

In the

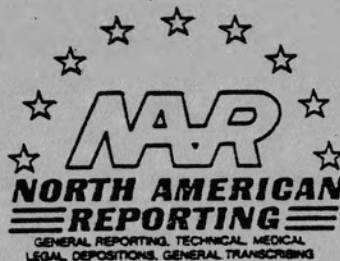
Supreme Court of the United States

UNITED STATES,)	
)	
Petitioner)	
)	
v.)	No. 80-808
)	
NOVIA TURKETTE, JR.)	

Washington, D.C.
April 27, 1981

Pages 1 through 43

ORIGINAL



202/544-1144

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----:
3 UNITED STATES, :

4 Petitioner :

5 v. :

No. 80-808

6 NOVIA TURKETTE, JR. :
7 -----:

8 Washington, D.C.

9 Monday, April 27, 1981

10 The above-entitled matter came on for oral argument
11 before the Supreme Court of the United States at
12 1:48 p.m.

13 APPEARANCES:

14 MARK I. LEVY, Esq., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.
15 20530; on behalf of the Petitioner

16 JOHN WALL, Esq., Cullen & Wall, Ten Post Office
Square, Boston, Massachusetts 02109; on behalf of
17 the Respondent.

C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
MARK I. LEVY, ESQ., on behalf of the Petitioner	3
JOHN WALL, ESQ., on behalf of the Respondent	25
<u>ORAL REBUTTAL ARGUMENT OF</u>	
MARK I. LEVY, ESQ., on behalf of the Petitioner	43

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in United States v. Turkette.

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

ORAL ARGUMENT OF MARK I. LEVY, ESQ.,

ON BEHALF OF THE PETITIONER

MR. LEVY: Thank you, Mr. Chief Justice, and may it please the Court:

This case is here on writ of certiorari to the United States Court of Appeals for the First Circuit. Respondent was convicted by a jury on eight counts of substantive drug and mail fraud offenses and on one count of conspiracy under the Racketeer Influenced and Corrupt Organizations Act.

In brief, the evidence at trial, the sufficiency of which was not challenged, showed the Respondent organized and headed a criminal association that engaged in a continuing course of illegal activities for profit. The Turkette group was in existence for more than a two-year period and was involved in numerous offenses, including the theft and distribution of drugs, the commission and facilitation of mail fraud by arson and other means, and the bribery of police officers and witnesses to protect these illegal activities.

The group operated in a highly structured and sophisticated manner, in which different individuals performed specific assigned roles to further the group's venture.

1 The questions presented by our petition are whether
2 the Racketeer Influenced and Corrupt Organizations Act excludes
3 wholly illegitimate enterprises like Respondent's from the
4 scope of its coverage, and if so, whether automatic reversal
5 of Respondent's otherwise valid, non-RICO convictions
6 required on grounds of misjoinder.

7 QUESTION: Well the First Circuit theory really was
8 that these people were so totally illegal that they had to
9 be acquitted, wasn't it?

10 MR. LEVY: I think that's correct. And the Court
11 below stands alone in reaching that anomalous result.

12 QUESTION: Or was it that they were so well organ-
13 ized in their enterprise that --

14 MR. LEVY: I believe the holding of the Court below
15 was that enterprises that are entirely and completely illegal
16 are not within the scope of the principal anti-racketeering
17 statute in the federal criminal code. That strikes us as
18 an anomalous result, and every other Court of Appeals to
19 consider the issue has concluded that RICO is not restricted
20 to legitimate enterprises, but applies to illegitimate enter-
21 prises as well.

22 Nothing in the language of the statute distinguishes
23 between legitimate and illegitimate enterprises. On the
24 contrary, the definition of enterprise states without qual-
25 ification that enterprise includes any group of individuals

1 associated in fact. Similarly, the substantive provisions
2 of RICO draw no distinction between legitimate and illegit-
3 imate enterprises, but refer broadly to any enterprise. And
4 Congress specifically reinforced the sweep of the statute
5 by providing that the provisions of RICO shall be liberally
6 construed to effectuate its remedial purposes.

7 In addition, despite the existence of an extensive
8 definitional section for the key terms used in RICO, the
9 statute offers no guidance whatever for defining the words
10 legitimate and illegitimate the Respondent and amici seek
11 to insert into the statute.

12 QUESTION: Under the First Circuit theory, on which
13 side of the line would fall an enterprise that had an appar-
14 ently legitimate front, that is, a truck line, or whatever, but
15 was --

16 MR. LEVY: Well, I think that's difficult to --

17 QUESTION: -- was engaged ... 75 percent or 90 percent
18 in shooting for hire, killing for hire, arson for hire and
19 extortion and loan sharking. Where would the First Circuit
20 case take us?

21 MR. LEVY: I don't think one knows with certainty,
22 because the meaning of the terms legitimate and illegitimate
23 are by no means self evident, and neither the statute nor the
24 legislative history offer any guidance on the meaning of those
25 terms. Simply because Congress didn't have that concept in

1 mind. In your hypothetical, for example, as I understand
2 it, it's impossible to know what are the salient considerations
3 or the proportion of legal and illegal activities --

4 QUESTION: You think that's irrelevant? What the
5 proportion is?

6 MR. LEVY: We do, because we think both "legitimate"
7 and "illegitimate" are within the statute. And we think
8 that the introduction of such an indefinite term as legitimate
9 enterprise would complicate and protract RICO trials, and
10 would lead to distinctions according to degree of legitimacy
11 that are entirely unrelated to Congress' purpose to eradicate
12 organized crime.

13 QUESTION: In any event, it's common ground there
14 has to be an enterprise.

15 MR. LEVY: It is common ground that there has to
16 be an enterprise.

17 QUESTION: And enterprise is defined in the
18 statute how, where is it?

19 MR. LEVY: Relevant here, enterprise is defined as
20 an entity consisting of a group of individuals associated in
21 fact. That's the statutory definition of enterprise under
22 which this prosecution was brought.

23 QUESTION: A corporation would be an enterprise.

24 MR. LEVY: A corporation would also be an enterprise.

25 QUESTION: Or a corporate association.

1 MR. LEVY: A labor union would. A partnership.

2 QUESTION: Where is the statutory definition?

3 MR. LEVY: It's in Section 1961(4) which is re-
4 printed in our Appendix to the petition.

5 QUESTION: Thank you.

6 QUESTION: Well Mr. Levy, is there a difference
7 between an illegal enterprise and the coverage under the
8 Act of a group of persons who commit a pattern of racketeering
9 activities, that is two predicate acts, is there a difference
10 between the two?

11 MR. LEVY: Well, if I understand the question cor-
12 rectly I believe there is. An enterprise is an entity
13 as in this case, a group of individuals associated in fact.

14 QUESTION: Well no, what I'm trying to get at is
15 what distinguishes a group of persons who commit a pattern
16 of racketeering activities, that is, two predicate acts
17 from an illegal enterprise?

18 MR. LEVY: The enterprise is an entity looking to
19 the common meaning of the word associate, and Congress used
20 the word associate in the definition of entity, we think that
21 means that the group of individuals had to join together
22 to form a confederacy or a union for some common purpose or
23 overall objective. We think that's what the word associate
24 means. Therefore, if there were simply two predicate acts,
25 that were unrelated to an enterprise, or simply isolated

1 or sporadic criminal activities, then they would not violate
2 the statute because there would be no enterprise. Congress
3 went on to --

4 QUESTION: What do you think the statute means
5 when it says enterprise includes any individual?

6 MR. LEVY: I believe what that means is that an
7 individual may be an enterprise, and --

8 QUESTION: So one person could be prosecuted under
9 RICO?

10 MR. LEVY: I think that is conceivable.

11 QUESTION: If he were carrying on an illegitimate --
12 the illegitimate business of bank robbery?

13 MR. LEVY: Let me say that is not at issue in this
14 case, and as far as I know, the government has never brought
15 a case --

16 QUESTION: Under the statutory definition do you
17 submit that he could?

18 MR. LEVY: I believe he could; if the person were
19 engaged in a sole proprietorship of crime rather than a
20 partnership in crime, it seems to me --

21 QUESTION: If he were an individual entrepreneur
22 bank robber he could be prosecuted under RICO? Could he?

23 MR. LEVY: In some circumstances, for example --

24 QUESTION: Well what circumstances?

25 MR. LEVY: -- if he held himself out as being

1 engaged in the business --

2 QUESTION: No, he's not holding himself out. That's
3 just his way of life, he robs banks.

4 MR. LEVY: And he does it repeatedly, using a
5 similar plan. If there were two people --

6 QUESTION: What's this got to do with a similar
7 plan? If he is an individual --

8 MR. LEVY: If two people --

9 QUESTION: -- enterprise includes any individual
10 this says.

11 MR. LEVY: That's correct.

12 QUESTION: And that means that any person who is
13 a repetitive offender can be prosecuted under RICO, does
14 it?

15 MR. LEVY: Well, I think not necessarily. It says
16 that it might be but that it's not necessarily so. If some-
17 body commits two isolated --

18 QUESTION: When I say can be prosecuted under
19 RICO, I mean not necessarily.

20 MR. LEVY: Yes. I think that a single individual
21 in some circumstances can be prosecuted under RICO, that's
22 correct. If the individual engaged in conduct that if it were
23 done by two people, a partnership in crime, would be within
24 the statute, we don't think Congress intended an immunity
25 simply because one person did it.

1 QUESTION: So any professional criminal in the
2 sense that this is his business --

3 MR. LEVY: This is an organized criminal enter-
4 prise.

5 QUESTION: -- is a criminal enterprise for purposes
6 of RICO.

7 QUESTION: Well how can you organize one person?

8 MR. LEVY: You can organize in the sense that you
9 engage in a conduct in an organized and recurring --

10 QUESTION: Well an individual operates individually --

11 MR. LEVY: That's right.

12 QUESTION: -- not through an organization.

13 MR. LEVY: That is correct in some circumstances.

14 QUESTION: Well in every circumstance, isn't it?

15 MR. LEVY: If the individual is acting alone, that's
16 right.

17 QUESTION: Well, an enterprise includes any
18 individual this says.

19 MR. LEVY: That's correct. An individual is not
20 excluded from the scope of the statute but --

21 QUESTION: He's included.

22 MR. LEVY: That is correct.

23 QUESTION: But he violates 1962(c) when he commits
24 two bank robberies.

25 MR. LEVY: No, I think that if he commits two

1 bank robberies that are in the language used in the legislative
2 history, sporadic or isolated, he commits one one year and
3 five years later, bearing no relationship.

4 QUESTION: And in the meantime he's a bank clerk.

5 MR. LEVY: For example. I would doubt that that
6 would fall under RICO.

7 QUESTION: Where does the statute exempt?

8 MR. LEVY: That's a different problem.

9 QUESTION: Say he commits two bank robberies, one
10 on February 1st, one on March 1st. Why doesn't that violate
11 the statute?

12 MR. LEVY: It might well violate --

13 QUESTION: Under 1962(c), isn't that directly
14 covered?

15 MR. LEVY: It might well violate the statute. But
16 as I say, it's a little hard to know since the government has
17 never brought a prosecution against a single individual, to
18 the best of my knowledge, and the provision simply hasn't
19 been construed.

20 QUESTION: Well I just wonder then, upon -- your
21 your argument rests upon the statutory definition
22 of enterprise, and enterprise includes any individual.

23 MR. LEVY: It does, and it also includes a group of
24 individuals associating --

25 QUESTION: Well it includes any individual, and --

1 MR. LEVY: The statute does provide that.

2 QUESTION: And therefore, and yet the government
3 has never utilized that against an individual?

4 MR. LEVY: To the best of my knowledge, they have
5 not.

6 QUESTION: Well the statute does define an enter-
7 prise as any individual, doesn't it?

8 MR. LEVY: It does. And a prosecution could be
9 brought --

10 QUESTION: Well then certainly you could, I suppose,
11 one person could infiltrate another individual, I mean, if
12 you couldn't be prosecuted for your own activities you could
13 subvert an individual proprietorship of another.

14 MR. LEVY: You might be able to, and that might
15 fall within either subsections (a) or (b), depending on the
16 method of infiltration.

17 QUESTION: Kind of like the aliens?

18 MR. LEVY: I'm sorry?

19 QUESTION: After your answers to my colleagues'
20 questions, I get back to the question I asked you, Mr. Levy.
21 If an individual may be an enterprise and a group of persons
22 who commit a pattern of activities, that is, two
23 predicate acts, may also be an enterprise, then how -- what
24 is the difference between them and an illegal enterprise?

25 MR. LEVY: The fact that a group of individuals

1 commit two illegal acts does not ipso facto establish a
2 violation of the statute. The two illegal acts, the pattern
3 of racketeering activity have to occur in a conduct of an
4 enterprise. The word "enterprise", the term is defined in
5 Section 1961(4).

6 QUESTION: Well I know, but you've already told
7 us an individual may be an enterprise, a group of persons
8 committing two predicate acts may be an enterprise.

9 MR. LEVY: They may be, but they are not necessarily.

10 QUESTION: Well then I still ask you what -- how are
11 either... of those distinguished from "an illegal enterprise"?
12 Aren't they illegal enterprises?

13 MR. LEVY: Perhaps I didn't understand the question.
14 If the association in fact is formed solely to commit illegal
15 acts and I think that's what the Court of Appeals had in
16 mind when it spoke of an illegal or an illegitimate enter-
17 prise. It's hard to know how that would be applied in a
18 particular case to conclude --

19 QUESTION: Well of course, what I'm getting at is,
20 the First Circuit as I read their opinion, had the idea that
21 to include an illegal enterprise within 1962(c) would make
22 that section internally redundant.

23 MR. LEVY: That was the suggestion of the First
24 Circuit, that's correct.

25 QUESTION: What I'm just trying to find out is

1 is that idea wholly without merit?

2 MR. LEVY: We believe it is without merit; that
3 there is nothing that makes the provisions redundant or
4 internally inconsistent. There is still the requirement that
5 there be an enterprise or an entity and there is still the
6 requirement that there be certain criminal acts. It may well
7 be true, and this may have been what the Court of Appeals
8 had in mind, that the government's proof in a particular case
9 will be much the same to show the pattern element of the
10 offense and to show the enterprise element of the offense; the
11 fact that people commit a series of offenses together may
12 be a grounds for the jury to infer that they had joined
13 together to form an association in fact that would satisfy the
14 requirement of an enterprise.

15 But the fact that the government's proof may be
16 the same on those two issues does not make them any less
17 separate and distinct issues.

18 QUESTION: Incidentally, while I have you inter-
19 rupted, Mr. Levy, looking at 1961(4), what's the meaning of
20 "union or group of individuals associated in fact although
21 not a legal entity." What's that supposed to mean?

22 MR. LEVY: Well I think the second clause of 1961(4)
23 was designed to expand the reach of the word enterprise to
24 include entities that are not in contemplation of law a
25 separate and definable --

1 QUESTION: Can you illustrate that?

2 MR. LEVY: Well a union would be one example, I
3 think.

4 QUESTION: Well, no, they say --expressly a union --
5 what's "group of individuals associated in fact, although not
6 a legal entity"?

7 MR. LEVY: Well I think if you had some informal
8 group of individuals who formed a civic association or a
9 bridge club or something like that, there would be no entity
10 in the legal sense.

11 QUESTION: This even reaches bridge clubs, RICO?

12 MR. LEVY: Excuse me?

13 QUESTION: This even reaches bridge clubs, does it?

14 MR. LEVY: Not necessarily; they would still have
15 to commit a pattern of racketeering activities and I assume
16 most bridge players would not do that. But they might well
17 be an enterprise --

18 QUESTION: But even as my brother White just suggested,
19 what if they play for money?

20 MR. LEVY: And that were a violation of state law?

21 QUESTION: Yes.

22 MR. LEVY: It's conceivable that the statute --

23 QUESTION: The bridge club might be prosecuted, is
24 under RICO?

25 MR. LEVY: Just as a large scale gambling syndicate

1 would be. I don't think --

2 QUESTION: Just like it might be prosecuted now,
3 under state law?

4 MR. LEVY: It might be, or under the travel act,
5 or the --

6 QUESTION: Playing for money.

7 MR. LEVY: I think that's right.

8 QUESTION: Well, I suppose what is commonly called
9 the Mafia is not a corporation or an association, but it
10 would be covered here?

11 MR. LEVY: I think that's absolutely correct, and
12 I think that's -- certainly incongruous to think that Congress
13 in passing the Racketeer Influenced and Corrupt Organizations
14 Act didn't mean to take into account the Cosa Nostra or
15 the Mafia in the prohibitions of the Act.

16 The reading of RICO I've just suggested to encompass
17 illegitimate as well as legitimate enterprises, is fully
18 consistent with and supported by the legislative history
19 of the statute and the statute's purpose. The legislative
20 history nowhere indicates that Congress intended to limit the
21 statute exclusively to the infiltration and corruption of
22 organized or legitimate businesses -- and to exclude racketeer-
23 ing activities pertaining to thoroughly unlawful operations
24 as Respondent and amici urge. Indeed, we can conceive of
25 no reason and the Respondent and amici have offered none,

1 why Congress would have wished entirely illegal businesses to
2 be immune from the provisions of RICO.

3 QUESTION: Well, it's not that they wished them to be
4 immune from prosecution, but they -- Congress might rationally
5 have thought entirely illegitimate businesses are already
6 prohibited by other criminal laws.

7 MR. LEVY: I don't doubt that Congress could have
8 drafted the statute in many ways, but I think there's --

9 QUESTION: It wouldn't have been totally irrational
10 for Congress to say well, since those are covered by existing
11 laws, the new law will try to reach something else.

12 MR. LEVY: By definition, any prosecution under RICO
13 has to involve the violation of some other statutes. Congress
14 passed RICO to supplement those existing statutes because of
15 what it found to be inadequacies --

16 QUESTION: And because of its primary concern, and
17 the legislative history is certainly replete with this, that
18 the primary concern of Congress -- this doesn't totally undercut
19 your argument at all -- was, the infiltration of legitimate
20 business by organized crime.

21 MR. LEVY: Nobody doubts that that was a principal
22 concern of Congress. But it was by no means the exclusive
23 concern, and the legislative history doesn't indicate it was.

24 QUESTION: But your point is, the Mafia which is,
25 does not purport to be a legitimate business, would be covered

1 if their whole objective and stated purpose was illegal?

2 MR. LEVY: That's right, that would not be covered
3 under the decision of the court below.

4 QUESTION: That is, arson for hire, murder for hire,
5 or kidnapping for hire?

6 MR. LEVY: That's correct. As we read the statute
7 and the legislative history, Congress intended RICO to be
8 a broad gauged weapon in a full scale attack on racketeering
9 to the end that organized crime in this country would be
10 eradicated. And it was not designed for some narrow and
11 technical statute in the manner that Respondent suggests.

12 QUESTION: Mr. Levy, there are a number of kind of
13 ambiguous phrases in the briefs and so on, yet as you pointed
14 out illegitimate and legitimate -- pose questions in the brief
15 of what is organized crime as opposed to unorganized crime?

16 MR. LEVY: Or perhaps disorganized crime?

17 QUESTION: Or disorganized crime.

18 MR. LEVY: The statute and the legislative history
19 don't define that. We think in general, Congress used that
20 term in a rather broad sense, as you've suggested, to mean
21 organized criminal activities as well as in the narrower sense
22 to mean the mob or the Cosa Nostra, organized crime in the
23 vernacular sense. I think they were concerned about racketeer-
24 ing, about organized criminal --

25 QUESTION: Well, what's racketeering?

1 MR. LEVY: The statute offers the definition of
2 what Congress meant by racketeering, and those are the
3 enumerated statutes found in 1961 Subsection 1. In discussing
4 it, I think Congress was relying to some extent on the common
5 sense view, and on the --

6 QUESTION: For buying protection, and that sort of
7 thing?

8 MR. LEVY: Well I think it had in mind those things,
9 but it didn't by any means limit itself to that. And the
10 statute, if I may point out, does not require that the defen-
11 dant need be a member of an organized crime or organized
12 criminal activity, much as in Culbert, the Court held that
13 the Hobbs Act was not limited in that way.

14 The statutory statement of findings in the legis-
15 lative history of RICO plainly revealed Congress' awareness
16 of and concern over organized crime's wholly illegal activities,
17 and nothing suggests that Congress intended these activities
18 to be left outside the scope of the statute by confining the
19 term enterprise to legitimate enterprises.

20 Moreover on several occasions, Congress indicated
21 that RICO would apply to illegitimate enterprises. For
22 example, in the Senate Report, in discussing the civil pro-
23 visions of RICO, Congress referred to state cases in which
24 civil remedies had been used against illegal gambling and
25 prostitution businesses. Similarly, Senator McClellan, the

1 principal sponsor of the legislation, explained that RICO
2 would apply to the counterfeit phonograph record business, to
3 the illicit prescription drug industry and to stolen and
4 counterfeit credit card schemes, all those being wholly illegal
5 operations.

6 In the same vein, Congressman Poff, the sponsor of
7 the bill in the House observed that truck hijacking operations
8 would be subject to RICO; again an indication that Congress
9 understood the breadth of the provisions it enacted.

10 Congress also recognized that illegal activities
11 constitute the economic foundation of organized crime and
12 provide the money and power used to infiltrate and corrupt
13 legitimate businesses, labor unions and government offices.
14 Thus even if the sole purpose of the statute were to pre-
15 vent the infiltration of legitimate organizations, that
16 purpose would be well served by applying RICO to entirely
17 illegal ventures in order to eliminate the economic base
18 of organized crime --

19 QUESTION: Tell me, Mr. Levy, does that go this far --
20 say two men robbed a bakery today --

21 MR. LEVY: Excuse me?

22 QUESTION: Two men robbed a bakery.

23 MR. LEVY: A bakery, yes sir.

24 QUESTION: They never see one another for another
25 eight years and then they run into one another and they decide,

1 let's go ahead and rob another one. So they rob a second
2 bakery eight years later. Are they vulnerable to a RICO
3 prosecution?

4 MR. LEVY: I think not. In that case, there was
5 no association over that period of time to which the two
6 predicate acts of racketeering were related to, that would
7 simply be in contrast sporadic or isolated criminal activity
8 and that's the very reason why the Court of Appeals was
9 incorrect in suggesting that our interpretation of the statute
10 rendered the statutory element enterprise redundant to the
11 term pattern. They think that is --

12 QUESTION: But how about 1961 Subsection 5, where
13 it defines pattern of racketeering activity as at least two
14 acts of racketeering activity, one of which occurred after
15 the effective date of this Chapter and the last of which
16 occurred within ten years, including any period of imprison-
17 ment. Wouldn't my brother Brennan's example come under that?

18 QUESTION: No, but your answer to my brother
19 Brennan I understood, was to underline your argument that
20 there first of all has to be an enterprise, in which the
21 test is different.

22 MR. LEVY: Exactly so. In the hypothetical, the pattern
23 element would be satisfied, --

24 QUESTION: But the enterprise element would not be.

25 MR. LEVY: That's exactly right.

1 QUESTION: What would have to be, I gather, the two
2 would -- on the occasion of the first robbery, let's go into
3 the business of robbery. Is that it?

4 MR. LEVY: That --

5 QUESTION: That then would be an enterprise.

6 MR. LEVY: That's right. Now, it's --

7 QUESTION: But the hypothetical I gave you, they
8 were just isolated acts with no agreement between them to
9 make this a regular pattern of living.

10 MR. LEVY: That's correct.

11 QUESTION: Let's take another one. A single
12 individual who talks to no one, but simply goes around to
13 a series of pharmacies and says to the proprietor, I want
14 to buy x-number of certain drugs, cocaine and some others,
15 without a prescription and you either give them to me or
16 your windows will be broken as fast as you can replace them.
17 And he goes around to ten establishments and gets the cocaine
18 and sells it. Is that an enterprise?

19 MR. LEVY: I think it would be, yes. I think it
20 would be.

21 QUESTION: Whether there's one, two or ten, it's an
22 enterprise, is that right?

23 MR. LEVY: I think that's correct. If two people
24 did it, I don't think there would be any doubt about it. I
25 don't think there's any immunity provided in the statute for

1 the fact that a person exists as a sole proprietorship --
2 rather than a partnership --

3 QUESTION: Well then in that bridge example we
4 were talking about earlier. The ladies would have to agree
5 on the pattern of gambling, would they, over the years?

6 MR. LEVY: I think they would, although I don't
7 mean to suggest that bridge clubs would be --

8 QUESTION: Well if you could win your case without
9 conceding that the individual could be, himself, prosecuted?

10 MR. LEVY: That's correct. I repeat that our case
11 doesn't involve a single individual, --

12 QUESTION: But your argument does.

13 QUESTION: Even if you put the individual aside
14 on the grounds that it was silly, then it would be --

15 QUESTION: Your argument involves that statute, that
16 part of the statutory definition or more accurately, your
17 opponent's argument, because that implies that the individual
18 has to be -- is engaged in a legitimate enterprise, and he
19 has to be infiltrated by criminal activity.

20 MR. LEVY: I don't believe this case would be any
21 different if the word individual in the definition of enterprise
22 had been omitted.

23 QUESTION: I think your case would be a little easier.

24 MR. LEVY: Excuse me?

25 QUESTION: Well, it's a difference of opinion --

1 don't you think your case might be a little easier?

2 MR. LEVY: I don't believe our case would since
3 it involved a group of individuals and more than 50 drug store
4 burglaries, for example, and by no means the single indi-
5 vidual or a sporadic and isolated pattern of crime.

6 The Court of Appeals was also concerned with respect
7 to the redundancy of the statute about applying the criminal
8 provisions of Sections 1962(a) and (b) and the civil pro-
9 visions of Section 1964 to illegitimate enterprises. We have
10 discussed that in the brief, and we don't think there is any in-
11 consistency or redundancy in applying the statute that way,
12 and indeed the application of those provisions could well
13 serve Congress' purpose to eradicate organized crime by
14 enabling the government to prosecute a defendant who used
15 racketeering income, for example, to establish an illegal
16 narcotics business or who, in the words of amici, muscled
17 into an existing illegal operation. Similarly in the civil
18 provisions, we think that the Congressional intent would be
19 fully effectuated if any person injured by a violation of
20 the statute, including an illegitimate enterprise, would be
21 able to seek compensation under Section 1964(c) from the
22 wrongdoer for the injury he suffered to his business or pro-
23 perty.

24 I'd like to reserve the balance of my time for
25 rebuttal.

1 MR. CHIEF JUSTICE BURGER: Very well, Mr. Levy. Mr.
2 Wall.

3 ORAL ARGUMENT OF JOHN WALL, ESQ.,

4 ON BEHALF OF THE RESPONDENT

5 MR. WALL: Mr. Chief Justice, and may it please the
6 Court:

7 This case presents the opportunity for this Court
8 to reaffirm its decision in Kotteakos, and repair the damage
9 done to that decision and to rule 8, by such circuit
10 court decisions as Elliott. And I'd like to mention, in that
11 regard, what RICO does not do and was not intended by Congress
12 to do.

13 The RICO statute neither by its terms nor in its
14 legislative history, ever did purport to allow a single
15 prosecution of a defendant for all his disparate and unrelated
16 and otherwise non-joinable crimes. Also, in enacting RICO,
17 Congress did not intend to extend vicarious liability beyond
18 the limits of traditional conspiracy law to permit mass
19 trials.

20 What RICO does do and what it was intended to do,
21 I suggest, by Congress, was to protect the integrity of inter-
22 state businesses by 1962, thus 1962(a) prohibits people with
23 dirty money from buying into the businesses. 1962(b) prevents
24 the takeover of interstate businesses through criminal activ-
25 ity such as extortion and whatnot. And (c) prevents the

1 corruption or spoiling of legitimate businesses when one of
2 its employees or associates goes bad.

3 QUESTION: Well let's accept that it does all those
4 things, what do you say it can't do?

5 MR. WALL: Sir?

6 QUESTION: What do you say that it can't do? This
7 statute.

8 MR. WALL: What I say, Mr. Chief Justice, is what
9 RICO was designed to do was to be used like a scalpel, rather
10 than a meat cleaver. RICO was an integrated statute in itself,
11 part of an integrated whole, the Organized Crime Act. True,
12 the Organized Crime Act was designed to eradicate organized
13 crime.

14 QUESTION: Well are you saying there must be a
15 legitimate business involved, and then there is some illegit-
16 imate penetration of that, is that it?

17 MR. WALL: Yes sir. What I'm saying is, --

18 QUESTION: It would have to be totally illegitimate
19 from the outset?

20 MR. WALL: No sir, not under the definition, and
21 under the precise restricted purpose that Congress had in
22 enacting this one section. And I can perhaps best underline
23 that, Mr. Chief Justice Burger, if we think of the enterprise
24 that we're protecting as the victim, not the criminal, at the
25 heart of the split in the circuit is the distinction between

1 the enterprise as victim and enterprise as criminal. Only
2 the First and Eighth Circuits have squarely and correctly
3 looked at the statute as a whole in the symmetry of the RICO
4 title together within the larger symmetry of the Organized
5 Crime Act, and made it clear that Congress' purpose was to
6 treat the enterprise as a victim. And this satisfies the
7 plain meaning, so called plain meaning rule; look at the statute
8 as a whole and to make every element within the statute have
9 significance and not be redundant, we consider --

10 QUESTION: Mr. Wall, why does your distinction
11 between victim and criminal enterprise itself necessarily
12 answer our problem? Because is it not conceivable that you
13 might have say, a neighborhood numbers game, or a neighborhood
14 prostitution business, something like that. And a larger
15 criminal element comes in and by racketeering activities takes
16 over that more or less local enterprise. Why doesn't the
17 statute apply there and there the one taken over would be the
18 victim?

19 MR. WALL: There are other titles within the
20 Organized Crime Act, and other specific statutes that take
21 care of that particular problem.

22 QUESTION: What takes care of the takeover problem
23 other than 1962(b)? Isn't that just exactly what that's
24 directed at?

25 MR. WALL: What I'm suggesting, sir, is that that

1 is a simple extortion that could be handled under another
2 statute.

3 QUESTION: Well maybe it wasn't an extortion, maybe
4 it was just a -- using whatever these racketeering activities
5 as defined in the statute are, just to take over an illegal
6 enterprise? And I don't understand why your distinction
7 between victim and criminal helps us at all in our analysis,
8 because it seems to me you can have an illegal enterprise,
9 that would also be a victim of a takeover by a larger illegal
10 enterprise.

11 MR. WALL: Well, the reason that analogy is helpful
12 is that if we follow the Elliott definition and say that
13 all illegal enterprises are included, then we have no cohesive
14 thought to apply the conspiracy concept to. According to
15 Elliott, the essential nature of the plan was to associate for
16 the purpose of making money. And rather than the wheels and
17 the chains, we have an amoeba-like infrastructure that
18 controls the secret criminal network.

19 Until Elliott, defining RICO to include so-called
20 illegal enterprises, that is, to include an individual who does
21 two separate crimes that come under the definition of criminal
22 racketeering, or a group of individuals who do strictly illegal
23 activities, -- excuse me, I lost my train of thought.

24 QUESTION: Well, as long as you've lost your train
25 of thought for a moment, the word enterprise as contained in

1 the definitional section of the statute doesn't make any
2 distinction between legal and illegal entities, does it?

3 MR. WALL: It does, Your Honor, I suggest -- Mr.
4 Justice, if you look at the statute --

5 QUESTION: I'm talking about 1961(4) where it says
6 enterprise includes any individual, partnership, corporation,
7 association or other legal entity and any union or group of
8 individuals associated in fact, although not a legal entity.

9 MR. WALL: Yes sir, it does make a distinction
10 as the First Circuit and other courts in dissenting opinions
11 have pointed out. Under the rule of ejusdem generis, that
12 -- in interpreting the statute, you apply that canon of
13 construction.

14 Also, when considered with the other elements
15 in the statute, to give enterprise independent meaning it
16 would have to only refer to legitimate business rather than
17 illegitimate.

18 QUESTION: In the hypothetical I put to your friend
19 about the individual, just one man, who goes around to the
20 -- a dozen pharmacies and says you sell me 500 units of
21 cocaine every week, or your windows will be broken. You
22 say that would not be covered because that's one person,
23 and it's totally illegal from the start, it has no legal
24 front. What do you say about that?

25 MR. WALL: I say that that, the RICO statute,

1 this section, was not directed at that activity, and that has
2 been the problem of many a --

3 QUESTION: How do you get away from the word
4 -- the first category under subsection (4) is any individual,
5 partnership, and then the whole array, seriatim. Why
6 weren't they trying to get at this one strong-armed extortionist?

7 MR. WALL: They weren't because -- because they
8 stated that with this particular title they were directing
9 the protection to the victims of -- interstate businesses
10 that were victims of organized criminal activity.

11 QUESTION: And an individual could be a victim, if
12 he were an individual entrepreneur.

13 MR. WALL: He could be a victim, yes sir, if he's
14 involved in legitimate --

15 QUESTION: An individual wrongdoer, obviously, it
16 would be -- your argument is, it would be silly to apply RICO
17 to an individual wrongdoer.

18 MR. WALL: It was not designed to protect him, no.
19 That's correct. The Anderson Court makes the distinction
20 that it has to be a separate economic entity, it doesn't say
21 legitimate or illegitimate, and under the Anderson definition
22 the wrongdoer might be protected.

23 QUESTION: Mr. Wall, would you say the loners who
24 engage in this activity are not covered by RICO? They must
25 have at least one other colleague helping them.

1 MR. WALL: In what activity, now?

2 QUESTION: Extortion of the druggist.

3 QUESTION: Well I had understood your argument to
4 be that whether he be a loner, whether it be an association
5 of two or 100, it's not covered.

6 MR. WALL: That's absolutely correct.

7 QUESTION: It's illegal activity.

8 MR. WALL: It's illegal activity, there has to be --

9 QUESTION: I was just starting with the first
10 category, I was going to take you through the rest of them.

11 MR. WALL: The loner --

12 QUESTION: Is it not covered if it's illegal from
13 its inception?

14 MR. WALL: If the loner in the first instance, by
15 robbing the drug store intends only to rob the drugstore, he's
16 not covered. If he intends by robbing the drugstore two
17 separate times, to make the drugstore owner give him a piece
18 of the business, then I suggest the victim is the drugstore
19 and he is covered by RICO, because he's done precisely what
20 Congress was attempting to prevent from happening to the
21 legitimate victim business by --

22 QUESTION: Then the enterprise is the drugstore,
23 it's not the individual?

24 MR. WALL: That's correct. In this instance, and I
25 suggest that it helps us clarify who we're trying to protect

1 if we realize that in every instance in the legislative
2 history and the purpose of the statute was to protect legiti-
3 mate businesses. So we have to think of the enterprise as
4 the victim.

5 QUESTION: In your ejusdem argument, or argument
6 under the definition, you assume as I understand it, the first
7 listed things like partnership, corporation, association, would
8 necessarily be legitimate. But is it not possible that a
9 corporation could be organized and do nothing but deal in
10 stolen goods or stolen securities or something like that, and
11 be wholly illegitimate. Would you say that even a corporate,
12 a corporation, so organized and totally illegitimate would not
13 be an enterprise within the meaning of the statute?

14 MR. WALL: That, sir, was precisely the reason
15 that liberal construction provision was submitted, I suggest.
16 904(a). And that, I suggest that Congress intended to mean
17 that you liberally construe who are the victims. Congress
18 wanted to protect as many forms of legitimate endeavors as pos-
19 sible, so to effectuate the remedial purposes of 904(a) you
20 don't limit the Rule of Lenity, but you broadly construe
21 the term enterprise when enterprise is the victim.

22 QUESTION: But not if it's a wholly illegal business,
23 you don't broadly construe it then?

24 MR. WALL: No sir.

25 QUESTION: Even though it's a victim?

1 MR. WALL: Anderson says that they would. I
2 suggest that under Anderson or the First Circuit, understand-
3 ing of the purpose of the Act and the legislative history,
4 it doesn't matter in the long run.

5 QUESTION: I don't see, personally, I don't see how
6 urging us to apply broad principles and broad construction to
7 criminal statutes helps a defendant. You kind of lose me
8 on that one.

9 MR. WALL: Well, Mr. Justice, I'm not suggesting
10 that. I was suggesting that the liberal construction pro-
11 vision of 904(a) should be applied only to the definition
12 liberally construe who are the victims. So that, when you
13 have the definition statute --

14 QUESTION: You apply one part of it liberally and
15 the other part --

16 MR. WALL: One part liberal to the definition as
17 to who is an enterprise, who is a legal enterprise, because as
18 somewhere in the legislative history was mentioned, organized
19 crime may form all kinds of different ways to get around
20 this. Well that's precisely why the broad term of enterprise
21 is applied, when you are construing it to protect the victim.
22 When it comes to the criminal, the actor, rather than the one
23 or the individual or the enterprise acted upon, the Rule of
24 Lenity applies. And by adopting our understanding of the
25 statute, you are protecting the Rule of Lenity regarding the

1 penal provisions.

2 QUESTION: But you're not observing Congress'
3 admonition that organized crime may find all sorts of ways
4 to get around these definitions.

5 MR. WALL: I am, Your Honor, Mr. Justice. In this
6 regard, that I'm applying the broad construction to the remedial
7 purpose of protecting the legitimate enterprise which we
8 define broadly. But when it comes to the Rule of Lenity,
9 when that's applied to a wrongdoer, the criminal, the one
10 acting rather than the one acted upon, no. And by the
11 approach that we take, you protect the Rule of Lenity, and
12 you avoid the due process implications mentioned in Dunn v.
13 the United States, where Mr. Justice Marshall said, writing
14 for the majority of this Court, as a matter of fact for the
15 unanimous court, this practice, that is the Rule of Lenity,
16 is not merely a convenient maxim of statutory construction,
17 rather, it is rooted in fundamental principles of due process.
18 Related to that argument, and particularly related
19 to what we consider probably the most important case to be
20 considered in this matter, is that Dunn's observation -- or,
21 rather Dunn, Dunn has significance with regard to the Justice
22 Department's observation is, well, theoretically, this thing
23 may be overbroad, but trust our discretion to apply it
24 properly. I suggest to you there are two problems with that.

25 One, the Justice Department, instead of Congress,

1 then defines the crime. A bigger problem, as pointed out by
2 Dunn and relevant in this case too, is it defines the crime
3 differently when it signs the indictments than it does at
4 the legislative hearings.

5 In Dunn, that precise point was brought out by the
6 Court. In our view, the Justice Department's contemporaneous
7 rather than current interpretation offers the more plausible
8 reading of the subcommittee's intent. At the legislative
9 hearings on RICO, the Attorney General, the chief of the
10 criminal division, everybody, said that the purpose of RICO
11 -- again, applying the scalpel as part of an overall plan,
12 is to cut out the cancer of racketeering activity on legit-
13 imate interstate businesses.

14 QUESTION: Mr. Wall, I gather from what you said
15 much earlier, you read 1962(c) as addressed to a situation
16 in which some employee or somebody associated with a legitimate
17 enterprise, sets about conducting that legitimate enterprise
18 in business through a pattern of racketeering activity or
19 collection of unlawful debt. And that that's as far as that
20 section goes, is that right?

21 MR. WALL: Yes sir.

22 QUESTION: Is there anything in the legislative
23 history to support that very narrow reading?

24 MR. WALL: Yes sir. The whole, everything in the
25 legislative history. As a matter of fact --

1 QUESTION: This is all part of your basic argument
2 that Congress was more interested in protecting a victim from --

3 MR. WALL: Than getting the wrongdoer --

4 QUESTION: --infiltration or otherwise --

5 MR. WALL: Title 10. They specifically went after
6 the repeat offender, and Title 8, they specifically went after
7 another aspect of organized crime, that's precisely the point
8 I'm making, Mr. Justice.

9 QUESTION: What's collection of unlawful debt?

10 MR. WALL: A gambling debt, I assume.

11 QUESTION: Or usurious debts?

12 MR. WALL: Or usurious, yes sir.

13 QUESTION: Certainly in 1962 -- goes after some
14 variety of criminal behavior? I mean, this whole part that
15 we're talking about isn't for the benefit of the victims.

16 QUESTION: It was to create criminal offenses.

17 MR. WALL: It's to create a criminal -- a -- to focus
18 in on the protection of the victim; that's precisely the
19 purpose of 1962.

20 QUESTION: But 1962 also makes criminal some conduct,
21 does it not?

22 MR. WALL: It certainly does. And it said, this
23 particular type of activity, this depredation that's taking
24 place on legitimate businesses, is serious enough that we're
25 making this drastic criminal penalties.

1 QUESTION: So it isn't as if it were just kind of a
2 reparation statute or a victim of crime statute. It in itself
3 makes certain acts criminal that weren't otherwise made
4 criminal.

5 MR. WALL: Right. That's a fact, Mr. Justice.

6 QUESTION: I mean, how do you square your previous
7 statement --

8 MR. WALL: Well, excuse me. I didn't mean to
9 interrupt you, Mr. Chief Justice. It doesn't -- the acts
10 themselves were criminal previously, and they are otherwise
11 criminal, however; when they are committed in this pattern
12 -- two separate acts, to do this act, attack the victim that
13 we want to protect, it's a --

14 QUESTION: Traditionally?

15 MR. WALL: Yes sir.

16 QUESTION: Previously, I understood you to say
17 that the term enterprise was just a one-way street, applied
18 only to one of the two, that is, victim or criminal actor,
19 you said it couldn't apply to the criminal actor? Doesn't
20 1962(c) explicitly apply to the criminal actor and the victim;
21 or neither one?

22 MR. WALL: Well, 1962(c) applies, I suggest, to
23 protect the victim; it prevents corruption or spoiling of
24 a legitimate business or a front business, as was suggested
25 by one of the questions, supposing there's an apparently

1 legitimate front truck line. Who is the victim? It's the
2 truck line.

3 QUESTION: Let's suppose something less. Let's
4 suppose that if some group, one or 21 people, set up a
5 specialty of collecting illegal debts. That is, usurious
6 debts, gambling debts, any other kind, and that's all they do.
7 You say they are not covered?

8 MR. WALL: I say they are not covered.

9 QUESTION: You mean, they can't be prosecuted under
10 this statute?

11 MR. WALL: Under this particular statute, RICO, it
12 was not designed, it's -- it was not designed, and doesn't
13 make internal sense, and it destroys the traditional con-
14 spiracy and joinder rules if it is applied to that --

15 QUESTION: Destroys them or supplements them?

16 MR. WALL: I suggest, Mr. Chief Justice Burger,
17 most respectfully, it destroys them. And it changes --

18 QUESTION: Isn't this one of the broadest nets that
19 Congress has ever thrown out to catch criminal activity?

20 MR. WALL: It is probably -- well, I suggest, it
21 may -- it is, the Organized Crime Control Act is a very broad
22 net. However, Congress did not set up RICO to get all possible
23 criminal activity, and they did not intend this body of lawyers
24 as Mr. Justice Rehnquist said in Alvarez, this body of
25 lawyers did not intend, when they passed RICO, to change the

1 rules of conspiracy, to change Kotteakos, and to change the
2 rules of joinder. And if they did intend to do it, which
3 they didn't, but if they tried to, I suggest it would be
4 unconstitutional and this Court would have much to say about
5 that.

6 Members of the Court, it has been suggested that
7 even if this Court does agree with our view of the scope of
8 RICO, that my client should nevertheless have the First
9 Circuit reversal, the change, because there was harmless error.
10 And our argument is, of course, that there was not harmless
11 error, that he was joined with other defendants he should
12 not have been, and that he was joined in a number of criminal
13 charges against him, that without the RICO expansion of con-
14 spiracy vehicle he could never have been tried together for.

15 QUESTION: Did you ever seek a severance?

16 MR. WALL: Yes sir.

17 QUESTION: In the trial court?

18 MR. WALL: Yes sir. I represented Vargas at the
19 trial court, Your Honor, but as the First Circuit points out,
20 severances were sought by this defendant as well as Vargas,
21 and there were many written and oral requests, every few days
22 in this almost seven-week trial.

23 QUESTION: Was the denial of severance appealed?

24 MR. WALL: Well, you mean, an interlocutory appeal?
25 No sir. It was appealed, the denial of severance, was appealed.

1 QUESTION: After conviction?

2 MR. WALL: Yes sir.

3 QUESTION: What about the sentences? On the sub-
4 stantive counts, didn't he not get sentences concurrent
5 with the sentence under the RICO count?

6 MR. WALL: He did, Mr. Justice.

7 QUESTION: But he had -- how was he prejudiced?
8 The sentences under the substantive counts stand, don't
9 they?

10 MR. WALL: They do, except for this. The First
11 Circuit reversed because once the legally improper conspiracy
12 count is out, there is no basis, no legal basis for having
13 joined all these crimes. And they cited McElroy v. The United
14 States --

15 QUESTION: The reversal gave them a new trial, does
16 it?

17 MR. WALL: It would get them a new trial.

18 QUESTION: Gave them a new trial.

19 MR. WALL: Yes sir.

20 QUESTION: Just on the substantive counts, I gather?

21 MR. WALL: That's correct. I suggest finally to this
22 Court, that the principles of severance enunciated in McElroy
23 and the language in Kotteakos which supports it, suggests that
24 he was damaged by going to trial in all these cases. For
25 instance, Vargas was found not guilty by the jury on three of

1 the mail fraud counts. Another defendant was found not
2 guilty of bribery in the police bribing count. I'm suggesting
3 that to have gone to trial with all these crimes confounds
4 the defendant. I'm suggesting he may well have had a
5 good defense, say, to one or more of the arson or bribery
6 counts, and might have wanted to testify but was not able to
7 because of the drug charge.

8 QUESTION: Did the United States urge harmless
9 error in the Court of Appeals?

10 MR. WALL: Yes sir.

11 QUESTION: And decided it against them?

12 MR. WALL: Absolutely.

13 QUESTION: But they held as a matter of law that
14 reversal was required, regardless of whether it was harmless
15 error or not, didn't they?

16 MR. WALL: Except for this: I suggest the intima-
17 tion is, and the fact is, that in these circumstances there's
18 certain error that is not harmless and never can be with this
19 illegal theory, never can be harmless.

20 And if I might take a moment just to remind all of
21 us that in Kotteakos, the Court of Appeals had said that
22 there was no prejudice, especially since guilt was manifest
23 and to reverse the conviction would be a miscarriage of jus-
24 tice. But this Court, speaking in Kotteakos, said technical,
25 my foot, they said, what may be technical for one is substantial

1 for another. What minor and unimportant in one setting, crucial
2 in another.

3 Moreover, lawyers know if others do not, that what
4 may seem technical may embody a great tradition of justice or
5 a necessity for drawing lines somewhere between great areas
6 of law, that in other words, one cannot always segregate the
7 technique from the substance, or the form from the reality.
8 I'm suggesting also, members of this Court, that in your
9 decision in Dunn that living, wonderful principle of our law
10 was again upheld where the Court of Appeals in the Tenth Circuit
11 said, it's obvious there was a variant, sure, but the guy lied
12 under oath, even if it was in the lawyer's office, so let the
13 conviction stand.

14 Oh no, this Court, in a unanimous opinion written
15 by Chief Justice -- or rather, I'm sorry, by Mr. Justice
16 Marshall, stated: the jury well -- may well have reached the
17 same verdict had the prosecution built its case properly. But
18 the offense was not so defined, and appellate courts are not
19 free to revise the basis on which a Defendant is convicted
20 simply because the same result would likely obtain on retrial.

21 I suggest to the Court that in conjunction with the
22 principles enunciated in Kotteakos, and in Dunn, and in McElroy
23 and in King in the First Circuit, that the First Circuit
24 decision should stand. Thank you.

25 MR. CHIEF JUSTICE BURGER: Do you have anything

1 further, Mr. Levy?

2 MR. LEVY: I only have two brief points, Mr. Chief
3 Justice.

4 ORAL REBUTTAL ARGUMENT OF MARK I. LEVY, ESQ.,

5 ON BEHALF OF THE PETITIONER

6 MR. LEVY: First, Mr. Wall has argued that under the
7 statute, the enterprise must be the victim rather than the
8 means of the commission of the pattern of racketeering activity.
9 Nothing in the statute suggests or requires that, and indeed
10 the fallacy may be shown by the Ninth Circuit's decision in
11 the Zemek case cited in our reply brief, where the owner of
12 a tavern advanced his tavern business through extortion and
13 murder of his competitors. In that case, the enterprise was
14 a tavern and that was advanced rather than being the victim
15 of the racketeering activity.

16 Second, in this case, there were legitimate businesses
17 that were harmed by Respondent's conduct. Particularly the
18 drugstores that were burglarized and the insurance companies
19 that were defrauded were clearly harmed and that illustrates
20 how the application of RICO to an entirely illegitimate enter-
21 prise can serve to protect legitimate businesses from the
22 ill effects of racketeering. Thank you.

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

25 (Whereupon, at 2:43 o'clock p.m. the case in the
above matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the
attached pages represent an accurate transcript of electronic
sound recording of the oral argument before the Supreme Court
of the United States in the matter of:

No. 80-808

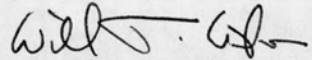
UNITED STATES,

v.

NOVIA TURKETTE, JR.

and that these pages constitute the original transcript of the
proceedings for the records of the Court.

BY:



William J. Wilson

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

1981 MAY 4 PM 5 53