

OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

DKT/CASE NO. 83-2146

TITLE RICHARD WILSON AND MARTIN VIGIL, Petitioners v. GARY GARCIA

PLACE Washington, D. C.

DATE January 14, 1985

PAGES 1 - 32



ALDERSON REPORTING

(202) 628-9300

2117 STREET, N.W.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

-----x
RICHARD WILSON AND :
MARTIN VIGIL, :
Petitioners, :
V. : No. 83-2146
GARY GARCIA :
-----x

Washington, D.C.

Monday, January 14, 1985

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:44 o'clock a.m.

APPEARANCES:

BRUCE HALL, ESQ., Albuquerque, New Mexico; on behalf of the petitioners.

STEVEN G. FARBER, ESQ., Santa Fe, New Mexico; appointed by this Court, on behalf of the respondent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
BRUCE HALL, ESQ.,	
on behalf of the petitioners	3
STEVEN G. FARBER, ESQ.,	
appointed by this Court, on behalf	
of respondent	12
BRUCE HALL, ESQ.,	
on behalf of the petitioners - rebuttal	30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Wilson and Vigil against Garcia.

Mr. Hall, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF BRUCE HALL, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. HALL: Mr. Chief Justice, and may it please the Court, as with the case just submitted, as Your Honor's questions indicate, this, too, is a case involving the application of a state statute of limitations to a 1983 civil rights action.

It arises out of an incident of alleged police brutality. The petitioners, who were the defendants below, moved to dismiss this action which had been filed some two and one-half years after the incident occurred, and moved to dismiss it on the basis of a state statute of limitation which provided that all actions against government entities and public employees for their torts must be filed within two years.

It is clear that had the case been filed in state court in New Mexico, that that limitation provision would have been applied and this case dismissed on petitioners' motion.

The lower federal courts, both the District

1 Court and the Circuit Court, have refused to follow the
2 decision of the state's highest court and apply that
3 two-year limitation. The petitioners submit that this
4 is wrong.

5 It is wrong under the language of Section
6 1988, which provides the rule of decision. It is wrong
7 under the characterization and application of 1988 by
8 this Court.

9 It is wrong, quite simply, because the state
10 judicial decision supplied the state rule of law, and
11 unless inconsistent with the United States Constitution
12 or the policies of deterrence and compensation
13 underlying 1983, that state rule of decision is to be
14 borrowed.

15 The cases of the Court on this point are quite
16 clear. There is no basis for distinguishing between a
17 state court judicial decision and an express legislative
18 determination which would by its terms apply to 1983
19 actions. As a matter of settled jurisprudence, a
20 construction by a state court of a state limitation is
21 itself part of the statute, and does not represent
22 simply a common law decision.

23 Given that fact, I think it is clear that 1988
24 intended to borrow and have govern, as it states, not
25 only the statutes of limitations which the state courts

1 would apply, but those statutes of limitations, general,
2 which the state's highest court has said are expressly
3 applicable.

4 QUESTION: Mr. Hall, the Court of Appeals,
5 because it took a Blothal approach to this 1983 problem,
6 simply didn't find it necessary to decide what statute
7 New Mexico would apply here, and the District Court
8 below apparently thought the New Mexico Tort Claims Act,
9 the two-year statute, was inapplicable. Is that
10 right?

11 And you think the District Court was wrong in
12 its view?

13 MR. HALL: Justice, the Circuit Court, I
14 agree, never really reached the question of what was
15 state legislative intent as expressed in the state court
16 opinion.

17 Now, the District Court opinion is quite
18 interesting. The District Judge acknowledges that had
19 there been an express legislative provision saying that
20 this two-year limitation is applicable to actions
21 against governmental entities and public employees for
22 their torts and constitutional torts, that that should
23 have been followed under Section 1988.

24 The District Court essentially disagreed with
25 the New Mexico Supreme Court's interpretation of New

1 Mexico's own limitation. Now, the District Judge also
2 found freedom, as did the Circuit Court, in the
3 principle that because we are applying a limitation to a
4 1983 action, and because characterizations of that
5 action are involved, that that is finally a federal
6 question, and that it is the freedom of this federal
7 question which allows the federal courts to ignore the
8 state rule decision.

9 QUESTION: Well, you do concede, of course, I
10 suppose, that there is a federal question involved here
11 on characterization.

12 MR. HALL: Most certainly. Most certainly.
13 Now, in this case, I said I disagreed, and I am going to
14 take it back just a bit. Where characterization is
15 necessary, certainly that characterization is a federal
16 question.

17 Where you have an express legislative
18 determination, or where you have the application of the
19 general limitation clearly defined by state law, I don't
20 believe that characterization is necessary. It is still
21 a federal question. It is simply irrelevant under that
22 analysis.

23 I don't think characterization was ever
24 intended by this Court to be anything other than a means
25 of identifying state law, and given the structure and

1 confusing structure of state statutes of limitations,
2 that has been a very necessary characterization for the
3 lower federal courts to use.

4 I think it is very appropriate for the lower
5 courts to attempt in addressing that federal question,
6 Justice, when it is available to the federal courts, to
7 address it as a federal question, and address it in a
8 way that will provide not only some guide to the lower
9 District Courts, but to the entire federal judicial
10 system in arriving at the most analogous state cause of
11 action.

12 But this question still is a question, though
13 it is a federal question, the question that is really
14 asked is, what is state law? And those circuits which
15 have acknowledged that characterization is merely a
16 means of identifying state law, have quite appropriately
17 where there is an express state determination, an
18 application of a particular limitation, said that this
19 characterization is no longer necessary.

20 So, it is our position that characterization
21 is what this Court has said it is, and that is only a
22 tool. This statute of limitations, the two-year New
23 Mexico limitation, if there were no state court
24 decision, would certainly be the most analogous cause of
25 action. It is certainly the most specific applicable to

1 the facts in this case.

2 This is a very straightforward physical
3 assault and battery action, though it of course raises
4 grave constitutional actions as well as simply common
5 law torts. But certainly in terms of the underlying
6 facts, there is nothing exotic about it which requires
7 difficult analysis to find the most appropriate
8 limitation.

9 The two-year limitation which the state has
10 applies to state causes of actions against law
11 enforcement officers for their assaults and batteries,
12 but also, and we submit this is significant, it is a
13 two-year limitation which applies to a state cause of
14 action against law enforcement officers for bodily
15 injury that they have caused and results in a
16 deprivation of United States constitutional rights.

17 I believe this is a very unique provision of
18 state law, when you examine the New Mexico tort claims
19 scheme. It contains this quite unusual recognition of
20 the development of 1983 action certainly in the area of
21 actions against law enforcement officers by stating
22 quite specifically that under state law, there is a
23 right to sue a law enforcement officer for depriving one
24 of his constitutional rights.

25 So, when you analyze this case in terms not

1 only of underlying facts, who did what to whom, but what
2 are the elements of it, there is a very clear analogy,
3 and the lower federal courts were simply wrong in not
4 following that analogy.

5 This statute as well as the case before you
6 does involve drawing a different limitation period for
7 certain actions against public officials and private
8 individuals. Private assaults would be allowed three
9 years to sue under New Mexico law. This statute allows
10 suits against government entities and public officials
11 for these types of suits to be filed. They must be
12 filed within two years.

13 It is argued, of course, that that in and of
14 itself is an inconsistency which requires that this
15 statute be rejected. We submit that that is not an
16 inconsistency which undercuts, is hostile to 1983 goals
17 of compensation and deterrence. It is not enough to
18 examine simply the difference in the period of time
19 without, I submit, examining the entire statute in which
20 this limitation is contained.

21 And when that is done, Justices, there is
22 something very important found in the New Mexico Tort
23 Claims Act. That Act makes the state in effect a
24 liability insurance company to pay actions, both the
25 state law for torts which can be brought against the

1 state, and also expressly provides that the State of New
2 Mexico will pay all settlements and judgments which are
3 brought against state public officials, not only for
4 state torts but again for deprivation of United States
5 constitutional rights.

6 This statutory scheme, which the respondents
7 find so hostile to 1983, in fact makes 1983 recoveries
8 more than, as they can be in some cases, only a paper
9 judgment. It guarantees the payment, the compensation
10 which implements 1983 goals.

11 There is necessarily in any state's
12 consideration of meshing its tort claim scheme to 1983
13 actions considerations which I believe are different
14 than those in the private sector, and what finally must
15 be decided is whether the balancing involved is a
16 reasonable balancing.

17 I would observe that Congress as well in
18 considering the availability of private actions versus
19 suits against the government has drawn similar
20 distinctions. In maritime torts, United States boats
21 are subject to suit within two years. Maritime torts
22 against private owners, three years.

23 So there is necessarily in any consideration
24 of compensation such as the New Mexico legislation is
25 addressed to a balancing of factors, and the question

1 becomes whether that balancing has been carried on
2 reasonably.

3 The final test really of inconsistency here is
4 whether any state policy, any state rule, any state
5 interest which is exhibited in that limitation has
6 somehow precluded this respondent from getting to the
7 federal court, and the answer to that is quite clear.

8 For two years the courthouse doors were open
9 to the respondent without any possible hostility
10 exhibited by state law in any respect. The respondent's
11 action here is precluded quite simply because he slept
12 on his rights for a period of two years.

13 No reasonable argument, and it is not made in
14 any of the briefs, is made that that period of time is
15 too short. It is the same period of time which Congress
16 in waiving United States immunity allows for actions
17 against federal law enforcement officers under the Tort
18 Claim Act.

19 We submit that this provision, this
20 limitation, which is general in its scope, does not
21 discriminate against 1983 and civil rights actions. It
22 is not inconsistent. And petitioners ask that the
23 motions which they have filed and pursued in both lower
24 federal courts be granted here, and the case dismissed.

25 I will reserve my remaining time.

1 CHIEF JUSTICE BURGER: Very well, Mr. Hall.
2 Mr. Farber.

3 ORAL ARGUMENT OF STEVEN G. FARBER, ESQ.,
4 APPOINTED BY THIS COURT,
5 ON BEHALF OF THE RESPONDENT

6 MR. FARBER: Mr. Chief Justice, and may it
7 please the Court, the New Mexico Tort Claims Act was
8 enacted as a legislative response to the judicial
9 abrogation of the doctrine of sovereign immunity in the
10 State of New Mexico.

11 It is only a limited waiver of sovereign
12 immunity, and there is no legislative intent within the
13 entire confines of the New Mexico Tort Claims Act that
14 evidences any desire on the part of the New Mexico
15 Legislature to apply the New Mexico Tort Claims Act to
16 1983 actions which are filed for the deprivation of
17 rights secured by the Constitution and federal law.

18 The particular provision of the New Mexico
19 Tort Claims Act which the petitioners in this case seek
20 to urge is the two-year limitation period found in
21 Section 15 of the New Mexico Tort Claims Act, which
22 refers exclusively to torts.

23 And as Chief Judge Bratton of the New Mexico
24 District Court found in analyzing legislative intent,
25 and as the New Mexico Supreme Court in the case of Wells

1 versus County of Valencia found in examining legislative
2 intent in the New Mexico Tort Claims Act, the New Mexico
3 legislature distinguishes between a tort and a
4 constitutional deprivation.

5 There is no, and I repeat, no expressed
6 reference anywhere within the New Mexico Tort Claims Act
7 to 1983 actions, to 1981 actions, to 1982 actions, to
8 1985 actions.

9 QUESTION: Well, we certainly have to take the
10 word of the Supreme Court of New Mexico as to questions
11 of state law and state legislative intent. The Supreme
12 Court of New Mexico here held that the two-year statute
13 was the applicable one, and the state court in 1983 --

14 MR. FARBER: In the DeVargas decision on
15 certiorari, which is found in the Joint Appendix at
16 Pages 15 and 16, there is no discussion of legislative
17 intent. What the court basically did was, it looked to
18 this Court's decision in Timanio, and it said, we think
19 the most analogous statute of limitations is that found
20 in the New Mexico Tort Claims Act, Section 15, based
21 upon a violation of Section 12, which applies solely to
22 law enforcement officers.

23 The net effect of that decision is that a
24 whole wide range of 1983 actions that simply are not
25 covered, were never intended to be covered by the New

1 Mexico Tort Claims Act, are now apparently under that
2 reading of the DeVargas decision covered by a two-year
3 limitation period.

4 There is no way that a zoning due process type
5 case filed because of 1983 can come within the arguable
6 confines of the New Mexico Tort Claims Act or be
7 analogous, yet --

8 QUESTION: But unless you are talking about a
9 residuary statute, you are going to have some sprawl or
10 overlap any time you try to fit a 1983 action with all
11 of its varieties into some specific state tort
12 limitation.

13 MR. FARBER: Not based upon the Tenth
14 Circuit's method of characterization, which I believe
15 follows the case of Burnett versus Gratton, which this
16 Court decided six months ago. In Burnett versus
17 Gratton, this Court set forth a three-stage process.

18 First, the Court said that in attempting to
19 borrow a rule where federal law is deficient, you look
20 to the laws of the United States to the extent that they
21 are suitable to carry the civil rights statutes into
22 effect.

23 QUESTION: Your argument is essentially then
24 that we should disregard the decision of the Supreme
25 Court of New Mexico not because it improperly applied

1 state law, but because characterization is a matter of
2 federal law.

3 MR. FARBER: No, I have three arguments why
4 the DeVargas decision should not be followed.

5 One, it is not an analogous statute of
6 limitations, as the DeVargas decision says that it is.
7 Two, it characterizes 1983 actions in a discriminatory
8 fashion. And three, and I have thought a great deal
9 about the DeVargas decision on certiorari, it was a
10 decision that quashed certiorari as being improvidently
11 issued, and my understanding of the law is that when a
12 decision quashing certiorari is issued, it is not
13 precedent.

14 QUESTION: Wasn't it -- didn't the Supreme
15 Court of New Mexico write an opinion in the process of --

16 MR. FARBER: They did write an opinion, but it
17 was called a decision of certiorari. Excuse me.

18 QUESTION: Don't the New Mexico appellate
19 courts follow that as binding precedent?

20 MR. FARBER: I think they have been incorrect
21 in following that. If the Court will look --

22 QUESTION: Well, in any event, the New Mexico
23 courts are treating it as a decision with precedential
24 value. Isn't that true?

25 MR. FARBER: Some -- in Cosart they did, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUESTION: And in Sayna School Bus?

MR. FARBER: Yes, but I think that they were not the most analogous state statute of limitations to be applied to 1983 actions. It is somewhat curious how the DeVargas decision on certiorari came to be published, by the way.

On Page 22 of the Joint Appendix, there is an affidavit from Rose Marie Aldereti, the clerk of the New Mexico Supreme Court, in which she says that the DeVargas decision on certiorari is not to be published, it is not a recorded opinion, and it won't be cited as precedent.

After we filed a motion in the District Court attaching that affidavit to a reply to new authority, because the DeVargas decision was decided after we filed our lawsuit, then the decision became published. I don't know how that happened, but that is the sequential events leading up to the publishing of the DeVargas decision.

If one reads the DeVargas decision, there is no attempt to analogize. A 1983 action --

QUESTION: That may be true, but if a 1983 action were brought in the state court, there isn't much question about what the applicable statute would be, is there?

1 MR. FARBER: I think if a 1983 action were
2 brought in state court, the statute of limitations would
3 be what the federal courts have said that it is, which
4 is that you have to --

5 QUESTION: Why wouldn't the lower courts of
6 New Mexico have to follow DeVargas?

7 MR. FARBER: Because of the supremacy clause.
8 This Court has said --

9 QUESTION: Well, I know, but that is just --
10 that is true only if you win this lawsuit.

11 (General laughter.)

12 MR. FARBER: Well, I think that it is not just
13 true based upon this lawsuit. I think it is true based
14 upon the line of cases which this Court has developed in
15 attempting to analogize and decide what the appropriate
16 or analogous statute of limitations is.

17 QUESTION: What if we decide in the case that
18 preceded this one that the federal courts must apply the
19 statute that the state courts would apply to a 1983
20 suit?

21 MR. FARBER: I think that that would be a
22 departure from the decisions of this case.

23 QUESTION: Well, I know, but what if we do
24 decide --

25 MR. FARBER: The decisions of this Court.

1 QUESTION: What if we decide just that in the
2 case that preceded this? Then the Tenth Circuit is
3 wrong and you are wrong.

4 MR. FARBER: No, I think that based upon the
5 characterization of a federal civil rights action as
6 being an injury to personal rights, that the most
7 analogous state statute of limitations in New Mexico is
8 the New Mexico personal injury statute, which allows a
9 lawsuit to be filed within three years from the date of
10 the injury. This Court --

11 QUESTION: I know, but if we decide what I
12 suggested in the case before, a lot of the inquiry is
13 pretermitted, because if the state court or -- a state
14 legislature or a state court expressly finds that this
15 is the statute that applies to 1983 actions, then isn't
16 the only question left inconsistency?

17 MR. FARBER: Discrimination, and we have that
18 argument in this case also. Inconsistency with federal
19 policy. This Court has said on a number of occasions
20 that it is not going to follow state law automatically.
21 To be sure, state law is --

22 QUESTION: So you could say the only question
23 that would be left would be inconsistency. Isn't that
24 right?

25 MR. FARBER: Whether it is unreasonable and

1 not consistent with federal civil rights policy, and
2 whether it discriminates against the federal cause of
3 action, and those arguments are made in our case, and
4 are shown by the facts of the case.

5 Based upon the underlying approach analysis
6 which has been urged by the petitioners in this case,
7 there could be a two-year statute of limitations applied
8 to certain types of civil rights claims brought against
9 law enforcement officers, but interestingly enough, if a
10 law enforcement officer was discriminated against, or if
11 a law enforcement officer had his First Amendment rights
12 violated, that law enforcement officer would have either
13 three or four years to bring a lawsuit, but if someone
14 has their rights abused by a governmental authority
15 through law enforcement agencies, that person only has
16 two years to bring a lawsuit.

17 There has been, and I think this is the reason
18 that the Tenth Circuit took the approach that it did, a
19 colossal burden on the federal courts by litigation
20 based upon the underlying conduct approach, and we have
21 cited the authorities and the collections of cases in
22 Footnotes 9, 11, and 13 of our brief, where there has
23 just been this wide range of litigation.

24 This case has been going on, on January 28th
25 it will be three years, solely on the basis of what is

1 the proper statute of limitations to be applied to the
2 remedial 1983 action that was filed in this case seeking
3 compensation for the severe personal injuries that my
4 client received and deterrence, so that this type of
5 governmental abuse will not occur again.

6 And I think that it is important at this
7 moment to point out just very briefly and succinctly
8 that the complaint alleges that Gary Garcia was
9 viciously and brutally beaten by Petitioner Wilson,
10 sprayed with teargas, that Richard Wilson was hired by
11 Petitioner Vigil, who was the chief of the New Mexico
12 State Police, even though Petitioner Vigil had been
13 advised by two high-ranking police officers of the New
14 Mexico State Police not to hire this man because the man
15 had been fired for stealing from a prior employer, the
16 man had arrest warrants outstanding against him, and the
17 man had several convictions, and four days prior to the
18 beating in this case, Petitioner Wilson brutally
19 assaulted two women in Rio Riva County, New Mexico, and
20 that fact was --

21 QUESTION: Mr. Farber, all this goes to the
22 merits, and if this is all that clear, I wonder why you
23 waited two years to sue.

24 MR. FARBER: Part of it was that -- it deals
25 with the practicalities of the litigation. You have an

1 uneducated man in Ria Riva County, New Mexico, who was
2 subpoenaed to appear at a trial where all the facts came
3 out, and then learned about his cause of action against
4 Petitioner Vigil.

5 QUESTION: Isn't your basic argument that all
6 this unfairness, and time, and figuring out what the
7 right statute of limitations is, that is really a
8 criticism of Congress for not enacting a uniform statute
9 of limitations. It is not --

10 MR. FARBER: I think this Court has criticized
11 Congress each and every time it has written a statute of
12 limitations case, because the answer would be resolved
13 simply if Congress said, the statute of limitations is X
14 years.

15 QUESTION: They haven't, and until they do we
16 are going to have a million of these cases.

17 MR. FARBER: And that is why the approach of
18 the Tenth Circuit makes sense, because it creates a
19 theme which this Court can follow, that is consistent
20 with the concept of federalism, it is consistent with
21 the remedial nature of 1983 actions and the dual
22 policies of compensation and deterrence, and it is
23 consistent with the settled expectations and repose
24 policies of the states, because now people will know
25 what they have to do.

1 QUESTION: If Congress had done what it did in
2 1946 in the Federal Tort Claims Act, you would have a
3 two-year statute, wouldn't you?

4 MR. FARBER: Yes.

5 QUESTION: And would you be quarreling with
6 Congress?

7 MR. FARBER: If Congress had enacted a statute
8 and made it applicable to 1983, no, that would end the
9 inquiry, but we don't have --

10 QUESTION: It would end your case, too.

11 MR. FARBER: It would end the case, but it
12 hasn't. And the two-year statute, it does not apply to
13 1983 actions in New Mexico.

14 As we have shown in the survey which is
15 attached as a part of the appendix, Part B, the approach
16 of the Tenth Circuit does not lead to nationwide
17 uniformity, which this Court has said is not a goal of
18 the Federal Civil Rights Acts in Footnote 11 in the
19 Robertson versus Reagan case.

20 What it does is, it creates a -- and we show
21 that there is a range of 50 statutes of limitations for
22 the states and the territories that would apply to civil
23 rights actions based upon the characterization of the
24 injury as being an injury to personal rights.

25 What you do under Burnett versus Gratton is,

1 you use the federal laws to the extent that they are
2 suitable to understand what it is when one's rights are
3 violated, and we have set forth the legislative history
4 at Pages 17 to 23, which I believe supports the
5 characterization of an injury to civil rights as being
6 an injury to personal rights.

7 You then look to state law. No one in this
8 case has suggested that you don't look to state law to
9 find the statute of limitations. But the second step of
10 the Burnett versus Gratton test is to look to state law,
11 and for each state it is different, although some of the
12 years are the same. It ranges from one year in
13 California to six years in North Dakota.

14 Unless we have an approach that gives that
15 degree of limited uniformity, rather than 50 statutes of
16 limitations, this Court may well be burdened with 150 or
17 200, and I think the example of the case of Polite from
18 the Third Circuit is strikingly clear.

19 In that case there were allegations that there
20 was excessive force used, a false arrest, an illegal
21 search and seizure of a car, and coercion of a guilty
22 plea, and based upon the cause of action, the federal
23 cause of action that was filed, the Third Circuit
24 analogized those claims to state law and found in the
25 same case that a one-year statute of limitations ought

1 to apply to the false arrest claim.

2 The court found that a two-year statute of
3 limitations ought to apply to the coercion of guilty
4 claim and the assault and battery claim, analogizing
5 these to common law torts, and that a six-year statute
6 of limitations ought to apply to the illegal search
7 claim based upon the car -- based upon the Pennsylvania
8 cause of action for recovery of goods.

9 I suggest that that is not a concrete, proper
10 resolution to the issue of statutes of limitations. It
11 has caused intolerable burdens on the federal courts,
12 and the cases which we have collected, once again, in
13 Section 9 -- Footnotes 9, 11, and 13, I think, show
14 that.

15 The characterization method which the Tenth
16 Circuit utilized and which we think is appropriate and
17 proper is something which this Court has historically
18 engaged in as far back as 1905, and we have summarized
19 that in Footnote 5 of the red respondent's brief.

20 In the case of McLain versus Rankin, which was
21 a national bank assessment action, what the Court did
22 was, the Court looked to the law and it said, we think
23 that this action is a liability based upon a statute
24 against the claim that it was a contract action.

25 The court then looked to the law of the

1 particular state, the forum state, for an analogous
2 statute of limitations, and finding none, the Court then
3 applied the residuary statute of limitations.

4 This has been done consistently where the
5 Court as a part of the characterization process
6 determines for itself the essential nature of the
7 federal right which has been conferred by Congress, and
8 then applies the most analogous and appropriate statute
9 of limitations under state law.

10 In this case, if one characterizes the action
11 as an action for injury to personal rights, and then
12 looks to state law, the conclusion is that it is the
13 personal injury statute, the three-year statute of
14 limitations, because the two-year limitation provision
15 of the New Mexico Tort Claims Act does not apply.

16 It refers exclusively to torts, and
17 consistently throughout the New Mexico Tort Claims Act,
18 as was noted by Judge Bratton, and as was noted by the
19 Supreme Court of New Mexico in Wells versus County of
20 Valencia, a decision totally inconsistent with DeVargas,
21 the legislature distinguishes between torts and 1983
22 actions, and if in fact the legislature had intended the
23 Tort Claims Act to apply to 1983 actions, it would have
24 said so.

25 It did not say so. It does not apply. The

1 Tort Claims Act is a very limited waiver of the state's
2 sovereign immunity. It has not, as I have said, waived
3 immunity for the wide range of actions --

4 QUESTION: Mr. Farber, may I interrupt you?

5 MR. FARBER: Yes.

6 QUESTION: Is it not correct that under your
7 approach and, I think, the Tenth Circuit's approach,
8 even if the New Mexico legislature had said in so many
9 words, we intend this to apply to 1983 actions, you
10 would still make the same argument?

11 MR. FARBER: Yes, but there would be a
12 difference, because I think in that circumstance, the
13 third part of the Burnett versus Gratton test comes into
14 play. You have the federal characterization as an
15 injury to personal rights. You look to state law. You
16 find the state personal injury statute. And lo and
17 behold, there is this other statute that says it
18 specifically applies to 1983 actions.

19 I think the Court then has to look and see
20 whether the time periods are the same, because if they
21 are giving less time for the 1983 action than for the
22 other action, you have a discriminatory statute of
23 limitations.

24 If you have at the same time, if you have a
25 statute of limitations that is a part of let's just say

1 a tort claims act which allows compensatory damages
2 without a limit, unlike the New Mexico Tort Claims Act,
3 which allows punitive damages, unlike the New Mexico
4 Tort Claims Act, which doesn't have a restrictive notice
5 provision, unlike the New Mexico Tort Claims Act, which
6 doesn't discriminate against a federal cause of action,
7 unlike the New Mexico Tort Claims Act, and which allows
8 in this case a cause of action against a police officer
9 for action under color of law but outside the course and
10 scope of his duties, unlike the New Mexico Tort Claims
11 Act, then I think it is appropriate to use that statute
12 of limitations, because it is consistent with this
13 nation's federal civil rights policy.

14 QUESTION: Would you say that even if it were
15 a shorter statute?

16 MR. FARBER: No, I would not, because I think
17 it discriminates against --

18 QUESTION: Well, then why do you ever have to
19 look past -- then I don't understand how you ever reach
20 the third question, because if you limit the third
21 inquiry to statutes that are even longer, it seems to me
22 you --

23 MR. FARBER: Because you have to make that
24 judgment. You have to defer to the state to see what --

25 QUESTION: If you say as a matter of federal

1 law that all 1983 actions are most analogous to a
2 personal injury tort case, and you always look at the
3 state statute for a personal injury lawsuit, why isn't
4 that the end of the ball game?

5 MR. FARBER: Because the third step -- because
6 states do enact 1983 actions, and they have the right to
7 enact a 1983 action as long as it doesn't discriminate
8 against what a private individual would have to --

9 QUESTION: In other words, they could enact a
10 longer statute. That is what you are really saying.

11 MR. FARBER: I am sorry, what?

12 QUESTION: In other words, they could permit a
13 longer period.

14 MR. FARBER: They could permit a longer period
15 or the same period. They couldn't go under what the
16 personal injury statute would be, because you would have
17 a situation like we have in New Mexico, where someone
18 who is the victim of a simple assault has three years to
19 bring a lawsuit, but someone who has been brutally
20 abused by a police officer only has two years to bring a
21 lawsuit.

22 That is certainly not a result, I think, that
23 is consistent with the decisions of this Court and with
24 the federal interests which are involved.

25 QUESTION: Of course, it is pretty unlikely,

1 isn't it, that a state would adopt a longer statute for
2 suits against its officers than --

3 MR. FARBER: Yes, I think that is unlikely.
4 The action filed in this case is a federal action filed
5 in federal court seeking a federal remedy based upon a
6 uniquely federal interest, which is the protection of
7 the rights of citizens through compensation and
8 deterrence, and the judgment of the Tenth Circuit should
9 be affirmed.

10 If for any reason this Court should determine
11 that the limitations provision of the New Mexico Tort
12 Claims Act should apply to the claim of Gary Garcia,
13 then we would ask that this Court make any such ruling
14 prospective, because prior to the filing of the
15 complaint in this case there had never been any kind of
16 judicial decision which had ever said 1983 actions were
17 governed by the New Mexico Tort Claims Act.

18 The New Mexico Tort Claims Act does not refer
19 to 1983 actions. The decisions of the federal courts in
20 the State of New Mexico were that the action was either
21 a liability based upon a statute or an action for
22 personal injury, either the three-year or the four-year
23 statute of limitations.

24 In the Tenth Circuit, it was the policy under
25 Shaw versus Haliburton, which we have pointed out in our

1 brief, that if there was an arguable difference, that the
2 longer statute as a matter of policy should be applied.

3 For all of these reasons, it would be unfair
4 to bar the claim of the plaintiff in this case. For all
5 the reasons that I have mentioned, we would respectfully
6 request this Court to affirm the judgment of the United
7 States Court of Appeals for the Tenth Circuit.

8 Thank you.

9 CHIEF JUSTICE BURGER: Very well. Do you have
10 anything further, Mr. Hall?

11 ORAL ARGUMENT OF BRUCE HALL, ESQ.,

12 ON BEHALF OF THE PETITIONERS - REBUTTAL

13 MR. HALL: Mr. Chief Justice, and may it
14 please the Court, on the prospectivity issue alone,
15 there was no reasonable reliance by the respondent on
16 any particular view of this rule which was significantly
17 changed or altered by the Tenth Circuit, as the granting
18 of the interlocutory appeal itself indicates.

19 There were indeed different views on whether
20 the two-year limitation should apply, and in fact the
21 Tenth Circuit's decision is a reversal of its prior
22 approach to these cases, which would apply the two-year
23 limitation.

24 There is the statement made that again state
25 law has been incorrectly interpreted by state courts.

1 The statement is made here several times that there is
2 no reference to 1983 actions as such in the limitation
3 or the statutory scheme.

4 What it says, and it says specifically, is
5 that there is a cause of action in state law against law
6 enforcement officers for deprivation of any rights,
7 privileges, or immunities secured by the United States
8 Constitution.,

9 Any tort lawyer can read that quite clearly as
10 a reference to 1983 actions. When you finally come down
11 to it, the question of was the state's decision of its
12 own law wrong, that question really can't even be asked
13 in this context. The point is, it is the state's
14 decision, and in the only matter in which this is
15 relevant it is state law.

16 QUESTION: Mr. Hall, your opponent did to a
17 certain extent argue that, but I don't understand the
18 Tenth Circuit to have so reasoned. Do you? They don't
19 say that the New Mexico Supreme Court misconstrued state
20 law.

21 MR. HALL: No, Justice, they said it's
22 irrelevant.

23 QUESTION: That's right.

24 MR. HALL: That's what they said, in a
25 footnote. I think that is the significance of this

1 case. It is not a happy result for federalism when
2 federal courts directed by a federal rule of decision
3 statute such as 1988 are told to borrow state law, and
4 that it should govern.

5 That state law, as observed and applied in the
6 state courts, is simply relegated to a footnote and
7 regarded as irrelevant. That is not what Section 1988
8 intended.

9 It is not only an unhappy result for
10 federalism, it is an unhappy result for plain principles
11 of judicial comity. We are left with an irreconcilable
12 difference between state and federal courts in applying
13 their concurrent jurisdiction over 1983 actions which
14 simply cannot and should not be permitted to continue.

15 CHIEF JUSTICE BURGER: Thank you, gentlemen.
16 The case is submitted.

17 (Whereupon, at 11:23 a.m., the case in the
18 above-entitled matter was submitted.)
19
20
21
22
23
24
25

CERTIFICATION

Anderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#83-2146 - RICHARD WILSON AND MARTIN VIGIL, Petitioners v. GARY GARCIA

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)

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

'85 JAN 22 AM 1:20