

# TRANSCRIPT OF PROCEEDINGS

IN THE SUPREME COURT OF THE UNITED STATES

RONALD W. REGAN, ET AL., )

Petitioners, )

v. )

JAMES ABOUREZK, ET AL., )

Respondents. )

No. 86-656

Pages: 1 through 44

Place: Washington, D.C.

Date: October 5, 1987

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Washington, D.C.

Monday, October 5, 1987

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 1:00 p.m.

APPEARANCES:

LAWRENCE G. WALLACE, ESQ., Deputy Solicitor General,  
Department of Justice, Washington, D.C.; on behalf of the  
Petitioners.

STEVEN R. SHAPIRO, ESQ., New York, New York; on behalf of  
the Respondents.

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ORAL ARGUMENT OF

PAGE

LAWRENCE G. WALLACE, ESQ.

on behalf of Petitioners

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STEVEN R. SHAPIRO, ESQ.

on behalf of the Respondents

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on behalf of Petitioners - Rebuttal

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1 PROCEEDINGS

2 (1:00 p.m.)

3 CHIEF JUDGE REHNQUIST: We will hear arguments, first  
4 this afternoon, in Number 86-656, Ronald Reagan versus James  
5 Abourezk, and you may proceed whenever you are ready, Mr.  
6 Wallace.

7 ORAL ARGUMENT OF LAWRENCE G. WALLACE

8 ON BEHALF OF PETITIONERS

9 MR. WALLACE: Thank you, Mr. Chief Justice, and may  
10 it please the Court, these cases, which were consolidated in  
11 the District Court, present questions concerning the denial, on  
12 foreign policy grounds, of non-immigrant visas to aliens  
13 invited by persons or groups in this country to participate in  
14 public or academic discussions.

15 The denials were based on a provision that appears on  
16 page 2 of our brief, Subsection 27, of a list of provisions in  
17 Section 1182 of Title VIII, which are provisions or bases for  
18 excluding aliens from the issuances of visas. And, in this  
19 instance, they were denied as prejudicial to the public  
20 interest or endangering the welfare, safety, or security of the  
21 United States.

22 The Court of Appeals held, and it is not contested in  
23 this Court, that foreign policy concerns can be a proper basis  
24 for a denial under Subsection 27; that something detrimental to  
25 our foreign policy interests would be within the broad

1 formulation of prejudicial to the public interest or  
2 endangering the welfare of the United States.

3 And the statutory issues that remain in the case, are  
4 whether that denial can be based on detriment to our foreign  
5 policy that flows from the very presence or entry of the alien  
6 into this country? Or whether it must be based strictly on  
7 something detrimental about the particular activities in which  
8 he plans to engage? And whether, if that question is answered  
9 favorably, to the Government, the authority that we would then  
10 have to deny the visas, under Subsection 27, has been abrogated  
11 by what is commonly called the McGovern Amendment, which  
12 amended another provision of Section 1182, Subsection 28?

13 Before --

14 QUESTION: May I ask, Mr. Wallace?

15 I gather you have to persuade us that to engage in  
16 activities, is virtually meaningless, do you not?

17 MR. WALLACE: Well, I would not characterize my  
18 burden that way, Mr. Justice.

19 Obviously --

20 QUESTION: Well, what does it mean, do you think?

21 MR. WALLACE: Well, there are two ways of looking at  
22 it, that support our position. The one that has been more  
23 commonly used in this litigation is to say that presence or  
24 entry into the United States are, themselves, activities. That  
25 is a little difficult to reconcile with the words, "to engage",

1 in activities, but it is not beyond the pale, in light of the  
2 legislative history.

3 Another way, which I think may be more helpful, is to  
4 say that, yes, they are admitted to engage in activities. And  
5 that those activities, while not detrimental to the public  
6 interest if engaged in by somebody else, would be detrimental  
7 to the public interest, if engaged in by this individual,  
8 because it would involve his presence or entry into the United  
9 States, to engage in those activities.

10 QUESTION: Well, in this case, as I understand it,  
11 there is no evidence, whatever, that they had any intention of  
12 engaging in any activities. This rests, does it not, entirely  
13 on the fact that they are members of what, the Communist Party?

14 MR. WALLACE: Yes. Various organizations. In one  
15 instance, the Government of Nicaragua; in the other instance,  
16 the Federation of Cuban Women; and in the third instance, a  
17 group called the World Peace Council, which was found to be --

18 QUESTION: And by reason of their association of one  
19 or the other or more of those organizations, that they were  
20 said to be excludable under the Statute?

21 MR. WALLACE: It was by reason of that, coupled with  
22 the State Department's determination that these organizations  
23 are instruments of a particular foreign government; and that it  
24 would be disadvantageous to our conduct of foreign policy, to  
25 admit someone for the purpose of carrying on that

1 organization's program, in the activities in which they want to  
2 engage in the United States. It would be detrimental to our  
3 foreign policy just to extend our hospitality to these  
4 individuals, by the issuance of a non-immigrant visa to engage  
5 in these activities.

6 QUESTION: Mr. Wallace, it was charged that they were  
7 going to engage in those activities in this country?

8 MR. WALLACE: That is correct. I mean, they wished  
9 to enter the country to engage in activities. I mean, anyone  
10 who wants to enter the country wants to engage in activities.

11 QUESTION: Like what? Making a speech?

12 MR. WALLACE: That is correct, and to participate in  
13 discussions.

14 QUESTION: Freedom of speech?

15 MR. WALLACE: Undoubtedly, when engaged in by someone  
16 properly present.

17 QUESTION: There is nothing other than speech  
18 involved?

19 MR. WALLACE: Our position is there need not be any  
20 misconduct in the activities, themselves, for Subsection 27 to  
21 apply. The activities might even be constitutionally protected  
22 activities. But Subsection 27, nonetheless applies, if the  
23 presence or entry of the individual to engage in those  
24 activities would be detrimental to our foreign policy  
25 interests. And that I --

1 QUESTION: Is it critical to your position that the  
2 activities be activities that could be attributed to the  
3 organizations with which the three people were associated?

4 MR. WALLACE: Well, it --

5 QUESTION: You seem to suggest that on an earlier  
6 statement?

7 MR. WALLACE: It is a part of our position.

8 QUESTION: Well, then, it is not a case of mere  
9 presence or mere entry?

10 Your proof is that these people are engaging in  
11 activities on behalf of some organization.

12 MR. WALLACE: That is correct.

13 QUESTION: That is a different theory than the  
14 dissent below, I think.

15 MR. WALLACE: Well, the dissent authorizes in its  
16 theory, a broader use of Subsection 27, then we are actually  
17 making of it.

18 QUESTION: So you are not espousing the theory of the  
19 dissent?

20 MR. WALLACE: Well, I am not disassociating myself  
21 from it, but we do not have to go as far as some of the  
22 implications of the dissenting opinion.

23 QUESTION: Well, you are not arguing that mere  
24 presence and mere entry is an activity, within the meaning of  
25 Subsection 27? Or are you?

1 MR. WALLACE: Well, that is one of our alternative  
2 contentions, yes. We have the authority to decide that mere  
3 entry or mere presence is an activity, that within itself, is  
4 detrimental to our foreign policy interests.

5 But in administering the statute, the fact of the  
6 matter is, we look at the activities in which they propose to  
7 engage, before making the determination of whether entry or  
8 presence would be detrimental to our foreign policy.

9 But we do so in a very limited way. In other words,  
10 we allow individuals to enter, even though we might deny them  
11 entry for this purpose, but we would allow them to enter and we  
12 have allowed some of these same individuals to enter --  
13 including Olga Finlay -- to attend meetings of an international  
14 body, such as the United Nations.

15 We would allow them to enter for limited purposes.  
16 We would allow them to --

17 QUESTION: Is there a finding here, that it was the  
18 activities in which they intended to engage that explain the  
19 reason for their exclusion?

20 MR. WALLACE: There were affidavits submitted --

21 QUESTION: No, I said, was there a finding to that  
22 effect?

23 MR. WALLACE: The finding by the District Judge, is  
24 that we had facially valid foreign policy reasons for denying  
25 their entry, which under this Court's decision, in Kleindienst

1 v. Mandel, he has no right to look behind and make a finding  
2 with respect to --

3 QUESTION: I still ask is the facially valid reason  
4 the fact that their mere presence or mere entry would be  
5 detrimental, or is it, that the activities in which they would  
6 engage would be detrimental?

7 What is the finding?

8 MR. WALLACE: I cannot say that the District Judge's  
9 finding is articulated so as to draw that distinction, as I  
10 recall it.

11 It would be a --

12 QUESTION: It would make a difference in this.

13 MR. WALLACE: I am looking at Page 80-A of the Joint  
14 Appendix, where the District Court merely says, it has  
15 concluded that, "Facially legitimate reasons exist for denying  
16 visas to the four individuals, whose entry is being sought in  
17 these actions."

18 "And they were not denied entry because of the  
19 content of the expected speeches, but because of their personal  
20 status as officials of governments or organizations which are  
21 hostile to the United States."

22 But the affidavits, on which he relies, do state, as  
23 part of the reasons why their entry would be detrimental to our  
24 foreign policy interests, is because it is entry to function as  
25 representatives of -- in Mr. Borge's case, in the case of the

1 Cuban women -- of organizations controlled by the Nicaraguan or  
2 Cuban governments; and in Mr. Pasti's case, to further the  
3 program of an organization controlled by the Soviet Union.

4 That is necessarily related to the kinds of  
5 activities that they propose to engage in. But the distinction  
6 that we make, with respect to activities, is not that someone  
7 submits the speech that he is planning to give, and a board of  
8 censors sits at the State Department and reads the speech and  
9 decides whether giving that speech is detrimental to our  
10 foreign policy interests. It is a distinction between entry  
11 for the limited purposes I started to describe to you -- to  
12 attend an international meeting of a body that meets in the  
13 United States; to conduct bi-lateral discussions with  
14 representatives of the United States; humanitarian entry, such  
15 as to get medical treatment; to attend a family funeral.

16 We would allow people in for those purposes, but not  
17 extend our general hospitality to them of providing them with a  
18 non-immigrant visa, because, as the affidavits explain, in the  
19 case of --

20 QUESTION: Mr. Wallace, the thing that troubles me is  
21 that you are telling me what the affidavits say, but the  
22 finding just relates to the personal status of the three  
23 people. I would think that it would apply going to a funeral,  
24 that they were not denied because of the content of their  
25 expected speeches, but because of their personal status, as

1 officials of governments or organizations, which are hostile to  
2 the United States.

3 I would think that would apply if they wanted to come  
4 in and have lunch.

5 MR. WALLACE: But the finding was made based on  
6 affidavits that explain the reasons --

7 QUESTION: Well, let me just ask you, is it necessary  
8 for us to support your position to go behind the finding, and  
9 rely on what is in the affidavits, instead of what the finding  
10 says?

11 MR. WALLACE: I think that --

12 QUESTION: That is your whole argument, is it not?

13 MR. WALLACE: I would say that it is necessary to  
14 read the finding in light of the affidavits on which the  
15 finding is based, because the finding is very succinctly  
16 stated. The finding is very responsive to this Court's holding  
17 in Kleindienst v. Mandel, that the Courts are not to go behind  
18 facially legitimate reasons that have been given.

19 And he is relying on the affidavits as the facially  
20 legitimate reasons, and in a sense, the finding incorporates  
21 the affidavits, if I may say so. I do not think that the  
22 District Court's decision can be read without reference to the  
23 affidavits.

24 QUESTION: We have the affidavits.

25 MR. WALLACE: They are in the Joint Appendix, and the

1 classified ones that he refers to, are in the Appendix to the  
2 Petition for Certiorari because they were declassified and  
3 reprinted there.

4 QUESTION: Mr. Wallace, when you speak about a  
5 finding in this case, actually the District Court granted  
6 summary judgment for the Government, did it not?

7 MR. WALLACE: That is correct.

8 QUESTION: So you are not talking about finding, in  
9 the ordinary sense, of a finding of fact at a bench trial?

10 MR. WALLACE: That is correct. It granted summary  
11 judgment. It concluded that there were no material issues of  
12 fact that it had to resolve in light of the facially legitimate  
13 reasons given by the Government in this series of affidavits,  
14 for the exclusion.

15 QUESTION: Mr. Wallace, may I ask whether you agree  
16 with the dissent in the Court below, that Kleindienst v.  
17 Mandel, necessarily upheld the constitutionality of the  
18 exclusion of communists based on their political beliefs?

19 Was that, do you agree that that was the necessary  
20 holding of Mandel?

21 MR. WALLACE: I do not read Kleindienst v. Mandel as  
22 necessarily holding that. It said that there was a facially  
23 legitimate reason for that particular exclusion, because  
24 Professor Mandel had violated restrictions on his visa, in past  
25 entries.

1           And that that was a sufficient basis to uphold the  
2 visa, here, and to override any First Amendment claim that was  
3 implicated on behalf of those who invited him. So, I cannot  
4 say that we can read Kleindienst v. Mandel as having resolved  
5 that question so definitively, with respect, I have to say that  
6 is slightly overstated in that dissenting opinion.

7           The reasons given in these affidavits do relate to  
8 specific foreign policy concerns and we have summarized them  
9 briefly, in our brief. Let me say that with respect to those  
10 who would be entering here, as representatives of an  
11 organization and to further the purposes of an organization,  
12 controlled by the Cuban government, the reference was to our  
13 country's policy of trying to diminish the disruptive influence  
14 of the Cuban government in Latin America, that is detrimental  
15 to the conduct of our foreign policy. And that extending  
16 hospitality to representatives of that government for purposes  
17 of participating in discussions in the United States, would  
18 contribute to giving that government an aura of legitimacy,  
19 that would enhance that government's ability to undermine our  
20 foreign policy objectives, in Central America.

21           QUESTION: But do you need our Courts for that  
22 purpose -- to enforce public policy in foreign governments and  
23 to prevent foreign governments?

24           MR. WALLACE: We did not need the Court and we were  
25 not the one who invoked the Court's jurisdiction. We were sued

1 in this case, Mr. Justice. We simply denied visas.

2 QUESTION: You want us to say that the Court can  
3 approve the denial of an entry of somebody who is going to make  
4 a speech, because the State Department does not like the  
5 country or the person.

6 MR. WALLACE: Because the State Department thinks  
7 that it is detrimental, has concluded that it would be  
8 detrimental to our foreign policy to extend our hospitality to  
9 that person, with a non-immigrant visa. And that that was  
10 within the authority of the Department of State to do.

11 With respect to the Interior Minister of Nicaragua,  
12 rather similar reasons were given, having to do with the  
13 undermining of our efforts to achieve a peaceful settlement of  
14 hostilities in Central America, should we, at the time, extend  
15 our hospitality to the Interior Minister, of that state, to  
16 which we were, to some extent, in an adversarial relationship.

17 With respect to Mr. Pasti, an active member of the  
18 World Peace Council, which the State Department had determined  
19 to be a Soviet-controlled organization, at the time, he was  
20 coming, that organization was engaged in a vigorous campaign to  
21 undermine support within Western Europe for the deployment of  
22 American missiles -- partly through a campaign of  
23 disinformation, that is elaborated upon in an Attachment to one  
24 of Undersecretary Eagleburger's affidavits.

25 And he was an active member, coming to further the

1 purposes of that campaign which was aimed at achieving  
2 unilateral disarmament, to the extent of not deploying those  
3 particular missile systems in Europe. And, obviously,  
4 extending our hospitality to him, for that purpose, would have  
5 a tendency to encourage that organization's efforts and  
6 contribute to its esprit for that purpose.

7           These matters change over time, and these are now  
8 missiles that are currently the subject of negotiation between  
9 the Soviet Union and ourselves, for the possibility of some  
10 mutual withdrawal of the missiles. But these determinations  
11 have to be made in the context of the times, in which they  
12 actually occur.

13           I think some further insight into the problems of  
14 this case, can be had by looking at the statistics that we  
15 collected on page 6 of our brief, in the footnote, which are  
16 also based on affidavit in this record. And that show, in the  
17 20-year period -- and this is footnote 2, on page 6 -- from  
18 1963 to 1983, Consular officers issued nearly 70 million non-  
19 immigrant visas, and denied on either foreign policy or  
20 internal security grounds, under Subsection 27, only 519  
21 applications.

22           And in the most recent times, 1981 through 1983, 6 to  
23 7 million per year have been granted, an average of less than  
24 30 have been denied.

25           This, in itself, is reflective of the consistent

1 dominant thrust of our foreign policy, which is to encourage in  
2 all countries -- including our own because reciprocity is a  
3 very important consideration in foreign policy -- to encourage  
4 freedom of travel, through non-immigrant visas, and indeed,  
5 even to encourage freedom of immigration. It is a policy that  
6 not only reflects our ideals about free interchange of persons  
7 and ideas, but it is further supported from the likelihood of  
8 re-examination by the very practical consideration that, in our  
9 country, there is already a much greater diversity of views  
10 being expressed than is true in many countries.

11 And it would not be to our ultimate advantage,  
12 overall, to be opposing travel by persons who might express  
13 diverse views, because we tend to benefit much more from  
14 additional views being expressed in other countries through  
15 travel, than that it would be at all practical to hope to  
16 monitor the expression of views in our country.

17 We do not know what these 70 million people might say  
18 when they arrive here. There were only a very minute number  
19 of people that we had reason to keep out because of foreign  
20 policy concerns of the type I mention, with respect to these  
21 particular applicants.

22 We have, in the Joint Appendix, some other examples.  
23 This is on pages 111 to 114, and the earliest examples that  
24 became known of the use of denials for foreign policy  
25 reasons -- most of these do not become known because there is a

1 statutory inhibition on public disclosure of them -- but these  
2 were three examples that, indeed, had come to the attention of  
3 Congress.

4 One was a denial of a visa to a Mr. Liao, a proponent  
5 of an independent Formosa. And another was a denial to Mr.  
6 Otto Skorzeny, a former Nazi SS Officer. And the objection to  
7 him was based on the detrimental foreign policy ramifications  
8 of granting our hospitality to him regardless of any particular  
9 activities that he might be planning to engage in. The other  
10 mentioned, is Madame Nhu.

11 The problems that the State Department is faced with,  
12 have to do with factions in exile; of factions that may be  
13 engaged in armed resistance to governments; deposed former  
14 heads of state --

15 QUESTION: Mr. Wallace, about the Nazi who was --  
16 Skorzeny, I think that you referred to?

17 MR. WALLACE: Certainly.

18 QUESTION: That was back in 1959, and is it not true  
19 that a few years later, they amended the statute to provide a  
20 new section that covered the people of that status?

21 MR. WALLACE: People who were associated with the  
22 Nazi Regime, during the thirties and World War II, but it does  
23 not cover people who engaged in brutality while in office, in  
24 other countries at other times, and there are many such people.

25 QUESTION: No, but I was just wondering, if you are

1 correctly interpreting 27, and you gave us an example, this  
2 Skorzeny, why did they need to enact 33? They could have used  
3 27?

4 MR. WALLACE: Perhaps it was done for emphasis. They  
5 did not necessarily mean that Congress thought that 27 was  
6 misapplied with respect to Mr. Skorzeny, and we have taken the  
7 position right along, that we can apply it with respect to  
8 others who have engaged in physical brutality, which are not  
9 embraced while in office, which were not embraced within  
10 Subsection 33.

11 There have been deposed governments in many countries  
12 -- I do not want to create international incidents by  
13 mentioning some of them -- where we might very well deny, on  
14 foreign policy grounds, the entry of these persons. And this  
15 has not been disputed by the other side, nor do they deny our  
16 basic proposition that it is not necessary for the activities  
17 to be, in themselves, misconduct, because they point to the  
18 case of a Libyan, young person denied entry to study aircraft  
19 maintenance and engineering, as a proper example of the use of  
20 Subsection 27.

21 But there is nothing inherently wrong about studying  
22 that and certainly having a willing student attends one's class  
23 is a part of academic freedom -- the First Amendment interests  
24 are implicated in such a case. The problem is the detrimental  
25 consequences to our foreign policy.

1 In a case like that, where you are dealing with a  
2 non-prominent person, the particular nature of the activities  
3 looms as a larger consideration.

4 But in the case of prominent people, such as are  
5 involved in our case, what really looms large on the foreign  
6 policy call, is whether extending our hospitality to them, at  
7 all, is going to be detrimental to our foreign policy?

8 Let me say that once it is concluded, as we submit,  
9 that Subsection 27 authorizes us to exclude persons on these  
10 grounds, it seems clear to us, that the McGovern Amendment is  
11 not meant to take that away.

12 It says, on its face, that it applies only to persons  
13 otherwise admissible to the United States. And the legislative  
14 history we have recounted, particularly in connection with an  
15 Amendment to the McGovern Amendment, shows that it has always  
16 been understood not to diminish the authority that we had under  
17 Subsection 27, specifically, the Chairman of the House Foreign  
18 Relations Committee made that point, as we recounted in our  
19 brief.

20 I would like to reserve the balance of my time.

21 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Wallace.

22 And now, we will hear from you, Mr. Shapiro.

23 ORAL ARGUMENT OF STEVEN R. SHAPIRO

24 ORAL ARGUMENT ON BEHALF OF RESPONDENT

25 MR. SHAPIRO: Mr. Chief Justice, may it please the

1 Court, I think that it is obvious from the Government's  
2 argument that the issues raised in this case are critical ones  
3 in a constitutional democracy -- whether and to what extent,  
4 the government may bar foreign speakers from addressing  
5 American audiences in the United States, on issues of obvious  
6 and substantial public concern?

7 As the Government points out and I just want to  
8 reiterate, because I think that it is important to an analysis  
9 of the case, there are two separate but related statutory  
10 questions before the Court today.

11 One is, whether (a)(27) Section 212(a)(27), applies  
12 in the absence of any allegation by the government that the  
13 excluded foreign speaker is likely to engage in prejudicial  
14 activities, if admitted to the United States?

15 The second question, which the government barely  
16 reached in its argument, is whether the Executive may  
17 circumvent the Congressional restrictions embodied in the  
18 McGovern Amendment, by using an alien's organizational  
19 membership as the basis for exclusion under (a)(27)?

20 I must say that I am somewhat flabbergasted by Mr.  
21 Wallace's argument, today, which apparently abandons the  
22 principle legal contention that the government has advanced in  
23 this case from day one. And that is, until 30 minutes ago, the  
24 government's position in this case, was that an alien could be  
25 excluded, a foreign speaker could be excluded from the United

1 States, based on the contention that his or her mere entry or  
2 presence in the United States were prejudicial to the public  
3 interest. That was the government's phrase not ours, but that  
4 the alien's mere entry or presence in the United States would  
5 be prejudicial to the public interest.

6 That argument, as the Court of Appeals found, as the  
7 government now apparently concedes, is simply impossible to  
8 square with either the language or the history of (a)(27).

9 Indeed, the extent to which the government has, at  
10 least until today, construed its authority under (a)(27), is  
11 illustrated by the example of Nino Pasti. Pasti is a former  
12 NATO General, a former Italian Senator, and he worked in the  
13 Pentagon for three years as a liaison between the Italian Armed  
14 Services and the United States Armed Services. In 1983, he was  
15 invited to address a disarmament rally on Boston Commons by an  
16 American peace group and he was denied the visa on the grounds  
17 that the government feared that he would spread disinformation,  
18 if permitted to enter the United States, and give his views on  
19 the propriety of American missiles in Europe.

20 The statute that we are dealing with, (a)(27), quite  
21 plainly speaks to the requirement of activities.

22 QUESTION: The government has abandoned its prior  
23 position in favor of what? Just how do you understand its  
24 argument?

25 MR. SHAPIRO: The way that I understand its argument,

1 now, Your Honor, and I must say that there were seeds of this  
2 in its brief, is that its previous argument was that it did not  
3 need to allege any activities, and indeed, it has not alleged  
4 any activities.

5 Not only is there no finding of prejudicial  
6 activities, but by any of the Courts who have ruled on this  
7 question below, if you, in fact, look at the affidavits  
8 submitted by the government -- either their original public  
9 affidavits, or their original classified and now declassified  
10 affidavits -- you will not see any reference to prejudicial  
11 activities. What you will see is a conclusion that the alien's  
12 mere entry or presence in the United States is prejudicial.

13 What I now understand the government to be saying is,  
14 that a claim of mere entry or presence is not sufficient under  
15 (a)(27), but we have more, and they say this in their brief,  
16 since after all any alien who enters the country necessarily  
17 engages in some activity. And the activities that they cite in  
18 their brief, as an illustration of that legal contention are:  
19 every alien eats, sleeps, travels in the United States. Those  
20 are activities sufficient to invoke (a)(27).

21 I think that is equally a fallacious ruling of  
22 (a)(27) since (a)(27) does not require some activities, it  
23 requires activities prejudicial to the public interest. And  
24 the government has not claimed that the sleeping or eating is  
25 prejudicial to the public interest, it is just another way or

1 restating a position, which I think that the government now  
2 understands they cannot sustain and that is --

3 QUESTION: Well, I understood the government's  
4 position, particularly with respect to someone like Mr. Borge,  
5 as being just a highly placed official of the Sandinista  
6 government and anything that he did in this country would be  
7 prejudicial, just his presence here, would be.

8 MR. SHAPIRO: Just his presence here would be, you  
9 are right, that is exactly their position, Your Honor. That  
10 what he does is --

11 QUESTION: What is your answer to that?

12 MR. SHAPIRO: That what he does is irrelevant. That  
13 merely his presence in the United States is prejudicial. My  
14 answer to that is, a visa denial based on that allegation was  
15 never authorized or contemplated by Congress when they adopted  
16 Section 212 (a)(27), because Section 212 (a)(27) provides that  
17 an alien may be excluded if there is reason to believe that  
18 they will engage in prejudicial activities, not if there is  
19 reason to believe that their presence in the United States may  
20 be prejudicial to the United States' foreign policy.

21 QUESTION: Then you are saying that there cannot be  
22 someone of sufficiently bad omen of our foreign policy that  
23 anything that he does in this country would be prejudicial?

24 MR. SHAPIRO: I am saying that that is not a (27)  
25 exclusion. As we said, in the Court below, and we continue to

1 believe, there are other provisions of the Immigration and  
2 Nationality Act, including Section 212(f) of the Immigration  
3 and Nationality Act, which may well permit the government under  
4 certain circumstances to exclude somebody because their mere  
5 presence in the United States is prejudicial to foreign policy  
6 interests.

7 But those other Sections of the Act are hinged in by  
8 other procedural protections that Congress has provided, namely  
9 in the case of 212(f), the requirement of a Presidential  
10 finding to make sure that our government is not excluding  
11 foreign speakers based merely on a bureaucratic judgment that  
12 their speeches in the United States are likely to create  
13 problems for American foreign policy interests.

14 And I think that if you look at the affidavits --

15 QUESTION: Of course, I do not understand the  
16 government's version of why it excluded Borge. To be his  
17 speeches might create problems -- just that anything he did  
18 here, his mere presence here would create problems.

19 MR. SHAPIRO: I think that the government, in the  
20 case of Borge, the government's position is, that his mere  
21 presence in the United States will create problems for us.

22 And our answer to that, and the answer of the Court  
23 of Appeals to that, is that is not what Section 212(a)(27)  
24 provides, and that is the only statutory authority that the  
25 government has cited in this case.

1           With regard to Pasti, if you look at the affidavits  
2 concerning Pasti, either the public or classified affidavits,  
3 it is perfectly clear that the government's allegation, in that  
4 case, was that his presence in the United States would create  
5 problems because they did not like what they expected him to  
6 say on the Boston Commons about American Pershing Missiles in  
7 Europe and he was a person who came to that setting with great  
8 credibility, because he was formerly the Chief Nuclear  
9 Strategist for NATO.

10           And they would prefer not to have him in this  
11 country, at that time, delivering that message, because it made  
12 it more complicated for them to put their missiles in Europe.

13           I do not think that there is any indication that  
14 (a)(27) permits a visa denial on those grounds.

15           And in terms of the entry or presence, versus  
16 activities claim, as the Court of Appeals likewise pointed out,  
17 the government's interpretation of (a)(27) is inconsistent with  
18 the statutory scheme of the Immigration Act for a variety of  
19 reasons.

20           One reason being that there are 33 categories of  
21 excludable aliens, listed in Section 212 of the Immigration  
22 Act. Congress, by and large, has traded, has categories of  
23 exclusion based on status and categories of exclusion based on  
24 conduct. And 212(a)(28), which is the exclusionary provision  
25 at issue in Mandel, which says that communists cannot come into

1 the country unless they get a waiver, that is a status  
2 exclusion.

3 And 212(a)(27), with its reference to prejudicial  
4 activities, is a conduct exclusion and the burden on the  
5 government is to show some evidence of prejudicial conduct in  
6 the United States and there was absolutely nothing in the  
7 record to sustain that burden.

8 As Justice Brennan also pointed out, the word,  
9 activities, is introduced by a phrase, that says, seeks to  
10 enter to engage in activities. The word, to engage, not only  
11 in the abstract is an active verb, it does not make sense to  
12 read the language and say that an alien seeks to enter to  
13 engage in entry. That simply does not make sense as a  
14 grammatical proposition, but within the Immigration Act,  
15 itself, the phrase "to engage" is a phrase that Congress used  
16 when it meant to justify, permit an exclusion based on  
17 anticipated conduct in the United States.

18 So, that the Immigration Act, for example, permits  
19 the exclusion of an alien who seeks to enter to engage in  
20 espionage; seeks to enter to engage in sabotage; seeks to enter  
21 to engage in immoral sexual activities. That is the  
22 phraseology that Congress used over and over and over again, in  
23 the Immigration Act, and does not support a reading of (a)(27)  
24 that an alien seeks to enter to engage in the act of being  
25 present in the United States. It simply does not make sense.

1                   Let me say something as well about the  
2 administrative practice that the government cites. The  
3 government makes a variety of claims with regard to past  
4 administrative practice. One being, that over the last 20  
5 years, 70 million people have been issued non-immigrant visas  
6 and only 500 or 600 have been denied admission under (a)(27).

7                   With all due respect, that is not an argument that I  
8 understand, because to the extent that those 500 or 600 may  
9 have been improper, they remain improper regardless of the fact  
10 that 60 or 70 million other people may have properly been  
11 granted visas.

12                  In terms of concrete illustrations, concrete  
13 illustrations, and the government was questioned quite  
14 precisely about this in the Court of Appeals -- how many times  
15 have you denied entry to an alien under (a)(27) based on the  
16 alien's entry or presence in the United States -- the claim  
17 that their entry or presence would be prejudicial to American  
18 foreign policy interests?

19                  The government came up with three examples in the  
20 Court of Appeals. We, by the way, have had no opportunity for  
21 discovery, so that we have no idea of what contrary examples  
22 may be in the administrative record. But the government came  
23 up with three examples that Mr. Wallace has, again, referred to  
24 today.

25                  The example of Mr. Liao; the example of Madame Nhu;

1 the example of Otto Skorzeny. And aside from the fact that all  
2 of them are at least 25 years old, Mr. Liao and Madame Nhu as  
3 the Court of Appeals points out -- the majority opinion in the  
4 Court of Appeals -- were, in fact, excluded based upon  
5 anticipated activities and that is what the correspondence  
6 submitted by the government to the District Court established.

7 In terms of Otto Skorzeny, the former Nazi General,  
8 he may well have been excluded based on his status as a former  
9 Nazi, but aside from the fact that one exclusion 30 years ago,  
10 is not, I do not think probative of anything, let alone a  
11 consistent administrative practice -- as Justice Scalia pointed  
12 out, in 1978, Congress amended the Immigration Act, to add  
13 Section 212(a)(33) that expressly provides for the exclusion,  
14 now of former Nazis.

15 And when they did so, both the Congressional sponsors  
16 and the Justice Department, itself, in a supporting letter  
17 submitted to Congress -- and these can both be found attached  
18 to the House Report -- referred to the fact that the Nazi  
19 exclusion provision that was added in 1978, was added to fill  
20 an existing loophole in the law, that previously the  
21 administration did not have the authority to keep people out of  
22 that sort, or at least Congress did not think that they did.  
23 And Congress wanted to fill the loophole and so they passed the  
24 Nazi Amendment.

25 QUESTION: Would you say, Mr. Shapiro, suppose that

1 the claim is that Section 27 permits the exclusion of an alien,  
2 where his mere presence, for the purpose of making speeches,  
3 would endanger our foreign policy, would you think that Section  
4 27 would permit that?

5 MR. SHAPIRO: I do not think that Section 27 permits  
6 -- well, several things. I do not think it is what the  
7 government has alleged here. I do not think that it is what --

8 QUESTION: Well, that is not what I asked you.

9 MR. SHAPIRO: I do not think that it is what 27 now  
10 says, and to the degree that it is what 27 says, then I think  
11 that you would be smack up against a significant First  
12 Amendment problem. And I do not think that there is any need to  
13 confront that problem.

14 QUESTION: Well, let us just stick to the statute.

15 If the government says, well, look, his presence  
16 here, for the purpose of making speeches, no matter what he  
17 says, if our allies think that we are permitting him in this  
18 country to be privy to go around and make speeches, that is  
19 just offends them.

20 Is that outside the reach of the statute, do you  
21 think?

22 MR. SHAPIRO: I think that that is outside of the  
23 reach of the statute, because I do not think that the statute,  
24 with its reference to prejudicial activity was discussing  
25 speech making in the United States, as Justice Marshall

1 suggested.

2 And I think that is for very good reason that the  
3 government has refrained from taking that position, all  
4 throughout this litigation. The government has never come in,  
5 from day one and --

6 QUESTION: Well, they were pretty close to it, in  
7 this argument today, saying that they may consider -- what they  
8 are here for, they are here for making speeches.

9 MR. SHAPIRO: Well, to the extent, as I said, to the  
10 extent that the government's position now is that these people  
11 can be excluded because they are here to make speeches, and  
12 here to make speeches which the government openly admits, by  
13 the way, that it is not a viewpoint neutral judgment -- if your  
14 question, Justice White, is meant to suggest that the  
15 government does not care what these people are saying, that it  
16 is the act of making a speech, while present in the United  
17 States, circa (a)(27), first of all, the record, itself, does  
18 not support that.

19 If you look at the classified affidavits submitted by  
20 Undersecretary Eagleburger with regard to Nino Pasti, for  
21 example, it is quite clear that the State Department's  
22 objection is, that at the time that we were engaged in the  
23 critical negotiations about the deployment of the American  
24 Pershing Missiles in Europe, they anticipated that Nino Pasti  
25 would come to the United States and tell people that those

1 missiles were not necessary or appropriate.

2 To the degree that the government's position is that  
3 it is that anticipated speech that justifies their exclusion  
4 under (a)(27), I do not think that (a)(27) provides that and if  
5 (a)(27) provides that, I do not think that the Constitution  
6 permits that.

7 And one of the --

8 QUESTION: Well, suppose that we disagree with you on  
9 your construction of (27), that the government may deny a visa  
10 to a person whose presence here, for the purpose of making  
11 speeches, would really cause the government trouble?

12 Suppose the Section covers that? Are we foreclosed  
13 from reaching that ground here?

14 MR. SHAPIRO: Well, I think, Your Honor, I think  
15 that --

16 QUESTION: On what basis did the District Court  
17 decide the case?

18 MR. SHAPIRO: Well, that is a hard question for us to  
19 answer, as I will explain in a moment.

20 QUESTION: Well, it is hard for us too, and I want  
21 you to --

22 MR. SHAPIRO: Well, let me give you the background on  
23 what happened, having been there since the case --

24 QUESTION: Well, what does his opinion say?

25 MR. SHAPIRO: What Judge Green's opinion says, is

1 that the government may not deny visas for content-based  
2 reasons.

3 QUESTION: Right.

4 MR. SHAPIRO: And having read the public affidavits,  
5 submitted by Undersecretary Eagleburger, which in conclusiory  
6 fashion, simply recited the language of the statute. It said,  
7 I denied these visas, because I determined that their admission  
8 would be prejudicial to the public interest. He said, he read  
9 the public affidavits. They do not satisfy me, and I do not  
10 know what they mean. He then entertained the government's  
11 classified affidavits, in camera, ex parte, without sharing  
12 them with us, and he wrote in his opinion -- because these were  
13 still ex parte classified affidavits -- that I have read the  
14 affidavits and I am convinced that the government had  
15 legitimate and bona fide reasons which he, then, did not  
16 explain, because at that point they were still classified.

17 That is the difficulty in understanding the District  
18 Court's --

19 QUESTION: Well, do you read his opinion as accepting  
20 the government's position that mere presence is enough?

21 MR. SHAPIRO: I think that he accepted the  
22 government's position that mere presence is enough. I do not  
23 think that the Court of Appeals accepted the position that mere  
24 presence is enough.

25 QUESTION: Oh, I know that.

1 MR. SHAPIRO: And one of the things, the Court of  
2 Appeals remanded on two grounds. And one of the Court of  
3 Appeals' remands was to determine exactly --

4 QUESTION: That is right.

5 MR. SHAPIRO: -- their position was, that entry or  
6 presence is not enough. It looks to us, from your affidavits,  
7 that that is why you kept these people out but since we are  
8 sending it back for some other reasons, you might want a better  
9 opportunity to explain to the District Court if you had some  
10 reasons other than entry or presence, because the Court of  
11 Appeals likewise read the current state of the record, as  
12 supporting an exclusion based only on entry or presence.

13 The other difficulty with reading (a)(27), to permit  
14 exclusions based on entry or presence, is that it really then  
15 does run smack up into the McGovern Amendment, which I want to  
16 just discuss for a moment.

17 There are vastly greater numbers, or there  
18 historically have been vastly greater numbers of aliens kept  
19 out of the United States under Section (a)(28) rather than  
20 (a)(27). And (a)(28) being the statute that was at issue in  
21 Mandel, which basically says, if you are a member of a  
22 communist organization or if you advocate the doctrines of  
23 communism, you shall be excluded from the United States, unless  
24 the Attorney General grants you a waiver.

25 In 1977, Congress adopted the McGovern Amendment, to

1 promote the principles of the Helsinki Accords as it states in  
2 its preambles. And what the McGovern Amendment essentially  
3 says is, we no longer want to keep people out based on this  
4 notion of guilt by association. And so, notwithstanding the  
5 fact that aliens may belong to communist organizations, or be  
6 affiliated with communist organizations, our presumption is  
7 they will now be admitted to the United States, unless the  
8 government executive is are prepared to certify that both  
9 houses of Congress that national security interests are at  
10 stake.

11 Even if you put the best gloss possible on the  
12 government's affidavits, what you will find, at least with  
13 regard to Nino Pasti and the two Cuban women, is that the  
14 government's position is that Pasti is a Member of the World  
15 Peace Council and the World Peace Council is affiliated with  
16 the Soviet Union. The Soviet Union is engaged in a propaganda  
17 campaign and therefore, Pasti must also be engaged in a  
18 propaganda campaign.

19 There is no specific allegation with regard to Nino  
20 Pasti that is independent of an assumption that the government  
21 made based on his organizational affiliation. He is connected  
22 to this group and this group is doing bad things, and  
23 therefore, we presume that if we allow him into the country, he  
24 will do similar bad things.

25 That is precisely our position, at least is, that is

1 precisely the kind of leap, the kind of presumption, the kind  
2 of guilt by association, that Congress meant to prohibit by the  
3 McGovern Amendment. And one of the reasons that I believe that  
4 these speakers were excluded under (a)(27), rather than  
5 (a)(28), where they would have more naturally belonged, is  
6 precisely because the government did not want to have to deal  
7 with the rigors of the McGovern Amendment, because the  
8 government was not prepared, in fact, to certify to both houses  
9 of Congress, that national security would be jeopardized if  
10 Nino Pasti were allowed in the United States and to give the  
11 speech that he wants to give on the Boston Commons.

12 QUESTION: Well, in terms of the last argument of  
13 yours, Mr. Shapiro, is it possible that Pasti's case could come  
14 out one way and Borge's case come out another?

15 MR. SHAPIRO: I think that there are two answers to  
16 that. And this is where there are two statutory issues before  
17 the Court.

18 If the Court agrees with our interpretation of  
19 (a)(27), that it requires activities and not mere entry or  
20 presence, then I think that all of these visa denials fall,  
21 Borge's included.

22 If the Court concludes that entry or presence is  
23 encompassed within (a)(27), then I think that we still have to  
24 deal with the McGovern Amendment. We would still say that the  
25 presence, flowing from entry or presence, has to really be tied

1 to the individual not based on organizational membership and at  
2 that point, it may be that Borge would be in a different  
3 situation than Pasti is and the two Cuban women.

4 I mean, Borge, there is no doubt that he is a member  
5 of the Sandinista Junta. He is an official of the Nicaraguan  
6 government. Nobody disputes that. At the very least the  
7 allegations connected to him, are connected to him personally.

8 The allegations connected to Pasti and to Finlay and  
9 to Lezcano, are connected to them because of the organizations  
10 to which they belong, and that is, we think, forbidden by the  
11 McGovern Amendment, regardless of how you decide the other  
12 (a)(27) question about entry or presence.

13 And let me come back to the entry or presence issue  
14 for one more moment, then, just debunk this reliance on  
15 legislative history.

16 The government makes a passing nod to the doctrine of  
17 plain language that any analysis of the statute has to begin  
18 with the language which the Congress has drafted, and it then,  
19 for very understandable reasons, wants to get off that language  
20 as quickly as possible, because, it, in fact, speaks to  
21 activities and not entries or presence.

22 And where it winds up is in the legislative history.  
23 And the government's position with regard to the legislative  
24 history and it was a position that was echoed by Judge Bork, in  
25 dissent, below, is that over the 40 or 50 years that this

1 statute has been developing, there are five or six references  
2 in committee reports, to the words, entry or presence, and  
3 therefore, that supports the claim that when Congress referred  
4 to activities, it really meant to include entry and presence  
5 within the term, activities.

6 As we point out, in our brief, if you in fact, look  
7 at the full passages cited by the government and not the  
8 isolated phrases that I believe the government takes out of  
9 context, you will see that every reference to entry or presence  
10 is followed by a reference in the next clause, or the next  
11 sentence, to prejudicial activities within the United States.

12 And that, on the basis of a full and fair reading of  
13 the legislative history, it seems quite clear, that what  
14 Congress has been consistently concerned about, in (a)(27) and  
15 its predecessor statutes, was entry and presence to engage in  
16 prejudicial activities. And (27), if it is linked to anything,  
17 it is more closely linked to (29). That talks about entry to  
18 engage in sabotage or espionage.

19 And that what Congress understood, I think, is that  
20 there are some activities that may not rise to the level of  
21 sabotage or espionage, but nonetheless are prejudicial  
22 activities. It is a very big leap to go from there to the  
23 claim that either no activities are required at all, under (27)  
24 despite its language, or that the kinds of activities that  
25 Congress meant to prohibit or meant to justify a ban under

1 (27), included speech making.

2 And when you look at the statements that Senator  
3 McCarren made on the floor of the Congress when he introduced  
4 the predecessor provision in 1950 -- in 1952, when Section  
5 212(a)(27) was enacted, there was very little colloquy or  
6 conference language about the provision.

7 And there was more in 1950 when its predecessor's  
8 provision, the Internal Security Act was adopted and what  
9 Senator McCarren, quite clearly says, and we cite it in our  
10 brief, is that his concern, the concern of Congress, was with  
11 aliens who seek to enter or engage after entry, in activities  
12 prejudicial to the public interest, and he, in fact, referred  
13 to the requirement of overt acts.

14 And as I have said, previously, this record is  
15 totally barren of any allegations that even comes close to  
16 that.

17 Let me raise just a few other points with you. In  
18 terms of -- to come back to administrative practice, for a  
19 second -- the government does not make very much mention of the  
20 contemporaneous administrative record, which under standard  
21 doctrine of statutory construction is, if anything, more  
22 relevant than current interpretations.

23 In terms of contemporaneous interpretations of  
24 (a)(27), there are two things worth noting. One is a Board of  
25 Immigration Appeals decision in 1953, in which the government

1 attempted to exclude a pacifist from the United States and the  
2 Board of Immigration Appeals one year after (a)(27) was  
3 adopted, said, no, you cannot do that. You are keeping him out  
4 on the basis of status. And (a)(27) requires activities. He  
5 was, I think, engaged in a speech making tour, Justice  
6 Rehnquist. The BIA in 1953 said that that is not enough, under  
7 (a)(27).

8 The other thing that I want to bring to the Court's  
9 attention, and I say this with regret, but it does not appear  
10 in either side's brief, or in the opinion by the Court of  
11 Appeals, are some 1952 regulations by the State Department on  
12 (a)(27), which disappeared in 1954.

13 Since 1954, the State Department has had no  
14 substantive regulations interpreting this Section. But from  
15 1952 until 1954, and this appears at 17 Federal Register, page  
16 11590, and December 19th, 1952.

17 The Section on (a)(27) says, the provision of Section  
18 212(a)(27) that the Act shall be considered to relate to the  
19 ineligibility of aliens to receive visas, because of their  
20 purpose, plan, intention or design, whether solely,  
21 principally, or incidentally to engage in activities after  
22 arrival in the U.S., which would be prejudicial to the public  
23 interest, or would endanger the welfare, safety or security of  
24 the United States.

25 Once again, the emphasis on activities after

1 admission, not somebody whose mere entry or presence, because  
2 of their status, would create difficulties for the government.

3 Let me just wind up by making a brief comment about  
4 the First Amendment issue in this case. We raised the First  
5 Amendment claim in the District Court. It was not reached by  
6 the Court of Appeals because of its interpretation of the  
7 statutory language. It is not before this Court, in any real  
8 and concrete way. It was not raised by the government in its  
9 cert petition.

10 But I think that it undeniable, that the  
11 interpretation and application of these statutes, in these  
12 cases,

13 QUESTION: Well, the government would not be expected  
14 to raise it in its petition, would it? The government does not  
15 want to claim that it violates the First Amendment.

16 MR. SHAPIRO: No, what the government did, Your  
17 Honor, what the government did, in their petition, in fact, was  
18 to drop a footnote on the final page of their brief on the  
19 merits, saying that even though, we have not raised the First  
20 Amendment question in our questions presented, it was reached  
21 by dissent below, it was alleged by the Plaintiffs, and  
22 therefore, this Court has jurisdiction, and should reach out to  
23 decide it.

24 What I am saying is that I do not think that it is  
25 necessary for this Court to decide the First Amendment

1 question, but I do think that the presence of significant First  
2 Amendment claims has to affect the interpretation of the  
3 statute. And that the statute can, and should be interpreted,  
4 in a way that minimizes its First Amendment difficulties, and  
5 that is not the case, if the statute is interpreted to permit  
6 exclusions from the United States, based on a claim that an  
7 alien's substantive speeches within the United States, create  
8 prejudice to American foreign policy interests.

9 And I do not believe, as Justice O'Connor's question  
10 indicated and I was delighted to hear the government's  
11 response, I do not believe this Court, by any means, foreclosed  
12 the First Amendment issue in Mandel. Mandel was a case, in  
13 which the excluded foreign speaker was kept out of the United  
14 States, because he had violated the terms of a past visa, by  
15 engaging in activities that were not permitted under that visa.

16 Nothing in the holding of Mandel, I do not believe,  
17 even remotely suggests that if the government keeps somebody  
18 out of the country, because it does not like the speeches, they  
19 are likely to give in this country, that that is a facially  
20 legitimate and bona fide reason.

21 And I think that those First Amendment considerations  
22 have to necessarily at least be part of the process, of  
23 interpreting the statute to conform, not only with  
24 constitutional requirements, but to conform with, what I  
25 believe, is the clear and obvious intent of Congress, as

1 reflected in the plain language of the statute, and a fairly  
2 consistent legislative history.

3 Thank you, very much.

4 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Shapiro.

5 Mr. Wallace, you have two minutes remaining.

6 REBUTTAL ARGUMENT OF LAWRENCE G. WALLACE

7 ON BEHALF OF PETITIONERS

8 MR. WALLACE: The Court of Appeals referred to the  
9 legislative history of Subsection 27 as interchangeably using  
10 references to entry and activities as the basis of concern, and  
11 that is, entirely consistent with Judge Harold Green's saying  
12 that it is a distinction without a difference in this context.

13 And, that, as I tried to relate it to the text, that  
14 the thing that can be prejudicial about the activities, is the  
15 entry -- of the proposed activities, is the entry or presence  
16 of the individual who is seeking the visa.

17 That is the thing that can be prejudicial rather than  
18 anything that is malum and say, about the activities that is  
19 our reading of our Subsection 27 and the way to reconcile it  
20 with the repeated entries, repeated reference to entry or  
21 presence in the legislative history of that provision and its  
22 predecessors.

23 The affidavits, in this case, and I refer the Court  
24 to Joint Appendix pages 59, 62, and 89, repeatedly say that no  
25 one is excluded from this country solely because his views are

1 critical of our foreign policy views or in any way to deny the  
2 expression of points of view to the American people.

3 The reason that one looks to the proposed activities,  
4 is to see whether they come within the narrow class for which  
5 we would admit someone without extending our general  
6 hospitality -- the narrow classes that I tried to describe to  
7 you -- to attend a meeting of the UN; to engage in bilateral  
8 negotiations; to get hospital treatment, etc.

9 We can allow people in for limited purposes, but not  
10 to extend our general hospitality to them. My time has  
11 expired.

12 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Wallace, the  
13 case is submitted.

14 (Whereupon, at 1:59 o'clock p.m., the case in the  
15 above-entitled matter was submitted.)  
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