Appeals
4 has focused on the second stage in a probation revocation case,
5 and that is the determination of whether to revoke. The State
6 has not addressed nor has the Court of Criminal Appeals
7 addressed the first stage, that is, the requirement of a
8 hearing to determine probable cause.

9 QUESTION: Well, wasn't one of the conditions of his
10 probation to obey all the laws?

11 MR. McCUTCHEON: Yes.

12 QUESTION: And he was picked up for drunken driving?

13 MR. McCUTCHEON: Yes.

14 QUESTION: And didn't either the arresting officer
15 or -- I forget if he was taken before a magistrate or not --
16 find there was probable cause to arrest him for drunken
17 driving?

18 MR. McCUTCHEON: The officer made that determination
19 as he must do in all situations for arrest. That, I don't
20 think, is what this Court was talking about in Gagnon v.
21 Scarpelli and Morrissey v. Brewer. You were talking about a
22 disinterested person.

23 QUESTION: What admissions if any did your client
24 make at that time?

25 MR. McCUTCHEON: Well, he admitted that he was

1 intoxicated and that he was on probation.

2 QUESTION: And even that he was driving?

3 MR. McCUTCHEON: Yes.

4 QUESTION: Well, that's clear.

5 MR. McCUTCHEON: Well, he was clearly driving the
6 car.

7 QUESTION: So it was a clear violation of his proba-
8 tion, wasn't it?

9 MR. McCUTCHEON: Yes.

10 QUESTION: By his own admission?

11 MR. McCUTCHEON: Yes.

12 QUESTION: What do you need the hearing for at that
13 stage, in view of his subsequent admission at the revocation
14 hearing that he had violated the conditions of his parole?
15 Why aren't all the preceding steps utterly moot and irrelevant?

16 MR. McCUTCHEON: Because, Your Honor, as this Court
17 has said, one of the purposes of that preliminary hearing is
18 not only to determine probable cause but to --

19 QUESTION: But he's determined it. He's determined
20 it by his admission.

21 MR. McCUTCHEON: But, number one, he was intoxicated
22 when he made that admission.

23 QUESTION: What did he admit when he had the revoca-
24 tion hearing, which was a number of days or weeks later?

25 MR. McCUTCHEON: When I put him on the stand he admitted
that he had been drinking beer seven or eight hours earlier.

1 QUESTION: And that he had admitted it before?

2 MR. McCUTCHEON: Yes, it is before.

3 QUESTION: And he was conscious of having admitted
4 it before?

5 MR. McCUTCHEON: It seems to me, though, that what
6 this Court -- the problem with that approach is that you're
7 looking at a later determination of the merits to decide whether
8 you filed -- should or should not have followed due process
9 grounds earlier in the case. And you can never know that, and
10 a person can be incarcerated for a substantial length of time
11 without the disinterested determination that this Court set
12 forth as one of the minimum requirements of due process under
13 the Fourteenth Amendment.

14 QUESTION: But we decide specific concrete contro-
15 versies here, and in this case certainly there is some sense
16 that there wasn't a concrete controversy as to whether your
17 client at the initial stage had violated parole.

18 MR. McCUTCHEON: I would agree with that statement.
19 There was no concrete conscious controversy at that time.

20 QUESTION: Then, why haven't all of his rights been
21 fulfilled by the State of Texas? Certainly there's no reason
22 to have a hearing about a fact which is not in dispute, is
23 there?

24 MR. McCUTCHEON: It seems to me that there is a
25 reason to have a hearing for a fact which may not be in dispute

1 and that is that in order to set a procedure, a constitutional
2 procedure under that statute, which for seven years the Court
3 had said it did not have to follow, that even though he may
4 have admitted it at the time he is still entitled to that
5 hearing, to have the evidence presented against him, the wit-
6 nesses told to him, and a chance to speak.

7 QUESTION: Well, supposing that in a civil case the
8 plaintiff alleges that the defendant was at the intersection
9 of High and Broad in Columbus, Ohio, at 12 noon on such-and-
10 such a day, and the defendant admits it, do you think that
11 either party is entitled to a hearing on that?

12 MR. McCUTCHEON: Not in a civil case. That's
13 governed by local procedures, whether that's an admission or
14 whether that's a concrete evidentiary fact, or as to how it
15 can be used at trial.

16 QUESTION: But isn't yours very much the same, that
17 there is no dispute as to the fact on which you want a hearing?

18 MR. McCUTCHEON: There is no dispute now as to the
19 fact, there probably was not a dispute at the time, but the
20 fact is that he was not afforded those minimum due process
21 rights which I do not understand to be dependent on whether he
22 was guilty or innocent. If he was guilty we don't need a
23 later revocation hearing on the fact of his guilt except for
24 determining whether he should be revoked or not.

25 QUESTION: Well, that isn't what Morrissey v. Brewer

1 held at all. Morrissey v. Brewer said that the first hearing
2 should be held promptly to determine, among other things,
3 whether they got the wrong person -- they might have two people
4 of the same name -- to give them a chance to have witnesses
5 that are in the same neighborhood if the place of the ultimate
6 revocation hearing is far distant. Now, here, where he has
7 admitted in the second hearing that he was driving while under
8 the influence of liquor, that he admitted it on the scene at
9 the time, the whole purpose of the preliminary hearing was
10 lost and gone, by his own admissions. And why,
11 why are we wasting the time of the courts to decide this aca-
12 demic question which you concede probably has no practical con-
13 sequence?

14 MR. McCUTCHEON: Your Honor, number one, it's not
15 purely academic.

16 QUESTION: It isn't a class action, as Justice
17 Rehnquist suggested --

18 MR. McCUTCHEON: No.

19 QUESTION: -- where you make the establishing pro-
20 cedure.

21 MR. McCUTCHEON: But I think you are in essence, you
22 are establishing a procedure in Morrissey --

23 QUESTION: We've established that in Morrissey v.
24 Brewer.

25 MR. McCUTCHEON: And you've established it in Gagnon v.

1 Scarpelli. And the fact is that the Texas courts have not
2 been following that procedure.

3 QUESTIONS: Well, you're here to see, to have
4 us monitor the State courts on their actual application?

5 MR. McCUTCHEON: Insofar as it related to my client,
6 yes.

7 QUESTION: And, will you tell us again what you can
8 accomplish?

9 MR. McCUTCHEON: Insofar as my client is concerned,
10 I cannot probably accomplish any more than was accomplished in
11 Gagnon v. Scarpelli. And in that case the person in Scarpelli
12 had been caught in the act of a burglary, as I recall. And
13 under the evidence of one of the probation officers he sup-
14 posedly had admitted it, although he later revoked that under
15 grounds of fraud and duress. The same thing is true in
16 Morrissey v. Brewer. There were elements of admissions in both
17 of those cases.

18 QUESTION: Yes, but, again, Morrissey v. Brewer said
19 he's entitled to be sure you've got the right man so they don't
20 send him back to jail because of an act committed by someone
21 else of the same name. And so that he is entitled to have the
22 witnesses in his own locality brought into that preliminary
23 hearing, and it is not even a judicial hearing. It could be
24 a probation officer.

25 MR. McCUTCHEON: It could be a disinterested --

1 QUESTION: And the probation officer dealt with it
2 here.

3 MR. McCUTCHEON: But that was not a disinterested
4 probation officer. That was the probation officer that made
5 the decision to revoke.

6 QUESTION: And he rather sensibly concluded that
7 nothing else was necessary, in view of the admissions of this
8 man that he was driving under those conditions, would you not
9 agree to that?

10 MR. McCUTCHEON: I would think he concluded that
11 under the state of the law at the time that was all he had to
12 do, was to get the county attorney to file a motion and have
13 the probation started. And under the State of Texas law at
14 that time, I think he was right. And the only question is
15 whether that's constitutionally permissible.

16 I would like to reserve, if there are no further
17 questions, the balance of my time for rebuttal.

18 MR. CHIEF JUSTICE BURGER: Mr. Becker, among other
19 things, perhaps you will enlighten me on why we're here at all.

20 ORAL ARGUMENT OF DOUGLAS M. BECKER, ESQ.,

21 ON BEHALF OF THE APPELLEE

22 MR. BECKER: Yes, Your Honor. Under Gerstein v.
23 Pugh, and the other cases, I don't believe that there is any
24 possibility of this Court giving any relief whatsoever to the
25 petitioner.

1 As a matter of fact, he's received a determination
2 that there was probable cause to arrest him on at least three
3 different occasions, varying in reliability. First, at the
4 scene of the crime, when he was arrested while driving and in
5 an intoxicated state, he admitted, the arresting officer deter-
6 mined that there was probable cause to arrest him.

7 Now there was an impression perhaps left that he
8 later stated that he had been drinking eight hours earlier.
9 Actually, he testified at the evidentiary hearing -- it was
10 quite clear at the final revocation hearing that he had been
11 drinking for seven or eight hours, and he stated, I took my
12 first drink eight hours ago, and admitted that he had been
13 drinking wine, beer, and schnapps.

14 Now, at the scene of the arrest he didn't go into
15 that detail as to exactly what liquors he had been drinking
16 but he did admit that he was drunk to the officer, who had
17 stopped him under the circumstances in which he was driving
18 his car in irregular manner and in which he observed him in
19 what he believed to be an intoxicated state.

20 Not only did the arresting officer believe there was
21 probable cause but the arresting officer immediately called
22 the man's probation officer who met them at the jail. At the
23 jail they had conversations with him after giving him Miranda
24 warnings for I believe 45 minutes, the record reflects, and
25 the probation officer testified at the revocation hearing,

1 no doubt that the man was drunk; he made no bones about the
2 fact that he was drunk. The probation officer testified that
3 the reason he had come to the jail was because the police offi-
4 cer had called him to do so.

5 All right, now, all this occurred on February 3.
6 The record apparently reflects that Mr. Vincent was allowed to
7 go home for the weekend because on February 6 there was an
8 arrest warrant obtained. It appears on page 18 of the Appendix
9 and differentiates this case from Gerstein v. Pugh, and from
10 Morrissey and from Gagnon v. Scarpelli.

11 On the 6th the arresting officer and the probation
12 officer went to the magistrate, to the judge, and told him
13 what had happened and presented evidence to him. And he issued
14 an arrest warrant which recited, having heard and considered
15 the evidence offered by the State in support thereof. That
16 was an ex parte proceeding but nevertheless it constituted
17 judicial review of the decision to arrest.

18 QUESTION: And presumably was issued only upon
19 probable cause?

20 MR. BECKER: Yes, Your Honor.

21 QUESTION: Although it doesn't so recite, does it?

22 MR. BECKER: No, Your Honor. It recites, "Having
23 heard and considered the evidence offered by the State, the
24 Court is of the opinion that a warrant -- "

25 QUESTION: Should be issued for the arrest of the

1 said appellant.

2 MR. BECKER: That's right. And the record contains
3 the copies to the sheriff. The sheriff went out and arrested
4 Danny Vincent on the 6th. He was returned to jail on that
5 date.

6 QUESTION: Does the language, "The Court is of the
7 opinion that an arrest warrant should issue" --

8 MR. BECKER: Yes?

9 QUESTION: -- does that equate to probable cause?
10 Is that an implicit finding?

11 MR. BECKER: Yes, Your Honor, because under Texas
12 law probable cause is required for an arrest warrant to arrest
13 for a motion to revoke probation, same as in any other circum-
14 stances. All of the laws of arrest apply to probationers in
15 Texas, equally to persons who have never been charged with a
16 crime.

17 QUESTION: What's the reference in the arrest warrant
18 to burglary?

19 MR. BECKER: To the burglary?

20 QUESTION: Yes.

21 MR. BECKER: None whatever, Your Honor. The burg-
22 lary now is the offense for which he had received probation,
23 and the reason --

24 QUESTION: -- for the revocation was the drunken
25 driving offense.

1 MR. BECKER: Yes, that's right. And there is --
2 I'm sorry, there is a reference at the very end of the arrest
3 warrant to burglary, that being the original offense for which
4 he had been put on probation. There is no reference in it to
5 driving while intoxicated, which is why he had been --

6 QUESTION: It was a burglary, which was --

7 MR. BECKER: -- his original offense, for which --

8 QUESTION: Original conviction?

9 MR. BECKER: Yes. Original conviction for which he'd
10 received six years' probation. That's right.

11 In addition to the arrest warrant, of course, at the
12 revocation hearing itself, he received a full and fair oppor-
13 tunity to present everything that he had. His counsel, in
14 fact, made a two-pronged attack. He did an excellent job, I'm
15 sure every member of the court would agree, in the presenta-
16 tion of the State's case to attempt to establish that there
17 was not a preponderance of the evidence to believe that
18 Mr. Vincent was actually intoxicated. He did the best job
19 that he could.

20 QUESTION: This hearing that you referred to, the
21 order on page 18, that occurred two days, no one day after the
22 drunken driving episode, did it not?

23 MR. BECKER: Yes, sir. I believe that was, yes,
24 the day after. Now, I don't believe it was filed until two
25 days later and it wasn't acted upon until two days later.

1 QUESTION: Do you suggest that that process is the
2 equivalent, the functional equivalent of the hearing that
3 might have been held before a neutral probation officer under
4 Morrissey v. Brewer?

5 MR. BECKER: Not alone, Your Honor. Not alone; no.
6 It's not the equivalent. But in conjunction with the other
7 things that occurred in the case and in conjunction with the
8 revocation hearing, the final hearing itself, we do argue that
9 that was the functional equivalent of the preliminary hearing.

10 Now, if I -- when Gagnon and Morrissey v. Brewer
11 came down and the Texas courts started to read those cases,
12 I need to explain the reaction that they had in their published
13 opinions to those cases, because the statement has been made,
14 the Court of Criminal Appeals has consciously and steadfastly
15 ignored the decisions of this Court for eight years in this
16 area. And I don't believe it's true, and I don't believe that
17 it's fair.

18 When the cases came down the Court of Criminal Appeals
19 read them and said, well, this is all very nice, for these
20 other people, for these people in Iowa and Wisconsin where
21 these cases are coming from. Look what's happening to them;
22 they're being arrested without probable cause, they're being
23 arrested without warrant, they're being arrested by their
24 parole and probation officers. They're not only not getting a
25 preliminary hearing, they're not even getting a final hearing.

1 In neither one of those cases did those men get a final
2 hearing. They didn't have the right to an attorney. The
3 parolee after he was arrested was carted away to prison without
4 any kind of a hearing, which was 100 miles away, and never
5 got one at all.

6 Those procedures are so foreign to Texas and so
7 distant from our procedure that our court simply shook its
8 head and said, well, we're glad that we haven't done that; and
9 insofar as the Supreme Court's case by case determination of
10 the right to counsel at final hearings, well, of course, we
11 always give the right to counsel at all final probation hear-
12 ings -- revocation hearings.

13 QUESTION: At revocation?

14 MR. BECKER: Yes, sir, at revocation. It's a per se
15 right to counsel in all cases. When the accused is indigent,
16 counsel is appointed for him. There is no exception to it and
17 it's always been that way. Now, when Gagnon v. Scarpelli came
18 down, the cases from the Court of Criminal Appeals, in its wake,
19 said, well, the Supreme Court now has also given some rights
20 in a preliminary hearing. They have to do those things because
21 the way that other States revoke probation is so far differ-
22 ent from ours, they give such fewer rights at the revocation
23 hearing itself. The accused has so much less protection
24 that it's a necessity. But in Texas that hearing is full and
25 fair, always he's represented by counsel; he has a right to a

1 speedy hearing in two senses: they both apply the Barker v.
2 Wingo, and the other teachings of this Court on the constitu-
3 tional right to a speedy trial, which is something very few
4 other states have done; they've also passed a statute since
5 1975 which creates a statutory right to a speedy hearing within
6 20 days.

7 There are always written findings; there's never
8 anyone but a judge who conducts the hearing. There are no
9 administrative revocations in Texas, always a judge; unlimited
10 right of appeal; complete applicability of Fourth and Fifth
11 Amendment protections, search and seizure. The rights of the
12 probationer are precisely the same as any other person.
13 The Court of Criminal Appeals has ruled invalid conditions in
14 probate --

15 QUESTION: Mr. Becker, may I see if I can restate
16 your argument as I understand the thrust of it? You're saying
17 in effect that the Morrissey v. Brewer procedures are an
18 appropriate remedy to apply to a state which has previously
19 had unconstitutional procedures. But the Texas procedures
20 have always comported with due process of law so there's no
21 reason to tamper with them at all?

22 MR. BECKER: That is the large part of what I'm
23 saying. Really, I'm saying, though, that the Court must look
24 at the entire panoply of rights given the accused.

25 QUESTION: Right. And then when you do you find

1 that there's no constitutional violation in the way you go
2 about revoking parole, so there's no need to follow a procedure
3 that was tailored for a State that had violated the Constitu-
4 tion up to that time?

5 MR. BECKER: Exactly; that's exactly right. Yes,
6 Your Honor. That there is -- when you tailor a procedure for
7 those States which have given no hearings at all, no attorneys
8 at all, and really no hearing of any evidence at all, and
9 say, well, these are the minimal things, there's not an alge-
10 braic matchup between those things and every other State.

11 QUESTION: In other words, you're saying Texas is
12 giving a great deal more than Morrissey v. Brewer required.

13 MR. BECKER: Your Honor, if the flexibility in
14 according due process protections that this Court has so fre-
15 quently spoken of means anything, it means to me that what
16 Texas has done in this case overall greatly exceeds the con-
17 stitutional minimum, and that the mere happenstance that as
18 far as the preliminary hearing is concerned, that that is not
19 something that's routinely afforded in light of all the other
20 procedures, states no violation of the Constitution.

21 QUESTION: Mr. Becker, you mention on page 11 of your
22 brief the case of Escoe v. Zerbst, which was decided by this
23 Court in 1935, which characterized probation as an act of
24 grace. Do you suggest by that that as a matter of federal
25 constitutional law that Texas courts were at least entitled to

1 rely on that up until the time Morrissey v. Brewer came down,
2 and they felt they were according the parolee more rights than
3 the Constitution of the United States accorded him?

4 MR. BECKER: Consistently yes, Your Honor. That's
5 correct. And that the actual, the development of these rights
6 in Texas, as we tried to carefully explain in our brief, has
7 always either been contemporaneous or preceded that of this
8 Court. The right to counsel, for example, is given in Texas
9 in these proceedings, well, it's given today, and this Court has
10 still not given per se right to counsel in these proceedings.
11 So Texas has always believed that probation is an essential
12 component of the whole criminal justice system, has always
13 utilized it. I think the statistics which we present in our
14 brief show the overwhelming use of probation. The majority
15 of felony convictions in Texas end in probation. It's wide-
16 spread; it's rehabilitative too. I think it would be a real
17 disaster if by tampering with the Texas scheme unnecessarily
18 the result were to be to discourage the use of probation by
19 prosecutors in Texas.

20 QUESTION: Mr. Becker, can I just ask one more
21 question? The one flaw that occurs to me in your argument
22 is the fact that I think you rely heavily on the probationer's
23 right to a prompt hearing, if he makes a demand. But as I re-
24 member, you don't provide any way of letting him know he has
25 that right. How do you defend that?

1 MR. BECKER: Well, Your Honor, there are all sorts
2 of rights given to all sorts of people, that those people
3 aren't told about. It's perhaps unfortunate. It was clearly
4 the intent of the legislature and the Court of Criminal Ap-
5 peals has stated this on three occasions, that the purpose of
6 that statute was to augment the general right to a speedy
7 hearing which had already held in these matters, by an even
8 stricter statutory right. About the same time they passed a
9 Speedy Trial Act in general applicable to everyone else who
10 was not on probation, of course, and in that Act they stated
11 that certain consequences would flow from violation of it.
12 Of course, they didn't do the same thing in the statute, and
13 in response to your suggestion that it's a flaw in our argu-
14 ment, we don't think that there's any question but that our
15 procedures are valid, even if we didn't have the statute.

16 And the fact that we have it merely illustrates an
17 even additional attempt to assure that probationers are not
18 allowed to remain in jail indefinitely before they have their
19 hearing. Now, as a theoretical matter, any person might remain
20 in jail indefinitely by a mistake being made. Any person could
21 always be thrown in jail and might be overlooked administra-
22 tively. That danger always exists. And ultimately, for such
23 a person, in any context, all he can do is either get on the
24 telephone and call a lawyer, or file some sort of paper with
25 some Court protesting; in other words, amounting to a writ

1 of habeas corpus.

2 Well, the danger's no greater here. If Danny Vincent
3 had filed any sort of paper protesting his incarceration or
4 asking to see the judge or anything at all, that might have
5 been construed as a request for a speedy trial. I have little
6 doubt that it would have. So that he had some protection
7 from that. In addition --

8 QUESTION: Is it also true that he wouldn't get it
9 if he didn't do it?

10 MR. BECKER: No, Your Honor, I don't think that that
11 is true any more than anybody else who was thrown in jail.

12 QUESTION: Well, we realize that a man in Huntsville
13 doesn't move around freely, don't we?

14 MR. BECKER: Well, now, the record in this case re-
15 flects, Your Honor, that he made two phone calls to his former
16 attorney. Now, remember, this man has -- by definition has
17 experience in the criminal justice system. He's
18 already been arrested for burglary. In our case he'd already
19 been arrested already for --

20 QUESTION: Do you know that our Constitution has two
21 sets of rules, one for those who know, and one for those who
22 do not know?

23 MR. BECKER: Well, he already had a lawyer. No, it
24 doesn't, Your Honor; that's right. But he already had, although
25 this Court has often said it on a waiver question, that the

1 experience in criminal law might be waived. But he had a for-
2 mer attorney in the burglary. He called that lawyer. He
3 talked to her on one occasion. He talked to his probation
4 officer.

5 QUESTION: How'd you know that?

6 MR. BECKER: Because he testified to that in the
7 transcript. It's cited, the page cite is number --

8 QUESTION: I think I remember that one.

9 MR. BECKER: Yes, sir, he had a conversation with
10 her on the telephone.

11 QUESTION: But my whole point is that you put a guy
12 in jail and then the statute says, if you can get word out,
13 you'll get a hearing. Well, in my book that's not due process.

14 MR. BECKER: Well, as I said, Your Honor --

15 QUESTION: Is that the Texas system?

16 MR. BECKER: In other words, if he didn't get word
17 out, he could sit there indefinitely?

18 QUESTION: Yes.

19 MR. BECKER: He could sit there indefinitely except
20 that he has a right to bail, in the discretion of the court,
21 and he has a general --

22 QUESTION: Does he get the bail without applying
23 for it?

24 MR. BECKER: Well, he may.

25 QUESTION: How?

1 MR. BECKER: It's in the discretion of the trial
2 court.

3 QUESTION: Well, how can the Court give him bail if
4 he doesn't ask for it?

5 MR. BECKER: Well, they did it -- directive reflects --
6 they did it the first time he'd been thrown in jail for
7 possessing marijuana.

8 QUESTION: Well, how did he get before the court?

9 MR. BECKER: On that occasion?

10 QUESTION: I thought this case was talking about the
11 man who is in jail?

12 MR. BECKER: Yes, that's correct, sir.

13 QUESTION: Well, how can he get bail in jail if he
14 doesn't apply for it? Does the judge go around and say, do
15 you want bail?

16 MR. BECKER: Apparently, the judge might, the judge
17 and the district attorney. The record doesn't reflect who's
18 monitoring it. Someone is monitoring it, and when he's taken
19 into jail in that fashion, he's no worse off than anybody
20 else who's taken to jail.

21 QUESTION: I'm just asking for facts.

22 MR. BECKER: Yes.

23 QUESTION: Is the only way that he gets this due
24 process is to ask for it in some fashion?

25 MR. BECKER: Well, the only way that he's guaranteed

1 to get it, that's correct, Your Honor. The same as if I were
2 walking down the street and were thrown in jail, the only way
3 I could guarantee to get my due process is to ask for it.

4 QUESTION: Does that make it right?

5 MR. BECKER: Well, if I were a legislator I might
6 have written that statute a little differently, but I am
7 adamant upon the point that if we didn't have the statute our
8 procedures would still be constitutional.

9 I would have a hard time understanding how, under the
10 procedures this Court approved in Gagnon and Morrissey v.
11 Brewer -- it should be recalled, if this man were from Wiscon-
12 sin or Iowa, under those procedures, his probation officer
13 could have seen him driving down the street and thought he
14 was intoxicated, could have stopped him on his own, could have
15 said, I think you're drunk, come with me, taken him in to his
16 office, called in his coworker, his co-probation officer from
17 next door -- apparently, as I read the law, that would be a
18 hearing by a neutral person -- and say, this man is drunk, I'm
19 going to throw him in jail. Is that all right with you?
20 And his coworker might say, well, have you got anything to say
21 for yourself? He might say, well, I haven't had that much to
22 drink. My girl friend's here, do you want to talk to her?
23 He could talk to her, satisfy himself that there was probable
24 cause, take him in, throw him in jail. Now --

25 QUESTION: And that would comply with Morrissey

1 v. Brewer, you say?

2 MR. BECKER: I say that it would, as I read the case.
3 Now, if that's going to comply with what this Court says is
4 the minimum, I can't understand how what Texas did in this
5 case can be said to fall below that standard. As a matter of
6 fact, it would be incomprehensible to me.

7 Gerstein v. Pugh appears to wholly bar relief even
8 if the Court were to find a defect with the preliminary
9 hearing in Texas. He's already received that in the revoca-
10 tion hearing and the retroactivity discussion in our brief,
11 of course, is really meant to buttress that type of fact.
12 If it is going to be applied to anyone, particularly if it's
13 going to be applied retroactively, as we state in our brief,
14 there are several thousand probationers in Texas who were sent
15 to prison under these procedures. There are also in other
16 States. As a matter of fact, Texas is not alone in what it's
17 done and the way it's responded to Morrissey v. Brewer and
18 Gagnon. There have been several States, and I would include
19 among these Michigan, Florida, Georgia, and Kentucky, in my
20 belief, according to how I read their case law, have responded
21 by saying, we don't think, in our State, that the Supreme
22 Court's gone far enough in what they should give at the actual
23 revocation hearing, whether it's parole or probation. We think
24 that we should go farther than that. And at the same time
25 they have loosened up or introduced the element of flexibility

1 into what they were going to require in terms of the prelimi-
2 nary hearing or whether they would require one at all. The
3 Court has consistently spoken of the need to recognize and
4 hold the flexible procedures introduced by the states where
5 possible. We feel this is clear in such a situation.

6 Indeed, the two things that were cited as need for
7 a preliminary hearing in Gagnon and Morrissey were first that
8 there would be a substantial time lag between time of arrest
9 and the final hearing, and that there would be a geographical
10 disparity; he may be carted away to prison. I've already
11 addressed the question of time lag. We say there wasn't one in
12 this case, and there couldn't be, reasonably, under the Texas
13 procedures. As far as the geographic matter, in Texas, there
14 is a right under our statutes to have your final revocation
15 hearing at the place of your arrest, where you were arrested
16 for your violation of your probation, or where you reside.

17 There are venue provisions. Any judge can transfer
18 jurisdiction wherever necessary or helpful to present evidence
19 and witnesses. He has, not the limited right of confrontation
20 and cross-examination that this Court has spoken of in those
21 cases, but an unconditional right.

22 QUESTION: Is it always a judge of the State of
23 Texas who hears the revocation proceeding?

24 MR. BECKER: Invariably. Invariably a judge.

25 QUESTION: And that's considerably beyond our cases,

1 isn't it?

2 MR. BECKER: Always a judge, always an attorney.

3 QUESTION: You make Texas sound almost perfect.

4 It isn't, you know.

5 MR. BECKER: Well, no, Your Honor, Mr. Justice
6 Marshall may well have pointed out something that we might
7 have done better, but in truth, if you look at the Appendix
8 that's in our brief, which was prepared painstakingly, where
9 there is a comparison of Texas procedures with those of every
10 other state, as to what we selected as broad-based matters
11 of comparison, Fourth Amendment protection, Fifth Amendment
12 rights, right to counsel, and whether or not each of those
13 states affords those protections, Texas is the only state with
14 "yes's" all the way across except of course that a preliminary
15 hearing is not invariably required.

16 QUESTION: But at that point, Mr. Becker, in order
17 to take him into custody and start the revocation proceeding,
18 doesn't the officer have to make a motion?

19 MR. BECKER: Yes. The probation officer has to file
20 the motion.

21 QUESTION: Where does he file it?

22 MR. BECKER: At court.

23 QUESTION: And who acts on it?

24 MR. BECKER: Well, an arrest warrant has to be
25 issued.

1 QUESTION: I know, but who acts on it?

2 MR. BECKER: The judge.

3 QUESTION: And the warrant doesn't issue until a
4 judge acts?

5 MR. BECKER: Right.

6 QUESTION: And what's attached to the motion?

7 MR. BECKER: What's attached to the motion to revoke?
8 There's no evidence that is attached.

9 QUESTION: Is there an affidavit?

10 MR. BECKER: There is always commonly an affidavit,
11 yes, sir. It's signed by the probation officer and attorney --

12 QUESTION: It's signed by him but not by a lawyer?

13 MR. BECKER: Right. But -- not by an attorney; no.
14 Just by the probation officer, and the district attorney --

15 QUESTION: Are you suggesting, or should you suggest,
16 that whatever reliability factor the initial hearing in
17 Morrissey was supposed to require is in a sense made up for by
18 this necessity of filing a motion in court?

19 MR. BECKER: It's -- yes, it's made up for, that it's
20 almost made up for, and that it's close enough to be an
21 all-right-made-up-for, but because of the lack of a wrongful
22 determination down the line, because of that hearing that's
23 coming soon, that dealing both ends of the spectrum --

24 QUESTION: Is this similar to the probable cause
25 hearing that's necessary or equivalent to what's necessary

1 in Gagnon to assure compliance?

2 MR. BECKER: Well, yes, Your Honor, except that the
3 accused has no right to be there. He's not present; he
4 doesn't hear anything --

5 QUESTION: Do you think the -- do you think that
6 Morrissey inevitably requires the presence of the accused at
7 the first hearing?

8 MR. BECKER: Well, that's how I read it; yes, sir.
9 If I'm wrong upon that point, that's fine. But --

10 QUESTION: Oh, I know you'd be glad --

11 MR. BECKER: Yes, but as I read it, yes, he's re-
12 quired to be there. He's not always allowed to present evi-
13 dence. He's not always allowed to present witnesses.

14 QUESTION: But it's really just that it's in
15 order to have a fairly reliable probable cause determination,
16 isn't it?

17 MR. BECKER: Yes, that's right. I don't -- I think
18 surely if Texas also required the presence of the accused at
19 a preliminary hearing and put all that on top of all this, we
20 might all applaud that.

21 QUESTION: But you could arrest, you could have
22 people arrested and incarcerated on an ex parte proceeding
23 under an arrest warrant.

24 MR. BECKER: It happens all the time.

25 QUESTION: And so, you're saying that this is as

1 reliable as that, anyway.

2 MR. BECKER: Yes.

3 QUESTION: You file a motion and the judge acts on
4 it and issues a warrant.

5 MR. BECKER: Yes. It's as reliable as any --

6 QUESTION: Well, under Morrissey v. Brewer, a man
7 in this situation, apparently driving while intoxicated,
8 might come into that preliminary hearing and bring in the
9 affidavit of his dentist that he'd just had two teeth pulled
10 and that he had given him a sedative and that that would ex-
11 plain a condition that would resemble intoxication. And then
12 the probation officer might say, well, with that explanation,
13 after this don't drive your car after you've had a sedative,
14 and that would be the end of it.

15 Or, if he came in and said, I am not the man who
16 got arrested for driving while drunk, that was another man of
17 the same name, and the probation officer if satisfied would
18 then drop the matter. Is that not so?

19 MR. BECKER: This is true, Your Honor. But, of
20 course, in this case the arresting officer and the probation
21 officer both spoke to him and of course he raised no --

22 QUESTION: So there were no problems of the kind
23 that we were concerned about in Morrissey v. Brewer?

24 MR. BECKER: Right. If anything like that had been
25 raised, well, these officers would have had the duty to tell

1 the magistrate about that when they told him about probable
2 cause. Or at least to tell -- if they didn't tell him about
3 that, they were aware of that and would still have been of
4 the opinion, Your Honor, there's probable cause to arrest this
5 man. In my opinion he was drunk.

6 QUESTION: Now, your friend has not suggested --
7 at least if he did, I didn't hear him suggest anything that
8 might have been done, any showing that he might have made at
9 that Morrissey v. Brewer hearing. Can you think of anything
10 that might have been accomplished by holding that hearing
11 right on the ground at the time?

12 MR. BECKER: None whatsoever. None whatsoever.
13 Under the Texas procedures, at the revocation of probation,
14 also, frequently the only issue -- and the only issue in this
15 case, after the guilt or innocence part of the hearing --
16 was whether or not to continue his probation. In Texas the
17 probationer has a right in the discretion of the trial judge
18 to be continued on probation even if he's found to be in vio-
19 lation of it. In fact, this was already done once in
20 Mr. Vincent's case. And that is the real work of a lawyer in
21 the Texas procedures and one of the main reasons that he gets
22 a lawyer. Not only can he be continued on probation, but his
23 term of imprisonment can be reduced by the judge at that point
24 to any term that he feels is just. Again, he had assistance
25 of counsel there, and his counsel here today drove very hard

1 upon both of those points at that hearing.

2 The final matter I wanted to mention, I suppose that
3 indeed the motion to dismiss the appeal, I was informed by
4 Mr. Rodak, had been denied rather than carried with the case.
5 So there will be no further, nothing further presented.

6 QUESTION: Is he still a fugitive, if you know?

7 MR. BECKER: Well, of course, we have a factual dis-
8 pute as to whether he's a fugitive.

9 QUESTION: Well, is he incarcerated or not?

10 MR. BECKER: He is incarcerated in Colorado.

11 QUESTION: In another state.

12 MR. BECKER: In another state there is --

13 QUESTION: -- for another offense.

14 MR. BECKER: For a different -- as a matter of fact,
15 for revocation of probation up there, if you can believe it. He
16 got up there and apparently committed an offense, was on proba-
17 tion, got revoked, he's in the Colorado penitentiary. There's
18 a detainer on him from the State of Texas to be returned to do
19 his time after he's through there. Thank you.

20 MR. CHIEF JUSTICE BURGER: Do you have anything
21 further, Mr. McCutcheon?

22 MR. McCUTCHEON: One brief point, Your Honor.

23 ORAL ARGUMENT OF ROBERT D. McCUTCHEON, ESQ.,

24 ON BEHALF OF THE APPELLANT -- REBUTTAL

25 MR. McCUTCHEON: I don't want this Court to leave

1 with the impression that in all probation revocation cases
2 the only way to get the probationer into court is on an arrest
3 warrant with a predetermination by a judicial magistrate for
4 probable cause.

5 Section 8(a) says, "At any time during the period of
6 probation the Court may issue a warrant for violation of any
7 of the conditions of the probation and cause the defendant to
8 be arrested. It then says, any probation officer, police
9 officer, or other officer with power of arrest may arrest such
10 defendant without a warrant upon the order of the judge of
11 such court to be noted on the docket of the court."

12 QUESTION: Well, it's upon the order of.

13 MR. McCUTCHEON: Order of the Court. But that --

14 QUESTION: That's a considerably different kettle of
15 fish than having the decision to arrest made by an officer of
16 the law independently of the court.

17 MR. McCUTCHEON: If it's done in the ordinary sense
18 that we think of an arrest warrant being done, that is, upon
19 an affidavit with the information --

20 QUESTION: Arrests are made on warrants that are
21 issued ex parte all the time.

22 MR. McCUTCHEON: I understand, but they also may on
23 arrest warrants under Texas procedure. They have to be made
24 on a sworn complaint or other affidavit and then the arrest
25 warrant can issue. Here there was nothing more than the

1 probation officer telling the judge, Danny Vincent was D.W.I.
2 I want him brought before the court: The court considered
3 that and ordered a warrant.

4 QUESTION: Is that interchange between the probation
5 officer and the judge in the record?

6 MR. McCUTCHEON: It is not. The only thing in the
7 record --

8 QUESTION: How do we know what happened between them?

9 MR. McCUTCHEON: The only thing we know is what the
10 order says.

11 QUESTION: At least it's perfectly clear, though, that
12 the probation officer did not act on his own.

13 MR. McCUTCHEON: That's right.

14 QUESTION: In Morrissey the question was whether if
15 you're going to administratively detain a man and make the
16 administrative determination, and bind him over, you're going
17 to have to have whatever Morrissey said. But here the proba-
18 tion officer went to court.

19 MR. McCUTCHEON: That's correct. I just didn't want
20 the Court to get the idea that this was simply a standard
21 straight arrest warrant type of situation. I have nothing
22 further.

23 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.
24 The case is submitted.

25 (Whereupon, at 11:56 o'clock a.m., the case in the
above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the
attached pages represent an accurate transcript of electronic
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of the United States in the matter of:

No. 79-5962

Danny Vincent

v.

State of Texas

and that these pages constitute the original transcript of the
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