

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE

**THE SUPREME COURT  
OF THE  
UNITED STATES**

CAPTION: GREGORY P. WARGER, Petitioner v. RANDY D.  
SHAUERS.  
CASE NO: No. 13-517  
PLACE: Washington, D.C.  
DATE: Wednesday, October 8, 2014  
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IN THE SUPREME COURT OF THE UNITED STATES

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GREGORY P. WARGER, :

Petitioner :

v. : No. 13-517

RANDY D. SHAUERS. :

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Washington, D.C.

Wednesday, October 8, 2014

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:06 a.m.

APPEARANCES:

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P R O C E E D I N G S

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll here argument next in case 13-517, Warger v. Shauers.

Mr. Shanmugam.

ORAL ARGUMENT OF KANNON K. SHANMUGAM

ON BEHALF OF THE PETITIONER

MR. SHANMUGAM: Thank you, Mr. Chief Justice, and may it please the Court:

In McDonough v. Greenwood, this Court held that a party is entitled to a new trial where it can show that a juror was materially dishonest at voir dire, regardless of whether the juror's dishonesty actually infected the verdict.

A McDonough claim is thus an inquiry into the composition of the jury. It is not an inquiry into the validity of the verdict. And for that reason, Federal Rule of Evidence 606(b) unambiguously permits the introduction of testimony about statements made during deliberations in support of a McDonough claim.

JUSTICE KENNEDY: But -- but wasn't that a case in which a third party came and gave the information?

MR. SHANMUGAM: That is correct. And so we are certainly not arguing that McDonough itself resolved

1 the question of the scope of Rule 606(b). But we do  
2 think the nature of the McDonough inquiry is really  
3 critical here in determining whether Rule 606(b)  
4 applies.

5 And in particular we think that the critical  
6 fact is that McDonough in no way requires an inquiry  
7 into what actually took place in the jury room. It is,  
8 as we say in the briefs, a type of structural error.  
9 And by that, I mean that it has no prejudice component.

10 And in that regard it is critically  
11 different from other types of claims, such as a claim of  
12 outright jury bias, where prejudice is required. And  
13 it's really for that reason that we think Rule 606(b)  
14 unambiguously permits evidence of this variety to be  
15 admitted.

16 JUSTICE GINSBURG: I thought that the whole  
17 rationale behind this is we don't want to invade the  
18 jury province with information about what went on in the  
19 jury room. And that's a pretty old rule. And some  
20 people might think it makes no sense. You can have an  
21 eavesdropper, and that's okay, but you can't have a  
22 juror itself.

23 So this, what's involved here is a juror  
24 reporting what she heard during the deliberations. And  
25 it seems to me that's exactly the kind of thing that is

1 not permitted.

2 MR. SHANMUGAM: Justice Ginsburg, we're  
3 certainly talking about statements made during  
4 deliberations, and we are not disputing that this is the  
5 type of evidence that is subject to the rule. Our  
6 argument concerns the first requirement of Rule 606(b),  
7 which goes to the type of inquiry during which evidence  
8 that is otherwise covered by the rule would be  
9 admissible. And I do think that Rule 606(b) embodies a  
10 balance. It isn't simply about the countervailing  
11 policy concerns, which Respondent and the government  
12 understandably emphasize, of finality and jury secrecy.

13 There is, of course, a countervailing  
14 concern here about fairness. That is, after all, the  
15 principal concern on which the rule of McDonough itself  
16 was based.

17 JUSTICE GINSBURG: But it's too easy to  
18 convert anything that occurs in the jury room as  
19 reflecting on the voir dire. So the judge instructs the  
20 jury. Can you follow my instructions? Oh, yes, I can  
21 follow my instructions. In the jury room, that juror  
22 says: Oh, come on, let's just average it all up and go  
23 home. Didn't -- didn't follow instructions. On your  
24 theory that could come in, because it goes to dishonesty  
25 at the voir dire stage.

1                   MR. SHANMUGAM: So two responses to that,  
2 Justice Ginsburg. First of all, as we point out in our  
3 reply brief, our rule has been the rule, both on the  
4 Federal level and on the State level, in numerous  
5 jurisdictions. And we would respectfully submit that  
6 there is really no evidence of the floodgates problem  
7 that Respondents suggest will follow if this Court  
8 adopts our interpretation.

9                   JUSTICE GINSBURG: Well, perhaps if you  
10 prevail. Why not?

11                   MR. SHANMUGAM: Well, that goes to my second  
12 response, which is that I think that it is going to be  
13 very difficult in the hypothetical you posit for a party  
14 to make out a successful McDonough claim. And that is  
15 simply because the requirements of McDonough are in fact  
16 quite stringent.

17                   And in particular, the first requirement of  
18 McDonough is that the moving party must show that the  
19 response was intentionally dishonest. And by that, I  
20 think that the Court really meant intentionally  
21 dishonest at the time of the voir dire. So to take the  
22 hypothetical that the government uses in its brief --

23                   JUSTICE ALITO: I think you're missing the  
24 point of Justice Ginsburg's question. The question is  
25 not whether the McDonough claim ultimately would

1 prevail. The question is whether the testimony from  
2 jurors about what went on in the jury room is going to  
3 be solicited in an effort to prove a McDonough claim.

4 MR. SHANMUGAM: Well --

5 JUSTICE ALITO: And I guess your answer to  
6 -- what's implicit in what you're saying is that it  
7 would be permissible to receive that testimony in that  
8 situation.

9 MR. SHANMUGAM: Well, Justice Alito, I think  
10 there are two separate issues here. The first is the  
11 concern about undue solicitation. And as we have  
12 explained, there are a variety of rules that I think  
13 impose appropriate limits on a lawyer's ability to go  
14 out and get evidence of this variety. And of course  
15 lawyers always have an incentive to talk to jurors if  
16 they are able to do so.

17 Our point is simply that, to the extent a  
18 concern raised about harassment of jurors, that is  
19 already dealt with, and appropriately so, by governing  
20 rules.

21 Now, I think Justice Ginsburg's question --

22 CHIEF JUSTICE ROBERTS: I'm sorry. I didn't  
23 follow that. You said lawyers always have an interest  
24 in talking to -- what's to prevent them if the payoff  
25 could be as significant as you're looking for.

1                   MR. SHANMUGAM: Well, I think at a minimum,  
2 Mr. Chief Justice, lawyers certainly would have that  
3 incentive, even if we were to lose this case, because in  
4 talking to jurors, that conversation could very well  
5 lead to evidence that unquestionably would be  
6 admissible, because, after all, a party can always make  
7 a McDonough claim based on extrinsic evidence.

8                   And so, for instance, if in fact a juror had  
9 posted something on Facebook that indicated that the  
10 juror had been dishonest at voir dire, there's really no  
11 debate that that would be admissible.

12                   But to go to Justice Ginsburg's question,  
13 really sort of the second part of this, I think it's  
14 important to remember that the mere fact that the  
15 evidence is admissible under Rule 606(b) is not the end  
16 of the inquiry. The evidence still has to be probative  
17 and probative with regard to the requirements of  
18 McDonough.

19                   And I think perhaps the best example that I  
20 would give is actually an example that the government  
21 uses in its brief, the example of the situation where  
22 the jurors go back into the jury room and they flip a  
23 coin in order to resolve the case.

24                   Now, the government suggests that perhaps a  
25 party could seek to use that as evidence that the jurors

1 were in fact dishonest when they said that they could be  
2 fair and impartial at the time of voir dire. But if so,  
3 that is pretty weak evidence of that for the simple  
4 reason that the requisite showing under McDonough is  
5 that the juror intended to be dishonest at the time of  
6 voir dire.

7                   And in the coin flip hypothetical, it might  
8 very well have been that the jurors flipped a coin  
9 because they were frustrated with their inability to  
10 reach a decision. They may have wanted to go watch the  
11 football game. There any number of reasons. But that  
12 is not really very strong evidence of intentional  
13 dishonesty at the time of voir dire. I think this  
14 case --

15                   JUSTICE GINSBURG: But what is the strong  
16 evidence of intentional dishonesty in this case? The  
17 woman says: I can judge this case fairly, I can award  
18 damages. And one of the other things that the judge  
19 instructs the jury: You can take account of your own  
20 life experience.

21                   What is so blatant about that? How do we  
22 infer that she intended to be dishonesty at the time of  
23 the voir dire?

24                   MR. SHANMUGAM: Well, again, I think that  
25 this really goes to the requirements of McDonough as

1 opposed to the interpretation of Rule 606(b). But I  
2 think that there's a meaningful difference between a  
3 juror simply bringing personal experiences to bear on  
4 the one hand and a juror doing so in a way that  
5 indicates that the juror was, as was true in this case,  
6 simply unwilling to award damages to Petitioner in a  
7 case of this variety.

8           And I think it's important to underscore the  
9 extent that the facts of this case shed some light on  
10 the legal question. But this is not simply a case about  
11 a question involving fairness and impartiality. There  
12 were also questions asked about whether the jurors would  
13 be willing to award damages of various types in a case  
14 of this variety.

15           And to point to the evidence of dishonesty  
16 in the record at pages 40a, to 41a of the petition,  
17 Juror Titus said that Juror Whipple said in the  
18 discussions that if her daughter had been sued for the  
19 accident for which she was responsible, it would have  
20 ruined her life.

21           In our view, that is evidence that the juror  
22 was unwilling to follow the instructions and to apply  
23 the law to the facts. And we believe that it also  
24 strongly supports the inference that the juror was  
25 dishonest at the time of voir dire when she answered --

1 CHIEF JUSTICE ROBERTS: Well, it's pretty  
2 ambiguous. She said if -- if she had been sued, she  
3 would have to pay a lot of damages, right? Well, this  
4 guy has been sued. I mean, I don't know that you can  
5 just take that and says that means she's not going to  
6 award a judgment in favor of the -- of the plaintiff.

7 MR. SHANMUGAM: Well, she said it would have  
8 ruined her life if she had been sued. And to be fair,  
9 this is obviously not smoking gun evidence. This is not  
10 a situation where the juror comes into the jury room and  
11 says, look, I really lied when I answered those  
12 questions at voir dire.

13 It is inferential evidence, and it will be a  
14 matter for Judge Viken on remand if this Court agrees  
15 with our interpretation to determine first of all  
16 whether this affidavit is in fact probative evidence of  
17 intentional dishonesty, and second --

18 CHIEF JUSTICE ROBERTS: I guess the reason I  
19 ask is precisely for that reason. In other words, it's  
20 a fairly broad inquiry. The circumstances in which you  
21 would allow an inquiry are fairly broad. It's not  
22 simply when there's a smoking gun, but a very debatable  
23 point about, well, she -- she didn't want to award  
24 damages because if her daughter had been sued it would  
25 ruin her life, as opposed to, well, she realized there'd

1 be a lot of damages here because the guy was sued.

2 MR. SHANMUGAM: And again, that really goes  
3 to the application of the McDonough standard. And we've  
4 now had 30 years of experience with the McDonough  
5 standard. This is not a recent decision of this Court.

6 JUSTICE SCALIA: But McDonough did not  
7 have -- my problem is not -- is not that, the difficulty  
8 of proving that it did demonstrate dishonesty during the  
9 voir dire. My problem is what you also have to  
10 establish, namely that this does not constitute an  
11 inquiry into the validity of a verdict or indictment.

12 MR. SHANMUGAM: Well, thank you, Justice  
13 Scalia, because this is obviously --

14 JUSTICE SCALIA: Look at 606(b)(1), and why  
15 are you raising this issue? Because you want to set  
16 aside the verdict, right?

17 MR. SHANMUGAM: Well, this is obviously a  
18 case about the interpretation of that language.

19 JUSTICE SCALIA: Right.

20 MR. SHANMUGAM: But I think it's critical to  
21 realize that that language does not simply refer to any  
22 challenge to the verdict. It refers to inquiries into  
23 the validity of the verdict. And in our view, that  
24 language unambiguously --

25 JUSTICE SOTOMAYOR: Except -- why -- why

1 would you have an inquiry into the validity of the  
2 verdict absent juror misconduct? You're not going to  
3 use that statement in any other part of your case.

4 MR. SHANMUGAM: But the critical point,  
5 Justice Sotomayor, is that that language focuses on the  
6 inquiry and it focuses on the substantive inquiry  
7 mandated by the claim at issue.

8 And again, as I indicated at the outset, a  
9 claim of juror dishonesty during voir dire does not  
10 require any examination of the verdict itself. It does  
11 not depend in any way on what took place in the jury  
12 room. And it's really for that reason that we think  
13 that a McDonough claim is qualitatively different from a  
14 claim --

15 JUSTICE KAGAN: I guess I don't understand  
16 that, Mr. Shanmugam. I mean, one reason that a verdict  
17 can be invalid has to do with what happens in the jury  
18 room. And another reason why a verdict can be invalid  
19 might have to do with the composition of the jury  
20 itself.

21 And why we should read that language to  
22 include the first but not the second I guess I'm just  
23 not getting as a matter of language.

24 MR. SHANMUGAM: Sure. Well, I do think that  
25 you have to give meaning to every word in this

1 provision. And I really do think that this provision is  
2 different from a provision that just refers to  
3 challenges to the verdict. And it certainly it true  
4 that in this case, as in many others, we are seeking as  
5 the remedy on our McDonough claim a new trial. And a  
6 component of that, once a verdict has been reached, is  
7 obviously that the verdict should be set aside.

8 In other words, I'm not disputing the  
9 proposition that our purpose here is to obtain a new  
10 trial, and of course, therefore, to set aside the  
11 verdict that has already been reached.

12 My point is simply that a McDonough claim in  
13 no way turns on the manner in which the jury has reached  
14 the verdict.

15 JUSTICE KAGAN: I know, but -- so maybe  
16 we're just going back and forth here. But an inquiry  
17 into the validity of the verdict means asking the  
18 question, is the verdict valid? And the question, is  
19 the verdict valid, can have answers that refer either to  
20 the deliberative process itself or to the composition of  
21 the jury.

22 MR. SHANMUGAM: But that is not the question  
23 that a McDonough claim asks. And I think the best  
24 evidence of that is that I think it's really undisputed  
25 that a McDonough claim can be brought even before a

1 verdict has been reached.

2 JUSTICE KENNEDY: I haven't -- I haven't  
3 quite counted, but you keep saying the McDonough claim.  
4 If you read the McDonough case, Chief Justice Rehnquist  
5 does not cite Rule 606. He does not cite. I think I'm  
6 correct.

7 MR. SHANMUGAM: You're absolutely correct.

8 JUSTICE KENNEDY: And so you want to tell  
9 us, don't look at Rule 606. Just look at McDonough.  
10 That's what you're telling us. It's a whole --

11 MR. SHANMUGAM: I am eager for you to look  
12 at the language of Rule 606 because I think it supports  
13 our position. The only reason that we're talking about  
14 McDonough at all is because Rule 606 requires you to  
15 look at the type of inquiry that the claim at issue  
16 mandates. And I think in many ways this nature --

17 JUSTICE KENNEDY: But it also requires you  
18 to look at who is producing the evidence. And here, the  
19 juror is producing the evidence and McDonough was a  
20 third person. It's different.

21 MR. SHANMUGAM: Well, the rest of Rule  
22 606(b) is, of course, all about that, because it is all  
23 about the type of evidence that is subject to exclusion.  
24 And again, there's no debate that that portion of the  
25 rule sweeps quite broadly and would otherwise include

1 the evidence at issue here.

2 Our point is simply that a McDonough claim  
3 is a type of structural error and I think that that  
4 points up the --

5 JUSTICE GINSBURG: But you're taking a case  
6 that had nothing to do with a juror testifying about  
7 what -- what -- the deliberations in the jury room. I  
8 think you're using the case for much more than it's  
9 worth, much more than the opinion writer put into it.  
10 It just didn't present the question of what about a  
11 juror testifying about the deliberations in the jury  
12 room.

13 MR. SHANMUGAM: But, Justice Ginsburg, I do  
14 think that the nature of a McDonough claim points up one  
15 of the oddities of Respondent's position, which is that  
16 there's really no dispute that if a McDonough claim is  
17 brought before a verdict has been reached, that  
18 evidence -- even evidence from the jury room would be  
19 admissible. And so, for instance, if a juror came  
20 forward before the jury actually completed its  
21 discussions and reached a verdict, I think there's no  
22 dispute here -- at least I don't see any dispute in the  
23 briefs -- that that evidence would be admissible.

24 And so, too, of course, in Clark, this Court  
25 held that evidence of this variety would be admissible

1 in a contempt proceeding after the verdict has been  
2 reached. And so --

3 JUSTICE ALITO: This is what troubles me  
4 about your -- your argument. I suspect, maybe I'm wrong  
5 and you tell me if I am, that in a case where there's a  
6 lot at stake, a really good lawyer loses a case and  
7 there was a lot on the line. And let's suppose this  
8 lawyer gets a transcript of what was said in the jury  
9 room. Do you think it is going to be very hard for the  
10 lawyer to find something that some juror said that can  
11 be used to make out a somewhat plausible claim that  
12 the -- that the juror was dishonest during voir dire?  
13 The juror promises during voir dire to be fair, and it  
14 appears from this transcript the lawyer was for the  
15 plaintiff or for the defendant from the first minute of  
16 deliberations. Or the juror says, I will follow the  
17 jury instructions. And then at some point, the juror is  
18 making an argument that's inconsistent with the jury  
19 instructions. Do you see the problem?

20 MR. SHANMUGAM: I -- I see the problem. I  
21 would just respectfully submit, Justice Alito, that it  
22 hasn't proven to be a problem in practice. And as we  
23 note in our reply brief, this has been the rule in the  
24 Ninth Circuit, it's been the rule in the nation's  
25 largest State jurisdiction, California, for decades.

1 And yet in those jurisdictions, there is less than one  
2 decision per year that we've been able to find involving  
3 a McDonough claim based on this type of evidence.

4 And, of course, as we -- I was just going to  
5 say, one last thing, Justice Alito, which is that, of  
6 course, as we also point out, our rule was, if anything,  
7 the prevailing rule at common law even before the  
8 enactment of Rule 606(b) and there's no evidence that  
9 there was a floodgates problem at common law either.

10 CHIEF JUSTICE ROBERTS: Is -- under your  
11 reading of 606(b), is there anything that is an inquiry  
12 into the validity of a verdict other than a motion to  
13 set aside the verdict?

14 MR. SHANMUGAM: Well, I think that there  
15 might be certain types of claims of which prejudice is a  
16 component. And certainly, if you brought a motion that  
17 was based on pure juror bias of the type that was at  
18 issue in cases such as Remmer v. United States and Smith  
19 v. Phillips --

20 CHIEF JUSTICE ROBERTS: Well, what would --  
21 that motion would be presumably a motion to set aside  
22 the verdict.

23 MR. SHANMUGAM: I assume it would be framed  
24 that way rather than as a motion for a new trial.

25 CHIEF JUSTICE ROBERTS: The reason I ask is

1 because they don't say that. It seems to me a broader  
2 definition of any inquiry into the validity of a  
3 verdict. If they wanted to say, you know -- if they  
4 only meant a motion to set aside a verdict, you'd think  
5 they would have said that.

6 MR. SHANMUGAM: Yeah. I mean, I -- off the  
7 top of my head, I can't think of another type of motion  
8 for new trial that would be treated differently. But  
9 certainly, wherever the claim depends in any way on what  
10 took place in the jury room, the evidence would, of  
11 course, still be subject to the rule. And again, that  
12 sweeps in claims of juror bias, it sweeps in all of the  
13 types of claims about which the framers of Rule 606(b)  
14 were clearly concerned. Claims involving the manner in  
15 which the jury reached the verdict, claims involving  
16 compromised verdicts, quotient verdicts and the like.

17 And I think if anything, to the extent that  
18 the drafting history of Rule 606(b) is relevant, it  
19 tells us two things. First, there's no indication that  
20 the framers of the rule intended to disturb what was the  
21 prevailing practice at common law, particularly after  
22 this Court's decision in Clark. There is simply nothing  
23 in the history of the rule that suggests that. And if  
24 anything, I think that the history of the rule suggests  
25 that the central focus in framing the rule was on

1 excluding evidence concerning the manner in which the  
2 jury reached its verdict, and not evidence that was used  
3 to demonstrate that the jury was improperly constituted.

4           Now, again, because the rule focuses on the  
5 inquiry mandated by the claim at issue, we think that  
6 ours is the better textual interpretation. But at a  
7 minimum, if the Court thinks that the rule is somehow,  
8 by its terms, ambiguous, I would simply make two points.  
9 First, we do think that the canon of constitutional  
10 avoidance would apply in this context. At least one  
11 court of appeals has held that there would be a  
12 constitutional problem with excluding evidence in cases  
13 involving racial bias. We believe that there would be a  
14 serious constitutional concern. More generally, because  
15 the right to adequate voir dire is, as this Court has  
16 said, part of the right to trial by an impartial jury.

17           But even if the Court doesn't think that  
18 this is a matter for constitutional avoidance, we  
19 certainly think that there is a constitutionally based  
20 interest here. The interest in protecting a litigant's  
21 right to a fair trial. And we believe that that  
22 interest does outweigh the countervailing interest in  
23 finality in jury secrecy. Now, in Clark --

24           JUSTICE ALITO: A party has a right to a  
25 competent jury, doesn't it?

1 MR. SHANMUGAM: Yes, that is true.

2 JUSTICE ALITO: Constitutional right to  
3 that. And yet, you couldn't inquire -- we -- the Court  
4 has held that there can't be an inquiry into whether the  
5 jurors were intoxicated?

6 MR. SHANMUGAM: Well, that is true. But I  
7 think that the Court reached that conclusion based  
8 entirely on the outside influence exception. And I  
9 think part of the reason why that is true is that I  
10 think that the Court viewed the inquiry in that case in  
11 Tanner as requiring a showing of prejudice. In other  
12 words, I think that the Court was operating on the  
13 premise that the underlying claim there would require a  
14 showing that the drunkenness actually redounded to the  
15 moving party's prejudice.

16 My point is simply that when we're looking  
17 at the policy balancing that is required here, the  
18 better point of reference is this Court's decision in  
19 Clark where the Court suggested -- albeit in the context  
20 of contempt proceedings -- the concerns about fairness  
21 outweighed the litany of concerns about jury secrecy and  
22 harassment. And to be sure --

23 JUSTICE GINSBURG: That was leaving out the  
24 conspicuous difference, there was no jury verdict  
25 impugned in the contempt case.

1                   MR. SHANMUGAM: That is correct. Although  
2 the Court did indicate that its rule was consistent with  
3 the common law no impeachment rule. But I think with  
4 regard to the policy considerations, it certainly is  
5 true that this case is different because it does possess  
6 a final verdict. But I think with regard to finality, I  
7 would point to the experience in the jurisdictions that  
8 have adopted our rule, which confirms that if evidence  
9 of this variety is admissible, verdicts are only rarely  
10 set aside and that is because McDonough itself sets an  
11 appropriately high standard.

12                   And, of course, the only question before the  
13 Court in this case concerns the admissibility of this  
14 evidence. It would be open to the district court on  
15 remand to decide what to do with this evidence if it is  
16 admitted. Our submission is simply that Rule 606(b) by  
17 its terms permits the admission of this evidence because  
18 it is not being admitted in an inquiry into the validity  
19 of the verdict.

20                   And if I can reserve the balance of my time  
21 for rebuttal.

22                   CHIEF JUSTICE ROBERTS: Thank you, counsel.  
23                   Miss Birnbaum.

24                   ORAL ARGUMENT OF SHEILA L. BIRNBAUM  
25                   ON BEHALF OF THE RESPONDENT

1 MS. BIRNBAUM: Thank you, Your Honor. May  
2 it please the Court, Mr. Chief Justice:

3 What the Petitioner would do here is change  
4 the rules of 606 and how it would apply. 606 is clear.  
5 This Court has said its language is clear. What  
6 Petitioner does not emphasize is that what they did  
7 below was to make a motion for a new trial and to  
8 invalidate the verdict. The fact that the ground was  
9 dishonesty of the juror doesn't change anything from the  
10 Tanner case where the grounds for the new trial was that  
11 the jurors were drinking during the trial and during  
12 deliberations.

13 McDonough doesn't change the nature of  
14 606(b). All McDonough says, I think as you have pointed  
15 out, is that if there is inquiry, that inquiry would  
16 have to be such, but it does not tell you why it's  
17 admissible. And Rule 606 tells us what's admissible.  
18 And this, the Petitioner has conceded is not admissible.  
19 It is jury testimony of what happened during  
20 deliberations. So that's clear.

21 So what are we fighting about? We're  
22 fighting about what did Congress mean by during an  
23 inquiry into the validity of the verdict. This is an  
24 inquiry into the validity of the verdict. You can't  
25 just separate the grounds. What they want here is a new

1 trial and the verdict invalidated.

2 And so it falls exactly into 606(b), and the  
3 legislative history absolutely supports that. Congress,  
4 this Court made decisions and balanced the fairness on  
5 one hand of allowing in this testimony and problems  
6 about the sanctity of a jury trial and the entire  
7 structure of our judicial system. And to adopt  
8 Petitioner's analysis would put this all on its head.  
9 What would we have? I think we all know what we would  
10 have here. Every lawyer, good ones or bad ones, Your  
11 Honor, would try to ask generalized questions -- can you  
12 be fair -- and then wait and see what happens.

13 CHIEF JUSTICE ROBERTS: Your friend says  
14 that hasn't been the experience in a large portion of  
15 the country.

16 MS. BIRNBAUM: Well, that's not true  
17 because, first of all, my friend doesn't tell you that  
18 there are only five States that allow in this kind of  
19 evidence at all.

20 CHIEF JUSTICE ROBERTS: Is California one of  
21 them?

22 MS. BIRNBAUM: California is one of them.

23 CHIEF JUSTICE ROBERTS: Well --

24 MS. BIRNBAUM: But even in California, Your  
25 Honor, there are different requirements. These cases go

1 off -- I'll just give you a perfect example. He cites a  
2 bunch of cases in the Ninth Circuit that he says these  
3 are the cases that apply the rule. Well, they don't.  
4 Even the cases that they rely on from the Ninth Circuit,  
5 Henley and Hard, it is dicta in those cases that you can  
6 admit testimony on -- of a juror on what happened during  
7 deliberations if you're trying to determine whether  
8 there's dishonesty. In those cases themselves, that was  
9 not the holding of the case. There was dicta that says  
10 you should be able to do that, but the holdings of the  
11 case went off on extraneous prejudicial influences or  
12 extraneous prejudicial information.

13 And there are --

14 CHIEF JUSTICE ROBERTS: But your argument --  
15 your argument is this is going to be something lawyers  
16 are going to ask about in every case.

17 MS. BIRNBAUM: And they will --

18 CHIEF JUSTICE ROBERTS: It seems to me -- it  
19 seems to me if you're dealing with California, you would  
20 have a lot more evidence of that, since they operate  
21 under the rule that your friend is arguing for.

22 MS. BIRNBAUM: Well, they do and they don't,  
23 Your Honor. They -- you can introduce certain things in  
24 California, but you can't introduce the mental processes  
25 in California.

1           But the answer to that is we don't know  
2 what's happening in California. There is no -- no  
3 experience that anybody has about what's going on in  
4 California or how the courts are applying it. We didn't  
5 have an opportunity to respond to all those California  
6 cases, because they are only cited in the reply. But  
7 we've gone through all those cases and in many of those  
8 cases this kind of testimony was not let into evidence.

9           So we don't know what the experience was in  
10 California, but we do know what Congress said. And we  
11 do know what Congress had before them and what Congress  
12 wanted. Congress did the balancing here. Congress  
13 balanced the fairness of jurors, the fairness of a jury  
14 trial against all of the issues and policies of keeping  
15 the jury in a black box because it's good for the  
16 system. Without it, we couldn't function.

17           JUSTICE SOTOMAYOR: Ms. Birnbaum, what sense  
18 does it make to do what we did in Clark, which is to say  
19 you can invade the jury deliberations in a contempt  
20 proceeding. So that -- the jury is not sacrosanct. The  
21 court has already said that the proceeding for contempt  
22 doesn't involve the verdict and it's a criminal action,  
23 and not permit the use of that evidence in the civil  
24 trial.

25           The same thing will have happened in both

1 situations. The jury's sanctity has been invaded.

2 MS. BIRNBAUM: But, Your Honor, the reason  
3 that we allow it in a contempt proceeding is it doesn't  
4 affect the validity of the verdict. It doesn't go to  
5 what happened with regard to the verdict.

6 And the contempt proceedings are few and far  
7 between. Jurors aren't going to be harassed on a  
8 regular basis, and if you have a criminal contempt  
9 proceeding, you have a prosecutor who is going to make a  
10 determination and stand between the jurors and the --  
11 and the contempt proceeding before they will bring a  
12 contempt proceeding. We know how few these are.

13 Here we're talking about in every criminal  
14 case, in every important civil case, or not such an  
15 important civil case. This is a run-of-the-mill case we  
16 have here, a simple accident case.

17 JUSTICE GINSBURG: Is -- Ms. Birnbaum, is  
18 there no way, is there no way to police the honesty of  
19 jurors' answers on voir dire? This is an obvious way,  
20 if it were permissible, to police the honesty. But is  
21 there any other way?

22 MS. BIRNBAUM: Your Honor, in this case  
23 especially, and I'm not sure I'm answering your  
24 question, we could have had a different kind of voir  
25 dire. There was no -- there was no specific question

1 here: Has any member of your family or you been  
2 involved in an automobile accident? That was never  
3 asked of the jury. And bad if a juror lied about that;  
4 well, they could, or the juror could have said yes.  
5 Assuming there was -- assuming that the juror  
6 foreperson's daughter was involved in an auto accident,  
7 she could have said that, and they could have inquired.  
8 But they didn't do that.

9           And look at the gamesmanship that can be  
10 played with lawyers. They don't ask specific questions  
11 which they should to get to the right answers and to get  
12 to the right jurors in voir dire, and then they sit back  
13 and wait and game the system and see how the verdict  
14 comes back, talk to the jurors, and then they have a  
15 ground to set aside a verdict.

16           This is not what Congress wanted. That's  
17 not what the Supreme Court said should happen in Tanner.  
18 And the Petitioner here says under the common law, this  
19 was the rule. You could admit this kind of testimony.  
20 That's utterly untrue. In Tanner, this Court said under  
21 the common law, it is clear that you could not admit  
22 this evidence.

23           That was the majority rule. There was a  
24 minority rule. And you know what happened? When  
25 Congress looked at this issue, they adopted the majority

1 rule. They said the jury room is a black box except for  
2 certain extraneous influences, extraneous prejudicial  
3 information. This is not it. Doesn't fall within that  
4 category.

5 JUSTICE ALITO: And why not?

6 MS. BIRNBAUM: Because, Your Honor, this is  
7 generalized information. When we talk about extraneous  
8 prejudicial information, I think the case law is  
9 absolutely clear. It has to be about the case, about  
10 information that you put into the jury room about the  
11 defendant or about the incident, the accident.

12 If you went and looked at the scene of the  
13 accident and then came back and talked to the jurors  
14 about it, that would be extraneous. But this kind of  
15 generalized information, assuming it's true -- my  
16 daughter was in an auto accident. Okay, the Petitioner  
17 talks about her unwillingness to determine certain  
18 damages. This case never came to damages. What  
19 actually happened in this case is the jury met for two  
20 hours. This was a question of contributory fault and  
21 what happened was the jurors came, asked the court a  
22 question: If we apply -- if we apply contributory  
23 negligence and we find that there's slight contributory  
24 negligence, must we find for the defendant?

25 JUSTICE ALITO: What would happen in the

1 really egregious case? The jurors are asked during voir  
2 dire, can you be fair to every -- to parties regardless  
3 of race. Oh, yes, yes, we can. And then after there's  
4 a verdict, a juror comes -- comes forward and says  
5 during the jury deliberations, the jurors were making  
6 all kinds of biased statements and they were clearly  
7 prejudiced. What would happen there?

8 MS. BIRNBAUM: I think, Your Honor, under  
9 606(b), there would be no difference. You still could  
10 not introduce that juror testimony. Now, maybe that's  
11 wrong and maybe Congress should change 606(b), but  
12 that's a job for Congress in connection with the  
13 judicial conference and with all of the people that  
14 would ask Congress to come in and testify and Congress  
15 can make that decision if they want to have an  
16 exception.

17 But Congress knew about that when -- when it  
18 passed 606(b), and it -- it didn't make an exception for  
19 racial bias. And if Congress wants to do it, it could  
20 do it, but this Court can't do it or shouldn't do it  
21 because it's not part of what Congress intended.  
22 Congress knew quite well, there was a lot of discussion  
23 here, and the Petitioner is correct. Most of the  
24 discussion did not go to the words "during an inquiry  
25 into the validity of the verdict."

1 JUSTICE KAGAN: Well, do you think that with  
2 respect to the kind of case that Justice Alito has in  
3 mind, a case of racial bias and let's put it in a  
4 criminal context, that maybe it's not up to Congress,  
5 that at some point one begins to run into constitutional  
6 issues?

7 MS. BIRNBAUM: Well, I think at least if  
8 this Court, in Tanner, looked at those constitutional  
9 issues not in -- not in the racial bias context, but in  
10 the context of having a drunk juror deciding a  
11 particular case --

12 JUSTICE SCALIA: Why -- why is that the -- I  
13 mean, would we make an exception to normal hearsay rules  
14 where racial bias is the issue?

15 MS. BIRNBAUM: You would not, Your Honor.

16 JUSTICE SCALIA: I don't think so.

17 MS. BIRNBAUM: But the -- but the further  
18 answer to that is this Court has already said there are  
19 other safeguards that are in place that we feel will be  
20 sufficient in order to safeguard the Sixth Amendment  
21 rights in that particular instance, or the Seventh  
22 Amendment rights, of a fair trial. This Court has said  
23 we can't give litigants a perfect trial. We -- we know  
24 that there are going to be some cases where a juror acts  
25 improperly, acts with bias, but we can't change the

1 system and open it up to jurors being harassed, to  
2 jurors being asked what happened in the jury room,  
3 because we will then take a private process and make it  
4 a public inquiry. And Congress didn't want that. This  
5 Court in Tanner said that was not --

6 JUSTICE KAGAN: I suppose one idea --  
7 because we have relied a lot on the efficacy of other  
8 safeguards, and this isn't this case, so you can just  
9 say it's not this case. But -- that those safeguards  
10 might not be so effective in certain contexts and  
11 particularly with respect to ferreting out racial bias  
12 or religious or ethnic or something like that.

13 MS. BIRNBAUM: I think, Your Honor, again  
14 I'll come back to really this is an issue for Congress.  
15 The rules of evidence are now adopted. Even if the  
16 Court feels there is unfairness in them, they have to  
17 interpret them. And they have to interpret them as  
18 Congress wrote them. Certainly, Congress knew about  
19 racial bias and ethnic bias when it was writing these  
20 rules and passing these rules in 1972. There were  
21 not --

22 CHIEF JUSTICE ROBERTS: Is there any -- is  
23 there any alternative remedy available that doesn't go  
24 to the validity of the verdict? You know, the  
25 Petitioners allegedly were injured to a great extent by

1 the jurors' -- I could call it fraud, I guess. Can they  
2 bring an act -- direct action against her?

3 MS. BIRNBAUM: No, Your Honor, I don't -- I  
4 don't think so. I think the only thing is if a juror  
5 lies, there is the contempt proceeding that can be  
6 brought. It's -- it's part of what we have to live with  
7 in the system because we can't provide perfect trials  
8 for people. We can only provide as fair as they can.

9 And in this particular case, the broad  
10 questions that were asked, the fact that -- there was  
11 no -- they didn't -- the Petitioner says there was an  
12 unwillingness on this -- on this juror to find damages.  
13 There's nothing in the affidavit that was presented that  
14 even hints at that. It says she may have influenced  
15 other jurors. By the way, do we bring in the other  
16 jurors? Well, this is what this would open up.

17 Let's say we go back. The juror that put in  
18 the affidavit goes and testifies. The forelady goes and  
19 testifies. They have diametrically different views of  
20 what happened in the jury room. Do we then bring in all  
21 the rest of the jurors? That's what -- and the fact  
22 that McDonough may, in certain circumstances, allow  
23 jurors to -- and by the way, McDonough does not allow  
24 jurors to testify. As you said, there was no juror  
25 testimony there.

1           And the fact is that the rule is clear on  
2 its face. This falls exactly within 606(b) and the  
3 legislative history and the policy behind it, and we  
4 should not be extending it to this kind of situation.

5           Thank you.

6           CHIEF JUSTICE ROBERTS: Thank you, counsel.

7           Ms. Harrington.

8           ORAL ARGUMENT OF SARAH E. HARRINGTON

9                           FOR THE UNITED STATES,

10                          AS AMICUS CURIAE, SUPPORTING RESPONDENT

11           MS. HARRINGTON: Thank you, Mr. Chief  
12 Justice, and may it please the Court:

13           Any hearing on a motion for a new trial is  
14 an inquiry into the validity of a verdict. That's true  
15 when a plaintiff -- when a litigant brings a McDonough  
16 claim because of what it -- the litigant is arguing is  
17 that verdict that was issued in his case is invalid  
18 because the tribunal that issued the verdict was  
19 improperly constituted. It would be the same if the  
20 litigant were arguing that the judge that issued a  
21 decision in a case should have recused herself from the  
22 case based on some sort of conflict. It would be the  
23 same if a litigant were arguing that the jury had 5  
24 members or 25 members.

25           In each of those examples, how the argument

1 goes is that the -- the tribunal was improperly  
2 constituted and so the verdict that was issued was  
3 invalid because an improperly constituted tribunal  
4 cannot issue a valid verdict.

5           Now, Mr. Shanmugam says that we should limit  
6 the phrase "inquiry into the validity of a verdict" to  
7 cases where what you're inquiring into is what happened  
8 in a jury room. But just as a matter of normal English  
9 usage, I think we -- it's not hard to imagine an inquiry  
10 into the validity of a verdict that would not look into  
11 what happened in a jury room. For example, if a  
12 criminal defendant who's convicted files a motion for a  
13 new trial based on sufficiency of the evidence, I think  
14 anyone would think that the hearing on that motion is an  
15 inquiry into the validity of a verdict because a verdict  
16 that's based on insufficient evidence is not valid. You  
17 wouldn't look at what happened in the jury room and so  
18 you may have no occasion to apply Rule 606(b) in that  
19 kind of inquiry, but it would certainly be an inquiry  
20 into the validity of a verdict.

21           When someone brings a McDonough claim, it's  
22 just not a freestanding thing. They bring it as part of  
23 a motion for a new trial; that's part of an inquiry into  
24 the validity of a verdict.

25           Now, there's been some questions about

1 what's happened in California where this type of  
2 evidence is admitted. What Mr. Shanmugam says is that  
3 there have not been -- there hasn't been an appreciable  
4 increase in the number of successful McDonough claims in  
5 California. Of course, the problem that Rule 606(b)  
6 targets is not too many successful McDonough claims,  
7 it's overly intrusive inquiries into what's happened  
8 in -- during jury deliberations and so that's really not  
9 responsive.

10 But it is true that in California and in  
11 about five other States, this type of evidence is  
12 admitted because those States apply the common -- the  
13 Iowa version of the common law rule. And under the Iowa  
14 rule, anything that jurors said during deliberations you  
15 can admit testimony about because it wasn't something  
16 that was internal to a juror's mind, it was something  
17 that could be corroborated or rebutted by other jurors.  
18 And so this type of evidence would be admissible in  
19 those five or six States because of they apply a  
20 different type of -- different version of -- in the  
21 no-impeachment rule.

22 Of course, Congress was aware that that was  
23 an option available to it when it adopted Rule 606(b)  
24 and that was the version of the rule that the House of  
25 Representatives wanted. There's lots of back and forth

1 that's covered in the briefs.

2           It's not true that that was the prevailing  
3 rule of common law. The Wigmore Treatise of 1961  
4 identifies 12 out of 50 States that apply the Iowa  
5 version. The other 38 States applied the majority  
6 version, which was more restrictive or -- you know,  
7 excluded more evidence. That was plainly the version of  
8 the rule that was adopted by the Senate.

9           And so I think that really points up the  
10 fact that in this kind of area where you have these  
11 competing important interests, it's really up to the  
12 legislature to decide where it's going to draw the line.  
13 Here the line is pretty clear. Congress couldn't  
14 have -- it would have been hard for them to write the  
15 rule any more broadly than they wrote it. It applies in  
16 any -- during any inquiry to the validity of a verdict.  
17 It covers anything that happens in the jury room unless  
18 one of the specific exceptions applies.

19           The exception for extraneous information  
20 does not apply here, it's our view, because that  
21 exception has been construed only to apply to evidence  
22 that specifically related to the case. Congress  
23 understood that. That's reflected in the legislative  
24 history. It's reflected in the common law. And if the  
25 Court doesn't have any questions, I think I've hit the

1 highlights.

2 CHIEF JUSTICE ROBERTS: Thank you, counsel.

3 MS. HARRINGTON: Thank you.

4 CHIEF JUSTICE ROBERTS: Mr. Shanmugam, you  
5 have 7 minutes remaining.

6 REBUTTAL ARGUMENT OF KANNON K. SHANMUGAM

7 ON BEHALF OF THE PETITIONER

8 MR. SHANMUGAM: Thank you, Mr. Chief  
9 Justice.

10 I think there are just four very quick  
11 points that I'd like to make. First of all, with regard  
12 to the text of the rule and this question of whether  
13 this constitutes an inquiry into the validity of the  
14 verdict, I would just say one thing in response to what  
15 Ms. Harrington has just said. If, for instance, a party  
16 files a motion for a new trial based on the  
17 insufficiency of the evidence, that is, by definition, a  
18 claim that can be brought only at the close of the  
19 evidence in the case.

20 A McDonough claim is critically different  
21 because that claim ripens at the point at which the  
22 allegedly dishonest juror is actually empaneled. And so  
23 a McDonough claim could be brought before the verdict  
24 has been reached or after the verdict has been reached.  
25 And to the extent that the argument here is that the

1 jury is a black box and that one shouldn't look into the  
2 jury's deliberations, I would note, again, that evidence  
3 of this variety would plainly be admissible either  
4 before a verdict has been reached or in a contempt  
5 proceeding after a verdict has been reached.

6 JUSTICE SCALIA: Yes. But, of course,  
7 you'd -- you'd have no incentive to do that until you  
8 lose, right? So you would rather sit around and see if  
9 the verdict goes against you at which point you -- you  
10 would make the claim.

11 MR. SHANMUGAM: Well, that is -- that is  
12 certainly true, but the --

13 JUSTICE SCALIA: Nobody is going to make the  
14 claim before verdict comes out.

15 MR. SHANMUGAM: Well, there are cases where  
16 the evidence comes to light, typically when a juror  
17 actually comes to the judge and then the judge takes  
18 some action based on the statements that have been  
19 recorded. But I think it's important to realize that a  
20 McDonough claim doesn't in any way depend on the  
21 outcome. One could be the prevailing party and secretly  
22 file a McDonough claim, although one would, obviously,  
23 have no incentive to do so.

24 That simply points up the fact that a  
25 McDonough claim, again, in no way depends on what

1 actually took place in the jury room in terms of the  
2 manner in which the jury reached its verdict.

3 Second, I want to address this question of  
4 the state of the law which I think is critically  
5 important here because it really goes --

6 JUSTICE GINSBURG: Can you explain the  
7 manner in which the jury reached its verdict? I thought  
8 that the testimony of Titus was she made this statement  
9 about her daughter and she persuaded all the other  
10 jurors to go along with her. That's the manner in which  
11 the jury reached its verdict. It didn't follow the law,  
12 it followed what this woman was alleged to have said.

13 MR. SHANMUGAM: Justice Ginsburg, the Titus  
14 affidavit does contain those allegations, but those  
15 allegations are utterly irrelevant to the resolution of  
16 a McDonough claim. In other words, it doesn't matter  
17 for purposes of the McDonough claim whether the other  
18 jurors were influenced or whether the other jurors said,  
19 we don't care about your daughter's experience, that  
20 doesn't affect our decisionmaking in the slightest. And  
21 that is because a McDonough claim is designed to  
22 identify juror dishonesty at voir dire without regard to  
23 the impact on the jury's deliberations.

24 Now, second, I want to say something about  
25 the current state of the law --

1 JUSTICE KAGAN: Well, presumably that's  
2 because we assume impact, isn't it? So the impact is  
3 sort of built into the rule.

4 MR. SHANMUGAM: Well, it's built into the  
5 rule only in the sense that it has to be material  
6 dishonesty. And so, if a juror dishonestly answered a  
7 question about his or her name at voir dire, a court  
8 would say that that's immaterial. My point is simply  
9 that McDonough does not require any analysis of actual  
10 prejudice as the proceedings actually played out, and  
11 that in our view is the critical distinction.

12 Now, let me say something about the current  
13 state of the law because I think there's a certain  
14 amount of uncertainty based on this argument about that  
15 and I want to clarify that. It has unambiguously been  
16 the rule in the Ninth Circuit since its decision in *Hard*  
17 that evidence of this variety is admissible. And I  
18 respectfully submit that my friend Ms. Birnbaum simply  
19 misreads the *Hard* case when she argues that that is  
20 dicta, and the best evidence of that is how that rule  
21 has been applied in the Ninth Circuit because I think it  
22 has been treated as the law now for some three decades.  
23 And it is clearly the law in California in the wake of  
24 the California Supreme Court's decision in *People v.*  
25 *Gestaldia*.

1           Our point is that there has been less than  
2 one decision that we've been able to find, whether  
3 reported or unreported, in each of those jurisdictions  
4 per year since those rules were adopted. And when I'm  
5 talking about decisions, I'm not just talking about  
6 decisions in which McDonough claims were successful.  
7 I'm talking about decisions in which evidence of this  
8 variety has even been sought to be admitted. And so  
9 there's really no evidence that this is a problem in  
10 those jurisdictions and we have been unable to find any  
11 suggestion in the secondary literature that this is a  
12 problem either.

13           And to the extent that Ms. Birnbaum  
14 complains that we only cited those cases in our reply  
15 brief, I would note that it's really Respondent's burden  
16 here to identify evidence that this is, in fact, proven  
17 to be a problem.

18           Now, Respondent and the government say that  
19 there are five States in which evidence of this variety  
20 is admissible. I think that actually understates the  
21 current state of the law. We've identified  
22 approximately 14 States where the evidence is  
23 admissible. But this points out another point of  
24 confusion here. Respondent and the government talk  
25 about this distinction between the Iowa rule and the

1 Federal rule, and the Iowa rule applies to jurisdictions  
2 where only evidence of the jurors' thought processes is  
3 subject to exclusion and the Federal rule, like Rule  
4 606(b), covers a broader type of evidence.

5 But even in jurisdictions that apply the  
6 Federal rule, courts have held that evidence of this  
7 variety is admissible. And that's simply because we're  
8 talking about two separate questions: On the one hand,  
9 the type of evidence that is subject to exclusion; and  
10 on the other hand, the type of inquiry during which such  
11 evidence is excluded.

12 So again, we would respectfully submit that  
13 there is no evidence that this is anything other than a  
14 speculative concern that our interpretation would lead  
15 to these difficulties with juror harassment and  
16 undermining the finality of verdicts.

17 Let me say just a word about the issue of  
18 racial bias. I think this is critically different from  
19 a case involving, say, the application of the hearsay  
20 rule, because this really goes to the fundamental  
21 question of whether the factfinder itself was racially  
22 biased.

23 JUSTICE SCALIA: How about religious bias?  
24 Is that also an exception?

25 MR. SHANMUGAM: Well --

1 JUSTICE SCALIA: What about bias against  
2 handicapped people? I mean, all of those things are  
3 difficult to find. Right?

4 MR. SHANMUGAM: Well, it raises  
5 constitutional concerns, beyond the constitutional  
6 concerns that we think are applicable in every case of  
7 this variety, because, after all, regardless of the type  
8 of bias, what we're talking about here is the right to  
9 trial by an impartial jury. A right that is founded  
10 both on the specific constitutional rights involving  
11 jury trials and the fundamental right to due process.  
12 And our point is simply that to the extent that the  
13 Court thinks the rule is ambiguous, those concerns  
14 should come into play and support our interpretation.

15 I would just say one last thing before the  
16 end of the argument and that is simply that Ms. Birnbaum  
17 referred to this as a run-of-the-mill case and my  
18 client, Petitioner Greg Warger, I think would strongly  
19 object to that. He, after all, lost his leg in this  
20 accident. And so, while this case doesn't involve  
21 multiple millions of dollars or some fundamental  
22 constitutional right, it is vitally important to him.

23 And while Ms. Birnbaum refers to the concern  
24 about gaming the system, it's important to remember that  
25 this was a case in which the juror in question, Stacy

1 Titus, actually came to the lawyer. And if Mr. Warger  
2 is unable to seek the admission of this evidence, he  
3 will have no ability to obtain relief on his underlying  
4 McDonough claim.

5 We would respectfully submit that the  
6 judgment of the court of appeals should be reversed.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
8 The case is submitted.

9 (Whereupon, at 11:56 a.m., the case in the  
10 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: GREGORY P. WARGER, Petitioner v. RANDY D. SHAUERS., and that these attached pages constitute the original transcript of the proceedings for the records of the Court.

Handwritten signature of Raymond R. Heer in cursive script, written over a horizontal line.

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