In the

Supreme Court of the United States

ROBERT EDWARDS,	)	
	)	
PETITIONER,	)	
	)	
V.	)	No. 79-5269
	)	
STATE OF ARIZONA,	)	
	)	
RESPONDENT.	)	
	)	

Washington, D.C.
November 5, 1980

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IN THE SUPREME COURT OF THE UNITED STATES

ROBERT EDWARDS,

Petitioner,

v. : No. 79-5269

STATE OF ARIZONA,

Respondent.

Washington, D. C.

Wednesday, November 5, 1980

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:01 o'clock p.m.

APPEARANCES:

MICHAEL J. MEEHAN, ESQ., P.O. Box 2268, Tucson, Arizona 85702; on behalf of the Petitioner.

CRANE McCLENNEN, ESQ., Assistant Attorney General, State of Arizona; State Capitol Building, Phoenix, Arizona 85007; on behalf of the Respondent.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments first this morning in Edwards v. Arizona.

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

ORAL ARGUMENT OF MICHAEL J. MEEHAN, ESQ.,

ON BEHALF OF THE PETITIONER

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

This case is here on certiorari to the Arizona Supreme Court which affirmed a conviction of Petitioner Edwards which included the use of incriminating testimony given by him to police officers at an interrogation just before he was to be given appointive counsel at his first court appearance.

The offenses arise from a robbery of a bar in Tucson, Arizona, in October of 1974. The case went unsolved for a considerable period of time but ultimately by gaining confessions from two accomplices the police solved the case sometime before January 19, 1976, about 15 months after the offenses. At that point the police obtained a complaint from a magistrate to determine probable cause to believe that an offense had been committed, who issued an arrest warrant for Robert Edwards.

The police then went to a slum area of Tucson and arrested Edwards, who then was young and indigent, and took him to the Tucson Police Department.

QUESTION: How old was he?

MR. MEEHAN: He was 23 at that time, Your Honor. He was 24 at the time of the trial, which was more than a year later.

At the Police Department he was read his Miranda rights, which he said he understood. He gave a recorded statement at the Tucson Police Department, when interrogated by a police detective named Bunting. At that time his statement was denying any implication in the offense.

QUESTION: And he had already been formally charged at that time?

MR. MEEHAN: He had been formally charged, we contend, and the State had agreed with us in the lower courts.

QUESTION: Well, as I understood their brief, they agree with you here.

MR. MEEHAN: Well, Your Honor, they did until a week ago today when they filed a supplemental brief. But in their brief they very expressly, in that portion of the argument, agreed that he had been formally charged. As a matter of fact they agreed in the statement their question presented.

After the tape recording of the statement, Edwards and Detective Bunting had an exchange back and forth about whether he would make a further statement. He apparently tried to convince the police that they should talk with him about some kind of a deal. The police said that they would

give him a chance to tell his side of the story but they would not entertain any kind of deal.

Ultimately, Edwards was taken for holding overnight at the Pima County jail after he told Detective Bunting in words to the effect: I'm not going to make a statement now, I'm not going to make a deal now, I'm going to wait until I get my attorney.

QUESTION: Do you think forever after he would be -- that no statement would be admissible?

MR. MEEHAN: "Forever after" is a long time, Mr. Chief Justice.

QUESTION: Well, that's what I had in mind.

MR. MEEHAN: I think that "forever after" until the next day at 1:30 when he was given a first arraignment, or possibly if he had, of his own, changed his mind and decided that he wanted to talk further with the police; yes, he should not have been interrogated without --

QUESTION: So your position is, he could change his mind and agree to speak?

MR. MEEHAN: My position is that under the right circumstances I think he might be able to change his mind. I say that that is not in this case, but --

QUESTION: I'm not talking about this case, now.

MR. MEEHAN: I understand.

QUESTION: I'm talking about trying to discern

your position.

MR. MEEHAN: My position is that in terms of application of Miranda, Mr. Chief Justice, that unless truly the accused himself institutes a change of mind, that there should be no reinterrogation until counsel has a chance to confer with the accused who has asked for it. This Court made very clear, I think, in Miranda, that that situation, where an accused asks for a lawyer, should be treated differently from the situation where the accused simply listens to the rights and then goes ahead and speaks or even listens to the rights being read to him and decides to remain silent, which indicates that he is feeling capable of making his own decisions about whether to deal with the interrogating officers or not to deal with them.

It was said in Miranda and this Court confirmed in a majority and concurring opinions in Mosley, and in Innis, and in Fare v. Michael C., that Miranda meant what it said; that unless -- at least as far as the police reinterrogation -- once the accused has been read his Miranda rights and says he'd like to have a lawyer, that there shall be no reinterrogation until a lawyer is provided.

This case demonstrates, I think, why that often is no great burden, because there was no reason that the interrogation couldn't have been carried out after 1:30 on the 20th of January. Instead it was carried out on the morning of

20 January, hours before Edwards would be making his first appearance and at a time when the police were aware that Edwards as an indigent would be appointed counsel that afternoon. They knew that he was about to get a lawyer.

QUESTION: Well, it could be, Mr. Meehan, that if a crime occurs at 11 o'clock at night, that there aren't many lawyers willing to get out of bed at that hour of night to provide the necessary support for a defendant, that might be during the daytime.

MR. MEEHAN: That's true, Mr. Justice Rehnquist. And, indeed, in Miranda, what was said was, we're not holding that the police have to have a lawyer in every precinct. But I'd like to emphasize two things about this case. One, the case was solved. They were not looking for additional offenders, they were not further investigating the case, they were not looking for the fruits or the instrumentalities of the crime such as may have been a justification in Innis had that been held to have been an interrogation, they were not trying to locate the body as was the case in Brewer v. Williams, there was no urgency. And even under Miranda it seems to me, once the accused says, I would like a lawyer, he's indicating that he feels that he needs to have that help, he needs to have somebody with him; he's acknowledging that the inherent coercive atmosphere, custodial interrogation, which is the focus of the Miranda guarantee, and the reason for the

warnings and affording the right to counsel is affecting him.

QUESTION: When you say the case was solved, was it solved as to Edwards?

MR. MEEHAN: Yes.

QUESTION: Well, it certainly won't be, if you have your way in this Court. I mean, Edwards will go free, will he not?

MR. MEEHAN: I think that's an assumption that can't be made at this point, because at the trial the evidence included the testimony of the police officers, but also testimony of an accomplice named Cleveland Reed. There was also obtained, and before this interrogation of Edwards, a tape-recorded confession of another accomplice named Soto. As a matter of fact that tape recorded confession had been played, several minutes of it, at least, for Edwards on the morning of his interrogation, which prompted the admissions that are the subject of this case.

QUESTION: Would you consider it a solution of the case if the police got incriminating statements from three potential suspects to whom they had not read their Miranda rights, and all of their declarations were excluded and the jury returned verdicts of acquittal?

MR. MEEHAN: I think I would treat it as having been solved by virtue of what the police felt at the time that they undertook the interrogation, and I think, number one, it would

be somewhat unrealistic to have a set of facts in which there were three different statements without Miranda rights having been read to them.

But secondly, it seems to me the focus has to be at the time of the interrogation. What was the motive of the police in undertaking this interrogation? At that time the offense was old, they were not, you know, on the trail of additional accomplices. They felt, as the State said in its opener, its responsor brief, they felt they had enough evidence. That's exactly what the State said in its brief, and they did. And they presented it to a magistrate, and a magistrate then has the right and the obligation to weigh that evidence, to cross-examine the complaining officer, to determine whether or not there's probable cause to believe that an offense was committed, and the defendant committed it, and if so to in effect file the complaint, which is to say, to approve the complaint and then to issue the arrest warrant.

There are, of course, two issues presented in this case, one under Miranda and one under the Sixth Amendment. Because the State has recently chosen to argue that no formal prosecution had begun in this case, I would like to spend more time talking about the Sixth Amendment aspects of it than the Miranda aspects.

As I said, in the courts below and in its briefs in this Court, except the supplemental brief, the State has agreed with the Petitioner that at the time of this interrogation formal prosecution had begun and the right to counsel under the Sixth Amendment as a critical stage had arisen.

A week ago the State contended on the virtue of a Second Circuit case construing federal criminal rules of procedure that no formal prosecution had begun. I think the State was correct in its first position. In Arizona, under the criminal rules, prosecution may be commenced in two ways, either by indictment or by complaint. In this case prosecution was commenced by the filing of a complaint.

QUESTION: But doesn't the complaint require that the county attorney take it to the court and file it?

MR. MEEHAN: The complaint is presented to a magistrate and it is in effect filed.

QUESTION: And isn't that the day of the commencement?

MR. MEEHAN: That is the day of the commencement, but in this case the complaint was filed on the 19th of January.

QUESTION: And if so, the complaint had been filed by the county attorney of Pima County at the time of the interrogation?

MR. MEEHAN: Yes, Your Honor, it had been filed with

the magistrate. Now, in Arizona the probable cause proceedings and the complaint are begun before a magistrate, which typically is a police court or a justice court, as it is in Arizona. And ultimately, those documents are then filed in the prosecution file in the Court of General Jurisdiction, which is the Superior Court. And that filing did occur somewhat after the day of the interrogation. But in terms of the magistrate receiving the complaint and having the officer appear before him and taking sworn testimony if he chooses to do so, and so forth, this was done on the 19th of January.

QUESTION: Do you remember, offhand, Mr. Meehan, where in the respondent's original brief there is a concession that your client had been formally charged at the time of this interrogation?

MR. MEEHAN: Yes.

QUESTION: I know I read it but I can't find it.

MR. MEEHAN: It's Footnote 47 on page 24. The respondent recognizes the efficacy of Massiah and also cites without dispute the McLeod case of this Court, which was handed down very shortly after Massiah and which I think supports the position that we have here that it's not important that this interrogation was carried out just before the appointment of counsel rather than just after, because of the holding of this Court in vacating what the Ohio courts had done in McLeod. That distinction, I think, is clearly not

important. I would say that the distinction is important in terms of the due process argument that we make, and also in terms of the motivation of the interrogating officers at this point. I think it's fair to say that knowing that the petitioner would have counsel appointed for him that afternoon and knowing that any counsel worth his salt is going to fully apprise this defendant of what he is charged with and what the severity of the charges are and what the police can do with a statement and so forth is going to advise this defendant, not now to try quickly to make a deal by giving a statement or to make a statement at all.

And of course, that's something that is to me, and --

QUESTION: Mr. Meehan, did the proceeding before the magistrate actually begin on the 19th?

MR. MEEHAN: Yes.

QUESTION: Was it completed that day?

MR. MEEHAN: I cannot tell this Court that there was a proceeding in terms of anything more than the officer preparing the complaint and swearing to it and appearing with the complaint before the magistrate. I am --

QUESTION: This wasn't a hearing where he was present, was it?

MR. MEEHAN: Well, he -- Edwards?

QUESTION: Before the magistrate.

MR. MEEHAN: No. It was not -- it is an ex parte

hearing. Arizona has kind of a strange term for it. We used to call it "a one-man grand jury" because it can be a very full-blown hearing or it can be a very perfunctory hearing in which the magistrate having placed before him a rather routine felony complaint and having no basis to disagree with what's sworn to by the officer simply says, yes, and, I'll issue the complaint.

As an example, one of the other ways that this rule has been used in times before the middle 70s when Arizona began to use grand juries with regularity, the so-called one-man grand jury was used to investigate corruption in public office. We had a sheriff in Pima County who was rather famous, indeed, I would say, notorious, whose prosecution was originally begun with the earlier procedural equivalent of this Rule 2.2, 2.3, and 2.4 procedure.

QUESTION: Well, has that superseded entirely the old procedure where the defendant after the warrant of arrest had been served on him could demand a preliminary hearing?

MR. MEEHAN: No, Mr. Justice Rehnquist, the preliminary hearing still exists for those felony prosecutions that are commenced by complaint. I think it's significant, however --

QUESTION: And that would be this type of case?

MR. MEEHAN: Except that there is now, because of the more common use of grand juries and the desire not to get

involved with public preliminary hearings at which the accused is present, a possibility of a complaint beginning a case and then an indictment superseding the complaint.

QUESTION: But that didn't happen?

MR. MEEHAN: That did happen in this case.

QUESTION: The indictment did supersede?

MR. MEEHAN: The indictment did supersede.

QUESTION: And what was the date of the indictment?

MR. MEEHAN: I think, Mr. Justice Rehnquist, but I'm not sure, that it was the 27th or so of January. It was fairly shortly after, but it was after the interrogation. I should point out one problem with getting into this area of formal prosecution. Edwards was arrested in 1976. He was not tried until April of 1977, and in the interim the charges against him were dismissed because of procedural problems not germane to the confession. When the case went up to the Arizona Supreme Court, we briefed and argued this matter, a speedy trial and other things, and pointed out that only the second court's file went up to the Arizona Supreme Court, and said that we would move to amend or supplement the record if necessary. The State agreed with us in their briefs before the Supreme Court as to the sequence of events, and they agreed with us here as to the sequence of events. So, physically speaking, the papers on the indictment from the first case and the complaint are not within this Court's record, but I can

ask the Clerk to supplement that if that becomes necessary or appropriate.

QUESTION: Your position is not that the police cannot at the scene of a crime interrogate witnesses whom they think might be guilty, unless each and every one of the witnesses has a lawyer, is it?

MR. MEEHAN: No, indeed. But that's investigative interrogation and quite different, I think, from this case.

QUESTION: So it depends on the motive of the police?

MR. MEEHAN: Not motive entirely. I think motive is important in deciding what is appropriate and what is not appropriate. I think that motive is important here because, number one, there are no countervailing considerations to require prompt interrogation. If there were some other problem, if the body of the murder victim were still to be located or if there may be other persons who were involved and should be identified, or if there was a dangerous weapon like in Innis, and there was a need right now to see whether this defendant would waive his rights and answer questions so that those other investigative activities quite properly undertaken could be furthered, maybe the interrogation should occur right away.

QUESTION: But will they ever know unless they ask?

MR. MEEHAN: Well, I think that the situations themselves are going to be fairly easily divisible into categories

and of course one reason I think this situation is fairly easily divisible into the category that I'm describing is the fact of the complaint, and the police believing that, they'd been working on the case for 15 months, they believe now they've got enough, they've gotten two statements, the time between the offense and the arrest, and so forth, I think simply tells them at that time and tells this Court at this time that we're dealing with a post-complaint, a post-indictment -- to use a shorthand term -- interrogation.

QUESTION: Mr. Meehan: I didn't understand one of your answers to Justice Rehnquist. Supposing you're right at the scene of the crime and the police ask somebody who was a suspect a question, they've let him know he's a suspect; he says, I want a lawyer. I don't want to answer your question. Is it your view they can go ahead and question him anyway?

MR. MEEHAN: I would say that if the suspect is in custody it would be a consideration.

QUESTION: Just the fact that it's at the scene of the crime doesn't mean he isn't in custody. They tell him he's a suspect and they give him the warnings; he says he wants a lawyer. As I understand your response to Mr. Justice Rehnquist, they can still go ahead and question him. Is that really what you're --

MR. MEEHAN: I didn't mean to leave that impression. Again, I was speaking more to the Sixth Amendment issue than

to the Fifth Amendment. I think that unless this Court is going to change what I believe has been clearly stated in Miranda and the other cases that you're bringing out that at that point the police have to scrupulously honor that request and not reinterrogate until a lawyer is provided. At that point --

QUESTION: But that's based on Miranda, whereas the facts here are Massiah -- ah, Sixth Amendment --

MR. MEEHAN: I think that this is more a Sixth Amendment, Massiah -- or really, a Brewer type of case than it is a Miranda type of case, although obviously the two really come very close together.

QUESTION: In Miranda, for Miranda to help him, he would have to be in custody, would he not?

MR. MEEHAN: Yes. Whereas, with the Sixth Amendment custody isn't important but may exist here.

QUESTION: Under the Arizona practice, at what point after the complaint is presented to the magistrate and presumably filed is the defendant, the person in custody, informed of that fact?

MR. MEEHAN: I'm not sure, except I know that at the initial appearance which was the proceeding that was to have taken place on the 20th, one of the functions is to either read to or provide a copy of the complaint which is referred to as the formal charges, and to advise of rights and so forth.

QUESTION: Well, then, did he get this notice on the 20th?

MR. MEEHAN: The record indicates that he was shown a copy of the arrest warrant at the time he was arrested on the 19th, shown in the sense, I am sure, of not handing it to him to read but to support the arrest, because there is an indication that there was a scuffle at the time of the arrest. He was told generally that he was an accused in a murder case on the 19th when he was interrogated by Sergeant Bunting at the Tucson Police Department. In terms of explaining to him precisely what the charges were, precisely what the penalties were, precisely where they were in stage of proceedings and so forth, the record doesn't show that he was given that information at any time before he made the statement on the morning of the 20th that, I'll tell you -- I'll talk with you, but I don't want anything tape recorded because I don't want it used against me in court.

It seems to me that the State must argue, and obviously does argue, that Edwards' Sixth Amendment right was waived, and the question then becomes whether in fact a waiver can occur of that right and whether it can be supported by the facts in this case. Brewer v. Williams is the closest that this Court has come to finding what will support a waiver in a Sixth Amendment as opposed to a Miranda or a Fifth Amendment kind of a case. Brewer did not, however, reach what would be

sufficient. All other waivers of trial rights, rights like the right to counsel, which involved the factfinding process, the fairness of the trial, and the reliability of the trial, have always been required to be made in open court and approved and supervised by a trial judge, so far as I can tell. This Court has said in in the Schneckloth case that the high standard of waiver which I think applies in the Sixth Amendment kinds of cases requires a showing of knowledge, understanding, and voluntary relinquishment that can only, or at least is designed to be carried out in that kind of a setting. I submit that in the case that's before the Court, there is no justification for finding a waiver of the Sixth Amendment right to counsel. It's possible that in order to establish the very high standard that this Court has imposed by Johnson v. Zerbst and by Fare v. Michael C., and by at least in dictum Schneckloth, and Faretta v. California for waiver of right to counsel at a critical stage, that a waiver should be either conducted before a magistrate or a judge in open court so that the record can be made that should be made. Or that it cannot be accepted unless counsel has had a chance to consult and advise the client, or at the very least, that it be an express waiver of a kind that would provide independent evidence. And I say, independent from the testimony of those who really have an interest in establishing a waiver, a videotape, an audio tape, or even a written waiver. I'm not suggesting that

this Court needs to accept or reject any one of the three or that even any one of the three necessarily have to be exclusive, but it seems to me that the cases of this Court impose a very high standard of joined waiver and that in order to fulfill that some kind of quite reliable factfinding process needs to be undertaken before there can be a waiver.

In this case, what do we have that would establish a waiver? Number one, when the police went to the jail on the morning of the 20th to interrogate Edwards, he said he didn't want to talk to them. He told the detention officer he didn't want to come out of "the hole," as he described it. Number two, after he was given his Miranda rights and was read a tape recording of another accomplice, he made the very conflicting statement, I'll tell you what you want to hear, but I don't want it recorded because I don't want it used against me in court. The police said, big deal. There are two of us here; we can testify to what you say. He didn't say, oh, okay. He said, I don't want it used against me in court so I don't want it tape recorded.

And finally, he did not say anything about giving up his right to counsel. He didn't say, well, I wanted a lawyer yesterday but today I feel more able to deal for myself and so I don't want one today. Under these facts, it seems to me there can be no waiver of the Sixth Amendment right to counsel.

QUESTION: Mr. Meehan, when do you contend that the

interrogation started?

MR. MEEHAN: I haven't focused on it that clearly, Your Honor, in terms of after Edwards was brought into the interview or interrogation room at the jail. They read him his rights, they said they wanted to talk with him.

QUESTION: Well, specifically, do you contend that playing him the tape of the other person's confession was the commencement of interrogation under Rhode Island v. Innis?

MR. MEEHAN: Yes, I think it was, because I think it was done --

QUESTION: It makes a great deal of difference as to whether there was a waiver at that point or later. To answer the waiver question, I think you first have to decide when the interrogation started.

MR. MEEHAN: That statement supposes that by listening to the tape and making a judgment as to the efficacy of that tape in being able to convict Edwards that he then was more informed in terms of his need for counsel, and I'm not sure I agree with that. It seems to me that the playing of the tape was designed to get Edwards to talk. They were telling him how everybody else was --

QUESTION: If you say that, then they have the burden of proving waiver before they started to play the tape.

MR. MEEHAN: Yes, that's true, that is true. And that then eliminates the conflicting statements that were made

after the tape was played.

If the Court please, I would like to reserve the remainder of my time for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Meehan. Mr. McClennen.

ORAL ARGUMENT OF CRANE McCLENNEN, ESQ.,

ON BEHALF OF THE RESPONDENT

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

This case involves two issues, admissibility of a confession after a request for an attorney, and the waiver of the Sixth Amendment right to counsel. The State feels that there are several important facts to be considered in this case.

First is, Mr. Edwards was warned of his right four times. Now there is fairly considerable disagreement about this, but Sergeant Bunting, everyone agrees, advised him twice: once at the beginning of the interview and once on the tape. Detective Marmion advised him of his rights the next morning. And on page 70 of the record Mr. Edwards himself says that Officer Allen advised him of his rights -- page 70 of the Appendix:

"Q. At any time did Sgt. Bunting or Steve Bunting, the other detective, read you your Miranda rights?

A. No. It was a detective -- it was a black policeman in a car. I don't know his name."

That was four times.

On the night of January 19, after the discussion, after the tape recorded statement, and after the discussion back and forth about the deal, Mr. Edwards never said, "I do not want to talk to you again until I see an attorney." He never said, "I will not answer any more questions till I see an attorney."

What he said was, "I will wait until I get an attorney before I make a deal. I'll wait till then before I make a statement."

QUESTION: Where do you find that particular dialogue? Is that 70-71?

MR. McCLENNEN: That's several pages throughout the record.

QUESTION: It's on 71: "Well, I need a lawyer."

QUESTION: Where did he talk about making the deal?

MR. McCLENNEN: Page 37, down towards the bottom:

"A. He never asked for an attorney. He stated he was going to wait until he had an attorney to make a deal."

At the top of the page 37:

"...he was going to wait until he had an attorney before he made a deal."

Page 39, the middle of the page:

"I'm just going to wait until I get an attorney to make a deal for me."

Page 41, towards the top. And page 43, right before the cross-examination starts:

"He . . . stated that without a deal he was not going to make a statement. He would wait for his attorney to make a deal for him."

QUESTION: Mr. Attorney General, where did he ever say, "I withdraw my request for a lawyer"?

MR. McCLENNEN: He never specifically said that. The next morning when Detective Marmion went there, Detective Marmion -- page 57 of the Appendix, towards the bottom:

"A. I got there. I identified myself to Mr. Barefield as a homicide detective. He said something to the effect, I don't remember his exact words, that he recognized me from seeing me the night before at the Dectective Division. I told him I was the detective that had the case and I wanted to talk to him. I then advised him of his constitutional rights. He replied that he would talk to me and tell us anything we wanted to know, but, first, he wanted to hear Manny Soto's statement."

And also, in the Supplemental Appendix, page 52. This is Detective Milne testifying:

"A. Detective Marmion went through your rights rather thoroughly to make sure you understood all your rights.

Q. Thoroughly?

A. And also the fact that you had the right to an attorney. You did not request one at that time."

QUESTION: But he at no time withdrew his request?

MR. McCLENNEN: He never said, I will no longer wait until I get an attorney to make a deal.

QUESTION: How did we get a waiver without that?

MR. McCLENNEN: They advised him of his rights. He said, I understand that and I'll answer your questions.

QUESTION: That's it.

MR. McCLENNEN: They said, you have the right to remain silent, you have the right to an attorney. He said, I understand that, I'll answer your questions.

Now, in North Carolina v. Butler, it is said that you do not have to have a specific waiver of the right to an attorney. You must look to the facts of the case. We submit that this dialogue where he was specifically told that he had the right to an attorney. He said, I understood that. I'll answer your questions. That constitutes a waiver.

QUESTION: Mr. McClennen, I'm a little bit confused about the procedure here. On page 30 in the Appendix it simply describes: "Proceedings March 4, 1977." And it says, "Larry Bunting was . . . called as witness in behalf of the Defendant Edwards."

And then, on page 98, it says: "Proceedings, March 28, 1977." And then, "Larry Bunting was thereupon recalled

as a witness in behalf of the defendant." Are those both motions to suppress in the Superior Court?

MR. McCLENNEN: No, Justice Rehnquist, the proceedings, March 4 and March 7, those are the proceedings at the suppression hearing. Then, the proceedings, March 21 and 28, the latter part of March, that is the first trial, the one that ended in a hung jury and a mistrial. The proceedings in April were the second trial where Mr. Edwards was convicted.

Now, the next morning, when Detective Marmion went to visit Mr. Edwards, the reason why Detective Marmion went to visit Mr. Edwards, it was Detective Marmion's case. He had been assigned as the lead detective in that case. It was his responsibility. The reason why Detective Marmion did not arrest Mr. Edwards, Marmion and Milne were in the process of arresting Manny Soto while Sergeant Bunting and Detective Bunting and Officer Allen were arresting Mr. Edwards. These took place simultaneously.

Marmion and Milne the night of the 19th were interrogating Mr. Soto while Sergeant Bunting was interrogating Mr. Edwards. So Detective Marmion whose case it was had not had an opportunity to talk to Mr. Edwards the night of the 19th. In his case, he was interested in what Mr. Edwards had to say, so he went to the jail the next morning, read Mr. Edwards his rights. Mr. Edwards acknowledged them, said he'll answer the questions, but then Mr. Edwards said, but

first I want to hear Manny Soto's tape. Detective Marmion played the tape per Mr. Edwards' request, and that caused Mr. Edwards to confess. The tape --

QUESTION: Where in the record is it that says that that caused him to confess?

MR. McCLENNEN: Nothing says that that caused him to confess. But they played the tape --

QUESTION: That's your conclusion?

MR. McCLENNEN: That's my conclusion. They played the tape and immediately he says, all right, I'll give you my story.

QUESTION: Does the record tell us how Edwards knew they had Soto's tape?

MR. McCLENNEN: No. That's unclear. He knew on the night of the 19th that Mr. Soto was being interrogated but Mr. Edwards was not told. He was told that Soto was confessing but he was not told what he was saying. So Mr. Edwards the night of the 19th did not know exactly what Mr. Soto had said. He did not know that until the morning of the 20th.

QUESTION: That is, specifically about the tape. How did he know there was a tape?

MR. McCLENNEN: There is nothing in the record that indicates how he knew that.

QUESTION: How who knew that?

MR. McCLENNEN: Mr. Edwards knew that there was a tape.

Our position in this matter is --

QUESTION: How soon after he heard that tape did he begin to talk and make these statements?

MR. McCLENNEN: According to the record it was immediately after that. He heard the tape --

QUESTION: Did he -- what statement did he make to introduce his statement after he heard the tape recording of the accomplice?

MR. McCLENNEN: I'm not sure where in the record it says that after he heard the tape he said, all right, I'll make a statement. It's somewhere, but I can't put my finger on it right now.

QUESTION: You are defending the judgment of your court and the rationale of it?

MR. McCLENNEN: Yes, insofar as it allows the police to reinterrogate someone who has asked for counsel.

QUESTION: And you agree that your case depends on waiver?

MR. McCLENNEN: Yes.

QUESTION: That there was an indication of the right to counsel and the right to silence?

MR. McCLENNEN: Yes. When he said, I'll wait till I get an attorney to make a deal, I'll wait till then.

QUESTION: And so that you have to find the elements of a waiver thereafter?

MR. McCLENNEN: Yes.

QUESTION: And that you have to contend there doesn't have to be an express waiver?

MR. McCLENNEN: Yes.

QUESTION: Or a written waiver, a fortiori?

MR. McCLENNEN: Or a written waiver under --

QUESTION: Just the mere fact of being willing to answer questions?

MR. McCLENNEN: In this situation, yes, where he was told he had the right to an attorney, he knew he had the right to an attorney, he knew if he asked for an attorney that they would stop talking --

QUESTION: So suppose a man in custody is given his Miranda warnings and then the officer just asks him some questions and he answers them. No question about -- no express waiver, no written waiver, and would you say that a waiver would be as readily implied in this case as there?

MR. McCLENNEN: I think in your hypothetical you might have a more difficult time finding a waiver than we do have --

QUESTION: Well, why? Why?

MR. McCLENNEN: Well --

QUESTION: Because you're saying that it's easier to find a waiver after you have invoked your right to counsel and after you've invoked your right to silence than it is before?

MR. McCLENNEN: You can make the argument that once you've invoked it, you know that you have it, that clearly indicates within the person's mind that he has those rights and what will happen if he invokes them.

QUESTION: Well, is that true about -- that might be true about silence, but how about the attorney? You know, when you invoke your right to an attorney you're in a sense saying, I'm not competent to handle my own affairs.

MR. McCLENNEN: Maybe.

QUESTION: You say, silence; maybe you are.

MR. McCLENNEN: That's the argument that's made, that when a person says, I wish to remain silent, that he is controlling his own destiny. But if he says, I want an attorney, it indicates that he is acknowledging he is incapable. But I do not think that that's true in all cases. And if you look at the totality of the situation, the judge, the trial judge can hear the person's testimony and if at the motion to suppress the man says, yes, I asked for an attorney because I knew that I couldn't handle matters with the police, it's true in that situation. If you get another man that says, I just asked for an attorney because I thought --

QUESTION: Well, what about this case?

MR. McCLENNAN: In this case he said he'd wait till he had an attorney before he made a deal, and then when he

heard the tape --

QUESTION: Well, I know but your Supreme Court, and you're defending that, said he invoked his right to counsel --

MR. McCLENNEN: Yes.

QUESTION: -- before he was to do anything.

MR. McCLENNEN: Yes.

QUESTION: All right, go ahead. So when he heard the tape, he just said something. Is that it?

MR. McCLENNEN: Well, first, they read him his rights. And he said, all right, I'll answer your questions.

QUESTION: Yes, but didn't your Supreme Court also recognize that when the officers arrived the next morning and the jailor said to him, the officers are here, he said, I don't want to talk to anyone? And didn't the jailor say, yes, but you have to?

MR. McCLENNEN: Yes. That is in the record.

QUESTION: Well, that isn't what had happened. And your Supreme Court recognized that.

MR. McCLENNEN: The Supreme Court may have recognized that but it --

QUESTION: And you recognize it?

MR. McCLENNEN: I don't recognize that; the trial court didn't recognize that, because if that in fact happened, that would indicate it's involuntary and the trial court specifically ruled that it did not believe Mr. Edwards' testimony.

And it found that the confession --

QUESTION: How about your Supreme Court?

MR. McCLENNEN: Well, this court can look at the same facts --

QUESTION: I just asked you, how about your Supreme Court? What'd the Supreme Court -- ?

MR. McCLENNEN: The Supreme Court did point out that fact.

QUESTION: And -- so that he was told that he had to?

MR. McCLENNEN: They quoted from the record.

QUESTION: Yes, and -- but, nevertheless found a waiver simply from his willingness to talk thereafter.

MR. McCLENNEN: Yes.

QUESTION: Wouldn't it follow from your logic that every time there's a violation of the protections of Miranda there's a waiver of them?

MR. McCLENNEN: No.

QUESTION: It sounds to me as though.

MR. McCLENNEN: In this case the police --

QUESTION: Whenever he does talk, then he's waived the protections?

MR. McCLENNEN: No. In this case it's not that he just talks. The police read him his rights and he says, all right, I'll answer your questions.

QUESTION: Well, let's say, in every such case,

all right, I'll answer your questions. There's a waiver then?

MR. McCLENNEN: Yes.

QUESTION: Even though --

QUESTION: Well, that's perfectly consistent with your logic, isn't it?

QUESTION: Yes, it is.

QUESTION: He's told that he may remain silent and he says, maybe one night or maybe the next morning, I know I have the right to remain silent, but I'm going to talk.

QUESTION: Well, he didn't say that here.

QUESTION: Well, what if he just goes ahead and talks?

QUESTION: That's the point.

MR. McCLENNEN: Well, maybe that's a waiver, but that's not what you have here.

QUESTION: Let's turn to page 71 of your Appendix, At the bottom of 71 he said, "Well, I need a lawyer." And then I'll read his statement: He -- this is Edwards speaking -- said, "I don't have nothing to hide and I'll tell you my side of the story."

"Q. You gave him a statement.

A. Yes, I did.

Q. Was that statement recorded?

A. Yes, it was."

and so forth. Do you rely on that colloquy as the waiver, after having just said, I want a lawyer? And then, he said, "I don't have nothing to hide and I'll tell you my side of

the story." Is that language what you rely on to make the waiver?

MR. McCLENNAN: Not for the statement on the 20th. That preceded the tape recorded statement on the 19th. The waiver on the 20th --

QUESTION: You have to get to that, don't you?

QUESTION: Yes.

QUESTION: Do you say this is or is not a waiver, on the 19th? On the bottom of the page, the colloquy on the bottom of page 71?

MR. McCLENNAN: Well, I think that would be a waiver. But nobody's challenging the admissibility of the statement on the 19th.

QUESTION: But do you suggest it has no relation to what happened on the 20th?

MR. McCLENNAN: Well, it indicates that he understands his rights.

QUESTION: And that he wants to talk to you. Do you say it indicates he wants to talk to the police?

MR. McCLENNAN: Yes.

QUESTION: That on the 20th he put the condition that he did not want it recorded?

MR. McCLENNAN: Yes.

QUESTION: So you -- essentially you say that if a fellow invokes his right to counsel and then the police then

turn on a record and he listens to it and then he says something, that's a waiver?

MR. McCLENNEN: I'm not sure whether that would be a waiver but that's not what we have here.

QUESTION: Why isn't that what happened here?

MR. McCLENNEN: Because what happened here is, he asked for counsel, and he was sent back to the jail.

QUESTION: And your Supreme Court recognized that?

MR. McCLENNEN: The next morning the police came.

QUESTION: Yes.

MR. McCLENNEN: The officer introduced himself.

QUESTION: Yes.

MR. McCLENNEN: Read him his rights.

QUESTION: Yes.

MR. McCLENNEN: "He replied that he would talk to me. and tell us anything we wanted to know. But first he wanted to hear Manny Soto's statement." He says that he'll talk to them. If an officer reads a suspect his rights, he says, you have the right to remain silent, you have the right to an attorney, you understand that? Yes; I'll talk to you.

QUESTION: But didn't he the night before say, if you'll get me a lawyer, I'll talk to you?

MR. McCLENNEN: No, he said I'll wait till I get an attorney before I'll make a deal, before I make a statement.

QUESTION: So didn't that apply the next morning too?

MR. McCLENNEN: Our position is that he changed his mind.

QUESTION: Well, he changed his mind after the jailor said, you have to talk. But you just don't -- you say that we must, or should, ignore that interchange between him and the jailor.

MR. McCLENNEN: Yes.

QUESTION: What if we don't? What if we don't?

MR. McCLENNEN: Well, what happens then -- of course, Mr. Edwards, when he testified, said he told the detectives he didn't want to talk to them and the detectives said he never said that. And the judge believed the detectives, believed that Edwards never told the detectives --

QUESTION: Well, he may not have but he certainly was told by the jailor.

MR. McCLENNEN: Yes, but the jailor never conveyed that to the detectives.

QUESTION: Well, what difference does that make? He was told by an official that he had to talk, so he came out and he said, I'll say anything you want.

MR. McCLENNEN: The detectives then tell him he has the right to remain silent. And the trial court believes that the testimony was voluntary; if the trial court believes that he had told the jailor, I'm not going to talk to anybody --

QUESTION: Then your Supreme Court would have

concluded that it was a voluntary waiver?

MR. McCLENNAN: Yes.

QUESTION: Did the jailor dispute the statement?

MR. McCLENNEN: Did what?

QUESTION: Did the jailor dispute the statement?

MR. McCLENNEN: The jailor was never called to testify.

QUESTION: Was there any reason why he couldn't have been called?

MR. McCLENNEN: There is no reason in the record indicated.

QUESTION: Mr. McClennen, you indicated a little while ago that the defendant knew what his right was after having requested counsel.

MR. McCLENNEN: yes.

QUESTION: What was his right after having requested counsel?

MR. McCLENNEN: He had the right to an attorney.

QUESTION: He didn't get it. How did he know he had a right to an attorney?

MR. McCLENNEN: Because that morning the officers again told him of his rights, specifically told him he had a right to an attorney.

QUESTION: You mean he had a right to an attorney if he ever went to trial, or something like that?

MR. McCLENNEN: No, they told him --

QUESTION: The right to an attorney at any particular point in time?

MR. McCLENNEN: They told him -- again they read the rights. You have the right to remain silent. You have the right to an attorney. You have the right to an attorney with you right now.

QUESTION: What happens then, what is his right? When he asks for an attorney, does that change the legal situation at all and if so, how?

MR. McCLENNEN: It's our position --

QUESTION: What duty, if any, does it impose upon the police?

MR. McCLENNEN: If he says --

QUESTION: He said, I want a lawyer. Now, what duty did that impose on the police?

MR. McCLENNEN: They cannot question him further --

QUESTION: But then they did.

MR. McCLENNEN: -- unless he changes his mind.

QUESTION: Well, yes, but all that happened after that -- supposing they start interrogating, they give him his Miranda warnings, and he says, I want a lawyer. Then they give him his Miranda warnings again, and play him a record. And he talks. Is that a waiver?

MR. McCLENNEN: It might be.

QUESTION: Well, in this case, they gave him his Miranda warnings and he said, I want a lawyer. Then they give him his Miranda warnings again --

MR. McCLENNEN: And he says, I'll answer your questions.

QUESTION: He says, I'll talk.

MR. McCLENNEN: But first I want to hear the tape. And they accommodate him.

QUESTION: Supposing they give him his Miranda warnings and he says, I want a lawyer, but before I get the lawyer, I want to tell you my side of the story?

MR. McCLENNEN: Then that would be a selective waiver which would allow him to tell them his side of the story. It's up to him to decide what he wants to do.

QUESTION: A request for a lawyer isn't an automatic refusal to talk further, is it?

MR. McCLENNEN: Well, this Court has said in Fare v. Michael C. that the request for an attorney is a per se indication of the Fifth Amendment right to remain silent. It's our position that if a person could invoke the Fifth Amendment right to remain silent, if you can later withdraw it, as in Michigan v. Mosley, if the request for an attorney invokes the Fifth Amendment right to remain silent, he can again withdraw that, as the cases we've cited have said -- United States v. Rodriguez-Gastelum, White v. Finkbeiner, U.S. v. Hauck.

In Rodriguez-Gastelum they said, do you want to talk? The man said, yes, but with an attorney. The policeman didn't stop; he said, do you want to talk to me without an attorney? The man said, all right. The 9th Circuit said, that's all right.

QUESTION: But that's not this case. I asked you if there was anything in the record that said that and you said, no.

MR. McCLENNEN: Said what?

QUESTION: That he could waive his right.

MR. McCLENNEN: There's nothing where he specifically says, all right, I will talk to you without an attorney. But they tell him he specifically has the right to remain silent.

QUESTION: Well, suppose, the night before, after they stopped questioning him, they took him in another room and this new officer came in and gave him his warnings? Now, here's the question.

MR. McCLENNEN: I guess the man --

QUESTION: I mean, once the man says I want a lawyer, he wants a lawyer.

MR. McCLENNEN: That assumes that he can never again change his mind.

QUESTION: I think he can change his mind.

MR. McCLENNEN: What if he's --

QUESTION: And I think he can express it when he changes it. As I read everything I know, including the FBI

regulations, once a man asks for a lawyer you stop questioning him. That's the FBI regulations.

MR. McCLENNEN: Right. But that's not Rodriguez-Gastelum.

QUESTION: You don't think those are good regulations, do you? They do a pretty good job.

MR. McCLENNAN: Well, yes. At any rate, the cases we have cited that I have mentioned say that once the person has asked for an attorney, he can go back and question him before he has seen an attorney. So, our position, that's what happened here. He knew he had an attorney, he was told again, and because they read him a statement, Soto's statement, he decided he might as well talk.

QUESTION: Mr. McClennan, then, in your primary brief you state in Footnote 47, on page 24, that the Respondent State acknowledges that the petitioner was formally charged by the State on January 19, 1976. Have you changed that?

MR. McCLENNEN: Yes. We've reconsidered our position on that. Now, this Court, in Moore v. Illinois, said that the right to counsel begins when adversary judicial criminal proceedings are initiated.

QUESTION: Kirby v. Illinois.

MR. McCLENNEN: Well, in Kirby v. Illinois, there was one point it said, "adversary judicial proceedings" --

and then it said, "adversary judicial proceedings." And then it said "judicial criminal proceedings." And in Moore v. Illinois, in five places it said, "adversary judicial criminal proceedings."

It happens that the complaint is not an adversary proceeding. A policeman can file a complaint, a citizen off the street can file a complaint --

QUESTION: Well, of course, every State is different. And New York is certainly different from Arizona. And I had understood that you had conceded that in your State and under your procedures, in Arizona, the petitioner had been formally charged on the date that you conceded he had been charged.

MR. McCLENNEN: Well, I conceded that the State had filed a complaint. But the question is, does that begin the adversary judicial criminal proceedings?

QUESTION: Well, you conceded that it did in your brief.

MR. McCLENNEN: In our supplemental brief we reconsidered our position.

QUESTION: Because you cited a case arising in a New York procedure.

MR. McCLENNEN: Yes.

QUESTION: And you acknowledge, I'm sure you agree with me, that each State is somewhat different in its criminal procedures.

MR. McCLENNEN: Yes.

QUESTION: What did the Supreme Court of Arizona indicate about --

MR. McCLENNEN: It never said anything on that issue, and another matter is that at the motion to suppress it was never argued that the confession should have been suppressed because the Sixth Amendment had started. That issue sort of cropped up as this came along.

QUESTION: At this point, Mr. McClellan, just so I understand the State procedure. I understand they did supersede with a new indictment --

MR. McCLENNEN: Yes.

QUESTION: -- but say they had not filed an indictment. Would it have been permissible without filing any other piece of paper with the court to go to trial?

MR. McCLENNEN: No.

QUESTION: He would not have been able to do that?

MR. McCLENNEN: No. Under the Arizona Constitution Article 20, Subsection 30, "No person shall be prosecuted criminally in any court of record for felony or misdemeanor otherwise than by information or indictment." So the State must either get a supervening indictment or take the person to a preliminary hearing and if he is bound over to Superior Court, file an information. The State cannot proceed on a complaint alone. It's our position that the complaint is not the adversary proceedings.

QUESTION: Well, it's your present position. It wasn't your position in your brief.

MR. McCLENNEN: No, it's our position --

QUESTION: And all through this litigation it hasn't been your position, as I understand it.

MR. McCLENNEN: No. But we are trying to establish what the law is right now.

QUESTION: Well, how do we know what the Arizona law is? We must rely on you. You told us in your opening brief that he had been formally charged on the date mentioned.

QUESTION: Well, I'm not sure. Is that really right? You didn't necessarily -- as I read the footnote, you just conceded that he was entitled to an attorney.

MR. McCLENNEN: Yes.

QUESTION: Maybe he's entitled to an attorney even if he hasn't been formally charged.

MR. McCLENNEN: Right, under Miranda he's entitled to an attorney.

QUESTION: Custody is the fulcrum of Miranda, is it not?

MR. McCLENNEN: Yes.

QUESTION: Not charge.

QUESTION: Well, but charge is the fulcrum of Massiah, and both arguments are made in this case, and it's important to distinguish the two, because they do factually run

into each other, but as a matter of constitutional law they're quite distinct.

MR. McCLENNAN: Yes. What's interesting in Miranda, at page 469, the Court says, "You must tell him that what he says can be used against him because he's faced with a phase of the adversary system."

And at page 477, it again says, "It is at this point that our adversary system of criminal procedure commences." Now, that's under Miranda. But it's our position that the filing of the complaint does not begin the adversary judicial criminal proceedings for the purposes of the Sixth Amendment. It's not an adversary proceeding.

QUESTION: Well, even if it were, do you say that -- assume that it was, would you say Massiah takes over if an attorney hasn't been appointed yet?

MR. McCLENNEN: It doesn't matter whether the attorney is appointed. Once --

QUESTION: What case have you got for that?

QUESTION: McLeod v. Ohio.

MR. McCLENNEN: McLeod v. Ohio. That once the adversary judicial criminal proceedings begin, he's entitled to an attorney under the Sixth Amendment.

QUESTION: Even if he has no lawyer?

MR. McCLENNEN: Right.

QUESTION: And even if he can hire his own lawyer?

MR. McCLENNEN: Right. However, in this case, we contend they didn't start then. It's also our position, even if they did start, he waived them. Because he knew he was charged with a crime. They showed him a copy of the arrest warrant. Sergeant Bunting discussed the charges with him -- Mr. Edwards, on page 101 and 102 of the brief -- "I advised him of the charge and showed him a copy of the warrant."

And at page 104:

"Q. Did you have any other conversations...?

A Just a short conversation discussing the charges."

He knew that he was charged with a crime, he knew that he had the right to an attorney; he had previously been convicted after a plea of armed robbery, he had previously been tried and acquitted of attempted assault on a mailman. At this case he defended himself. He wanted to defend himself. He knew --

MR. CHIEF JUSTICE BURGER: Your time has expired now. Mr. McClennen.

MR. McCLENNEN: He knew he had the right to an attorney, and in this case he waived it. We therefore ask this Court to affirm the judgment of the Arizona court.

MR. CHIEF JUSTICE BURGER: Do you have anything further, Mr. Meehan?

ORAL ARGUMENT OF MICHAEL J. MEEHAN, ESQ.,

ON BEHALF OF THE PETITIONER -- REBUTTAL

MR. MEEHAN: One or two items, if I may. The section of the record that you're inquiring about which I think most clearly expresses Edwards's statement in asking for a lawyer is on page 151. Now, that may be moot because the State --

QUESTION: Of the Appendix?

MR. MEEHAN: Of the Appendix. That may be moot because the State has agreed with me that on the 19th, as the trial court found and as the Arizona Supreme Court found, he had asked for a lawyer.

The Arizona Supreme Court didn't speak to the commencement of formal prosecution because of the concession, obviously. I would point out that the information there --

QUESTION: They didn't talk about the Sixth and Fourteenth Amendments?

MR. MEEHAN: They did not, Your Honor, although --

QUESTION: Only the right against compulsory self-incrimination, which would take the ground of the Miranda case --

MR. MEEHAN: That's correct. But that is not to say that it was not carefully and thoroughly briefed by both sides under the Massiah line of cases.

QUESTION: Well, it clearly wasn't carefully and thoroughly considered by the Supreme Court of Arizona.

MR. MEEHAN: That's true, but the question --

QUESTION: Or if it was, it was done so in silence.

MR. MEEHAN: I would agree with that.

QUESTION: Or it may have decided that it wasn't relevant.

QUESTION: Well, with a concession by the State in the Supreme Court of Arizona that he had been formally charged with an offense, I would think that --

QUESTION: If the Arizona Supreme court was conscious of the law that your friend has just mentioned that the complaint does not formally commence the proceeding, then the Arizona Supreme Court may have concluded that that was the law without discussing it.

MR. MEEHAN: I would acknowledge that that is conceivable but I think that counsel does not accurately state the law because the filing of the information follows, for example, the preliminary hearing at which counsel as well as the client has to waive.

QUESTION: What date was that?

MR. MEEHAN: The information, Your Honor, was not filed in this case. There was a supervening indictment -- superseding indictment.

QUESTION: But what date?

MR. MEEHAN: On the 27th or so of January. It was --

QUESTION: I thought he was reading from either a

statute or the Constitution that the criminal proceeding is, must be, commenced by either the information or an indictment.

MR. MEEHAN: If the Court please, the constitutional provision does not say it must be commenced that way. It says that --

QUESTION: Well, what was he reading from, do you recall?

MR. MEEHAN: Article II, Section 30, of the Arizona Constitution.

QUESTION: What does that tell us? I see you have it.

MR. MEEHAN: He cannot be prosecuted otherwise than by. Now, the Arizona rules say, for example, that at the first appearance that Edwards made on the afternoon of the day he was interrogated that one of the things the Court can do is to amend the formal charges if necessary; the formal charges. And the information and the indictment both come at a time after, by various rules, the Court of Arizona in its adopting the rules has recognized that the right to counsel applies.

QUESTION: Mr. Meehan, do you contend that the two-sentence opinion of the Court in McLeod extended the Massiah rule?

MR. MEEHAN: As I understand it, Mr. Justice Rehnquist, it originally had been vacated and remanded because of Massiah and the Supreme Court of Ohio in its opinion said,

Massiah does not apply because here the right to counsel had attached but counsel had not actually been either retained or afforded. And this Court again sent the case back.

QUESTION: It just reversed, didn't it?

MR. MEEHAN: It reversed.

QUESTION: That's correct.

QUESTION: And citing Massiah.

QUESTION: Correct.

MR. MEEHAN: Yes. Obviously, it's not a plenary opinion.

QUESTION: Like that famous Hicks case.

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

(whereupon, at 11:02 o'clock a.m., the case in the above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-5269

Robert Edwards

v.

State of Arizona

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: Lill S. Hall