IN THE SUPREME COURT OF THE UNITED STATES

WINFIELD L. ROBERTS, Petitioner,	:	
v.	:	No. 78-1793
UNITED STATES, Respondent.	:	

Washington, D. C.,

Tuesday, January 15, 1980.

The above-entitled matter came on for further oral argument at 10:06 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

ALLAN M. PALMER, ESQ., 1707 N Street, N. W., Washington, D. C. 20036; on behalf of the Petitioner

STEPHEN M. SHAPIRO, ESQ., Office of the Solicitor General, Department of Justice, Washington, D. C. 20530; on behalf of the Respondent

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C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will resume arguments in 78-1793, Roberts v. United States.

Mr. Shapiro, you may proceed whenever you are ready.

ORAL ARGUMENT OF STEPHEN M. SHAPIRO, ESQ.,

ON BEHALF OF THE RESPONDENT

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

After listening to extensive allocutions from defense counsel and the prosecutor, Judge Pratt imposed sentence on petitioner explaining that he had considered the fact that petitioner was a dealer in heroin, that petitioner was on parole from a prior bank robbery conviction, and that petitioner had refused to cooperate with the government in identifying the persons who supplied him with heroin.

We contend that Judge Pratt's consideration of petitioner's refusal to cooperate along with his prior record and the severity of his offense was entirely proper and was consistent with Congress' directive that no limitation shall be placed on the information concerning the character and the conduct of a person convicted of an offense which may be considered in imposing sentence.

Petitioner's contrary view is based on the

argument that a refusal to cooperate was an exercise of Fifth Amendment rights and that Judge Pratt punished him for exercising those rights.

The short answer to that contention is that petitioner never claimed or asserted any Fifth Amendment right which he may have had. Throughout the three-year period that preceded the sentence, petitioner never suggested that his refusal to cooperate rested on Fifth Amendment grounds. In addition, his conduct gave no indication that he was relying on the Fifth Amendment. When he was first interviewed in 1975, he immediately confessed. He later pleaded guilty, first to the charge of conspiracy and later to two of the substantive counts in the indictment.

Most importantly, at the time of the sentencing hearing, defense counsel fully disclosed petitioner's refusal to cooperate and did not even hint that the extent of his cooperation should not be considered or that this subject was immune from consideration under the Firth Amendment. Far from invoking the Fifth Amendment, counsel stated to the court that the petitioner refused to cooperate because he wasn't that involved in the conspiracy.

Counsel argued yesterday that everyone must have known that the petitioner was relying on the Fifth Amendment. With deference, the District Court would have needed powers of clairvoyance to recognize that there was a Fifth

Amendment claim in this case. The Fifth Amendment was not raised as a justification for petitioner's refusal to cooperate until he filed his brief in the Court of Appeals.

This Court has repeatedly held that the Fifth Amendment is not self-executing and may not be relied on unless it is invoked in timely fashion. Petitioner's argument that the Fifth Amendment protects his silence without any indication of the Fifth Amendment in the District Court.

QUESTION: Would your position here be different if he had in his allocution asserted Fifth Amendment rights not to reveal the sources of his drug supply?

MR. SHAPIRO: I believe that that would present a far different question and it would raise a serious constitutional difficulty if petitioner had invoked and relied on the Fifth Amendment. That issue can be argued two different ways, but we submit that the Court need not grapple with that difficulty in this case where the Fifth Amendment was never exercised.

QUESTION: Well, how would you go about asserting the Fifth Amendment? Would it be an assertion that would be retroactive to the time when he failed to cooperate?

MR. SHAPIRO: He would simply, as the Second Circuit pointed out in the Vermeulen case, he would simply advise the sentencing court that he was relying on the Fifth Amendment and not cooperating and that this was an

impermissible factor in sentencing, and had he done so I have every confidence that the District Court would have taken that factor out of its consideration. It is a simple matter, as Judge Moore pointed out in the Vermeulen case, to apprise the court of one's reliance on the Constitution at the sentencing hearing. A great deal of debate was focused on the question of cooperation and it would have been simple for counsel to advise the court that this was an improper consideration and that the Fifth Amendment privilege his refusal to cooperate.

QUESTION: But you're not entitled to invoke the Fifth Amendment unless there is a real and substantial probability that the answer to the question will in fact incriminate you.

MR. SHAPIRO: That's quite correct.

QUESTION: So just talis manic invocation of the Fifth Amendment wouldn't necessarily solve the problem even though you say, and apparently it is conceded, that didn't take place here.

MR. SHAPIRO: That didn't take place here, and Your Honor is quite correct in pointing out that if the District Court concluded that there was no realistic exposure to incrimination from this answer and that petitioner was simply covering up for other persons, which was our inference all along, that then it would be an invalid

invocation of the Fifth Amendment. That is what this Court held in the Rogers case and other cases that we cited in our brief.

QUESTION: I took it from Mr. Palmer's argument yesterday that his chief reliance on this claim was because fear of some possible consequences of disclosing who his principal sources of heroin were.

MR. SHAPIRO: Had he brought that to the attention of the court, it would have greatly altered the complexion of this case. But as this Court has held, it is not sufficient merely to refuse to answer a question or to fail to provide information. That is not an invocation of the Fifth Amendment. And had he entertained the subjective beliefs he should have advised the court, the court would have no way of knowing that he was fearful of self-incrimination under these circumstances. There was no indication of this at all from counsel, and he had three years to develop this theory if he wished to advance it. We notified him from the outset that the extent of his cooperation would affect the charges against him, the amount of time he spent in prison, and would be made known to the court, and yet he never invoked the Fifth Amendment until this theory occurred to him in the Court of Appeals when he put this argument into his appellate brief.

QUESTION: Suppose a witness is called in any

ordinary criminal case and he declines to answer on the ground that if he gives information he might be placing himself in jeopardy of retaliation by the defendants or friends of the defendants, is that a sort of de facto assertion of the Fifth Amendment?

MR. SHAPIRO: This Court held that it is not in the Piemonte case. In Piemonte the Court concluded that fear of retaliation and one's physical safety is not the same as a fear of self-incrimination and that it is the duty of the government to protect persons against retaliation, and we do indeed have a system for doing that, the witness protection program. If this had been explained to the government or to the court, steps could have been taken to protect petitioner if that was his concern, but no one was ever advised that this factor was a concern on his part. Other co-conspirators in this conspiracy did assist the government and did testify against persons who were higher up in the chain of the conspiracy, and there was no retaliation. If petitioner had been fearful of this, he should have apprised the court and the prosecutor, but this was never raised.

As this Court pointed out --

QUESTION: Suppose there were a codefendant who was not asked to cooperate, is he to be treated more harshly than one who is asked to cooperate and does it only

partially, or less harshly?

MR. SHAPIRO: I would think that a person who has not been asked to cooperate could not be faulted for failing to come forth with information and that would not be an adverse circumstance to take account in sentencing, whereas somebody who provides some information but stonewalls the government as to the rest of it would be turning his back on the request and that would reflect on his character and his attitude towards society.

In the first instance that Your Honor has posed, where there has not been a request, I think it is difficult to fault that individual for not coming forward with the information.

This Court pointed out in the Vajtauer case --

QUESTION: Mr. Shapiro, before you get to that, did I understand that if he had said before the sentence that the reason I was quiet was because I was asserting my Fifth Amendment right, that the judge could not have used that material, is that your position?

MR. SHAPIRO: Our position is that that would present a very serious difficulty. I am reluctant to say --

QUESTION: Oh, I thought you said that under those circumstances he would not have done it.

MR. SHAPIRO: He may well have not considered that, but I don't want to --

QUESTION: Is it your position that he could do it?

MR. SHAPIRO: It is my position that that is a difficult question. Under the Corbitt case that was recently handed down --

QUESTION: Could the judge do it or not if he raised the Fifth Amendment point, ignore the --

MR. SHAPIRO: There is a strong argument that he could have done it, although that question hasn't been decided by this Court, of course, and there are --

QUESTION: Well, is it your position that the court can take into consideration his silence?

MR. SHAPIRO: After he has pleaded the Fifth Amendment, if the court views that as a refusal to cooperate, which is essentially the same as standing on one's right to --

QUESTION: What do you mean by cooperate, that a man charged with a crime is bound to come in and say, one, I committed the crime and, two, everybody that helped me and, three, everybody that might have helped me? How far does he have to cooperate?

MR. SHAPIRO: Well, this is a reflection in our view on his attitude towards society. If he is unwilling to identify the persons who continue to inject heroin into the community and continue to cause this injury to the

community, even though he has that information, we submit that that is an adverse reflection of his character.

QUESTION: Well, would this be true for embezzlement, too?

MR. SHAPIRO: It would. It would.

QUESTION: Well, why do you have to say injecting heroin in?

MR. SHAPIRO: Because it reflects on the man's character, his --

QUESTION: But you don't really mean a separate law for --

MR. SHAPIRO: We don't need a separate law for that, I agree with Your Honor.

QUESTION: I assume that.

MR. SHAPIRO: As the court --

QUESTION: If there was an assertion of the Fifth, the judge would still have to find that there is some realistic --

MR. SHAPIRO: Yes, he would.

QUESTION: -- danger of incrimination that compels self-incrimination.

MR. SHAPIRO: That's quite correct.

QUESTION: And in order to sustain it, you would have to say that -- when you ask him to cooperate and you tell him that if you don't this is going to be taken into

consideration, and he says, well, I will spea, you have to assume that that is compulsion. Is that right?

MR. SHAPIRO: Well, if his --

QUESTION: If you assume that his compulsion -- I don't know why you wouldn't just say then that taking this into consideration is a penalty for his remaining silent.

MR. SHAPIRO: Yes, but this Court has held in an analogous situation, in the Corbitt case, that taking into account someone's unwillingness to waive their Firth Amendment rights and go to trial is something that can be taken into account in sentencing.

QUESTION: I know, but I just wonder if the judge would -- in order to sustain his Fifth Amendment claim, he would have to say that there was compulsion involved and that the threat or the likelihood of taking that into account amounted to legal compulsion.

MR. SHAPIRO: Well, that is correct.

QUESTION: Then how do you square that with Corbitt?

MR. SHAPIRO: Well, my understanding is that under Corbitt it is permissible to impose differential sentences when one does insist on a right to go to trial and to grant lenience to those who do not insist on that right. And in Your Honor's hypothetical, if the individual refuses to cooperate, relying on the Fifth Amendment, I would think that that would be analogous to the person who says I'm not

going to plead guilty, I'm going to stand trial, where the court has agreed that differential sentencing is proper. But I would reemphasize that that is not the issue here because there has been no indication of the Fifth Amendment. This is an interesting and difficult issue but it simply is not posed here.

QUESTION: Well, tell me where the compulsion would be?

MR. SHAPIRO: It would --

QUESTION: If he invoked it and said I was silent because I didn't want to incriminate myself, what is the compulsion? He never said anything.

MR. SHAPIRO: That's correct, there is no compulsion testimony --

QUESTION: He never said anything, there was never any testimony.

MR. SHAPIRO: But it would arguably be a penalty imposed on him for not cooperating.

QUESTION: Because of compulsion or --

MR. SHAPIRO: It would just be an additional sentence attached to his lack of cooperation, but that arguably is what was approved in court.

QUESTION: Then I don't see why it makes any difference whether he tells the judge if he relied on the Fifth Amendment or not. He should just say I was silent

and you can't penalize me for it.

MR. SHAPIRO: Well, I would agree that I think we might be able to win this case even if the Fifth Amendment was pleaded under the Corbitt precedent, but here it is an a fortiori case because the Fifth Amendment was never raised and this Court has held repeatedly that before the Fifth Amendment can be relied on in the Court of Appeals, it has to be asserted in the lower court.

QUESTION: Is there any constitutional right to maintain silence about criminal activity that is known to the person in question --

MR. SHAPIRO: Certainly --

QUESTION: -- unless it will bring compelled incrimination of himself?

MR. SHAPIRO: There is no such right and in fact there is a federal criminal statute, 18 U.S.C., section 4, that provides that it is compounding of a felony or misprision of a felony to fail to report and to conceal the occurrence of crimes by other persons, and this conduct of petitioner treads very close to that. Without an invocation of the Fifth Amendment and simply withholding the information that was in his possession, that is --

QUESTION: But he wasn't charged with that.

MR. SHAPIRO: He was not charged with that, but we say it reflects on his character and it reflects on his

attitude towards society, just the way the perjury in the Grayson case reflected on the --

QUESTION: Let me get to another one. If a defendant in a criminal trial, and the judge calls him to the witness stand and he says I'm not going to talk, does he have to say I'm not going to talk on the basis of my constitutional right not to testify? Does he have to say that in detail?

MR. SHAPIRO: He doesn't have to --

QUESTION: Does he?

MR. SHAPIRO: He doesn't have to use lawyers' language.

QUESTION: You can't even call him, can you?

MR. SHAPIRO: He doesn't have to use lawyers' language.

QUESTION: So why does he have to, on the Fifth Amendment, say at every stage of the proceeding that I am asserting my Fifth Amendment?

MR. SHAPIRO: As this Court has held repeatedly in the Rogers case, in the Vajtauer case --

QUESTION: A minute ago I asked you about this case.

MR. SHAPIRO: Yes, sir.

QUESTION: When was he obliged to say I am relying on the Fifth Amendment?

MR. SHAPIRO: At the sentencing hearing he was obliged to say I rely on the Fifth Amendment or I am relying on my right to refuse to incriminate myself. He has to fairly apprise the tribunal of his reliance on that constitutional privilege. He doesn't have to use a particular kind of lawyer's language, but it isn't enough just to say I'm not talking. The Court has held that repeatedly.

QUESTION: Well, isn't that what the Fifth Amendment gives him the right to do --

MR. SHAPIRO: It is not self-executing.

QUESTION: -- not to talk?

MR. SHAPIRO: It is not self-executing.

QUESTION: What does it say?

MR. SHAPIRO: It says that no person may be compelled to be a witness against himself in a criminal trial.

QUESTION: That means talk, doesn't it?

MR. SHAPIRO: But this Court has held repeatedly that there must be recitation of the Fifth Amendment.

QUESTION: Suppose he didn't say anything, still he would be bad off, wouldn't he?

MR. SHAPIRO: If he didn't invoke it, his --

QUESTION: You are putting on him a duty to come forth, aren't you?

MR. SHAPIRO: And invoke the constitutional privilege, and this Court has held that that is the

requirement of the law consistently over the years.

QUESTION: And you want us to say here that from now on every defendant who is relying on the Fifth Amendment must make it clear to the court that he is relying on the Fifth Amendment.

MR. SHAPIRO: Precisely. He would be leading the court into an error if the rule were anything else, because he brought the court's attention to his cooperation and gave a totally different explanation for his refusal. He said he was not that involved in the conspiracy. He asked the court to consider it. And if he didn't then and there assert that this shouldn't be a permissible factor, he was simply leading the court into error and to raise it for the first time in the Court of Appeals to us is just a ploy. It is leading the court into error and --

QUESTION: Could I test your question? I wonder if it necessarily must rest entirely on the Fifth Amendment. I notice neither of the questions presented are framed in constitutional terms, and I suppose the court would have some supervisory power over the factors that could be considered. Supposing in a case, this was a crime of using a telephone to facilitate the distribution of narcotics.

MR. SHAPIRO: That's correct.

QUESTION: Supposing the government intercepted

40 or 50 different telephone conversations and they concluded that this man was just a runner of some kind who would normally be entitled to a sentence of six months or a year or some first offender and so forth. Could the judge say to him at sentencing, I know that you know who the higher-ups are in this and if you don't tell the prosecutor who they are, I am going to give you thirty years because there are thirty different instances and I can make consecutive sentences out of them. Would there be any legal objection to the judge doing that?

MR. SHAPIRO: The outer limit is prescribed by the Eighth Amendment and I submit that in Your Honor's hypothetical --

QUESTION: Assume it is not a violation of the Eighth Amendment.

MR. SHAPIRO: If it is not a violation of the Eighth Amendment --

QUESTION: Is it proper sentencing procedure for the judge to get involved in the investigatory process in that way?

MR. SHAPIRO: Yes, we submit that it is, if it is within the statutory limits. Congress has prescribed expressly that all information bearing on the conduct and the character of the individual can be considered. And if there is no statutory objection under the relevant penal

statute, no Eighth Amendment barrier to piling on the punishments, then this is a proper procedure. But I would point out that there is no element in this case of threatening the defendant and negotiating with the defendant by the court. The Seventh Circuit has approved a course of behavior similar to what Your Honor described. That was the rule in the Seventh Circuit and we have cited the Seventh Circuit's decisions in our brief.

QUESTION: But it isn't up to the government in the sense that the government is the prosecutor to prescribe the sentence for a convicted defendant, is it? It is up to the judge.

MR. SHAPIRO: It is up to Congress and the judge, that is quite correct. And if petitioner had within his own mind any mitigating information that he wanted to bring to the attention of the judge, he was permitted to do that under the rules and he made an extensive allocution. And if any of these concerns that he is raising for the first time on appeal were concerns that troubled him, any fear about self-incrimination or fear about retaliation, he should have presented them then and there. That is the only way that the District Court could have known of these concerns.

QUESTION: Earlier in your argument, Mr. Shapiro, you referred to the statute which defined broad powers in

the sentencing judge to take into account everything. What is the date of that statute? When was that enacted?

MR. SHAPIRO: 1970. That is part of the comprehensive --

QUESTION: The omnibus.

MR. SHAPIRO: Yes.

QUESTION: Now, did that add anything to what this Court said in Williams v. New York?

MR. SHAPIRO: It was merely a codification of the rule in Williams. The legislative history shows that Congress meant to adopt the standard that this Court had prescribed in several of its prior cases, including Williams.

Laying aside petitioner's after-thought arguments, it is possible to see this case as it was presented to Judge Pratt. Petitioner stood before the court as a convicted heroin dealer. He had distributed heroin and had previously been convicted for bank robbery. He had also been convicted for unauthorized use of a motor vehicle as well as larceny. He was on parole for his prior bank robbery convictions when he was arrested once again for dealing in heroin.

In addition, he stood before the court as a man who refused to cooperate. Although petitioner in amici argued that this had no logical relationship to the length

of sentence to be imposed, we submit that it was a highly relevant datum, along with the other information available to Judge Pratt. It showed what kind of a man petitioner was. It was part of the mosaic of information that revealed his character and his attitude towards society. It showed who he wanted to protect and who he was unwilling to protect. It showed that he still adhered to the code of conduct of the criminal conspiracy, not the code of conduct that society recognizes.

The prosecutor's repeated requests to cooperate presented a chance for petitioner to turn over a new leaf. It is beyond dispute that heroin causes addiction of members of the community which not only ruins many lives and causes large numbers of crimes, but it actually results in deaths of persons who overdose on heroin.

Last year, in the District of Columbia, 41 persons died from heroin overdoses. In short, dealing in heroin is a highly antisocial act. The prosecutor gave the petitioner a chance to mitigate the harm which he had done by stopping the other persons who continued to inject heroin into the community. It was an opportunity to break off his prior pattern of behavior, an opportunity that he rejected.

Petitioner's refusal to help make amends for the harm which he had done was one of many indications that he

was a poor prospect for rehabilitation. As Professor Hart has correctedly pointed out, rehabilitation requires recognition of the community's interests and the obligations of community life. Refusal to cooperate also suggested that a substantial period of imprisonment was needed to protect the community. By refusing to cooperate, petitioner showed that his allegiance with his co-conspirators was unbroken, an association that could be easily resumed on his release from prison.

Although petition at amici had argued that non-cooperation should not be considered, we submit that this statute that the Chief Justice referred to is direct evidence to the contrary. It says that there shall be no limits on the information concerning the character and conduct of the person convicted of an offense which may be considered in imposing sentence. This Court has approved that principle repeatedly in its own decisions. Most recently, in the Grayson case, this Court emphasized that the sentencing judge should consider the whole range of information bearing on a convicted defendant's character and his attitude toward society. Failure to cooperate with the authorities in stopping persons who continue to distribute heroin within the community is certainly relevant to the appraisal of the defendant's character and his attitude toward society.

We note that at common law there was a duty to raise the hue and the cry to alert the police to the occurrence of crimes by other persons so those crimes could be stopped. And under the modern penal code it is compounding or misprision, a felony not to report felonies and to conceal felonies by other persons.

Petitioner's unwillingness to realign his interests with those of society and his determination to conceal the actions of those persons who prey on society was a factor that the sentencing court could not properly ignore in making a responsible evaluation of his attitude and his character.

Petitioner and amici have advanced the rather surprising argument that the extent of a defendant's cooperation is relevant in granting leniency but is not relevant in enhancing punishment. We say that this is surprising because it presupposes two levels of punishment based on the convicted defendant's willingness to cooperate and to name his accomplices. This theory would open the door to precisely the result that petitioner opposes. Within statutory limits, consecutive sentences could be imposed on those persons who do not cooperate and concurrent sentences could be reserved for those who do and show their entitlement for leniency. This procedure, like the procedure that petitioner opposes, would place substantial

pressure on convicted defendants to name their accomplices to avoid additional prison time.

We ntend that there is no logical reason why defendant's refusal to cooperate should not be relevant in imposing sentence, whether the decision is characterized as increasing punishment or withholding lenience. If the sentence is within statutory limits, if the defendant has had the opportunity to cooperate and if he has had the opportunity to plead any applicable constitutional privilege or present any mitigating information that he may possess to the District Court, and if he doesn't take any of these actions, his uncooperative conduct is properly judged at face value along with the other information available to the judge. It sheds light on the question of whether the defendant is willing to recognize the obligations of community life and whether he continues to pose a threat to the community.

QUESTION: Mr. Shapiro, let me just think through again the Fifth Amendment point. Are you saying that -- you are not saying, I take it, that he must plead the Fifth Amendment when he's being interviewed by the prosecutor before the sentencing hearing?

MR. SHAPIRO: Not at all.

QUESTION: You are saying at the time of the sentencing hearing he has to tell the judge that the reason

he previously did not cooperate was because of a Fifth Amendment concern.

MR. SHAPIRO: That's correct. Our point is that when the judge is considering these factors and petitioner's counsel is adverting to them before the court, he has a duty to at least advise the court that this is an impermissible factor because of the Fifth Amendment. Counsel is there for that very purpose, to raise constitutional or any other legal objections to these considerations.

As the Court reaffirmed in the case of Dorszynski v. United States, "If there is one rule in the federal criminal practice which is firmly established, it is that the Appellate Court has no control over a sentence which is within the limits allowed by statute." This Court has applied that rule in narcotics cases where substantial consecutive sentences were imposed by the court. The Gore case and the Blockburger case are examples.

The Senate imposed by Judge Pratt fell squarely within the limits prescribed by Congress; limits that Congress contemplated would provide maximum flexibility to the judge, permitting him to tailor the period of imprisonment as well as the fine to the circumstances of the particular case.

From a common sense point of view, the sentence imposed within these limits was not a severe or a

disproportionate one. Judge Pratt required petitioner to serve only two years before becoming eligible for parole and he declined to impose any fine of any kind. For a convicted heroin dealer who was already on parole for a prior conviction for bank robbery, this we submit was a very lenient sentence. In our view, there is nothing here that would tempt an appellate tribunal to disturb the sentence imposed by the District Court.

For these reasons, we respectfully request that the decision of the court below be affirmed.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Do you have anything further, Mr. Palmer?

ORAL ARGUMENT OF ALLAN M. PALMER, ESQ.,

ON BEHALF OF THE PETITIONER -- REBUTTAL

MR. PALMER: Just briefly, Mr. Chief Justice and members of the Court:

Counsel's waiver argument bears no relationship to the facts for this reason: From the first day the petitioner walked into the government's office, he was advised of his Miranda rights and he refused to testify or cooperate. This Court had said that refusal or silence is an indication that the man intends to rely on his Fifth Amendment rights. He did that for three years throughout these proceedings. Never until the day of sentencing did

the government ever urge lack of cooperation as a sentencing factor, therefore there was no reason for the defense or the petitioner to urge it because the government had never alleged it, and that is the reason why the issue came up for the first time on appeal after the judge had injected it into the case.

QUESTION: The statement you referred to was made in the context of the person being interrogated after arrest and while in custody, was it not?

MR. PALMER: No, Your Honor.

QUESTION: The interrogation was stopped as soon as he indicates that he doesn't want to talk? Isn't that the context of that statement?

MR. PALMER: The statement of Miranda?

QUESTION: Yes.

MR. PALMER: Well, Miranda dealt in that sense but in any event, regardless of whether he is under arrest or not, if he is warned and relies on that warning to refrain from saying anything, whether you say he is in custody or not, the result is the same as we see it.

Thank you.

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

(Whereupon, at 10:36 o'clock a.m., the case in the above-entitled matter was submitted.)