

ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: UNITED STATES, Petitioner v. VICKIE S. CABRALES
CASE NO: 97-643 *0-1*
PLACE: Washington, D.C.
DATE: Wednesday, April 29, 1998
PAGES: 1-53

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES, :
Petitioner :
v. : No. 97-643
VICKIE S. CABRALES :
- - - - -X

Washington, D.C.
Wednesday, April 29, 1998

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:07 a.m.

APPEARANCES:

MALCOLM L. STEWART, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of the Petitioner.

JOHN W. ROGERS, ESQ., Columbia, Missouri; on behalf of
the Respondent.

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1 P R O C E E D I N G S

2 (10:07 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in Number 97-643, United States v. Vickie Cabrales.
5 Mr. Stewart.

6 ORAL ARGUMENT OF MALCOLM L. STEWART

7 ON BEHALF OF THE PETITIONER

8 MR. STEWART: Mr. Chief Justice, and may it
9 please the Court:

10 To obtain a conviction under the Federal money-
11 laundering statutes, the Government must prove that the
12 defendant engaged in a financial transaction, that the
13 property involved in that transaction represented the
14 proceeds of specified unlawful activity, and that the
15 defendant knew that the funds were illegally acquired.

16 The Government has alleged in this case that
17 respondent violated the money-laundering statutes by
18 engaging in banking transactions in Florida using funds
19 that were acquired through cocaine-trafficking activities
20 in Missouri. The question presented is whether venue was
21 proper in Missouri, the place where the unlawful
22 generation of funds is alleged to have occurred.

23 This Court's decisions have recognized two
24 principal criteria on which venue may be based. First, a
25 prosecution may ordinarily be brought in any district

1 where conduct constituting an element of the offense
2 occurs. Second, where a particular effect is an element
3 of a Federal crime, the prosecution may generally be
4 brought in any district where that effect is felt.

5 For purposes of the present case, the crucial
6 point is that neither of those bases for laying venue
7 requires that the prosecution be brought in a district
8 where the defendant personally committed an unlawful act.

9 In the Government's view, Missouri is an
10 appropriate forum for this prosecution on both of the
11 foregoing approaches. First, Missouri is the place where
12 conduct constituting an element of the offense, namely the
13 drug-trafficking crimes that generated the laundered
14 funds, is alleged to have occurred.

15 Second, Missouri is the place where the harmful
16 effects of respondent's money-laundering were principally
17 felt, since the evil of money-laundering consists of its
18 capacity to conceal and thus facilitate the predicate
19 crimes.

20 Finally, trial in Missouri furthers the purposes
21 underlying the requirement that a criminal offense be
22 prosecuted at the place where the offense was committed.

23 Now, both Article III of the Constitution and
24 the Sixth Amendment require that a criminal offense be
25 prosecuted at the place where the offense shall have been

1 committed.

2 QUESTION: Does it make any difference at all,
3 Mr. Stewart, whether the defendant had any knowledge of
4 the circumstances of the predicate offense or any link at
5 all with the State in which that was carried out?

6 MR. STEWART: To establish guilt under the
7 money-laundering statutes the defendant would have to be
8 shown to have known that the funds were illegally
9 acquired, so to --

10 QUESTION: Well, the defendant presumably could
11 have been told by somebody, look, I got these funds
12 illegally. Maybe the defendant is told that in the State
13 of New York by someone from Missouri, and the someone
14 says, these are illegally obtained funds but I need your
15 help to put them in a bank and do such-and-such with them.
16 Is that enough to prosecute in this case?

17 MR. STEWART: Yes, under our view it is. That
18 is, the defendant must be shown to have known of the
19 unlawful origin of the funds, but you're correct, the
20 defendant doesn't --

21 QUESTION: Even if the defendant doesn't know
22 that the crime occurred in Missouri and --

23 MR. STEWART: That's correct.

24 QUESTION: -- was never there.

25 MR. STEWART: That's correct. In mean, in this

1 case there are more substantial contacts between the
2 respondent and the Western District of Missouri, but
3 you're correct, under our theory that's not an essential
4 feature of the grounds for laying venue.

5 QUESTION: Well, what cases do you think justify
6 that particular approach?

7 MR. STEWART: I think the two best cases in this
8 Court would be Hyde v. United States and In Re Palliser.
9 Hyde v. United States involved a prosecution for
10 conspiracy, in which the petitioners in this Court were
11 prosecuted in the District of Columbia. They were not --
12 for conspiracy.

13 They were not alleged to have personally
14 committed an unlawful act in the District of Columbia, or
15 ever to have been there, but it was held that because co-
16 conspirators had committed overt acts in furtherance of
17 the conspiracy in the District of Columbia, that that was
18 an appropriate venue, and --

19 QUESTION: Well, I -- it's a little easier to
20 see, isn't it, in a conspiracy context. Of course, you
21 have a conspiracy charge here.

22 MR. STEWART: It -- you're correct that in some
23 sense the link between the defendant and the co-
24 conspirators may be more direct than the link between the
25 money-launderer and the persons who perpetrate the

1 predicate crimes.

2 Nevertheless, to us the crucial point is that
3 the evil of money-laundering is not that the transactions
4 are per se unlawful or harmful. The evil of money-
5 laundering consists precisely of the fact that it assists
6 in the concealment and thus the facilitation of the
7 predicate criminal act --

8 QUESTION: Well, what about receiving stolen
9 property, one of the examples mentioned, I think, in one
10 of the briefs.

11 MR. STEWART: I --

12 QUESTION: You know, the property is stolen in
13 State A, and then it's received and resold in State B.

14 MR. STEWART: It certainly is our theory that
15 the prosecution could be brought in State A for much the
16 same reasons, that because the evil of the offense is that
17 it facilitates or conceals the crime that occurred in
18 jurisdiction A, and because the harm of the crime is felt
19 in jurisdiction A, it therefore makes sense to prosecute
20 the offense there.

21 QUESTION: Well, how does receiving stolen
22 property in New York conceal the existence of a crime,
23 say, in Chicago?

24 MR. STEWART: Well, for one thing, if the person
25 in New York receives it and profits by it rather than, for

1 instance, turning over the evidence to the police, in that
2 sense it conceals the offense.

3 It certainly facilitates the offense in that the
4 crime of stealing property is more profitable and
5 therefore is more likely to occur if there are people out
6 there who will --

7 QUESTION: I can see how it facilitates it, but
8 to say it conceals it, I really don't follow that.

9 MR. STEWART: I guess it would be accurate to
10 say it conceals it only if we compare the person who
11 receives the stolen property to the person who becomes
12 aware of the theft and reports it to the authorities.

13 QUESTION: I take it on your theory -- how do
14 you feel about controlled substances? I mean, there are
15 quite a few that the Attorney General has to put on a list
16 or they're not controlled, so does that mean as to any
17 such substance every drug crime could be prosecuted,
18 wherever it takes place, in Washington, D.C.?

19 MR. STEWART: No, I don't think so, because the
20 Attorney General's act of putting the controlled substance
21 on the list would not in any sense be conduct that the ban
22 on possession --

23 QUESTION: No, it's not conduct exactly.

24 MR. STEWART: It would --

25 QUESTION: But isn't it an element of the

1 offense?

2 MR. STEWART: It's no --

3 QUESTION: I mean, if the substance is not on
4 the list, then you can't prosecute the person for the
5 offense.

6 MR. STEWART: It would not be conduct that it
7 was the purpose of the controlled substance statutes to
8 prohibit or deter, and I think --

9 QUESTION: Oh --

10 QUESTION: Element of an offense is not a
11 separate justification, as you said in your initial
12 presentation.

13 MR. STEWART: I --

14 QUESTION: Is it or isn't it?

15 MR. STEWART: Element of the offense is not a
16 universal justification. I said in the opening statement
17 that typically the crime --

18 QUESTION: It's not sufficient, then.

19 MR. STEWART: That's correct.

20 QUESTION: So what else do you -- I mean,
21 it's -- your theory is that although all the conduct
22 relevant here took place in Florida, I take it, but there
23 was some element of the offense that took place in a
24 different State, that that element of the offense does
25 give venue, but my element of the offense, putting the

1 drug on the list, doesn't give venue, because?

2 MR. STEWART: Well, I would dispute the
3 proposition that all of the conduct that's relevant here
4 occurred in Florida. It's true that the only conduct in
5 which the respondent --

6 QUESTION: Yes, all the conduct -- and similarly
7 the Attorney General's conduct of putting a drug on a list
8 took place in Washington, D.C., but that conduct which
9 created an element of the offense does not count for
10 venue, but here the conduct of the activity and element of
11 the offense in Missouri does, because --

12 MR. STEWART: There's an intensely practical
13 reason for that, that is that the central purpose
14 underlying the constitutional requirement that the crime
15 be prosecuted at the place where it was committed was to
16 facilitate the production of relevant evidence, and it's
17 very likely, in money laundering prosecutions generally
18 and in this case in particular, that the fact that
19 specified unlawful activity generated the funds will --

20 QUESTION: Do you really think that provision
21 was designed to protect the Government's interest in
22 getting evidence?

23 MR. STEWART: I don't think it was designed
24 to --

25 QUESTION: Not to protect the defendant's

1 interest --

2 MR. STEWART: I --

3 QUESTION: -- in being tried at home?

4 MR. STEWART: I think -- well, it was designed
5 to protect the defendant's interest, but clearly if the
6 Framers had been concerned only with the defendant's
7 convenience, or with the right of the defendant to be
8 tried at home, the Constitution would say that the
9 defendant has a right to be tried in the district of her
10 residence.

11 The Constitution doesn't say that. It
12 recognizes that the defendant's -- the interest in the
13 defendant's convenience should not be so overwhelming as
14 to frustrate --

15 QUESTION: Prevent him from being tried where he
16 goes and commits a crime. But to let him be tried where
17 somebody else committed a crime across the country and
18 shipped goods to him he fenced, that's a rather novel
19 proposition.

20 MR. STEWART: Well, I think it is consistent
21 with the prin --

22 QUESTION: Mr. Stewart, in the Constitution --
23 this is mentioned twice in the Constitution, and in the
24 Sixth Amendment it says, the accused shall enjoy the
25 right, so apparently the people who wrote that thought --

1 the right to be tried in the district wherein the crime
2 shall have been committed, enjoy the right.

3 So it's a little hard to say that they saw that
4 mainly in terms of where -- the convenience of the
5 prosecution, as opposed to the right of the defendant.

6 MR. STEWART: I'm not suggesting that they put
7 the provision in there in order to protect the
8 prosecution. What I am saying is that they -- the
9 constitutional provisions represent a balancing of the
10 defendant's and the Government's interest.

11 That is, if the Framers had wanted to protect
12 the convenience of the defendant at all costs, they could
13 have said the defendant has the right to trial in the
14 district of her residence. They could even have said the
15 defendant has the right to trial in whatever district she
16 chooses.

17 As the Court --

18 QUESTION: But it is the idea of the jury of the
19 vicinity where the act was committed, and you have dealt
20 with the Attorney General and the list, but what crimes?
21 To get an idea of the dimensions of what we're talking
22 about, so far you've mentioned receiving stolen property
23 would be analyzed the same way as money-laundering.

24 There's one example in the cases of jury
25 tampering. The jury is sitting in D.C. but the tampering

1 is done in Maryland. What else? What other crimes
2 present this problem, where all of the conduct is in one
3 State, but it's in aid of something that went on earlier
4 in another State?

5 MR. STEWART: Well, in terms of something that
6 went on earlier, I think there isn't so much authority.
7 The principle is well-established in cases, for instance,
8 involving aiding and abetting, where a person in
9 jurisdiction A assists in the planning or preparation for
10 a crime that's to occur --

11 QUESTION: But that --

12 QUESTION: That, like conspiracy, is a crime
13 where you are being held responsible for acts done by
14 other people. I think you have to set aside aiding and
15 abetting, just as you set aside conspiracy.

16 MR. STEWART: Well, it is true that respondent
17 is not being held responsible for the drug-trafficking
18 crimes in the sense of being prosecuted for distribution
19 of narcotics or for conspiracy to distribute narcotics,
20 but I think it's nevertheless accurate, in a sense, to say
21 that she is being held responsible for those acts. In
22 the --

23 QUESTION: But if we could take the substance of
24 it, is what I'm -- let's assume we're talking about just a
25 single defendant, no aiding and abetting, so I know from

1 the cases that there's receiving stolen property, and
2 there's jury tampering, and there's money-laundering.
3 What else?

4 MR. STEWART: I think perhaps the best example
5 would be offenses involving the use of the mails, or the
6 channels of interstate commerce, where Congress has
7 provided by statute that those offenses can be prosecuted
8 in any district, for instance, where the mail was sent,
9 where the mail was received, or even in a district through
10 which the mail passes in transit, and the idea is that
11 even though the defendant may not personally have been
12 present in the district of receipt, nevertheless she is
13 responsible for harm occurring in that district by --

14 QUESTION: Well, is that it, or she is using the
15 mails wherever she sends her letter. She's using the
16 mails where it's received, she's using the mails where
17 it's transported through. I don't think that's a good
18 example.

19 MR. STEWART: I think -- it -- I think it is a
20 good example, at least to the extent that it shows that
21 the Constitution does not guarantee the defendant the
22 right to trial in a district where she personally acted.

23 QUESTION: Oh, sure, but that's not the
24 contention being made here by the defendant, I don't
25 think.

1 QUESTION: And the Palliser case really is the
2 mailing in one district to a postmaster in another
3 district a solicitation that's unlawful, and it seems to
4 me that that falls considerably short of showing that the
5 Government should prevail here.

6 MR. STEWART: Well, I think the Palliser case
7 involves --

8 QUESTION: I think it's Palliser.

9 MR. STEWART: Oh, Palliser.

10 QUESTION: Have you read the Trollope novels,
11 the Palliser novels? I think those are always pronounced
12 Palliser.

13 MR. STEWART: Okay. I'm sorry, Your Honor.

14 The Palliser case involved the use of the mails.
15 The Palliser case also cited authorities dealing with the
16 crime of murder, that established that the crime of murder
17 may typically be prosecuted at the place where the fatal
18 blow -- the fatal force was struck or the poison
19 administered, even if that was not the place where the
20 defendant acted, for instance, the hypothetical which
21 appears to have arisen, at least on occasion, where a
22 person standing in jurisdiction A shoots a gun across the
23 border and hits a person in jurisdiction B.

24 So I think the Court in Palliser was not
25 announcing a holding that was unique to the mail setting.

1 Rather, it was relying on a more general principle that a
2 person may be held accountable for harm caused in another
3 jurisdiction even if he never sets foot there.

4 QUESTION: So your --

5 QUESTION: Well, but there's a difference, it
6 seems to me, in prospective and retroactive. Under your
7 view, as I understand it, if methamphetamine is
8 manufactured in Arizona and it goes through about four
9 different distributors and ends up in New York, you're
10 going to be able to prosecute the New York, what do you
11 call him, mule, or the ultimate seller in Arizona. I
12 think that's what you're saying, and -- but that's, to me,
13 backward-looking.

14 Now, if he -- if the defendant intends to cause
15 or should know that what he does will have a prospective
16 effect in some other jurisdiction, that's quite different.

17 MR. STEWART: I mean, I think Your Honor is
18 correct in saying that the defendant in a money-
19 laundering case doesn't cause the narcotics-trafficking
20 activities to occur, but I think it's nevertheless the
21 case that the harm of those -- the money-laundering
22 activities is felt in the district where the predicate
23 crimes took place.

24 That is, the transactions prohibited by the
25 money-laundering statutes are not prohibited because they

1 are per se harmful. They are prohibited because they
2 assist in the concealment and facilitation of the
3 underlying crimes.

4 QUESTION: You're not backing away from my
5 description of your position as to the meth prosecution
6 being in Arizona, even though it was sold by someone who
7 has never been in Arizona and it's gone through three
8 different stages and it's in New York City?

9 MR. STEWART: I guess I'm not sure about the
10 precise scope of your hypothetical.

11 QUESTION: Well, the hypothetical is that meth
12 is manufactured in Arizona, it's sold by two or three
13 different people, and it's finally sold by some guy on the
14 street in New York, and it seems to me, under your point
15 of view, this street seller can be prosecuted in Arizona,
16 because that -- it makes the meth laboratory work to have
17 this little distribution network.

18 MR. STEWART: I think that may not be accurate,
19 because I think in the prosecution of the street seller it
20 would not in any sense be an element of the crime,
21 where -- we would not typically show --

22 QUESTION: But you're not relying on elements of
23 the crime.

24 MR. STEWART: Well, we are relying on effects to
25 the extent that they are elements of the crime. That is,

1 here it's not simply the case that the money-laundering
2 did facilitate the drug-trafficking activities. It's the
3 case that in order to obtain a conviction for money-
4 laundering, we would have to show that the funds were --

5 QUESTION: Use Justice Kennedy's example with
6 counterfeiting.

7 MR. STEWART: I'm sorry.

8 QUESTION: Use Justice Kennedy's example with
9 counterfeiting. I mean, you have the person passing the
10 \$10 bill, but the bill was counterfeited in Arizona.

11 MR. STEWART: I think that probably would fall
12 under our theory, although I think that's a harder case,
13 because the harm in that case would be felt where the
14 counterfeit bill was passed, and not where the bills were
15 manufactured.

16 Again, to return to --

17 QUESTION: Oh, you mean the Government doesn't
18 think there's any harm in having a counterfeit
19 organization in a particular community?

20 MR. STEWART: There's harm in having the
21 counterfeit organization. I mean, hypothetically, if you
22 had an individual who, as a hobby, liked to counterfeit
23 bills simply for the artistry of it, never did anything
24 with them, it wouldn't cause any harm.

25 Now, the statutes prohibit that simply because

1 it would be hard to detect the activity going on if you
2 couldn't go after the counterfeiting, but the harm that
3 results from counterfeiting bills occurs at the moment
4 they're passed to innocent people, and to return to
5 Justice Ginsburg's question for a second, I think you were
6 right that part of the purpose of the Sixth Amendment's
7 guarantee of a right to trial in the place where the crime
8 shall have been committed is to assure that a jury from
9 the relevant community sits in judgment upon the accused,
10 but in our view, the relevant community here is the
11 Western District of Missouri. That is --

12 QUESTION: Well, but Mr. Stewart, may I ask you
13 a question that goes one step further on that question of
14 purpose. The reason for selecting the community that the
15 Constitution has done in the vicinage provision
16 historically, as I understand it, was to select a jury
17 from the place where the evidence was going to be found.

18 Originally, if you go far enough back, it
19 reflects the fact that the jury in fact supplied evidence.
20 Later on the theory was still maintained and, as I
21 understand it, the theory was maintained in order to
22 prevent the Crown or later the Government from taking
23 people from the places where they are accused of having
24 committed a crime, spiriting them away to another part of
25 the kingdom, or another part of the country, where the

1 Government can, with its power, get all the evidence it
2 wants, but where the individual is probably not going to
3 be very effective in getting any defense evidence.

4 Now, assuming that that -- and I think that's a
5 fair statement of at least an important historical
6 consideration. If that is so, then it is not -- not only
7 is it, I suppose, not a positive justification for the
8 position that you take, but it shows that the kind of
9 evidence that you want to prove these nonact elements
10 really is the kind of evidence that the provision is not
11 concerned with at all.

12 For example, the fact that the money was
13 counterfeited somewhere is not an important fact. All the
14 Government has got to prove is that the counterfeiting,
15 the counterfeited bill was passed at the place where the
16 defendant committed that particular crime.

17 So that it seems to me that no purpose within
18 the Sixth Amendment is served by having a jury anywhere
19 except in places where the evidence either of the cause or
20 the effect of the crime is likely to be found, so if we
21 get into purpose, it seems to me that purpose argues
22 against you.

23 Am I wrong in my assumption about the purposes?

24 MR. STEWART: I think you are right in your
25 assumption about the purposes, and I -- we would

1 respectfully disagree with the assertion that the purposes
2 are not served here.

3 That is, in the instant case, for example, it's
4 very unlikely to be a fact in dispute that the banking
5 transactions which are alleged to have occurred in Florida
6 actually occurred as stated in the indictment. It's
7 conceivable that that will be disputed, but it's unlikely.

8 What is most likely to be disputed if this case
9 goes to trial is, first, whether the money was unlawfully
10 generated and, second, whether the respondent knew it.

11 Now, you're correct in saying that it's possible
12 that we could prove the money was unlawfully generated
13 without proving where the predicate crimes occurred, but
14 certainly a very good way of proving that the money was
15 unlawfully generated would be to prove the circumstances
16 underlying the drug-trafficking activities, particularly
17 in a case where the Government has already gotten a
18 conviction for the drug conspiracy that is alleged to have
19 generated the laundered funds.

20 QUESTION: The counterfeiting case, that
21 wouldn't apply. That reasoning wouldn't apply. I suppose
22 that reasoning wouldn't apply in the case of the felon in
23 possession of the firearm.

24 You pointed out in your footnote that you're not
25 suggesting that the place of the firearms manufacture

1 would provide venue, but I do suppose that on your theory
2 the place of the predicate felony would be within your
3 choice of venue, and yet the only thing you have to prove
4 is, in fact, that a felony was committed, which you do by
5 record. There's no need to go to that jurisdiction.

6 MR. STEWART: I don't think it follows that the
7 place where the felony was committed would be an
8 appropriate venue. First, we wouldn't be proving conduct,
9 because it wouldn't be necessary or even permissible in a
10 922(g) prosecution for us to present independent evidence
11 that the defendant had actually committed the prior crime.
12 We would simply be introducing the judgment of conviction
13 or relying upon a stipulation.

14 But the -- as to the counterfeiting, I think
15 that the -- having the trial in the district where the
16 counterfeiting took place might or might not be a sensible
17 venue. That is, if the Government --

18 QUESTION: Why might it be?

19 MR. STEWART: It might be because I assume that
20 an element of the offense of passing counterfeiting money
21 is that the person knew that it was counterfeited and, at
22 least in some cases, one of the ways of proving that the
23 defendant knew that the money was counterfeit was to show
24 that he was the one who manufactured it and perhaps took
25 it to distant locations to pass it, but that he was

1 involved in the operation.

2 So depending on the facts of an individual case,
3 evidence concerning the circumstances upon -- under which
4 the money was manufactured might or might not be relevant
5 to the prosecution.

6 QUESTION: Well, I suppose if that's what you're
7 going to rely on for proof you would prosecute him for
8 manufacturing the counterfeited bill in the jurisdiction
9 in which he did it.

10 MR. STEWART: We might prosecute him for that.
11 We could also have a circumstance -- we could also have
12 cases in which it was clear that money had been passed
13 from jurisdiction A to jurisdiction B, and the
14 circumstances under which the counterfeiting occurred
15 would be relevant to the prosecution.

16 QUESTION: I'm not sure you have to win the
17 counterfeiting case in order to win this case. As I
18 understand your theory that you're giving us now, I'm not
19 sure it is the same as the one that was in your briefs.
20 You are -- you're insisting upon two things before you can
21 try this person in Missouri, number 1, that the act which
22 occurred in Missouri be an element of the crime, but not
23 that alone.

24 In addition, that element must be the whole
25 purpose -- in the counterfeiting case I guess you'd say

1 must be one of the purposes, but here you say that the
2 whole purpose of the crime for which she's prosecuted is
3 to prevent what occurred in Missouri, so it's element,
4 plus the whole purpose of the crime in Missouri is to
5 prevent the drug dealing in Missouri.

6 MR. STEWART: I wouldn't say the whole purpose,
7 but I would say --

8 QUESTION: You wouldn't say the whole purpose?

9 MR. STEWART: I --

10 QUESTION: I mean, what do you care if somebody
11 launders money if it's not -- you know, you're trying to
12 stop the drug-dealing?

13 MR. STEWART: I mean, I would say -- I'm sorry
14 if I misspoke. I wouldn't say that our test is that the
15 whole purpose of the statute has to be to --

16 QUESTION: Oh, I know, because you want to reach
17 further, but in order to win this case I don't have to
18 agree to go any further, do I?

19 MR. STEWART: I think that's absolutely correct,
20 and I think certainly we would acknowledge that there is
21 indeterminacy at the margins as to the way that certain
22 cases should come out.

23 QUESTION: Well, sure. In the felon-in-
24 possession case you would certainly be able to argue that
25 one reason for penalizing the possession of the handgun

1 later is to discourage felonies generally, so that the
2 original felony is within the purpose considered by the
3 felon-in-possession statute.

4 MR. STEWART: That seems to me at the margins.

5 I think the other thing I would point to as to
6 the felon-in-possession cases, where they were talking
7 about the location where the underlying felony occurred,
8 or the location where the gun was manufactured, is that in
9 a sense, whether venue would be proper at those sites
10 under the statute or the Constitution is a rather abstract
11 question.

12 That is, there is a Federal rule of criminal
13 procedure that provides for change of venue in criminal
14 cases even --

15 QUESTION: May I ask about your suggestion that
16 the fact the money was illegal -- the taint of the money
17 occurred in Missouri makes venue proper there.

18 Supposing that was everybody's understanding,
19 that the money was tainted, with the proceeds of drug
20 transactions in Missouri, but the proof at the trial, they
21 brought in an accountant who proved yes, it was illegal,
22 but actually illegality occurred in Illinois, would that
23 mean that the element of the offense that it was illegal
24 money had not been established?

25 It isn't the place where it occurs. It's what

1 occurs, isn't it?

2 MR. STEWART: Well, it's the place where the
3 funds were unlawfully generated, and --

4 QUESTION: But supposing you'd alleged Missouri,
5 you thought it was, and it turned out -- on proof it
6 turned out they were actually done right across the river
7 in Illinois.

8 MR. STEWART: The --

9 QUESTION: Would you lose the case?

10 MR. STEWART: We would lose the case.

11 QUESTION: You would not.

12 MR. STEWART: We would lose the case.

13 QUESTION: You would lose the case.

14 MR. STEWART: That is --

15 QUESTION: It would be dismissed for improper
16 venue.

17 MR. STEWART: That's correct. We would lose it
18 for improper venue. That is, even if --

19 QUESTION: Now, assume he's tried in -- assume
20 she's tried in Florida. I'm assuming there's no venue
21 problem.

22 MR. STEWART: Oh.

23 QUESTION: I'm just talking about the element of
24 the offense. When you say the element of the offense is
25 that the illegal drugs transactions occurred in Missouri,

1 say you -- they actually proved that occurred across the
2 river, would the offense not have been proved?

3 MR. STEWART: No. It is not necessary to prove
4 the location in that sense, but that really seems to us
5 analogous to the situation involving use of the mails,
6 where the Federal statute says that offenses involving the
7 use of the mails may be prosecuted in any district through
8 which the mailed matter passes.

9 That doesn't mean that the Government in a
10 prosecution involving use of the mails has to prove the
11 identity of all those districts. It simply means that if
12 we do, we can lay venue there on that basis.

13 QUESTION: When the conduct that occurs in a
14 different place, like Missouri here, is not conduct that
15 has been engaged in by the defendant, as is true here,
16 you say it has to be an element of the offense, and it has
17 to be the purpose of the statute, to get at it?

18 MR. STEWART: I would say if the defendant could
19 show that that act, while an element of the offense, is
20 manifestly not the act that Congress was attempting to --

21 QUESTION: Does that mean that that act has to
22 be bad in some way?

23 I mean, what I'm thinking of, suppose under your
24 test the act in the distant place considered apart from
25 the conduct in Florida, or the close place, is fine.

1 Nothing wrong with an act like that. It's only when it
2 takes place -- that's true, of course, in dozens of
3 statutes. I mean, then does your test get it, or not?

4 MR. STEWART: I think it does get it. I mean --

5 QUESTION: It does get it.

6 MR. STEWART: We would say in these cases
7 that --

8 QUESTION: All right. Well, if it does get it,
9 then I'm back to my listing of the drug in dozens of --
10 because that's an element of the offense, and it's
11 connected -- I mean, it's nothing wrong with it in itself,
12 but nothing's wrong with a lot of things in themselves.

13 MR. STEWART: I think as a practical matter
14 another way of coming at it is to say that the District of
15 Columbia wouldn't be an appropriate venue in the
16 hypothetical regarding the listing of the drugs because
17 trial in that district would manifestly fail to serve the
18 purposes underling the constitutional requirements.

19 That is, it's extraordinarily unlikely that the
20 fact of the listing is going to be a matter in dispute at
21 trial, and the district --

22 QUESTION: Sounds as if it's getting a little ad
23 hoc, this test.

24 The -- I mean, what I'm thinking is, the other
25 case, of course, if I'm in California and I steal by mail,

1 you know, something that was -- the property was in New
2 York, I would have thought normally you could try the
3 person in New York, but there's nothing wrong with taking
4 property in New York and moving it unless, of course, this
5 conduct went on in California.

6 MR. STEWART: I guess one of the things I'd like
7 to focus on is, on the facts of this case, this is -- the
8 Western District of Missouri seems to us to be manifestly
9 the sensible district to try the case. We have a
10 defendant who was a resident of Missouri. Her lawyer is a
11 resident of Missouri. The Federal prosecutor who is
12 immersed in the details of the case is --

13 QUESTION: Mr. Stewart, may I ask you, what
14 practical difference does it make? You have the
15 conspiracy, so you've got her on that, and then at
16 sentencing relevant conduct can be taken into account, so
17 what are we talking about in terms of the defendant's
18 exposure, whether you can have it all tried in Missouri,
19 whether you have to split the trials?

20 MR. STEWART: I think the main difference is
21 that if we are limited to the conspiracy charge in
22 Missouri we would have to prove an agreement in addition
23 to -- an agreement to launder money in addition to the
24 money-laundering offense.

25 If I may, I'd like to reserve the balance of my

1 time.

2 QUESTION: Very well, Mr. Stewart.

3 Mr. Rogers, we'll hear from you.

4 ORAL ARGUMENT OF JOHN W. ROGERS

5 ON BEHALF OF THE RESPONDENT

6 MR. ROGERS: Mr. Chief Justice, and may it
7 please the Court:

8 The Government's essential-but-not-essential-
9 all-the-time elements test has no objective content and,
10 if applied consistently, will produce absurd results that
11 violate the constitutional venue provisions.

12 In contrast, the framework that respondent
13 offers is the analysis that this Court has used over and
14 over again when it has confronted a venue question in this
15 century. It's what it did in Armour Packing, it's what it
16 did in Freeman, Lombardo, Mid-State Horticultural Company,
17 Johnson, Anderson, Johnston, Cores, and Travis.

18 That is, it looked at the statute and said, what
19 is the proscribed conduct, and then -- the actus reus --
20 and then it said, where was that conduct performed, and
21 then, that is where venue lies.

22 The Government's essential elements test
23 abandons this precedent and offers an unworkable result.

24 Money-laundering is conducting a financial
25 transaction under certain circumstances in the case of a

1 1956 violation, and it's engaging in a monetary
2 transaction in a 1957 violation. Clearly, the conducts
3 that's prohibited are the proscribed financial
4 transactions. They have nothing -- it is not the
5 narcotics activity. That is a separate and distinct
6 crime. In that sense, this is a straightforward case of
7 statutory construction.

8 This is simply not a continuing offense. It's a
9 crime that was committed entirely within Florida, and that
10 is where it should be prosecuted.

11 QUESTION: So could Congress provide -- you say
12 this is a straight question of statutory interpretation
13 that we have, this venue statute. Suppose Congress was
14 explicit that a place of proper venue is the place where
15 the funds later laundered were first generated?

16 MR. ROGERS: I think that if Congress was to
17 define money laundering where venue would be proper where
18 the underlying unlawful activity --

19 QUESTION: That's not defining the crime. It's
20 a venue statute and it says, the crime of money-
21 laundering defined -- however it is now defined. For that
22 crime, the prosecution can be brought in either of two
23 places.

24 MR. ROGERS: I believe that statute would
25 violate the Constitution when -- in the cases when the

1 crime was not committed where it's tried, so I don't think
2 that that would pass constitutional muster.

3 QUESTION: So we're dealing not merely with a
4 question of statutory interpretation, but one that you say
5 is constitutionally compelled.

6 MR. ROGERS: I think -- I believe the
7 Constitution compels that the trial be had where the crime
8 is committed, and if the trial is not had where the crime
9 is committed, I think it will violate the Constitution.

10 QUESTION: Well, that's really tautological. I
11 think we'd all agree with that. That the Constitution
12 does require that trial of all crimes shall be held in the
13 State where the crimes were committed, and if it's held
14 someplace else, it violates the Constitution, but I think
15 we need a little more fine-tuning here than that.

16 MR. ROGERS: Well, this Court has said when
17 it -- to look -- to determine where the crime is
18 committed, you must look at the acts of the defendant that
19 violate the statute, and that's why you can't divorce what
20 the proscribed conduct is from the Constitution.

21 QUESTION: Well, in this situation, if the
22 Government were to allege and show that the defendant had,
23 indeed, conspired and participated in the drug offenses in
24 Missouri and had agreed that there would be money-
25 laundering, could she be tried in Missouri?

1 MR. ROGERS: She could be tried in Missouri --

2 QUESTION: For the money laundering that
3 occurred in Florida?

4 MR. ROGERS: If it was a conspiracy to launder
5 money, possibly, under that hypothetical, she could be.
6 She could not be tried in Missouri for a subsequent
7 violation of money laundering.

8 QUESTION: Well, was she --

9 QUESTION: Well, how do you --

10 QUESTION: Was she charged with conspiring with
11 Missouri defendants concerning laundering of drug
12 proceeds?

13 MR. ROGERS: She was. That's Count I of the
14 indictment.

15 QUESTION: And does that mean that the
16 laundering offense started in Missouri, in effect, because
17 that was the conspiracy agreement?

18 MR. ROGERS: Well, conspiracy, of course,
19 punishes the agreement to commit the illegal act, so in
20 the sense that the agreement was formed in Missouri and
21 there were overt acts in Missouri, venue would be proper
22 for a conspiracy prosecution in Missouri.

23 QUESTION: Or even if the agreement was formed
24 in Missouri and there -- or the agreement was formed in
25 New York and there were overt acts in Missouri.

1 MR. ROGERS: That is correct, Your Honor.
2 That's what Hyde holds. This, of course, isn't
3 a conspiracy -- this case doesn't involve a conspiracy.

4 QUESTION: But how do you square that with your
5 interpretation of the Constitution? How do you square
6 that?

7 I mean, it's fine to say, as I said to Mr.
8 Stewart, that -- you know, that conspiracy is different,
9 and aiding and abetting is different, but how do you
10 square treating them differently with your constitutional
11 point?

12 MR. ROGERS: In both those cases, in the
13 conspiracy context and in the aiding and abetting context,
14 you have a situation where the defendant herself or
15 himself would be legally liable for the conduct of
16 another, so in that sense the crime is committed in that
17 district where the other acts that they're legally liable
18 for. You do not have that in a substantive violation of
19 money laundering. There is no acts of others that the
20 defendant's legally liable for.

21 QUESTION: That's -- okay. That's so for
22 conspiracy. The co-conspirators are effectively agents of
23 the defendant, you can say. What about aiding and
24 abetting?

25 MR. ROGERS: Aiding and abetting is -- by a

1 statutory matter it says that an aider and abettor can be
2 prosecuted as a principal, so in that sense I think the
3 aider and abettor is legally liable for the actions of the
4 principal.

5 QUESTION: Mr. Rogers, you -- I -- am I correct
6 in thinking that there is a conspiracy charge here against
7 your client in connection with one of the pending counts?

8 MR. ROGERS: That is correct, Your Honor.

9 QUESTION: Then why doesn't Hyde cover this
10 case?

11 MR. ROGERS: Venue has to be looked at for each
12 crime that is charged. While the conspiracy to launder
13 money may or may not be proper in Missouri based on the
14 proof that the Government may or may not be able to make,
15 it's clearly not proper for the substantive violation of
16 money laundering.

17 QUESTION: So you say all we're talking about
18 here is the substantive offense, not the conspiracy?

19 MR. ROGERS: Conspiracy is not at issue in --
20 on -- in this case at all.

21 QUESTION: You didn't contest venue, or whoever
22 was representing the defendant didn't contest venue with
23 respect to the conspiracy count.

24 MR. ROGERS: No, that's not correct, Your Honor.
25 I did --

1 QUESTION: You did?

2 MR. ROGERS: I filed the motion to dismiss based
3 on all three counts on venue. The district court
4 sustained it as to the two substantive violations, denied
5 it as to the conspiracy.

6 I believe that that was a correct decision, not
7 because I believe venue's proper on conspiracy, but I
8 think the Government should have an opportunity to be able
9 to prove that venue's proper on a conspiracy, meaning they
10 should have an opportunity to prove that the agreement was
11 formed in Missouri, overt acts were carried out in
12 Missouri and, thus, the prosecution can properly lie in
13 Missouri.

14 On -- as far as the substantive violations that
15 the district court did dismiss, they failed on their face.
16 There is no possible way venue is proper on those two
17 cases, and that's why they were dismissed.

18 QUESTION: But on appeal the only question
19 related to the money laundering, not to the conspiracy, is
20 that right?

21 MR. ROGERS: That is absolutely correct, Your
22 Honor.

23 QUESTION: So that's what's before us for
24 review. You pursued the conspiracy only in the district
25 court.

1 MR. ROGERS: I'm sorry, I --

2 QUESTION: The -- you pursued the venue
3 objection on the conspiracy count only in the district
4 court, not in the court of appeals.

5 MR. ROGERS: That is correct.

6 The Government made an interlocutory appeal on
7 the two dismissed counts, and so at the Eighth Circuit,
8 they, likewise, didn't consider the conspiracy issue at
9 all.

10 QUESTION: What if the Government enacts a
11 statute that says, a person who launders money derived
12 from a illegal enterprise, drug sales, for example, shall
13 be deemed an aider and abettor of the illegal enterprise?

14 MR. ROGERS: If they were, in fact -- I -- if --
15 in that situation, if they in fact --

16 QUESTION: This same statute, just calling your
17 client an aider and abettor of the drug dealing. Then she
18 could be prosecuted in Missouri, I guess.

19 MR. ROGERS: That is correct, Justice --

20 QUESTION: The court just said it wrong.

21 MR. ROGERS: Or she would have to aid and abet
22 the drug dealing. They would have to prove that because
23 that would be what the statute would -- that would be the
24 proscribed conduct of the statute.

25 QUESTION: Well, the statute says that the act

1 of enabling the drug dealers to get the benefit of their
2 drug dealing by rendering the money usable, laundering it,
3 constitutes aiding and abetting of the drug dealing.
4 That's what the statute says.

5 MR. ROGERS: That's -- in your hypothetical --

6 QUESTION: Yes. Yes.

7 MR. ROGERS: If that's what the statute --

8 QUESTION: I'm making it up.

9 MR. ROGERS: Yes. I think if that is what the
10 statute said, and they in fact aided and abetted the drug
11 dealers by laundering their money --

12 QUESTION: Right.

13 MR. ROGERS: -- then you could be proper where
14 the underlying illegal activity happened.

15 QUESTION: It's not much of a constitutional
16 protection, is it, if it just turns on how the statute was
17 framed. If you could frame a statute that way, why don't
18 you say, effectively that's the same thing going on here.
19 Then you ought to be able to try your client in Missouri.

20 MR. ROGERS: I would respectfully disagree that
21 it's not a constitutional protection, since because what
22 you have done is, you have created a statute that
23 penalizes different conduct than the money-laundering
24 statutes at issue.

25 Of course, if you had -- if the statute said,

1 anyone who participates in a narcotics enterprise by
2 agreeing to launder their money, they could be prosecuted
3 in Missouri. I agree with you completely. But in that
4 sense, they would be involved --

5 QUESTION: Well --

6 MR. ROGERS: -- and they would be legally liable
7 for the people that --

8 QUESTION: Well, but what would happen, Mr.
9 Rogers, if your client were charged with aiding and
10 abetting, and that was the only basis for venue in
11 Missouri, and the court concluded after all the evidence
12 was in that she may have done something, but that she did
13 not aid and abet. Would that mean dismissal for want of
14 proper venue?

15 MR. ROGERS: On the hypothetical that Justice
16 Scalia gave, yes.

17 QUESTION: No, on the hypothetical that I gave.

18 MR. ROGERS: I'm sorry, I didn't follow that.
19 I --

20 QUESTION: Well, what I'm trying to get at is,
21 if the basis for venue were a charge of aiding and
22 abetting, and the court were to decide there just is
23 insufficient evidence of aiding and abetting as to this
24 particular individual, would the next step be to dismiss
25 the case against that individual for improper venue?

1 MR. ROGERS: Well, I think you would dismiss it
2 for failure of proof on the substantive --

3 QUESTION: Failure to prove that --

4 MR. ROGERS: That they aided and abetted, yes,
5 and --

6 QUESTION: Well, what if they were charged both
7 with a substantive offense and with aiding and abetting,
8 and the district court says, there's enough here to go to
9 the jury on the substantive offense, but there isn't
10 enough on aiding and abetting?

11 MR. ROGERS: Once again, I think my answer would
12 be the same. I think it would be a failure of proof on
13 the aiding and abetting count, and if there was enough to
14 go to a jury on the substantive violation, it would go to
15 a jury.

16 QUESTION: Even though were venue were based
17 only on the aiding and abetting?

18 MR. ROGERS: Oh, no, no. I misunderstood what
19 you were asking. Venue has to be proper for each count
20 that's charged. You can't bootstrap venue by getting
21 venue proper on one count and then saying it's proper for
22 any count we choose -- that the Government chooses to
23 join. I clearly --

24 QUESTION: If that were so there would be no
25 problem here, because she was indicted on the conspiracy

1 count.

2 MR. ROGERS: Correct.

3 QUESTION: If that's all that matters, then you
4 could link the other two.

5 MR. ROGERS: In that sense, this is no different
6 from many cases where, if you have a huge conspiracy of a
7 criminal enterprise, that they can -- the Government can
8 only join the counts in the district where the crime was
9 committed if they were -- even if they were substantive
10 violations in furtherance of the conspiracy.

11 They can't bring those substantive violations
12 that weren't committed in the district. They have to
13 choose the best district where the crime was committed
14 and, of course, if it's -- they could -- for sentencing
15 purposes they could, of course, bring that in as relevant
16 conduct as --

17 QUESTION: That's one of the questions I was
18 asking Mr. Stewart. I'm trying to determine the practical
19 consequences for your client, if you should prevail and
20 say, they have to deal with the money laundering in
21 Florida. Still, let's say she's convicted of the
22 conspiracy in Missouri, and they can take account of the
23 money laundering as relevant conduct, what's the
24 difference in terms of --

25 MR. ROGERS: There's --

1 QUESTION: -- her exposure?

2 MR. ROGERS: You're right on the money, Your
3 Honor. There's very little difference. When you have a
4 conspiracy count and an aiding and abetting, this case
5 becomes very unimportant. I don't see the importance to
6 it as far as the Government's concerned.

7 QUESTION: Why is aiding and abetting different
8 from this statute? You say that the Government can enact
9 a statute, which is called an aiding and abetting statute,
10 which will render your client liable to be hauled into
11 Missouri to defend the case simply because the Government
12 says that the essence of the crime is aiding and abetting.

13 Here, the Government has said that the essence
14 of the crime is laundering, not just any money, or doing
15 this financial deal not just with any money, but with
16 money that was the product of a drug -- of a drug
17 enterprise. Why can't -- why doesn't that suffice, just
18 as an aiding and abetting statute would, to enable your
19 client to be tried in Missouri?

20 MR. ROGERS: Your Honor, if I said that just
21 because the Government said she aided and abetted, venue
22 would be proper in Missouri, I clearly misspoke. The
23 Government would need to prove she aided and abetted.

24 QUESTION: No, when I say the Government said
25 it. I mean, the Government said it when it enacted the

1 statute. It simply defined the crime in a way that makes
2 it an aiding and abetting crime. Now, why is that
3 magical? Why isn't it enough if the Government defines
4 the crime in such a way that there has to have occurred in
5 Missouri, or somewhere -- in this case it happened in
6 Missouri -- an unlawful acquisition of money?

7 MR. ROGERS: I go back to the Constitution.
8 You -- if the Government defines a crime where the act of
9 the crime is committed in a certain district, venue's
10 proper.

11 QUESTION: But in aiding and abetting, the act
12 that she's aiding and abetting did not occur in Florida,
13 it occurred in Missouri, and here the act that she's
14 facilitating, the drug deal, did not occur in Florida, it
15 occurred in Missouri. What's the difference --

16 MR. ROGERS: I -- the difference --

17 QUESTION: -- for constitutional purposes?

18 MR. ROGERS: Well, for constitutional purposes,
19 in an aiding and abetting situation you're legally liable
20 for the acts of others, so the crime can be committed.

21 QUESTION: So here, you are legally liable --
22 you're being punished in part because of the acts of
23 others, the drug transaction.

24 MR. ROGERS: In an aiding and abetting
25 situation, I don't disagree with that. Of course, this --

1 QUESTION: Mr. Rogers, may I interrupt with this
2 suggestion, because this may be what's defeating the
3 joinder here.

4 Don't you, on your theory, have to make a
5 distinction between aiding and abetting which, in fact,
6 facilitates the commission of the crime in the first place
7 and aiding and abetting after the fact of the crime that
8 involved no pre-criminal agreement?

9 Your theory -- the reason I pose the question
10 that way is this. I thought your theory for reconciling
11 conspiracy and aiding and abetting liability with the
12 Constitution was something like this: the person charged
13 with aiding and abetting in effect is like an agent of the
14 individual who actually commits the criminal act, what you
15 call the actus reus, and therefore when the agent acts,
16 the agent is, in fact, acting for the aider and abettor,
17 acting for the conspirator.

18 That works fine, it seems to me, until you get
19 the situation in which the person charged with what we now
20 call aiding and abetting was the individual who, under the
21 old law, was called the accessory after the fact with no
22 other connection, the person in -- you know, when the
23 crime is committed in State A, the felon flees to State B,
24 goes to his friend and says, I'm on the lam, let me hide
25 out.

1 Letting him hide out has nothing to do with the
2 effectiveness of the crime that he committed in State B.
3 It simply has to do with whether he's going to get caught
4 or not.

5 Don't you have to distinguish between those
6 situations and say, when the aiding and abetting is that
7 kind of independent, after-the-fact accessory, then, in
8 fact, you're in a situation just like this and, in fact,
9 that would not be a basis for venue in the State of the
10 aiding and abetting?

11 MR. ROGERS: Your Honor --

12 QUESTION: Take it, Mr. Rogers, take it.

13 (Laughter.)

14 MR. ROGERS: Thank you, Your Honor, and you are
15 absolutely correct.

16 (Laughter.)

17 MR. ROGERS: In a situation when you're an
18 accessory after the fact --

19 QUESTION: And this is a case in which Justice
20 Scalia may even agree with you.

21 (Laughter.)

22 MR. ROGERS: If you are an accessory after the
23 fact you aren't legally liable for the principals. That
24 is a -- and that, you're absolutely right, and that was
25 briefed in the brief, and I think an accessory after the

1 fact is a totally different situation, regardless if,
2 Congress named it aiding and abetting and then essentially
3 passed an accessory-after-the-fact statute. I agree with
4 that.

5 As far as the -- the Government's put forth two
6 primary arguments, and one is that we can base venue on an
7 act of confederates. I think that clearly is not the case
8 that we've discussed so far.

9 The other one is that the effects of the crime
10 are somehow felt in Missouri. I think that in that
11 situation we're getting -- this is a very, very attenuated
12 and very, very abstract effects argument.

13 QUESTION: Suppose you intend the effects of the
14 crime to be felt in Missouri, so that there is this
15 prospective element?

16 MR. ROGERS: Sure. I don't think that would
17 make any difference for venue analysis. I think if you --
18 for instance, if the Unabomber sent a bomb to New Jersey
19 and intended to kill the president of a corporation and
20 intended to harm that corporation, that doesn't mean
21 venue's proper where the harm is felt. Same if you commit
22 murder and the widow is obviously affected by the murder
23 that was committed, and even if you meant to affect the
24 widow, that doesn't mean venue's proper there.

25 The crimes that are able to be had where the

1 effect is felt are the crimes that are defined as in
2 causing a certain result, like murder. It's not -- that's
3 not defined as in terms of an act, like shooting. It's
4 defined as in causing the death of a person, so where you
5 cause the death of that person, yes, venue would be
6 proper. The same is true of obstruction of justice.

7 QUESTION: Well, you wouldn't say that, I mean,
8 what if you -- you know, the Unabomber sends the bomb, it
9 explodes and injures the person in New York, and he goes
10 back to Darien, Connecticut, and dies in Darien. Is the
11 Unabomber triable in Darien?

12 MR. ROGERS: I believe that in certain
13 situations that if you have a -- where you commit the --
14 like, if I shot someone and they didn't die, and then they
15 stumbled over to a different district and died, I believe
16 that's one of the rare situations when murder probably
17 could be a continuing offense, and would be proper where
18 the act of the -- was committed and where the result was
19 caused in that sense. I wouldn't have a problem with that
20 analysis. It's kind of a far-fetched hypothetical and it
21 probably wouldn't happen very much, but at least in
22 that --

23 QUESTION: Cases that we've decided which allow
24 a Federal murder indictment where the person died and not
25 where the act which caused the death was applied?

1 MR. ROGERS: Well, I think that -- go back to
2 the Unabomber example. I think that you could look at the
3 act as mailing -- or making a bomb and mailing it, and the
4 person dies halfway across the country, but I think they
5 can clearly be tried --

6 QUESTION: No, but the explosion occurs, the act
7 which you produced occurs where the package is received,
8 and then the person is taken to another State where he
9 eventually dies. I wouldn't think it's consistent with
10 your theory to say that the Government can bring the
11 indictment where the death occurs.

12 MR. ROGERS: I'd have to agree with you. I
13 think I was getting a little carried away with myself. I
14 think in the sense where murder can be a continuing
15 offense is where the act crosses the -- in a sense where
16 you shoot a gun across the border of --

17 QUESTION: I'm not clear on your answer to that
18 question. You're talking about the Federal prosecutor,
19 but murder would ordinarily be prosecuted by the State,
20 and do you mean to say that the State prosecutor in
21 Connecticut could not bring in the Connecticut State
22 courts a murder charge when somebody dies in Connecticut,
23 even though the poison was administered someplace else and
24 the person stumbled home before he died?

25 MR. ROGERS: I think that if you -- I'm not --

1 I -- were -- I don't think that if the person was shot in
2 one district and then somehow they hopped on a plane and
3 went somewhere else, I don't think that State would
4 properly be able to try a murder prosecution there.

5 QUESTION: Suppose that the defendant intends
6 the -- his acts to have effects which it's the object of
7 the statute to prevent.

8 I'm thinking of your answer in which the widow
9 grieves in some other State, but that -- it's not the
10 object of the statute to prevent those effects, but
11 suppose in this case the object of the statute was to make
12 sure that this drug ring could continue to operate
13 effectively.

14 MR. ROGERS: Well, if the statute was --

15 QUESTION: And there was proof to that effect.

16 MR. ROGERS: Sure. If the statute was defined
17 as then causing the narcotics enterprise to continue their
18 activities by agreeing to launder their money, I think in
19 that sense that they properly could be tried there. Of
20 course, that's an entirely different crime than what the
21 Government's charged Ms. Cabrales with in this case.

22 They charge her with the substantive act of
23 engaging in a financial transaction with -- under certain
24 circumstances with dirty money. That is a far cry from a
25 situation where someone's -- someone where the statute's

1 defined in the terms of causing a drug enterprise or a
2 narcotics enterprise to continue.

3 And, in fact, they wouldn't be able to prosecute
4 her under this statute because she -- the money
5 laundering, even if it did occur, didn't cause any drug
6 enterprise to continue at all. They were -- the
7 narcotics -- as the Government points out, they've been
8 convicted and tried. It's clearly stopped. The money
9 laundering was something that happened after the fact.

10 QUESTION: Mr. Rogers, one aspect of this
11 puzzles me and that is, this is presented to us as a very
12 clean case. She's been charged just with the money
13 laundering in those counts, nothing with transporting it,
14 and in reality usually these questions don't come up
15 because it is a continuing offense. She's involved in the
16 original trafficking, she's involved in transporting it
17 someplace else and in, finally, the money laundering, the
18 beginning, the middle and the end.

19 But here, it was just presented so cleanly that
20 the -- that no, she had nothing to do with transporting
21 the money. She didn't have anything to do with the
22 original sales. That seemed to me odd.

23 MR. ROGERS: Well, in that situation, in the
24 crime you're talking about, you've got a -- you could have
25 a conspiracy to launder money, or a conspiracy to

1 distribute drugs.

2 QUESTION: Who did transport this money? How is
3 it that she had nothing to do with that?

4 MR. ROGERS: I -- frankly, I don't know who
5 transported the money. I -- there hasn't been a trial on
6 this.

7 QUESTION: Your answer should be, what money?

8 (Laughter.)

9 MR. ROGERS: Assuming the money was
10 transported -- assuming the money was transported, that
11 has nothing to do with the substantive violation of money
12 laundering. The statute doesn't prohibit transporting
13 dirty money. It prohibits --

14 QUESTION: Yes, but I was just wondering why, on
15 the Government's side, there was this admission that she
16 wasn't involved in transporting, or that at least what
17 they charged doesn't involve that.

18 MR. ROGERS: I couldn't speak for the Government
19 on that issue. I don't know why they did that. Maybe
20 because they are looking for a certain rule of law out of
21 this case.

22 QUESTION: That's what I was wondering.

23 MR. ROGERS: I just don't know.

24 If there are no further questions --

25 QUESTION: Thank you, Mr. Rogers.

1 MR. ROGERS: Thank you.

2 QUESTION: Mr. Stewart, you have 1 minute
3 remaining.

4 REBUTTAL ARGUMENT OF MALCOLM L. STEWART

5 ON BEHALF OF THE PETITIONER

6 MR. STEWART: As the exchange between Mr. Rogers
7 and Justices Scalia and Souter indicates, really the
8 respondent's position stands or falls with the proposition
9 that there is a constitutionally significant difference
10 between being an aider and abettor and being an accessory
11 after the fact, and I think the fact that Congress has
12 chosen to define an aider and abettor as --

13 QUESTION: Of course, in the aider and abettor,
14 you've got to aid something that hasn't yet happened.

15 Let me ask you this. What difference does it
16 make to the Government in this case, if you can prove the
17 conspiracy charge? Don't you get everything you need?

18 MR. STEWART: I think if we can prove the
19 conspiracy charge, then presumably the money laundering --

20 QUESTION: Would be relevant conduct --

21 MR. STEWART: -- itself would be relevant
22 conduct and probably the end result would be negligible.
23 It's not necessarily the case that we could prove
24 conspiracy simply because we could prove a substantive
25 money -- thank you, Your Honor.

1 CHIEF JUSTICE REHNQUIST: Thank you,
2 Mr. Stewart.

3 The case is submitted.

4 (Whereupon, at 11:03 a.m., the case in the
5 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:

UNITED STATES, Petitioner v. VICKIE S. CABRALES
CASE NO: 97-643

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

BY Donna Maria Fedele

(REPORTER)