

ORIGINAL

**OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE**

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WASHINGTON, D.C. 20543**

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-6061

TITLE JOSE GARCIA AND FRANCISCO GARCIA, Petitioners v.
UNITED STATES

PLACE Washington, D. C.

DATE October 10, 1984

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IN THE SUPREME COURT OF THE UNITED STATES

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JOSE GARCIA AND FRANCISCO GARCIA, :
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Petitioners :
:
v. : No. 83-6061
:
UNITED STATES :
:
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Washington, D.C.

Wednesday, October 10, 1984

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:02 a.m.

APPEARANCES:

CHARLES G. WHITE, ESQ., Miami, Florida; on behalf of the
Petitioners (pro hac vice).

JERROLD J. GANZFRIED, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of the Respondent.

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1 Now, the Government has, of course, adopted
2 that position based on what they consider to be the
3 plain reading and unambiguous wording of that statute.
4 Petitioners contend that in fact the statute is not
5 unambiguous and that the -- it suffers from various
6 defects in the way that it's worded, and we will be in a
7 position to argue that.

8 In addition, petitioners feel that the
9 congressional intent is certainly relevant, and I would
10 say controlling, as to what it was that Congress
11 intended to do when in fact they amended the statute.

12 Petitioners will also propose to this Court an
13 alternative, what we believe is in fact the plain
14 meaning of the statute that comports with congressional
15 intent; and that is an -- that will involve the
16 application of an ancient rule, a well-respected rule of
17 statutory construction called the rule of ejusdem
18 generis.

19 Now, the facts in this case are not totally
20 pertinent to the legal issue involved, but some of them
21 should be gone into in order to -- to give some
22 background to the Court.

23 The petitioners were two brothers, Jose and
24 Francisco Garcia, who back in July of 1981 were engaged
25 in negotiations with an undercover agent from the United

1 States Secret Service for the purpose of selling or
2 buying counterfeit money.

3 Now, the -- Francisco -- the Garcia brothers
4 represented to Agent Holmes that they would be in a
5 position to sell him counterfeit money in exchange for
6 real money. They had a meeting in a park in Miami,
7 Florida in the evening in which Agent Holmes had brought
8 some government money which was kept in a pouch. The
9 negotiations apparently were not to be had, because Jose
10 Garcia did pull out a gun and train it upon Agent
11 Holmes, and Francisco Garcia climbed into the car that
12 Agent Holmes had driven to the scene and escaped with,
13 or tried to escape with the pouch containing the real
14 money.

15 The backup agents that were with Agent Holmes
16 were approaching the scene to affect arrests. One of
17 their cars hit Francisco Garcia, knocking him to the
18 ground, and Francisco Garcia was taken into custody, as
19 was Jose Garcia.

20 Now, they were -- these two individuals were
21 prosecuted and tried in front of a jury in district
22 court in the Southern District of Florida. This issue
23 that's before the Court was not raised by the trial
24 attorney for the petitioners. The issue was not raised
25 until the brief was filed with the Eleventh Circuit, and

1 the Eleventh Circuit permitted the issue to be argued
2 and decided on its merits. In the Eleventh Circuit
3 opinion the conclusion was that the statute seemed very
4 plain and unambiguous. Basically, the Government's
5 position was adopted, and the petitioners were -- had
6 their convictions affirmed.

7 I had stated in the very beginning that I
8 intended to show that the statute was in fact ambiguous,
9 and I think that the way to understand it is to look at
10 the way in which the Government is contending the
11 statute should be read. By looking at the words
12 themselves you have a very unusual situation here. You
13 have three clauses that are separated by a disjunctive
14 "or."

15 The Government has argued that in fact there
16 are two clauses separated by a disjunctive "or," and
17 that one clause being mail matter, and then "or any
18 money or other property of the United States, thereby
19 that -- those -- that phrase which was added by Congress
20 in 1935 encompasses one category of things to be
21 prohibited. And the Government presumes that the
22 intention of Congress in reading that statute was to
23 have "property of the United States," "other property of
24 the United States" modify the preceding phrase which is
25 "any money."

1 Well, in the same breath the Government
2 contends, and the Eleventh Circuit seemed to accept this
3 argument at the time, that the use of the disjunctive
4 always establishes completely and wholly separate
5 categories of crimes. In order to determine or to rule
6 that the plain reading of this statute establishes that,
7 you have to take away from mail matter the other parts
8 that were added in 1935. Otherwise, you may have, in
9 fact, what the petitioners contend, which is a statute
10 which was only designed to -- to close what was
11 perceived in 1935 to be a loophole in the Postal Robbery
12 statute.

13 Now, how does this -- how does this work? If
14 we take each different category that's separated by the
15 disjunctive, we have mail matter is the first category,
16 and there's no dispute as to what that means. There's a
17 long history of case law and a pedigree which goes all
18 the way back to 1792 that regards this particular part
19 of the statute, or "any money."

20 What was it that "any money" means? Surely,
21 if the category has to stand by itself, then "other
22 property of the United States" is not going to be used
23 to modify "any money." We don't have a situation here
24 where the plain reading of the statute says that "any
25 money of the United States."

1 We also have a situation where it would have
2 made "any money" a redundant statement. As in Section
3 2112 of the United States Code in Title 18, robbery of
4 government property has been ruled quite conclusively to
5 include government money. The only purpose that
6 Congress could have had for putting "any money" as a
7 separate clause was that they were contemplating that
8 there would be other money over which Congress could
9 assert jurisdiction that was not government property.

10 And I submit to the Court that what they were
11 discussing and what they contemplated was the money
12 which would be in the possession of those who would
13 normally possess mail matter. Material other than mail
14 matter the statute was designed to protect.

15 And there's another way when you look at the
16 statute as a whole that this type of an argument and
17 this type of ambiguity begins to make more and more
18 sense. Before we get to the articles which a lawful
19 custodian would have custody of -- the mail matter or
20 any money or other property of the United States -- we
21 have the situation of a -- who is a lawful custodian of
22 these -- these properties.

23 Again, this is a statute which has been around
24 for a long time. Case law has been established as to a
25 lawful custodian of mail matter. Lawful custodians --

1 different courts have -- have looked at the -- at postal
2 regulations, different courts have looked at private
3 business people who run a post office on a contractual
4 basis and ruled that those people are in -- in custody
5 of mail matter. The courts have -- have ruled on this
6 issue.

7 Congress is presumed to have known what the
8 precedents were when it added these -- these other
9 categories to mail matter or any money or other property
10 of the United States. They knew what a lawful custodian
11 of these matters were, and there's no indication in the
12 statute that they intended to set up any other standard
13 for determining what it was that constituted a lawful
14 custodian.

15 Now, the petitioners contend that these types
16 of problems are all based -- and really the reason why
17 we are here before this Court is because the Government
18 was able to convince the Eleventh Circuit, of course,
19 that there was only two clauses with the "or." But if
20 you look at the opinion below, which we have petitioned
21 this Court to review, you will see that there is a major
22 glaring mistake that was made in that opinion. And that
23 is that the writer of that opinion presumed that there
24 was a comma between the words "mail matter" and the
25 clause "or any money or other property of the United

1 States." And, in fact, the United States Code does not
2 contain a comma in that place. There is no separation
3 in the two categories. The separation is into three
4 categories under a plain meaning of the statute.

5 Now, going back to the analysis of what kind
6 of any money they were talking about and other
7 government property, we now see that Congress must have
8 intended when reading the statute in its plain and
9 unambiguous fashion that somehow the various phrases
10 would be related to each other; that the different
11 categories that the Congress was intending to protect
12 would be related to each other.

13 QUESTION: Mr. White, if the Court were to
14 agree with you in this case, what would be the effect on
15 the Garcias here? They were convicted of other offenses
16 and sentenced to consecutive terms, is that right, for
17 the other offenses?

18 MR. WHITE: Yes, Your Honor. They were
19 sentenced -- Jose was sentenced to a 40-year term of
20 which 25 years was for this particular offense, and
21 Francisco was sentenced to a 30-year term.

22 QUESTION: So it wouldn't be necessary to
23 remand for any alteration of any sentence.

24 MR. WHITE: Well, yes, Your Honor, the
25 petitioners in their prayer for relief were asking that

1 this Court order the district court to dismiss the count
2 3 in the indictment which charges this violation of
3 Section 2114.

4 QUESTION: Well, yeah, if that were done, the
5 other sentences would stand as is, right?

6 MR. WHITE: That's correct, Your Honor.

7 Now, to proceed, if I may, when you look at
8 the -- at the statute as it's written, the different
9 categories, mail matter or any money or other property
10 of the United States, it's clear that you have a
11 specific term --

12 QUESTION: You say there are three categories
13 there, Mr. White? Mail matter is one, money is another,
14 and other property is the third?

15 MR. WHITE: That's correct.

16 QUESTION: Well, then -- but the word "of"
17 does not appear in front of the phrase "other
18 property." In other words, the -- the statute, as you
19 well know and read, "Whoever assaults any person having
20 lawful charge, control or custody of any mail matter or
21 any money or other property of the United States." It
22 seems to me if your construction was right, it would
23 read "or of any money or of other property of the United
24 States.

25 Do you see what I mean?

1 MR. WHITE: Well, Your Honor, the -- you are
2 correct, of course, in your -- in that part of the
3 analysis. This is one of the reasons why it's necessary
4 to, in cases of this nature, to go back and determine
5 what it was that Congress intended. Perhaps the Court
6 is correct. Perhaps it was Congress' intention if they
7 wanted to have three categories that they would have put
8 the "of" there.

9 QUESTION: Well, I'm not the Court. I'm just
10 one member of the Court, and I -- I was just asking, not
11 intimating that that is necessarily the correct view.
12 But it seems to me your position would at least be
13 stronger if the word "of" appeared before "other
14 property."

15 MR. WHITE: Well, that may be the case, Your
16 Honor. However, I think that the -- the basic position
17 on the point of ambiguity is really what we're
18 discussing, and we're playing with these words, and
19 we're trying to figure out what exactly they mean when
20 one looks at them plainly and sees whether or not the
21 guidance that those words give is sufficient to override
22 any concern with what it was that Congress actually
23 intended when they decided to -- to enact --

24 QUESTION: Well, the Solicitor General used to
25 agree with you, didn't he?

1 MR. WHITE: Well, he did back about ten years
2 ago, Your Honor. He did agree with the position. The
3 Secnd Circuit and the Ninth Circuit had --

4 QUESTION: Seventh, Seventh. Is it the
5 Seventh?

6 MR. WHITE: Well, it was a Seventh Circuit
7 case, the United States v. Hanahan, in which the
8 Solicitor General had filed his -- his concession in his
9 memorandum --

10 QUESTION: Was that based -- was that
11 concession based on the kind of an argument you're
12 making or not, or was it mostly legislative history?

13 MR. WHITE: It's my understanding of that --
14 my -- my understanding of it was that the concession was
15 based mostly on -- on legislative history. It was going
16 back and looking at the intent of Congress; that it was
17 really -- the beauty of a plain and unambiguous reading
18 of the words as they appear is that by having a specific
19 term like "mail matter" followed by terms of normally
20 general meaning that relate to each other, applying this
21 principle of ejusdem generis, you have conclusively the
22 class enumerated by mail matter, the money in the
23 possession of those who would be in custody of mail
24 matter, and the property that would be in their
25 possession or custody.

1 QUESTION: Well, when we -- when we remanded
2 that case to the Seventh Circuit, we ourselves didn't
3 accept the confession of error. We didn't, in effect,
4 construe the statute. Didn't we just remand for
5 reconsideration in light of the Solicitor General's
6 concession?

7 MR. WHITE: Your Honor, my understanding of
8 the history of the Hanahan case was that you did --
9 you're totally correct. It was remanded for
10 consideration. What the district court did --

11 QUESTION: But we didn't -- we didn't agree --
12 we didn't necessarily agree with the Solicitor General.

13 MR. WHITE: No, Your Honor. We're not -- I'm
14 not -- I'm not contending --

15 QUESTION: Yes, all right.

16 MR. WHITE: -- That we're here on the --

17 QUESTION: But the Seventh Circuit did
18 apparently.

19 MR. WHITE: The Seventh Circuit did agree with
20 their -- with their conclusion.

21 QUESTION: Yes.

22 MR. WHITE: And apparently Mr. Hanahan's
23 account was vacated, and he -- they imposed a -- a
24 conviction under 2112, I believe, on those facts, Your
25 Honor.

1 QUESTION: Mr. White, could the Government
2 have charged the Garcias under Section 2112 in this case?

3 MR. WHITE: Yes, they could have, Your Honor.
4 They could have charged them under 2112. The question,
5 of course, that may be decided if this case is remanded
6 back is whether or not since they have also convicted
7 the Garcias under 641, theft of government property,
8 whether or not it would be appropriate at this point to
9 impose additional penalties under 2112.

10 All of what I've said before about the wording
11 in attempting to answer the questions of the Court tries
12 to get us past the threshold question which caused this
13 case not to -- I believe not to be fully considered by
14 the Eleventh Circuit. And that was to go right into the
15 issue of what it was that Congress was intending to do
16 in 1935 when they added those words "or any money or
17 other property of the United States" to the statute.

18 There are certainly -- I believe the
19 petitioners have -- have successfully shown that there
20 are two interpretations of this -- of the plain reading
21 of the statute: one based on the -- my arguments and
22 based on -- on established rules of statutory
23 construction. And I submit that the -- the others the
24 Government proposes are based more on what they would
25 like the law to be rather than what it was that Congress

1 intended the law to be.

2 Going back into the history of the 1935
3 amendment we see that there really wasn't the kind of
4 comprehensive hearings, the kind of comprehensive input
5 from other federal law enforcement agencies that one
6 would assume would happen if the Government was actually
7 planning on enacting a statute of the sweeping scope
8 which the -- the Government would have you believe they
9 intended to do.

10 Really, the -- the -- a letter from the
11 Postmaster General was the only -- was the only part of
12 the committee reports, aside from indications of various
13 -- various amendments that were being proposed on some
14 phraseology changes. That letter from the Postmaster
15 General reflected his concern that the law of 2114,
16 which at that time was found in Section 320 of Title 18,
17 smack in the middle of all the postal offenses, that
18 that was very good protection for those custodians of
19 mail. However, he was pointing out a rise in incidents
20 of robberies of custodians of other materials besides
21 mail.

22 Now, it was a letter. It wasn't drafted in
23 such a way that it was going to -- the way the letter
24 was drafted was going to become law. The Government in
25 their brief made some issue about the fact that he says

1 "custodians of money or other property" as opposed to
2 saying mailman or letter carrier.

3 Well, that makes a lot of sense that he would
4 just use the term "custodians of money" when he's the
5 Postmaster General and he's writing a letter to the Post
6 Office Committee in the House of Representatives, and
7 he's talking about concerns of his own which are for his
8 employees.

9 What he was concerned about -- and the
10 statement of Congressman Dobbins on the floor of the
11 House of Representatives underscores this -- what he was
12 concerned about were people coming in and robbing post
13 offices not of letters, not of mail matter, but of
14 money. And he wanted to make sure that the -- a
15 loophole, that this loophole in the statute was covered
16 so that they could use the statute with its very
17 stringent mandatory sentence if a firearm or dangerous
18 weapon was used, they could use the statute to protect
19 postal employees or those who have lawful custody of
20 mail matter or other property that would be in the
21 possession or control of the postal function.

22 This is really what got this whole statute
23 started, the whole amendment process started with this
24 letter, with this request that this loophole be closed.

25 Now, Congressman Dobbins, as the Government

1 points cut, was never ordained a "floor manager," in
2 quotation marks. Congressman Dobbins, however, if you
3 turn to the Congressional Record and turn back a few
4 pages from where the various quoted excerpts on this
5 bill are, or move back -- up a few pages, you'll see
6 that Congressman Dobbins was from the Post Office
7 Committee, and he was apparently in charge of
8 shepherding quite a few bills out of that committee
9 through the House of Representatives. And he was the
10 one that they would turn to when they wanted to ask a
11 question or what does this mean; what does this bill
12 really do; is this bill this or that? And he would
13 answer the question because, as he told them, he was
14 consulting with the lawyers, the attorneys that worked
15 for the Postmaster General trying to construct the
16 wording of a statute that would simply and easily close
17 the loophole that he was concerned about.

18 There's another indication that the -- that
19 this is what Congress intended. There was some
20 discussion in the Government's brief to the effect that
21 the -- there was -- just because there was silence on
22 this issue from other law enforcement agencies, that
23 does not necessarily mean that they weren't interested
24 in the result.

25 Well, one year before, one year before this

1 amendment was enacted, the Congress considered a letter
2 from the Attorney General -- I believe it was to the
3 House or Senate Judiciary Committee -- regarding the
4 enactment of what later became Section 111 of Title 18.
5 In that -- in that letter, the Attorney General, of
6 course, as the case -- as this Court remembers from the
7 United States v. Viola case where the congressional
8 intent behind 111 was -- was explored, the Attorney
9 General mentioned that he was concerned, of course,
10 about the jurisdiction of the federal courts over
11 protecting law enforcement officers.

12 He mentioned in the back -- back part of the
13 letter about how other people are trying to -- other
14 federal agencies are trying to protect their employees
15 as well, and he mentioned specifically the Post Office
16 is trying to protect assaults on letter carriers. So
17 even the Attorney General at that time, and one year
18 before this 1935 amendment, he got his extra protection
19 for situations of this nature. And as a matter of fact,
20 both the petitioners were charged under -- under Section
21 111 in addition to Section 2114, and Jose Garcia was
22 convicted, and Francisco Garcia was acquitted of that
23 count by the jury.

24 When one takes the entire context of this
25 bill, of this amendment, looking at the ambiguity and

1 the two different ways in which the statute can be read,
2 it becomes clear that congressional intent would control
3 under these circumstances. Applying the rule of e^{iusdem}
4 generis to this particular situation would only be not
5 justified, it would only be incorrect if in fact there
6 was a manifest congressional intent to the contrary.
7 And it's clear that there is no such intent, and the
8 Government has the burden, I submit, of showing where it
9 is that Congress intended that their scope behind the
10 statute would control.

11 Really, in conclusion, I would state that the
12 Government has basically lucked out in the Eleventh
13 Circuit. The court apparently, and the Government, was
14 willing to -- to look and -- and -- and construe a comma
15 which would give some credence to their plain reading,
16 their plain and unambiguous version of what it was that
17 they thought the statute meant.

18 Petitioners have contended from the beginning
19 that this is an -- this was an ambiguous statute, and
20 that for the Government to construe it as suddenly that
21 the -- that the Congress intended to extend these
22 protections to all lawful custodians of any money --

23 QUESTION: Mr. White, can I -- can I interrupt
24 you? I -- I'm troubled by your comma argument, because
25 I don't understand why the comma would be any more

1 significant than what Justice Rehnquist pointed out as
2 there are just two "ofs." I mean it seems to me they --
3 the fact there are only two "ofs" supports the notion
4 there are two clauses, and you can't have three clauses
5 with only two "ofs." I just don't follow your comma
6 argument. Maybe I --

7 MR. WHITE: Well, essentially it doesn't
8 necessarily go into -- the fact of the matter is that
9 there is no comma there, and they wanted it there. They
10 wanted it there for a reason. The reason they wanted it
11 there was because they want to show that that "or," the
12 first "or," is the true disjunctive that sets off the
13 two categories that they feel that Congress was
14 addressing. And with the comma not there, under the --
15 the -- all the case law that was cited by the Government
16 and the Eleventh Circuit regarding what "or" means and
17 what it means to have a disjunctive, and how it
18 separates separate categories and estops separate
19 categories of crime, instead of one disjunctive with two
20 categories, you've got two disjunctives with three
21 categories. And we have to now look at these
22 grammatical points, as mentioned before, and see whether
23 or not there should have been an "of" there or there
24 should not have been an "of" there. And this is what
25 establishes the ambiguity.

1 QUESTION: Isn't it true that as of today in
2 the modern teaching of English, commas are the most
3 unimportant things known to man?

4 MR. WHITE: Your Honor, that may be the case.
5 I -- I'm not aware of whether or not, in fact, commas
6 are important or unimportant. I don't have that -- I
7 don't have that knowledge.

8 QUESTION: I mean if that's what you're
9 leaning on, I think it's a thin reed.

10 MR. WHITE: Your Honor, I don't believe that
11 the -- that the Petitioners' position is that I'm lean
12 -- I'm not leaning on the fact that there's a comma or
13 there wasn't a comma. The point of the matter is that I
14 think that the -- that this all goes towards what the
15 Government's -- what they contend is the plain reading
16 of the statute, is their version of it. It's
17 establishing the ambiguity. It's understanding whether
18 or not the statute is ambiguous.

19 QUESTION: You don't take the position that if
20 the comma wasn't there, you'd lose?

21 MR. WHITE: No, Your Honor. No. I'm not
22 saying that at all. I don't think that the -- the case
23 -- I don't think the case turns on that comma. What I
24 believe is that the -- the attitude -- the
25 interpretation of the statute turns on the fact -- the

1 evidence of that comma, which it appears shows what the
2 Government thinks and proves that what they think is
3 only their version, and it's not clear and unambiguous
4 as they would have you -- as they would have you
5 believe. And I think the congressional intent is clear
6 that the context of the 1935 amendments, that it was in
7 fact designed to protect the postal function, and that
8 this Court should vacate the conviction and count 3 of
9 this indictment as to both petitioners and -- and remand
10 to the district court for -- for appropriate orders.

11 And I would like to reserve the rest of my
12 time for rebuttal.

13 CHIEF JUSTICE BURGER: Mr. Ganzfried.

14 CRAL ARGUMENT OF JERROLD J. GANZFRIED, ESC.,

15 ON BEHALF OF THE RESPONDENT

16 MR. GANZFRIED: Mr. Chief Justice, and may it
17 please the Court:

18 Our position is that Section 2114 means
19 exactly what it says. The statute prohibits, among
20 other things, the robbery of a lawful custodian of
21 government property, and where the victim's life is
22 jeopardized by the use of a dangerous weapon, as it was
23 here, the penalty is enhanced.

24 Now, the evidence at trial showed the
25 petitioners committed those acts, and in fact, there is

1 no real dispute that their conduct falls within the
2 statute's plain language. Petitioners seek to avoid
3 these consequences, however, by suggesting that Congress
4 meant something other than what it said in Section 2114,
5 and so they request the Court to limit the statute to
6 so-called postal crimes, although they haven't quite
7 told us what that is, even though Congress --

8 QUESTION: Let me interrupt on the plain
9 language point just -- it's something that always
10 troubled me. I have in my pocket a dollar bill.

11 MR. GANZFRIED: Yes.

12 QUESTION: Is that money of the United States
13 within the meaning of the statute?

14 MR. GANZFRIED: Within the meaning of 2114
15 it's -- it's not. It's U.S. currency but --

16 QUESTION: So the language doesn't -- isn't
17 quite as clear as -- as its face would indicate. I
18 would think money of the United States would be these
19 green bills that I carry around from time to time.

20 MR. GANZFRIED: Well, it's -- it's -- it's
21 clear for two reasons: one, because the phrase that
22 follows it is "other property of the United States."
23 Petitioners have read the word "other" out of the
24 statute. It's "money or other property of the United
25 States."

1 I might say that if you're suggesting that
2 there's an ambiguity as to whether it refers to U.S.
3 currency or property of the United States, it has no
4 bearing on this case because these people were stealing
5 government funds. And, in fact, our reading of the
6 statute --

7 QUESTION: But under your view it would not
8 have -- they would not have violated this statute if the
9 agent had not had government funds but had his own money
10 which he intended to get reimbursed for.

11 MR. GANZFRIED: If they lifted his wallet and
12 took money that he was going to take for a bus at the
13 end of the day. That's right.

14 QUESTION: Well, Mr. Ganzfried, under your
15 view, someone who stole, for instance, a hammer from GSA
16 could be charged under this, and then there'd be a
17 25-year mandatory sentence?

18 MR. GANZFRIED: If they steal the hammer, the
19 answer is no. If they rob the hammer --

20 QUESTION: Taken in a robbery.

21 MR. GANZFRIED: If it's taken in a robbery and
22 its government property, the answer is yes, it's
23 covered. And I would say I suppose the purpose that
24 they use that hypothetical in their reply brief is to
25 suggest that it's unduly harsh. My answer to that is,

1 first, if it does appear to be unduly harsh, that's a
2 question for Congress to determine; and second, it's too
3 broad -- it proves too much because it would be the same
4 in the postal situation.

5 QUESTION: Well, you would say, I suppose,
6 that the prosecutor simply has a choice whether to
7 charge him under 2112 or 2114.

8 MR. GANZFRIED: That's right. The prosecutor
9 is certainly not obligated to rely on 2114.

10 QUESTION: Now, if we thought the statute was
11 clear on its face, are there any circumstances, in your
12 view, when the Court could look at a legislative history
13 -- if there ever were a case, this would be it, because
14 the legislative history is quite clear, it seems to me,
15 that a postal nexus was contemplated by Congress.

16 MR. GANZFRIED: Well, I -- I -- I disagree
17 with that. I think if we're looking at the purpose of
18 the statute, the congressional committee --

19 QUESTION: Well, just assume that for a
20 minute, would you, in answering the question? Assume
21 the legislative history is clear that a postal nexus was
22 contemplated. Are there any circumstances that would
23 justify the Court in looking past the meaning?

24 MR. GANZFRIED: Not here.

25 QUESTION: As expressed.

1 MR. GANZFRIED: Not here, because this -- the
2 statutory language is clear. There is no need to resort
3 to legislative history or any other aids to resolve any
4 uncertainty because there is no uncertainty to resolve.
5 The purpose of looking to the legislative history is --
6 is --

7 QUESTION: Well, suppose the committee report
8 said in -- in language as plain as the statutory
9 language itself we intend this to have a postal nexus;
10 that's the intent of Congress. Now, could the Court
11 look behind the plain meaning of the statute to that
12 kind of --

13 MR. GANZFRIED: There's no rule of law that
14 says that the Court cannot look behind the plain meaning
15 of the statute, but ordinarily the Court will do so only
16 when it's seeking to resolve an ambiguity on the face of
17 the statute.

18 We would also add that the Court has said in
19 the past that a statement of a purpose in the
20 legislative history does not necessarily mean that that
21 is the exclusive purpose. So even if the committee
22 reports had read as -- as you suggest in your
23 hypothetical, it would not resolve the case.

24 QUESTION: Well, you don't suggest there
25 aren't cases here that rely on the legislative history

1 to narrow the language of the statute; that is, to
2 exclude from its coverage some conduct that on its face
3 is covered by the statute?

4 MR. GANZFRIED: I'm sorry. I didn't hear the
5 beginning of the question.

6 QUESTION: Well, you wouldn't -- would you
7 deny that there are any cases in this Court that narrows
8 the otherwise broad coverage of the words of the statute
9 based on the legislative history?

10 MR. GANZFRIED: I would -- I would --
11 certainly there are cases that narrow the language of
12 statutes.

13 QUESTION: Well, a -- I'm talking about words
14 of a statute that on their face cover the conduct at
15 issue, but it's been -- but it's held that the statute
16 doesn't cover it because of the legislative history.

17 MR. GANZFRIED: My recollection is that there
18 have been rare occasions on which the Court has done
19 it. Frankly, no examples come to mind at the moment.

20 Now --

21 QUESTION: Mr. Ganzfried, if -- if Jose Garcia
22 had been prosecuted under 2112 instead on the facts as
23 the jury found them in this case, could the trial court
24 still have imposed a 25-year sentence by just giving
25 consecutive sentences under 2112 and 111?

1 MR. GANZFRIED: He could have, but 2112 and
2 111 simply specify maximum sentences, not the mandatory
3 sentence the 2114 --

4 QUESTION: But I mean that enough flexibility
5 would have been present using those two statutes to
6 still give the term that was given, in effect, 25 years.

7 MR. GANZFRIED: The court could have done that
8 if it were so inclined.

9 QUESTION: Do you -- while I have you
10 interrupted, do you know if there were ever any
11 prosecutions for robberies of nonpostal employees before
12 this section was moved to Title 18 under this section?

13 MR. GANZFRIED: Prior to 1935?

14 QUESTION: I think it was prior to 1948.

15 MR. GANZFRIED: Oh, that revision.

16 QUESTION: You see, it was in 1948 --

17 MR. GANZFRIED: The revision is when --

18 QUESTION: -- I think, when it was moved from
19 the postal area of the code to Title 18. And I just
20 wondered if there were ever any prosecutions in the
21 earlier years that didn't have a postal nexus.

22 MR. GANZFRIED: Not that I'm aware of. On the
23 other hand, it -- it depends on what you mean by the
24 phrase "postal nexus." There was the Rondo case that
25 the petitioners have cited in their brief, decided by

1 the Eighth Circuit in 1924. In that case the victim was
2 the son of the postmaster, and he was not, as I read the
3 opinion and recall it, employed by the Post Office
4 Department at the time. Nonetheless, it was found that
5 covered the situation simply because he was a lawful
6 custodian. In one sense I suppose you could say there
7 was a postal nexus.

8 QUESTION: Right.

9 MR. GANZFRIED: But possibly not the postal
10 nexus that the petitioners are -- are talking about.

11 QUESTION: And I guess the SG did take a
12 contrary position to the one you're taking now for quite
13 some time about this.

14 MR. GANZFRIED: Well, so far as -- as far as I
15 know, that position was taken in Hanahan, and it was the
16 only time that the Solicitor General took a position on
17 it.

18 QUESTION: I see.

19 MR. GANZFRIED: Certainly, the issue -- pardon
20 me. Certainly, cases under 2114 that did not involve a
21 postal nexus had come to the Court. Now, this
22 particular issue had not been raised. I'm thinking now
23 of one of the two earlier cases, either the -- the Peek
24 case or the Sherman case. There was a petition for cert
25 filed in one of them. Unfortunately, the citation to

1 the denial of cert is omitted from our brief. There was
2 a petition for cert filed in the case, and the Solicitor
3 General took the position that cert should be denied.

4 As I said, this issue was not raised, but he
5 took no occasion to say 2114 requires a postal nexus.
6 It was taken only in Hanahan, and it was taken there in
7 circumstances where the 2112 option was available and
8 recommended to the Court that there be a remand for
9 resentencing under 2112 and to treat 2114 as a
10 miscitation in the -- in the indictment.

11 We have since learned in the second Rivera
12 case in the Second Circuit that there will be occasions
13 when the 2112 option will not be available because there
14 had not been a completed robbery under 2114, only an
15 attempt, which 2112 doesn't cover.

16 QUESTION: It's the attempt thing that slips
17 through the cracks. That's --

18 MR. GANZFRIED: Well, the attempt that's
19 covered by 2114, that is not covered by 2112.

20 QUESTION: Right.

21 MR. GANZFRIED: And so having -- having
22 learned that the 2112 option is not always available to
23 us, having discovered the Peek and Sherman cases that
24 apparently the Solicitor General was not aware of in
25 1973, and having looked at this Court's more recent

1 cases on the reading of statutes, particularly criminal
2 statutes, and the great attention that's to be paid to
3 the plain meaning enacted by Congress as the best and
4 most reliable evidence of congressional intent, when
5 this case came along we took another look at it since --

6 QUESTION: You just don't want -- I mean you
7 would prefer not to have the attempt -- attempted
8 robbery of government property not covered by one of
9 these two sections.

10 MR. GANZFRIED: Well, we would prefer that.
11 We would also prefer to have 2114 available to
12 prosecutors within their discretion when the
13 circumstances warrant.

14 QUESTION: I presume you would also like to
15 carry out the intent of Congress.

16 MR. GANZFRIED: Absolutely, absolutely.

17 QUESTION: Mr. Ganzfried, in U.S. against
18 Sherman -- that was a Fourth Circuit case -- that was an
19 appeal by the United States, I gather. And doesn't the
20 Solicitor General authorize appeals of the United States?

21 MR. GANZFRIED: No. That was -- that was an
22 appeal by Sherman. That was a conviction.

23 QUESTION: Well, but the citation is United
24 States against Sherman.

25 MR. GANZFRIED: Yes. That was the court of

1 appeals caption.

2 QUESTION: Yes. I see. So Sherman did the
3 appealing.

4 MR. GANZFRIED: Sherman did the appealing,
5 yes. And Sherman -- and, I'm sorry, as I look at it I
6 see we do have cert denied.

7 QUESTION: No. Cert -- cert denied. That's
8 the title.

9 MR. GANZFRIED: When cert denied, the title
10 was Sherman v. the United States.

11 QUESTION: And what's -- why -- why is the --
12 why is it captioned U.S. against Sherman in the court of
13 appeals?

14 MR. GANZFRIED: As I understand it, that's the
15 way courts of -- courts of appeals ordinarily use the
16 captions that district courts use.

17 QUESTION: Well, the practice varies among the
18 circuits.

19 MR. GANZFRIED: Well, it may, and I -- my
20 recollection of the reading of the Sherman case was that
21 it was a conviction and an appeal by Sherman.

22 QUESTION: So it was a conviction.

23 MR. GANZFRIED: Yes.

24 QUESTION: It wasn't just a dismissal of an
25 indictment or something.

1 MR. GANZFRIED: That's right. Now, the issue
2 was not raised in Sherman, or in Peek, or in the C'Neill
3 case, an earlier Ninth Circuit case. But they were
4 prosecutions that were under 2114, and they had no
5 postal nexus by any stretch of the imagination.

6 QUESTION: Am I correct in remembering then
7 the Hanahan case in the Seventh Circuit, the issue
8 wasn't raised in the court of appeals, was it?

9 MR. GANZFRIED: That's right. The issue was
10 raised for the first time in the petition for cert.

11 QUESTION: May I also ask, is this question
12 the subject of the recent legislation that Congress, I
13 understand, has passed some comprehensive criminal
14 legislation?

15 MR. GANZFRIED: I've made inquiries on that,
16 and my understanding is that it's not.

17 QUESTION: It's not.

18 MR. GANZFRIED: I can check further on that,
19 and if what I've just said is in error, I will certainly
20 advise the Court.

21 QUESTION: What was -- what was the basis of
22 your concession in Hanahan?

23 MR. GANZFRIED: The basis of the concession --

24 QUESTION: What you were -- what you filed
25 here, which we don't have in our files.

1 MR. GANZFRIED: Oh, I see. Well, the basis
2 for the concession in Hanahan was primarily the
3 statement by Congressman Dobbins.

4 QUESTION: So it was legislative history.

5 MR. GANZFRIED: Absolutely. In fact, let me
6 read from our memorandum of the case.

7 QUESTION: Well, that's all right. I think
8 you've --

9 MR. GANZFRIED: We said, "On its face the
10 statute covers the crime for which petitioner was
11 convicted." We relied on Congressman Dobbins' statement.

12 QUESTION: Which you now call a snippet or
13 something.

14 MR. GANZFRIED: Which -- which was -- which
15 was a snippet then and which is a snippet today.

16 QUESTION: The passage of years hasn't changed
17 it.

18 MR. GANZFRIED: It hasn't gotten any longer
19 since he said it in 1935.

20 QUESTION: Of course, the whole legislative
21 history is only about three snippets.

22 MR. GANZFRIED: Three snippets and -- and 3
23 7/8 of them are consistent with our position. In fact,
24 if what we're trying to do -- and we are -- is to
25 determine what Congress' intent was, they made it quite

1 easy; because if the question is what was Congress'
2 purpose, the committee report says the purpose of this
3 bill is to bring within the provisions of the penal code
4 the crime of robbing or attempting to rob custodians of
5 government monies.

6 QUESTION: Does the -- does -- does the
7 committee report or the legislative history of that 1935
8 statute or the amendment, was it -- it was revised in
9 '35, was it?

10 MR. GANZFRIED: There was an amendment in 1935.

11 QUESTION: Does the legislative history
12 include any comment by the Department of Justice --

13 MR. GANZFRIED: Apparently not.

14 QUESTION: -- On the Post Office's proposal?

15 MR. GANZFRIED: Apparently not.

16 Now, let me address two arguments that the
17 petitioners have made on the face of the statute. It
18 had been their -- it had been my understanding of this
19 case up until a week ago that there was no real dispute,
20 but that on its face 2114 clearly covers the conduct
21 here. And we take the position, as we do in our brief,
22 that there's no need to go beyond the statutory
23 language. It's not a case where the words are unclear,
24 ambiguous or imprecise. And since there were not two
25 plausible readings that were suggested, there was no

1 reason to go any further to choose between any two --
2 any such readings.

3 Now, it wasn't until they filed their reply
4 brief last week and in their argument today that they
5 ever really suggested an ambiguity in 2114. They've
6 changed their tune, and they recently discovered an
7 ambiguity which, as I understand it, is that the term
8 "money" is unclear in that it could either refer to
9 government funds, or it could refer to any money. And I
10 submit, as I said in response to a question earlier,
11 that it doesn't matter for purposes of this case,
12 because what were stolen were government funds. And in
13 any event, the statute, in our view, does cover only
14 government funds.

15 They also make this morning an argument under
16 the doctrine of ejusdem generis, and we submit on that
17 that the doctrine is inapplicable here and should be
18 rejected for essentially the reasons that the Court
19 rejected it in the Powell case that's cited in
20 Petitioners reply brief and in the Turkette case, namely
21 that it's an aid to construction that comes into play
22 when there's some uncertainty in the language.

23 Here there is no uncertainty. Each category
24 is separate, and there is no common characteristic that
25 runs through the three categories. In essence, we don't

1 have a statute that has a long list of specific items
2 followed by a catch-all phrase at the end. In fact, the
3 case on which they rely, the Stever case, my
4 recollection of the statute in that case in 1916 was
5 that the catch-all phrase at the end said something like
6 "or other similar" items to the items that it pursued.
7 We have nothing of that sort here.

8 Now, as I said, there's no rule of law that
9 prevents the Court from looking at the legislative
10 history. Our position on that is that when you look at
11 it and you take the legislative history as a whole, it
12 supports us. I think we have to keep things in
13 perspective; that --

14 QUESTION: Well, despite the clearness of the
15 language, the Solicitor General urged us to look at the
16 legislative history in the Hanahan case.

17 MR. GANZFRIED: He did.

18 QUESTION: And the Seventh -- and he urged the
19 Seventh Circuit to do so, and won.

20 MR. GANZFRIED: I -- I don't know quite what
21 happened in the followup in the Hanahan case. I know
22 that Hanahan was resentenced, but he took --

23 QUESTION: Well --

24 MR. GANZFRIED: -- I assume --

25 QUESTION: The Seventh Circuit took the

1 Solicitor General's view, I think.

2 MR. GANZFRIED: I assume that it did. The
3 Solicitor General, however, has -- has now come to a
4 different conclusion under the same statute. As this
5 Court said unanimously in Mendoza last year --

6 QUESTION: Well, a different view also
7 apparently on the -- on the permissibility of looking at
8 legislative history.

9 MR. GANZFRIED: Well, the ease with which one
10 can have legislative history rewrite a statute --

11 QUESTION: Well, the view must have changed
12 since Hanahan.

13 MR. GANZFRIED: The view -- the view has --

14 QUESTION: About that issue, too.

15 MR. GANZFRIED: Presumably it has.

16 QUESTION: Yes.

17 QUESTION: Well, the legislative history back
18 in '35 was not extensive, and I guess that's why you
19 call it a snippet; but the prime sponsor and advocate at
20 the hearing was this Mr. Dobbins, and his language and
21 intent emerges pretty clearly, Mr. Ganzfried. That's
22 what bothers me. He said, "The only purpose of the
23 pending bill is to extend the protection of the present
24 law to property of the United States in the custody of
25 its postal officials, the same as it now extends that

1 protection to mail matter in the custody of the public
2 officials -- postal officials."

3 And it just seemed to me, frankly, that was a
4 pretty good indication of what they had in mind. And
5 then there were objections to the language by a Mr.
6 Walcott who said, and I quote, "This is the worst
7 drafted bill I've ever read," said he, and offered
8 suggestions for clarifying the language, but they
9 weren't adopted.

10 MR. GANZFRIED: Well, two things. First of
11 all, one of the suggestions that Mr. Walcott made was
12 adopted. The reason that I -- that I don't share that
13 concern about the significance of Congressman Dobbins'
14 comments is first of all that they have to be understood
15 in context. He was not offering an explanation of the
16 scope of the bill. He was not offering a definition of
17 the terms that are at issue here. He was responding to
18 criticism of the bill on an altogether different
19 subject, namely the mandatory nature of the 25-year
20 sentence.

21 In responding to that in which he was pointing
22 out that the amendment was not changing it -- the
23 statute as it already existed had a 25-year mandatory
24 sentence -- he added that all we're doing is, as you
25 said, but he was not offering an explanation of the

1 meaning of the statute.

2 Second, another reason why the comment is not
3 entitled to that weight is that it's inconsistent with
4 the words of the statute, and it's inconsistent with the
5 report of the committee of which Congressman Dobbins was
6 a member. And as this Court has said, comments made in
7 colloquies are hazardous bases for assuming what
8 Congress' intent was. Those -- the speeches are
9 available only to the -- or heard by the members who
10 happen to be there that day, whereas the statutory
11 language is -- is what is actually presented to all
12 members of Congress, commands a majority vote in both
13 Houses and is signed by the President.

14 QUESTION: Well, sure, but this was in the
15 post office section of the code, and it was suggested by
16 the Postmaster. And the evidence all shows that what
17 they were worried about were these little substations
18 where often there was property other than letters in the
19 custody of the substations like a little bit of money,
20 and people were coming in taking money from these little
21 substations. And that's really why it was passed.

22 MR. GANZFRIED: Well, we don't know why it was
23 passed, but it seems to me it -- I mean we can't lock
24 into the inner workings of the minds of the members of
25 Congress. All we can work with is the record that

1 they've left. And in trying to seek out the trail
2 towards congressional intent, the largest and best
3 signpost we have is the words of the statute they
4 passed. And it would seem to me --

5 QUESTION: Well, certainly your committee
6 report is contrary to Dobbins' remarks on the floor.

7 MR. GANZFRIED: Absolutely. Absolutely. It
8 doesn't --

9 QUESTION: And did he file a dissent to that
10 committee report?

11 MR. GANZFRIED: No, not -- not that we're
12 aware of.

13 QUESTION: Was he the -- what was his position
14 on the committee? Was he a subcommittee chairman or
15 what?

16 MR. GANZFRIED: I -- I don't know what his
17 position was on the committee.

18 QUESTION: May I ask you a question that I --
19 I haven't really been able to think through? I assume
20 -- particularly Justice O'Connor's reminded us -- that
21 the Government actually did not make use of this statute
22 for anything except postal cases at least until after
23 1948, really in only a handful of cases since then.

24 MR. GANZFRIED: Well, I -- I tried to find out
25 the answer to that, just how many cases there were that

1 were prosecuted under 2114, and unfortunately, we -- I
2 could not find any records to answer that, and so the
3 response that I gave to Justice O'Connor was based on
4 what I could find in the reported decisions. There may
5 well have been prosecutions.

6 QUESTION: At least there weren't any
7 appeals. But assume it, assume it to be the case in the
8 absence of really definitive evidence that the practice
9 of the executive branch of the government was to
10 construe the statute as having been intended to relate
11 to postal nexus cases.

12 MR. GANZFRIED: I'll assume that. I won't
13 necessarily agree.

14 QUESTION: Which I know you don't, and it
15 certainly had changed later, at least in some cases.
16 And if we are to look primarily at the contemporary
17 context in which the statute was enacted, does that
18 carry any weight at all? I -- I really don't know
19 whether it does -- the executive's practice in --

20 MR. GANZFRIED: If what you're suggesting is
21 that we try to engage in some pseudopsychology to
22 determine what individual Congressmen were thinking
23 about --

24 QUESTION: Well, generally speaking, in the --
25 generally speaking, in the thirties federal criminal law

1 was -- criminal law enforcement was basically the
2 providence of the states, and -- and the business of the
3 federal activity in law enforcement has expanded
4 dramatically in the last 10 or 15, 20 years.

5 In that context I just wonder if we wouldn't
6 have had -- if there was the -- the purpose that the
7 plain language seems to suggest, why we wouldn't have
8 had more cases other than postal cases. There's a lot
9 of government property floating around.

10 MR. GANZFRIED: Well, let me, I think, recast
11 that question. I think if -- if that was Congress'
12 intent, first of all, it's a simple matter for them to
13 say any postal employee in the statute or any property
14 of the Post Office Department. It also seems to me that
15 if this language really does run far beyond what
16 Congress intended that someone would have raised the
17 question and said look at what we're doing here. This
18 isn't limited to the post office. This says any
19 property of -- of the government. And the committee
20 report --

21 QUESTION: Yes, but you know as a realistic
22 matter how -- how much attention a bill of this kind
23 gets in the actual deliberations in Congress. It's
24 fairly routine.

25 MR. GANZFRIED: Well, it seems to me that the

1 language of the bill would get more attention than the
2 comments that Congressman Debbins made on the floor.

3 QUESTION: Which committee was it that handled
4 this bill?

5 MR. GANZFRIED: This bill was handled by the
6 Post Office Committee. There were two predecessor bills
7 that were virtually identical.

8 QUESTION: Is there any other criminal law of
9 general application that's handled by the Post Office
10 Committee?

11 MR. GANZFRIED: Offhand I can't think of any,
12 but I can tell you that the two predecessors to this
13 bill were, when introduced, identical to it, were
14 referred to the Judiciary Committee. No action was
15 taken in the committee, and so in 1935 when it was
16 reintroduced it went to the Postal Committee. If I had
17 to guess --

18 QUESTION: So they could -- so they could get
19 action.

20 MR. GANZFRIED: It got action, and it got
21 action from the full Congress. I would guess that it
22 was simply a matter of -- of political expedience, that
23 there was a bill that was needed, and -- and a way was
24 found to get it through Congress.

25 The bill itself is -- is just as broad, no

1 matter what the source, no matter what committee it
2 comes from. And it seems to me that it would be a
3 somewhat peculiar mode of statutory construction to go
4 back 50 years later and tell Congress that it sent the
5 bill to the wrong committee, that it has to do it right
6 if it -- if it wants to pass criminal laws.

7 QUESTION: I'm just -- I just would like to
8 weight that and consider it just like all other things
9 you've been talking about, which might be of no interest
10 at all.

11 MR. GANZFRIED: What we can do is make our
12 submissions for the Court's consideration and -- and
13 hope that we're persuasive.

14 QUESTION: Congress could have passed the bill
15 and said anybody that steals government money goes to
16 jail, period. You wouldn't have any of this trouble.

17 MR. GANZFRIED: Well, we don't think we have
18 that -- that trouble. It already had a statute that
19 says anyone who steals government property goes --

20 QUESTION: You don't consider coming up here
21 trouble?

22 MR. GANZFRIED: Pardon me?

23 QUESTION: You don't consider coming up here
24 trouble?

25 MR. GANZFRIED: It's an effort, but it's a

1 pleasure. It's not trouble.

2 QUESTION: Well, you were brought up here,
3 were you not? You were brought up here.

4 MR. GANZFRIED: That's right.

5 QUESTION: He didn't have to come.

6 (Laughter.)

7 MR. GANZFRIED: Well, since it's a case in
8 which I -- I believe that our position is rather simple,
9 we don't have to revise the statute, and I'd suggest
10 that in order to -- to read into the statute the
11 limitation that the petitioners propose, you would have
12 to revise the statute. You would have to read in and
13 insert language that Congress certainly could have used
14 in 1935 and had at that point in numerous other criminal
15 laws relating to the post office. And we've identified
16 some of those at pages 16 and 17 of our brief.

17 They knew how to do it. They didn't do it.
18 They chose instead the broad language of this statute,
19 and they stated clearly in both committee reports that
20 the purpose was to protect custodians of government
21 monies.

22 QUESTION: Can I ask one other question about
23 the plain language? I probably should have read more
24 cases before I asked this.

25 Supposing a person who's not a government

1 employee at all has custody of an unopened letter that's
2 written to his brother or his cousin or something, and
3 then he's robbed and that letter is stolen. Is this
4 statute violated?

5 MR. GANZFRIED: I'll have to ask you a
6 followup fact to be able to answer it.

7 QUESTION: It's been delivered. The letter's
8 been delivered.

9 MR. GANZFRIED: It's been delivered. I think
10 our position on that is that once it's been delivered,
11 it's not mail matter under the terms of the statute.

12 QUESTION: So if I open my neighbor's mailbox

13 --

14 MR. GANZFRIED: Which would be consistent, I
15 believe, with our position under Section 1708 which
16 covers thefts.

17 QUESTION: Do you think that's perfectly clear
18 from the plain language of the statute? Do you think
19 that limitation is clear from the plain language of the
20 statute, that the lawful custody means the lawful
21 custody during the transit of the mail as opposed to
22 some later period of time?

23 MR. GANZFRIED: I think it is, because I think
24 ordinarily once mail is delivered, taking the ordinary
25 meaning of the words, that once it's delivered, it's --

1 it's a letter, it's not mail.

2 QUESTION: It's no longer mail matter.

3 MR. GANZFRIED: No longer mail matter.

4 Oh, incidentally, there is one point that I
5 shouldn't sit down without commenting on, and that is
6 the business about this comma. I don't think it's
7 terribly important either way, but the fact of the
8 matter is that in the section of the statute that covers
9 what these petitioners did, there is a comma. It's on
10 page 2, it's the fourth line in our brief.

11 These people were charged with -- with robbery
12 of the -- of the lawful custodian of government
13 property. And the portion of the statute that covers
14 robbery says, "Whoever robs any such person of mail
15 matter," comma, "or of any money," comma, "or other
16 property of the United States," so on and so forth. So
17 I don't think there was much to that argument to begin
18 with, but in fact, the comma on which it was based or
19 the absence on which it was based is there.

20 Thank you.

21 CHIEF JUSTICE BURGER: Do you have anything
22 further, Mr. White? You have two minutes remaining.

23 ORAL ARGUMENT OF CHARLES G. WHITE, ESQ.,

24 ON BEHALF OF THE PETITIONERS -- REBUTTAL

25 MR. WHITE: Just to set the comma business to

1 rest, the statute, as you can look at it in its
2 entirety, contains several references to mail matter, to
3 money, and to other property of the United States. The
4 first reference, which is really where the focus of the
5 congressional intent has to -- to do with, the very
6 first reference it says -- it says "mail matter or any
7 money or other property of the United States," and there
8 is no comma there. So that -- that's something I didn't
9 realize that -- that the Government was quoting from a
10 different section of the statute than what we -- we
11 thought we were talking about.

12 In any event, interestingly, the Government
13 said something very interesting. It said that it would
14 -- it was for Congress to determine -- and this, I
15 believe, was in answer to Justice O'Connor's question
16 regarding the -- between whether this was unduly harsh,
17 the robbery of someone, say, from GSA of a government
18 hammer or something of this nature.

19 Yes, it's true it was unduly harsh, and in
20 fact, Congress did, the legislative --

21 QUESTION: Well, of course, that's not our
22 concern; that's Congress'.

23 MR. WHITE: Certainly. Certainly, Your
24 Honor. However, the statement that Congressman Dohkins
25 made on the floor was directed exactly to this provision

1 of this bill which makes it a very unique bill, which is
2 a 25-year mandatory sentence if there's a dangerous
3 weapon used or if it's a second conviction.

4 Now, he was asked, this is not something which
5 we normally do. We usually have a range, so the
6 sentencing judge has discretion to impose the sentence
7 that he feels is necessary. And Congressman Dobbins
8 started off his colloquy saying well, this is the same
9 -- this is existing law. This is the law as it -- as it
10 already stands. It already has this 25-year mandatory
11 sentence. We're not changing it. We're just expanding
12 it a little bit. And this, I think, is the basis -- it
13 was -- this issue that -- that Justice C'Connor raised
14 was actually raised before the Congress in these little
15 snippets of --

16 QUESTION: That -- perhaps there's not that
17 disproportion that is suggested, because some of these
18 hammers are pretty expensive.

19 (Laughter.)

20 MR. WHITE: Especially the ones with the
21 Department of Defense.

22 QUESTION: Well, if it were a coffee pot it
23 might make sense.

24 (Laughter.)

25 MR. WHITE: It certainly -- it also certainly

1 was not the intent of Congress to -- to give such
2 unbridled discretion to the prosecution.

3 Thank you very much.

4 CHIEF JUSTICE BURGER: Thank you, gentlemen.

5 The case is submitted.

6 We'll hear arguments next in Kavanaugh against
7 Lucey.

8 (Whereupon, at 11:01 a.m., the case in the
9 above-entitled matter was submitted.)
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CERTIFICATION

Alderson 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:
#83-6061 - JOSE GARCIA AND FRANCISCO GARCIA, Petitioners v.
UNITED STATES

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

BY Paul A. Richardson

(REPORTER)

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