

The Burger Court Opinion Writing Database

Williams v. United States

401 U.S. 646 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 23, 1971

Dear John:

In your circulation of
January 27, 1971, you combine
Nos. 81, 82, 5, and 36.

I am out of Nos. 81 and 82,
but I am taking part in Nos. 5 and
36.

Would it be inconvenient to
you to put this group into two
separate opinions?


William O. Douglas

Mr. Justice Harlan

to: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

SUPREME COURT OF THE UNITED STATES.

ES: Harlan, J.

JAN 27 1971

Nos. 81, 82, 5, AND 36.—OCTOBER TERM, 1970

Generalized

Recirculated:

Clarence Williams, Petitioner, v.

81

United States.

Joseph Elkanich, Petitioner,

82 *v.*

United States.

United States, Petitioner,

5 *v.*

United States Coin and Currency, Etc.

Fred T. Mackey, Petitioner.

36 *W. J. MacKenzie*

United States

On Writs of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

On Writs of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

[February —, 1971]

MR. JUSTICE HARLAN, concurring in part and dissenting in part.

These four cases have one question in common: the extent to which new constitutional rules prescribed by this Court for the conduct of criminal cases are applicable to other such cases which were litigated under different but then prevailing constitutional rules.

Two of these cases are before us on direct review, No. 81, *Williams* and No. 5, *Coin and Currency*, the other two being here on collateral review, No. 82, *Elkanich* and No. 36, *Mackey*. In each instance the Court holds that the new rule is not applicable, and hence affirms the judgments below without reaching the merits of the underlying questions presented. Two of the cases, *Wil-*

STYLISTIC CHANGES THROUGHOUT. SEE PAGES: 2, 14, 21, 33

5th DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

Nos. 81, 82, 5, AND 36.—OCTOBER TERM, 1970 Circulated:

Recirculated: **FEB 5 1971**

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
Joseph Elkanich, Petitioner, 82	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
United States, Petitioner, 5	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.
United States Coin and Currency, Etc.		
Fred T. Mackey, Petitioner, 36	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit.
United States.		

[February —, 1971]

MR. JUSTICE HARLAN, concurring in part and dissenting in part.

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 2, 6, 7, 10, 14-15, 18,
19, 22, 23, 25-28.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

6th DRAFT

SUPREME COURT OF THE UNITED STATES. ^{From} Harlan, J.

From Harlan, J.

Nos. 81, 82, AND 36.—OCTOBER TERM, 1970

Recirculated:

MAR 31 1971

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
Joseph Elkanich, Petitioner, 82	<i>v.</i>	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
United States.		
Fred T. Mackey, Petitioner, 36	<i>v.</i>	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
United States.		

[April —, 1971]

MR. JUSTICE HARLAN, concurring in Nos. 36 and 82 and dissenting in No. 81.

These three cases have one question in common: the extent to which new constitutional rules prescribed by this Court for the conduct of criminal cases are applicable to other such cases which were litigated under different but then prevailing constitutional rules.

One of these cases is before us on direct review, No. 81, *Williams*, the other two being here on collateral review, No. 82, *Elkanich*, and No. 36, *Mackey*. In each instance the Court holds that the new rule is not applicable, and hence affirms the judgments below without reaching the merits of the underlying questions presented. Two of the cases, *Williams* and *Elkanich*, involve the Court's decision in *Chimel v. California*, 395 U. S. 752 (1969), changing the rule as to the scope of permissible searches and seizures incident to a lawful

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

7th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

Nos. 81, 82, AND 36.—OCTOBER TERM, 1970. Circulated:

Recirculated: APR 1 1971

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
Joseph Elkanich, Petitioner, 82	<i>v.</i>	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
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[April —, 1971]

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These three cases have one question in common: the extent to which new constitutional rules prescribed by this Court for the conduct of criminal cases are applicable to other such cases which were litigated under different but then prevailing constitutional rules.

One of these cases is before us on direct review, No. 81, *Williams*, the other two being here on collateral review, No. 82, *Elkanich*, and No. 36, *Mackey*. In each instance the new rule is held not applicable, and, in consequence, judgments below are affirmed, without reaching the merits of the underlying questions presented. Two of the cases, *Williams* and *Elkanich*, involve the Court's decision in *Chimel v. California*, 395 U. S. 752 (1969), changing the rule as to the scope of permissible searches and seizures incident to a lawful

*Circulated
2-5-71*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner,	
81	<i>v.</i>
	United States.
Joseph Elkanich, Petitioner,	
82	<i>v.</i>
	United States.

On Writ of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[February —, 1971]

MR. JUSTICE BRENNAN, concurring.

Chimel v. California, 395 U. S. 752 (1969), applied principles established by a long line of cases¹ to determine the permissible scope of a warrantless search sought to be justified as the necessary incident of a lawful arrest. But in applying these principles to the circumstances involved in *Chimel*, we were compelled to overrule *Harris v. United States*, 331 U. S. 145 (1947), and *United States v. Rabinowitz*, 339 U. S. 56 (1950). *Harris* and *Rabinowitz* were founded on “little more than a subjective

¹ Our cases have settled the proposition that the Fourth Amendment requires agents of the Government to obtain prior judicial approval of all searches and seizures, see, *e. g.*, *Davis v. Mississippi*, 394 U. S. 721, 728 (1969); *Katz v. United States*, 389 U. S. 347, 356–357 (1967); *James v. Louisiana*, 382 U. S. 36 (1965); *Preston v. United States*, 376 U. S. 364, 368 (1964); *McDonald v. United States*, 335 U. S. 451, 455–456 (1948); *Agnello v. United States*, 269 U. S. 20, 33 (1925), subject only to a few narrow and well-delineated exceptions grounded upon urgent necessity. *Terry v. Ohio*, 392 U. S. 1, 16–27 (1968); see *Katz v. United States, supra*, at 357 n. 19 and cases cited; cf. *Chambers v. Maroney*, 399 U. S. 42 (1970). And in all events, “[t]he scope of [a] search must be ‘strictly tied to and justified by’ the circumstances which rendered its initiation permissible.” *Terry v. Ohio, supra*, at 19, quoting *Warden v. Hayden*, 387 U. S. 294, 310 (1967) (concurring opinion).

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
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United States.		

[April —, 1971]

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner, 81 v. United States.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Joseph Elkanich, Petitioner, 82 v. United States.	

[April —, 1971]

MR. JUSTICE BRENNAN, concurring.

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1970

81 & 82 - Williams v. United States

Dear Byron,

I should appreciate your adding the following at the foot of your opinions for the Court in these cases:

While joining the opinion of the Court, MR. JUSTICE STEWART would also affirm the judgment in No. 82, Elkanich v. United States, on the alternative ground that the issue presented is not one cognizable in a proceeding brought under 28 U.S.C. §2255. See Harris v. Nelson, 394 U.S. 286, 307 (dissenting opinion); Kaufman v. United States, 394 U.S. 217, 242 (dissenting opinion); Chambers v. Maroney, 399 U.S. 42, 54 (concurring opinion).

Sincerely yours,

P.S.
1/

Mr. Justice White

Copies to the Conference

To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun

2

From: White, J.

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Recirculated: 12-17-70

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Joseph Elkanich, Petitioner, 82	<i>v.</i>	
	United States.	
	United States.	

[December —, 1970]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the habeas corpus proceeding initiated by petitioner Elkanich.

I

In No. 81, federal agents on March 31, 1967, secured a warrant to arrest petitioner Williams on charges of selling narcotics in violation of 18 U. S. C. § 174. Williams was arrested at his home that night. A quantity of heroin was discovered and seized in the course of a search incident to the arrest. The trial court sustained the search and the heroin was introduced in evidence. Williams was convicted and sentenced to a 10-year prison term. The judgment of conviction was affirmed by the Court of Appeals for the Ninth Circuit. *Williams v. United States*, 418 F. 2d 159 (CA9 1969). That court held (1) that our intervening decision in *Chimel v.*

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice ~~Brennan~~
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

3

From: White, J.

SUPREME COURT OF THE UNITED STATES¹

Recirculated: 1-6-71

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner,

81

United States.

Joseph Elkanich, Petitioner,

82 *v.*

United States.

On Writ of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[January —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the collateral proceeding initiated by petitioner Elkanich.

I

In No. 81, federal agents on March 31, 1967, secured a warrant to arrest petitioner Williams on charges of selling narcotics in violation of 18 U. S. C. § 174. Williams was arrested at his home that night. A quantity of heroin was discovered and seized in the course of a search incident to the arrest. The trial court sustained the search and the heroin was introduced in evidence. Williams was convicted and sentenced to a 10-year prison term. The judgment of conviction was affirmed by the Court of Appeals for the Ninth Circuit. *Williams v. United States*, 418 F. 2d 159 (CA9 1969). That court held (1) that our intervening decision in *Chimel v.*

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr.~~ Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

4

From: White, J.

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Recirculated: 1-11-71

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
Joseph Elkanich, Petitioner, 82	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		

[January —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the collateral proceeding initiated by petitioner Elkanich.

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In No. 81, federal agents on March 31, 1967, secured a warrant to arrest petitioner Williams on charges of selling narcotics in violation of 18 U. S. C. § 174. Williams was arrested at his home that night. A quantity of heroin was discovered and seized in the course of a search incident to the arrest. The trial court sustained the search and the heroin was introduced in evidence. Williams was convicted and sentenced to a 10-year prison term. The judgment of conviction was affirmed by the Court of Appeals for the Ninth Circuit. *Williams v. United States*, 418 F. 2d 159 (CA9 1969). That court held (1) that our intervening decision in *Chimel v.*

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
~~✓~~ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

pp 2-3, 10

5th DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated: 1-25-71

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner,)

81

United States.

Joseph Elkanich, Petitioner,

82

United States.

On Writs of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[February —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the collateral proceeding initiated by petitioner Elkanich.

I

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pp 8-13

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

6th DRAFT

From: White, J.

Circulated:

Recirculated: 2-2-71

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
Joseph Elkanich, Petitioner, 82	<i>v.</i>	
United States.		

[February —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

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pp 9, 10, 13 Minor changes: primarily
in page cites to JMT Dissent

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

7th DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Nos. 81 AND 82.—OCTOBER TERM, 1970

Recirculated: 2-5-71

Clarence Williams, Petitioner, 81 v. United States.	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Joseph Elkanich, Petitioner, 82 v. United States.	

[February 1, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the collateral proceeding initiated by petitioner Elkanich.

I

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1, 4, 10, 11

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

From: White, J.

8th DRAFT

Circulated:

Recirculated: 3-27-71

SUPREME COURT OF THE UNITED STATES¹

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner, 81	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		
Joseph Elkanich, Petitioner, 82	<i>v.</i>	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
United States.		

[March —, 1971]

MR. JUSTICE WHITE announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN join.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the collateral proceeding initiated by petitioner Elkanich.

I

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Minor stylistic changes

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr.~~ Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

From: White, J.

9th DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Recirculated: 3-31-71

Nos. 81 AND 82.—OCTOBER TERM, 1970

Clarence Williams, Petitioner,|

81 *v.*

United States.

Joseph Elkanich, Petitioner,

82

United States

On Writs of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[April —, 1971]

MR. JUSTICE WHITE announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN join.

The principal question in these cases is whether *Chimel v. California*, 395 U. S. 752 (1969), should be applied retroactively either to the direct review of petitioner Williams' conviction or in the collateral proceeding initiated by petitioner Elkanich.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1971

MEMORANDUM TO THE CONFERENCE

This supplements the previous memorandum with respect to the cases held for Elkanich and Williams.

D No. 5187, Arriaga v. California. Having looked further at this case, arguably enough occurred at the front door to give the officers probable cause to arrest and enter.

6 No. 5721, Johnson v. Illinois. This case has the issue of limiting Wade-Gilbert to post-indictment lineups. No. 6401, Kirby v. Illinois, has the same issue. My dissent to denial of cert is in the mill.

The following cases were not covered by the previous memorandum:

⑨ No. 5113, Castillo v. California. Direct review with only Chimel retroactivity presented. Deny.

⑩ No. 5484, Smith v. Brantley. Collateral review. Wallet taken from wounded defendant prior to arrest. Search of wallet at station after arrest of defendant who was then in hospital revealed his own handwritten, incriminating notes. Query.

⑪ No. 5849, Pino v. United States. Direct review. To extent case rests on Chimel, it should be denied. But probable cause to arrest itself arguably arose from Fourth Amendment violation--peering into bathroom window from back porch railing of an apartment building and listening at apartment door. All pre-Katz. CA 2 apparently rejected the claim. I would deny.

⑫ No. 6051, Sutton v. United States. Direct review. Pre-Chimel search of accomplice's apartment. Deny on

-2-

Williams and Alderman. Issues re right to counsel at removal hearing, delayed arraignment and denial of preliminary hearing seem uncertworthy. Deny.

D No. 6090, Oliva v. United States. Direct review. Pre-Chimel search incident to probable cause arrest. Deny.

B.R.W.
B.R.W.

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES.

Nos. 81 AND 82.—OCTOBER TERM, 1970

Recirculated:

Clarence Williams, Petitioner,	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
81 <i>v.</i> United States.	
Joseph Elkanich, Petitioner,	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.
82 <i>v.</i> United States.	

[March —, 1971]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

After studying afresh the pattern of the Court's retroactivity decisions since *Linkletter v. Walker*, 381 U. S. 618 (1965), I conclude that a decision of this Court construing the Constitution should be applied retroactively to all cases involving criminal convictions not yet final at the time our decision is rendered. Sound jurisprudential reasoning, so well articulated by MR. JUSTICE HARLAN in his separate opinion covering the present cases, in my view requires that cases still on direct review should receive full benefit of our supervening constitutional decisions. I am persuaded that willingness to tolerate the inevitable costs and anomalies of the Court's current approach to retroactivity is incompatible with the judicial duty of principled review of convictions not yet final.

I disagree somewhat with MR. JUSTICE HARLAN as to the proper approach to retroactivity for cases arising on habeas corpus or other modes of collateral attack. In such cases I believe it is best to employ the three-part analysis that the Court undertakes today in deciding the retroactivity of the rule in *Chimel v. California*, 395 U. S.

February 10, 1971

Re: No. 81 - Williams v. United States
No. 82 - Elkanich v. United States

Dear Byron:

I believe that the correct volume of U.S.C., cited in the third line of Part I of your opinion, is 21 rather than 18. Mr. Putzel's office, of course, would catch this. I mention it now because you may wish to bring it into line with the citation on page 2.

Sincerely,

HAB

Mr. Justice White

February 10, 1971

Re: No. 81 - Williams v. United States
No. 82 - Elkanich v. United States

Dear Byron:

Please join me in the opinion you have prepared for these cases.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference