

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-5555

TITLE LARRY GENE HEATH, Petitioner V. ALABAMA

PLACE Washington, D. C.

DATE October 9, 1985

PAGES 1 thru 50



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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 LARRY GENE HEATH, :

4 Petitioner, :

5 V. : No. 84-5555

6 ALABAMA :

7 - - - - -x

8 Washington, D.C.

9 Wednesday, October 9, 1985

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 1:57 o'clock p.m.

13 APPEARANCES:

14 RONALD J. ALLEN, ESQ., Chicago, Illinois; on behalf of
15 the petitioner.

16 WILLIAM DUNCAN LITTLE, III, ESQ., Assistant Attorney
17 General of Alabama, Montgomery, Alabama; on behalf of
18 the respondent.

C O N T E N T S

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on behalf of the respondent	31
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1 through what is called the unified appeals procedure,
2 which is the method by which Georgia -- these are
3 hearings by which they decide if the death penalty is to
4 be imposed, and subsequently a life sentence was
5 imposed.

6 I think the reason the state asserts that he
7 pled guilty to the life sentence is they indicate or at
8 least argue that he was never in jeopardy for his life,
9 whereas in fact the record supports that he was, but
10 more importantly, suppose the government is right.
11 Suppose the state of Alabama is correct that he did
12 plead guilty to life imprisonment.

13 Under those circumstances, the dilemma that
14 the state faces is either that they are essentially
15 conceding that their agents denied a trial, that there
16 was a plea agreement, committed perjury, or if it was
17 somebody other than those agents who entered into the
18 plea agreement, serious questions of immunity are
19 raised, because obviously if there was an agreement in
20 Georgia, it would contain, at least implicitly,
21 statements about immunity, and if that is the case, one
22 of the issues that this Court would face should it apply
23 the dual sovereignty doctrine to successive state
24 prosecutions is how to work out those kinds of questions
25 of immunity.

1 QUESTION: What would you say, Mr. Allen, if
2 the record showed that there was a kidnapping and rape
3 in one state, either Georgia or Alabama, and then
4 another day the murder occurred? What would you --
5 would your view be the same?

6 MR. ALLEN: I am sorry, sir. You mean across
7 a state line?

8 QUESTION: The kidnapping and rape in, say --

9 MR. ALLEN: Say, Georgia?

10 QUESTION: -- and taking them across the state
11 line and murdering the victim on the next day.

12 MR. ALLEN: I think it is quite clear, Your
13 Honor, for reasons I am going to develop in detail, that
14 we have to respect territoriality in the criminal
15 justice process, and that under those circumstances, the
16 murder occurred in the one state, the kidnapping and the
17 rape occurred in another.

18 Now, if one of those acts is not an element of
19 the defense, and is relevant somehow to the sentencing
20 process, then it strikes me that the territoriality
21 principle would not restrict the state from considering
22 that element in its decision to reach a conclusion of
23 capital punishment.

24 The interesting fact in this case is that the
25 sentencing criteria in this case is the kidnapping. The

1 sine qua non is the murder, and that occurred in
2 Georgia, not in Alabama.

3 Now, this Court asked the parties to address
4 the applicability of the dual sovereignty doctrine to
5 successive state prosecutions.

6 QUESTION: Well, was there some offense in
7 Alabama?

8 MR. ALLEN: If -- was there some offense? If
9 there was a kidnapping, there was a kidnapping most
10 likely in Alabama. The record isn't absolutely clear
11 about that, to be quite frank about it, but --

12 QUESTION: How about the contracts to kill the
13 person?

14 MR. ALLEN: Those things were entered into in
15 Georgia.

16 QUESTION: In Georgia?

17 MR. ALLEN: That's right. Now, I would like
18 to address my remarks to three issues. First of all,
19 the concerns of the double jeopardy clause are more
20 acute here than in any other situation where this Court
21 has dealt with the dual sovereignty doctrine, the
22 concerns of the individual.

23 Commensurately, the concerns of the state are
24 less. Secondly, that a decision in favor of Alabama
25 will have a significant impact on the administration of

1 criminal justice in the United States, and further will
2 call into question --

3 QUESTION: Mr. Allen, let me interrupt you
4 again. Suppose the Alabama charge has been for only
5 kidnapping. Would you be here?

6 MR. ALLEN: No, sir. And further, as I was
7 saying, would call into question -- a decision in favor
8 of Alabama would call into question precedents of this
9 Court.

10 The third point that I will make today is that
11 by contrast a decision for Mr. Heath would essentially
12 cast doubt on no precedents of this Court and maintain
13 the status quo in the administration of criminal justice
14 in the United States.

15 The reason the defendant's interests are more
16 acute here than in other circumstances where this Court
17 has dealt with the dual sovereignty exception is, first
18 of all, here we have what is probably the pristine
19 problem of the double jeopardy clause, apparently
20 repeated efforts to deprive a person of his life.

21 In most instances where the dual sovereignty
22 exception has been applied, that is not the case, and of
23 course that raises an increased risk of an erroneous
24 death sentence that has not been dealt with before by
25 this Court, but more importantly than that, a second

1 reason why the defendant's interests are more acute here
2 is that the state purports to ask you to extend the dual
3 sovereignty exception to successive state prosecutions.

4 But that is not what they are asking you to
5 do. What they are asking you to do is in fact create a
6 multiple sovereignty exception. Under the state's
7 argument, the fact that there are only two states
8 involved in this case is a complete fortuity.

9 If states are allowed to be freed from the
10 constraints of double jeopardy clause when a sister
11 state has taken cognizance of that exact same act, the
12 result could be that an individual could be tried for
13 the same offense across a multitude of states.

14 A perfect example is, if a person is
15 kidnapped, to pick up some of the examples already used
16 today and carry it across three different jurisdictions,
17 each of those jurisdictions would have jurisdiction over
18 the kidnapping, and presumably if there is a murder that
19 follows, to try that individual for the capital offense
20 of the murder.

21 So, we are talking here not about a dual
22 sovereignty exception. We are talking about creating a
23 multiple sovereignty exception. Moreover, the interests
24 of the state in this situation are much less than they
25 are in the other context where this Court has extended

1 the dual sovereignty exception.

2 It is conceivable the next 15 minutes of my
3 life may be made uncomfortable by pointed questions that
4 implicitly ask if the states are sovereign. Well, let
5 me say at the outset that yes, indeed, the states are
6 sovereign. I am not here to attack the sovereignty of
7 the states. But to say that they are sovereign is not
8 to say what the attributes of sovereignty are.

9 And as this Court held -- or discussed, did
10 not hold, in Garcia last year, one has to look at the
11 interest underlying institutional relationships in
12 interpreting the nature of sovereignty. And I would
13 suggest that that is an appropriate way to proceed as
14 this Court has proceeded in the past in interpretations
15 of the double jeopardy clause.

16 If you look at your decisions, it is
17 interesting to note that when four conditions have been
18 met, you have applied the dual sovereignty exceptions to
19 successive prosecution. Number One, concurrent
20 territorial jurisdiction. Number Two, by quite
21 different entities, governmental entities that pursue
22 quite different interests. Number Three, where there is
23 a risk of intergovernmental conflict. And Four, where
24 the most felicitous resolution of that conflict is to
25 allow two, not a multitude, but two prosecutions.

1 None of these matters are present here in this
2 csae. There obviously is not, at least I think there is
3 not concurrent territorial jurisdiction. Without that,
4 there is not the overlapping of complex statutory
5 structures that exist, say, in the federal-state
6 relationships, and with that overlapping of the federal
7 and state statutes comes the possibility of continuous
8 and annoying friction.

9 That doesn't exist in the relationship of
10 states to each other as it does in successive federal
11 state prosecutions. Moreover, in the context of
12 resolving this problem in the federal-state context,
13 consider the alternatives that this Court faced when
14 asked to do just that.

15 If you allow, as you could have done, the
16 first prosecution to preempt the second, under those
17 circumstances, a state prosecution would preempt a
18 subsequent federal prosecution with the resultant loss
19 of federal supremacy, obviously not a desired result.
20 The reverse, though, is no more desirable.

21 If it is a federal prosecution that preempts a
22 state prosecution, the result of that is federal
23 preemption of local law enforcement, again, not
24 desirable, but again, neither one would occur in this
25 case. In fact, if there is any loss of sovereignty in

1 this case, it would come by affirming Alabama's taking
2 of jurisdiction over these events that occurred within
3 the territorial jurisdiction in Georgia, and allowing
4 them to execute a person for a murder that occurred
5 within that state.

6 Now, another --

7 QUESTION: Is that an independent argument of
8 your double jeopardy --

9 MR. ALLEN: Your Honor, I think --

10 QUESTION: -- the jurisdictional thing? Is
11 that just a -- is that a due process claim, or what?

12 MR. ALLEN: Your Honor, let me just be frank
13 about the matter. I would like you to tell me that
14 jurisdiction is before this Court. The difficulty is,
15 it was not raised by counsel for Mr. Heath below. I
16 think that nonetheless it is before this Court for
17 filing.

18 Your cases have always said that the dual
19 sovereignty exception applies only when both
20 jurisdictions have jurisdiction. Therefore your cases
21 make an element of the dual sovereignty exception the
22 presence of jurisdiction over the event. That is the
23 reason if it is before you it is before you.

24 Now, let me also say, though, that even if you
25 decide jurisdiction is not appropriately before you, the

1 consequences of this Court finding the dual sovereignty
2 exception to apply to successive state prosecution in
3 terms of what that implies about state jurisdiction
4 obviously is a concern that this Court should have.

5 QUESTION: Well, of course, I suppose the
6 double jeopardy argument is really a due process
7 argument, isn't it?

8 MR. ALLEN: In any even it is, you are right,
9 and --

10 QUESTION: Yes.

11 MR. ALLEN: -- I would be quite happy to be
12 free to think that all due process issues are properly
13 before you, but something tells me I shouldn't view it
14 that way.

15 QUESTION: May I be unfair and ask you to
16 explain to me your opponent's argument as to how Alabama
17 gets sovereignty?

18 MR. ALLEN: Your Honor, they have a statute
19 that says that a crime that commences in Alabama they
20 have jurisdiction of, even if it is consummated outside
21 the state. They say that this crime of the murder
22 commenced with the kidnapping, which occurred, if it
23 occurred at all, in Alabama, and therefore they say this
24 is a single crime, murder during a kidnapping, and they
25 have jurisdiction over it.

1 Do you want me to go further, because I can.

2 QUESTION: I mean, I have a problem that there
3 weren't two murders.

4 MR. ALLEN: Yes, sir, that is a problem.

5 QUESTION: That's my problem.

6 MR. ALLEN: That's the problem. Now, the
7 state -- the third reason why the state's interest in
8 this case is even less than in the normal context of
9 dual sovereignty is that in the normal context of dual
10 sovereignty, the federal-state context in particular,
11 you have different entities pursuing different
12 interests. Here that is not the case. This particular
13 case is a perfect example of it. You have both states
14 pursuing their interests in deterring and punishing
15 murders.

16 QUESTION: Wasn't the victim a resident of
17 Alabama?

18 MR. ALLEN: Yes, sir, she was. The issue that
19 raises is a very interesting one, which is whether or
20 not a state -- unfortunately, its jurisdiction -- has
21 the power to protect its citizens outside of its state
22 borders. Even if they do, and let's assume that they
23 do, nonetheless, they don't have the power to do that
24 freed from your interpretation of the double jeopardy
25 clause. So you would have to find that not only does

1 Alabama have the power to exert jurisdiction on this
2 basis, but also that the dual sovereignty exception is
3 going to be extended, because it is absolutely clear
4 that Georgia did exert authority over this murder.

5 QUESTION: But apart from the double jeopardy
6 argument, is there any reason to think that normal
7 minimum contacts rules don't apply in criminal
8 proceedings as well as in civil proceedings?

9 MR. ALLEN: Yes, sir, the opinions of your own
10 Court suggest that very strongly.

11 QUESTION: Which ones?

12 MR. ALLEN: Huntington versus Attrill says
13 that --

14 QUESTION: When was that decided?

15 MR. ALLEN: Quite some time ago, in the
16 1800's.

17 QUESTION: Well, somewhat before International
18 Shoe, then, wasn't it?

19 MR. ALLEN: It is my understanding that
20 International Shoe was not an interpretation of criminal
21 jurisdiction rules.

22 QUESTION: I know, but I mean, we are not back
23 in Pennoyer against Neff.

24 MR. ALLEN: Your Honor, you are right that we
25 are not. If you are asserting that --

1 QUESTION: I don't assert. I was simply
2 asking you a question.

3 MR. ALLEN: And the answer is that those cases
4 are old cases, but the reason they are old cases is
5 because the principal of territoriality that they
6 constructed, or I shouldn't say constructed, simply
7 recognized, has never been cast into doubt.

8 A perfect example of this is, after diligent
9 search I and I presume my friend from Alabama have not
10 been able to find a single case other than this case of
11 an extraterritorial assertion of jurisdiction over a
12 murder that occurred outside the state.

13 QUESTION: Well, why should -- as a matter of
14 principle, why should it be any different in a criminal
15 case than in a civil case, if you are talking about
16 "jurisdiction" apart from double jeopardy
17 considerations?

18 MR. ALLEN: If there is a reason, the reason
19 is, is that one has always interpreted the criminal
20 process, the statutes constructing the criminal process
21 in a narrow way. Here, if you allow the kinds of -- if
22 you allow an analogy to civil jurisdiction, what you
23 would get, of course, is that the states are completely
24 free to interpret their own interests, bring people in
25 for very serious charge, even though they may have

1 occurred anywhere across the country, or indeed for that
2 matter anywhere in the world in a context where normally
3 we view that as inappropriate behavior.

4 QUESTION: Well, let's take just the facts of
5 this case. Supposing that on these facts, Georgia for
6 some reason or other had said we just don't want to
7 prosecute this case. We think the case is weak. We
8 don't think a Georgia jury would convict.

9 Would Alabama then be prevented from trying
10 this particular defendant for murder on these facts?

11 QUESTION: Well, it depends, and I want to be
12 very clear about this, because your question goes to the
13 heart of one of the problems we have. If you construe
14 criminal jurisdiction to be limited to territoriality,
15 the question would be answered in the negative. They
16 could not exert jurisdiction, and obviously that would
17 be the end of the matter.

18 But that is not what my argument rests upon.
19 That is one implication of a decision in favor of
20 Alabama, that they do have extraterritorial
21 jurisdiction, notwithstanding the pronouncements of this
22 Court. The argument here, though, is, assuming that
23 they do have jurisdiction, Georgia did exercise
24 jurisdiction in this case, and the question is, does the
25 double jeopardy clause preclude Alabama from doing so

1 when Georgia has already done so.

2 QUESTION: So you don't have an unequivocal
3 answer to my question.

4 MR. ALLEN: No, I don't. I don't have an
5 unequivocal answer to your question, although it would
6 be a dramatic change in the administration of criminal
7 justice to hold that criminal justice jurisdiction,
8 jurisdiction over criminal acts is somehow analogous to
9 civil jurisdiction, and indeed, as I say, the absence of
10 these cases indicates how dramatic a change that would
11 be.

12 QUESTION: Well, Mr. Allen, suppose the
13 Alabama statute or the criminal statute said -- named as
14 one of the capital crimes a kidnapping in the course of
15 which a murder takes place, and so they indict him for
16 kidnapping, and they prove that a murder took place.
17 Would you be making the same argument?

18 MR. ALLEN: Where does the murder occur?

19 QUESTION: In Georgia.

20 MR. ALLEN: Yes.

21 QUESTION: Why is that?

22 MR. ALLEN: Because --

23 QUESTION: I thought you said a while ago that
24 you could use -- you could use in the sentencing phase
25 evidence of crimes that took place in Georgia.

1 MR. ALLEN: That is right, Your Honor, but it
2 is the conventional view of the interpretations of this
3 Court that the only crime, although it is not clear, but
4 the only crime for which capital punishment is
5 permissible is murder. Under those circumstances, it
6 would be quite obvious the state would be trying to
7 circumvent those restrictions. Call it kidnapping,
8 convict him, and then rely on what is the sine qua non,
9 which is the murder, which is outside the scope of the
10 state's jurisdiction.

11 But even in your case --

12 QUESTION: Well, that's a different argument.

13 MR. ALLEN: But even in your case, Your Honor,
14 let me point out --

15 QUESTION: That wouldn't be -- you wouldn't be
16 arguing jurisdiction, then, would you?

17 MR. ALLEN: No, I would be arguing --

18 QUESTION: You would be arguing double
19 jeopardy.

20 MR. ALLEN: I would be arguing the Eighth
21 Amendment.

22 QUESTION: You would be arguing something
23 else.

24 MR. ALLEN: Which, Justice White, if I had had
25 my druthers, would also have been raised below, but

1 wasn't. But I want to point out that in your
2 hypothetical you leave one fact out that does not make
3 it analogous to this case, which is that in this case
4 Georgia did take cognizance of the murder that occurred
5 in Georgia, did prosecute, did give a life sentence to
6 Mr. Heath.

7 For these reasons, it strikes me that the
8 balance is here altogether different. The interests of
9 the defendant are much stronger. The interests of the
10 state are much weaker than in other cases where this
11 Court has interpreted the dual sovereignty exception to
12 be applicable.

13 I might point out two other points. If you
14 decide in favor of Alabama, that will have a profound
15 impact on the administration of criminal justice. I
16 have already pointed out one way in which that is so.
17 This would be the creation not of a dual sovereignty
18 exception, but of a multiple sovereignty exception.

19 QUESTION: May I interrupt you there, because
20 I have been trying to reflect about your multiple,
21 whether that makes it better or worse.

22 Supposing somebody starts out in Chicago and
23 drives 100 miles an hour all the way up through Indiana
24 into Michigan. Can he be prosecuted for speeding in all
25 three states?

1 MR. ALLEN: I think he can, Your Honor. There
2 is going to be a point at which we are going to have to
3 decide what jurisdictional rules apply. You are going
4 to have to look at the acts that occurred in the state.

5 QUESTION: Supposing he forces someone against
6 his will to ride with him. Can he be prosecuted for
7 kidnapping in all three states in your view?

8 MR. ALLEN: I think the answer to that
9 question would be yes.

10 QUESTION: He could?

11 MR. ALLEN: I think the answer to that
12 question would be yes. There was a kidnapping that
13 occurred --

14 QUESTION: But if planning to kill him, he
15 picks him up in Chicago and dumps him off in St. Joe
16 when he does kill him, he can only be prosecuted in one
17 state?

18 MR. ALLEN: Where the events occurred. If
19 that is not true --

20 QUESTION: In each trial you would want to
21 prove the whole sequence of events, I am assuming. You
22 decided to do it, you picked him up -- I mean, if the
23 prosecutor -- you picked him up, drove him on this
24 particular route, and then killed him and dumped him
25 out.

1 MR. ALLEN: I don't think so, Your Honor,
2 except in the state in which the murder occurred. If
3 that is not part and parcel of the charge, I don't know
4 why it would be relevant.

5 QUESTION: Isn't the only way you could
6 analogize those hypotheticals with this one is that you
7 kill him each state.

8 MR. ALLEN: Right. If you kill him in each
9 state, then I would agree you could prosecute him in
10 each state.

11 QUESTION: Well, if you cut his throat and he
12 bled to death in two states, I suppose you could
13 prosecute in both states?

14 MR. ALLEN: That is a good -- that is a good
15 hypothetical, really, and in fact it is a hypothetical
16 that common law has dealt with. Common law says there
17 are two alternative grounds of jurisdiction over murder,
18 either where the blow occurs, in this case the cutting
19 of the throat, or where the person expires. But that
20 wasn't for purposes of allowing two states to have
21 jurisdiction. That was for the purposes of locating the
22 offense somewhere.

23 QUESTION: That may have been the purpose, but
24 what would you say in that case, only one state?

25 MR. ALLEN: Only one state, and --

1 QUESTION: Which one?

2 MR. ALLEN: Either.

3 QUESTION: But not two?

4 MR. ALLEN: But not two.

5 Now, if I may go on with the implications of a
6 decision in favor of Alabama, not only is there the
7 multiple sovereignty problem, there is also going to be
8 an impact on plea bargaining. The only reason why a
9 defendant pleads is to get assurances on sentence, and
10 the more that that person is exposed to multiple
11 prosecutions, the less likely that person is going to be
12 to cooperate, or at least it is true the more difficult
13 those negotiations are going to become.

14 This case is a perfect example of that. If
15 the state is correct in its implications that there was
16 -- well, if the brief is correct, if respondent's brief
17 is correct in its implications that there was a deal,
18 this statement that was given, which is virtually the
19 only evidence that ties him to the offense obviously was
20 given in response to that deal.

21 Now, it is highly, highly unlikely that that
22 individual is going to give that statement that then was
23 used against him in Alabama if he is exposed to the
24 prosecution in Alabama that actually occurred in this
25 case. So again I think one thing that you ought to

1 think about or might want to think about is the impact
2 of exposing an individual to multiple trials on plea
3 bargaining.

4 Moreover, a decision in favor of Alabama
5 raises serious questions for this Court, or will raise
6 serious questions for this Court in other areas. How do
7 the vindictiveness cases apply, or will they apply to
8 successive activities by state prosecutors in different
9 states? The state suggests that our suggestion in our
10 brief that in part the Alabama prosecution was a
11 function of Mr. Heath's refusing to testify in Georgia
12 is preposterous.

13 I would like to review just quickly what
14 happened. He was called to testify against his
15 confederates, who he identified, by the way, in the
16 statement made to the police in Georgia, and he pled the
17 Fifth Amendment on the grounds that he was still subject
18 to a kidnapping charge in Alabama, which he was, and it
19 was clearly a legitimate exercise of his Fifth Amendment
20 rights.

21 One week to the day after he pled the Fifth
22 Amendment, Alabama empaneled a grand jury and indicted
23 him for not the kidnapping but the murder. Now, it
24 strikes me that under the precedents of this Court,
25 Figpen versus Roberts, Blackledge versus Perry, and the

1 like, that would clearly raise a presumption of
2 vindictiveness, and the issue that you will face if you
3 apply the dual sovereignty exception to successive state
4 prosecutions is precisely that kind of an issue that
5 will now come back to you.

6 How does immunity work? I mentioned before
7 that we have here a problem of immunity. If there was a
8 deal, that deal implicitly contains an agreement not to
9 prosecute for other offenses. Under your precedence,
10 the state, if a state grants immunity, at least use and
11 derivative use, that binds the federal government. If
12 you apply the successive state to -- the dual
13 sovereignty exception to successive state prosecutions,
14 you will have the same kind of immunity problems in
15 successive state prosecutions. At least it will have to
16 be worked out.

17 Moreover, if you allow successive state
18 prosecutions, you will eventually have to decide the
19 scope of state court jurisdiction. You will get cases
20 with less and less of a nexus to states, and you will
21 have to work that problem out.

22 Now, perhaps you can work it out by an easy
23 reference to Pennoyer versus Neff. It is possible. I
24 suggest that that is quite inconsistent with our
25 understanding of criminal jurisdiction in the United

1 States in which the single most important element is
2 territoriality. If you affirm this opinion, affirm this
3 case in a way that implies that criminal jurisdiction is
4 freed from territoriality as a primary determinant, you
5 will then have to fill the void with something else, and
6 this Court will be the court, or the lower federal
7 courts will be the courts that will have to answer those
8 questions.

9 I would also point out that this case is
10 unprecedented in certain other ways. As I have said
11 before, this is the first case that I can find, and the
12 state has not cited any either, where there has been an
13 extraterritorial assertion of jurisdiction over a murder
14 that occurred somewhere else.

15 There have been two cases that have reached
16 courts of last resort where there are multiple
17 prosecutions and a federal-state dual sovereignty
18 exception for the same prosecution, and in both cases
19 the courts of last resort reversed. That was the Gay
20 case in Michigan and your case in Coleman versus
21 Tennessee.

22 I have found one case since the time we wrote
23 our brief where multiple prosecutions for the same
24 murder have been upheld, and that is Delay versus the
25 United States, 602 Fed 2nd 173 of the Eighth Circuit.

1 Its singularity, though, I think, speaks volumes about
2 the view of the scope of criminal jurisdiction in the
3 United States as well as the abhorrence that we have for
4 multiple prosecutions for the same --

5 QUESTION: What was that citation?

6 MR. ALLEN: Delay, D-e-l-a-y, versus United
7 States, 602 Fed 2nd 173.

8 QUESTION: One seventy-three?

9 MR. ALLEN: Yes. Eighth Circuit, 1979, I
10 believe.

11 Two other points that are involved in this
12 case. If you decide in favor of Alabama, you will cast
13 in doubt directly one of the precedents of your Court,
14 Nielson versus Oregon. In Nielson versus Oregon, you
15 held that where Oregon and Washington have concurrent
16 territorial jurisdiction because of the way in which
17 they were admitted to the union -- they have territorial
18 jurisdiction over the same river.

19 I shouldn't say you held. You said that when
20 a state, when two states have concurrent territorial
21 jurisdiction, and one state takes jurisdiction over a
22 criminal offense that occurred within that concurrent
23 area, the other state is forbidden from doing so.

24 Now, again, you may wish --

25 QUESTION: Is that quite right? Didn't one of

1 them permit it and the other prohibit it?

2 MR. ALLEN: Well, you are right. I was
3 talking about --

4 QUESTION: You had two crimes.

5 MR. ALLEN: I was talking about your dicta.
6 In dicta, the Court said that if this were the case, but
7 actually what happened in Nielson is that one state
8 explicitly allowed by statute the occurrence, and the
9 question was whether that was sufficient to negate the
10 otherwise legitimate statute of the state of Washington,
11 I believe, and it was not.

12 QUESTION: And by hypothesis they were dealing
13 with an act that took place in a territory over which
14 both had jurisdiction.

15 MR. ALLEN: Right, and of course that is an a
16 fortiori case from this case, because here I take it we
17 have not reached the point where Alabama has
18 jurisdiction over Georgia.

19 On the other hand, a decision for Mr. Heath
20 will be of very limited effect. First of all, this is a
21 capital case where, as I said earlier, he was put into
22 jeopardy in his life in two states, and indeed it
23 involves the single most important interest under the
24 double jeopardy clause.

25 QUESTION: Mr. Allen, I want to be sure,

1 because I wasn't sure I understood one of your answers
2 to Justice White.

3 Do you view -- is it critical to your argument
4 that this be a capital case?

5 MR. ALLEN: It is not critical, no. It is
6 interesting, but it is not critical.

7 QUESTION: So if it were just -- if it were a
8 non-capital offense, you would basically make the same
9 argument.

10 MR. ALLEN: That's right. This Court, as you
11 know, has carved out capital sentences as a thing apart
12 in many instances, Estelle versus Smith and all the --
13 and you could do that again. I have just pointed out
14 how limited the decision could be in favor of Mr. Heath,
15 and indeed there is a reason to do that, and that is
16 that again the Fifth Amendment speaks specifically about
17 putting somebody in jeopardy for their life.

18 Secondly, a decision in favor of Mr. Heath
19 overrules and casts into doubt no cases. Thirdly, it
20 preserves rather than disrupts the status quo in the
21 administration of criminal justice in the United States,
22 and no disruptive questions that I can see will come
23 from a decision in favor of Mr. Heath.

24 So, in conclusion, what I would say is that
25 Alabama is attempting essentially to circumvent two

1 fundamental limits on state power. One is that we
2 normally subject a person to a single trial for single
3 offense, and of course the other is that the reach of
4 the state's penal law is normally limited to
5 territoriality. They have offered no good reason why
6 they should be allowed to escape these limits on their
7 power, and I would respectfully suggest that they have
8 not been able to do so.

9 QUESTION: Well, suppose -- you are not --
10 your argument up here isn't the jurisdictional one. You
11 say you aren't entitled to make it. Well, you say you
12 are, but it wasn't raised below.

13 MR. ALLEN: Right.

14 QUESTION: And this is from the state court,
15 and all that sort of thing. What if -- what if this
16 weren't a capital -- weren't a capital case, and the act
17 he committed in Georgia in the course of a kidnapping or
18 in the course of something of a continuing crime wasn't
19 a crime there.

20 Now, would you be making the same argument
21 that Alabama then couldn't --

22 MR. ALLEN: Your Honor, I don't think it is
23 Alabama's role to police the acts that occur in other
24 states.

25 QUESTION: I know, I know, but you wouldn't --

1 MR. ALLEN: If the answer is yes, I would be
2 making a single argument.

3 QUESTION: -- you wouldn't be making a double
4 jeopardy argument.

5 MR. ALLEN: Not a double jeopardy argument.

6 QUESTION: You would be making a
7 jurisdictional argument.

8 MR. ALLEN: Jurisdictional argument.

9 QUESTION: Well, you are not -- so your
10 argument you made, your fundamental argument here
11 wouldn't apply in that case.

12 MR. ALLEN: No, that is not true. Even if
13 Georgia has --

14 QUESTION: Although your double jeopardy
15 argument wouldn't apply.

16 MR. ALLEN: Not in that --

17 QUESTION: You said it wouldn't.

18 MR. ALLEN: Not in that case, but that is not
19 this case, because Georgia did take cognizance of this
20 particular --

21 QUESTION: You talk about my example.

22 MR. ALLEN: Absolutely. If Georgia did not
23 take cognizance of some act, it would not be a double
24 jeopardy argument.

25 QUESTION: All right. That is all I need to

1 know.

2 MR. ALLEN: If there are no further questions,
3 I will reserve the remaining time for rebuttal.

4 CHIEF JUSTICE BURGER: Mr. Little.

5 ORAL ARGUMENT OF WILLIAM DUNCAN LITTLE, III, ESQ.,

6 ON BEHALF OF THE RESPONDENT

7 MR. LITTLE: Thank you. Mr. Chief Justice,
8 and may it please the Court, despite petitioner's
9 argument, this is a straightforward case. There is only
10 one issue here, and that is whether where one act
11 violates the law of two different governments or two
12 different sovereign governments, there are two different
13 offenses, or whether double jeopardy -- excuse me,
14 whether the dual sovereignty doctrine applies to an act
15 which violates the law of two different states.

16 As petitioner conceded, the issue of
17 jurisdiction was not raised in the courts below. It was
18 not addressed by the Alabama courts at all. It was
19 raised in the petition for certiorari. This Court
20 denied certiorari as to that issue and granted
21 certiorari as to an issue which specifically assumed the
22 existence of jurisdiction.

23 Now, this Court's dual sovereignty doctrine as
24 it has been established is very clear and very logical.
25 Where one act violates the law of two different

1 sovereign governments, there are two different offenses
2 for purposes of the double jeopardy clause. Two
3 governments are sovereign in relation to one another
4 where each derives its authority to prosecute from a
5 different source.

6 This Court in United States versus Lanza and
7 in Abbate versus United States has held that states
8 derive their authority to prosecute from their own
9 constitutions. Now, here we have Alabama and Georgia,
10 two states each deriving their authority to prosecute
11 from their own constitutions. These are sovereigns
12 under the dual sovereignty doctrine, and therefore there
13 is no double jeopardy violation.

14 Furthermore, this is not only clear, it makes
15 sense. In this Court's other double jeopardy cases, the
16 focus has been on the legal distinction between the
17 statutes, whether these statutes are legally different.
18 For instance, under Blockburger, the question there is
19 whether each statute includes an element of proof which
20 is not included in the other statute.

21 Now, here we have two laws which are legally
22 distinct in the most basic sense. One is an Alabama law
23 passed by the Alabama legislature pursuant to the
24 Alabama constitution. The other is a Georgia law passed
25 by the Georgia legislature. They must be considered

1 different offenses for purposes of the double jeopardy
2 clause.

3 Now, the petitioner would have the Court
4 discard all the clear language of these cases and
5 instead decide this case based on other factors. I
6 would like to discuss these individually.

7 First is the idea of comparison of interest.
8 Petitioner says that two prosecutions should only be
9 allowed where the two governments are pursuing different
10 interests, and where one government's interests are not
11 served by another government. This should be rejected
12 for a number of reasons.

13 First, it is totally contrary to what the
14 court has already said in this area. The focus in all
15 the dual sovereignty cases is on sovereignty, and the
16 focal question is, are the governments sovereign in
17 relation to one another. It is very telling, I think,
18 that the petitioner sites no cases which interpret this
19 Court's cases as involving any kind of comparison of
20 interest test.

21 Furthermore, in Abbate, Abbate versus United
22 States, this Court was presented with a similar interest
23 argument, and it rejected that argument. I think the
24 petitioner's argument is in essence that the Court
25 simply didn't mean what it was saying in these cases.

1 Furthermore, if the Court -- if the idea of
2 interest and a comparison of interest had been the real
3 reason for deciding these cases, United States versus
4 Lanza would have been decided differently. There, the
5 petitioner -- excuse me, the defendant was prosecuted in
6 state court for manufacturing, transporting, and
7 possessing liquor. He pled guilty. He was then
8 indicted in Federal court for manufacturing, possessing,
9 and transporting exactly the same liquor. So therefore
10 the interests in this case were identical.

11 The second reason for rejecting this
12 comparison of interest test is a related one. Because
13 this comparison of interest is contrary to the settled
14 law in this area, the Court could not adopt it in the
15 area of prosecution by two different states without
16 casting serious doubts on its holdings in other areas.

17 The third reason for rejecting this comparison
18 of interest test is a more practical one. If this test
19 were adopted, the Court would be discarding a very clear
20 and a very sound doctrine in favor of one that has to be
21 fleshed out on a case by case basis. Now, in our brief,
22 I have demonstrated the difficulty in applying -- that
23 often arises in applying a test like this to
24 prosecutions by two different states, and the petitioner
25 in his reply brief has essentially admitted that that is

1 correct.

2 Furthermore, if a comparison of interest test
3 were adopted and applied in this case, they are
4 different interests here. The petitioner pled guilty,
5 and he received in Georgia for his Georgia offense a
6 life sentence with parole eligibility. However, under
7 Alabama law the punishment is different. Under Alabama
8 law the minimum punishment is life imprisonment without
9 parole, and the prosecutor in this case asked for the
10 death penalty given the nature of the offense. So,
11 Alabama has unsatisfied interest.

12 The second factor in the petitioner's test is
13 the idea of concurrent territorial jurisdiction. He
14 points out that in all these dual sovereignty cases
15 courts happen to have been exercising current
16 territorial jurisdiction. This is simply a different --
17 a distinction without being a difference.

18 The focus of the dual sovereignty -- the
19 essence of the dual sovereignty doctrine is that where
20 one act violates the law of two sovereign governments,
21 there are two offenses. Now, how those governments
22 happen to have obtained jurisdiction, whether it is
23 because there is concurrent territorial jurisdiction or
24 because, as here, a defendant commits in essence the
25 continuing criminal transaction across the line of two

1 different states, is simply irrelevant to that analysis.

2 Now, the third factor in the petitioner's
3 proposed test is the idea of intergovernmental
4 conflict. He says that two prosecutions should only be
5 allowed where there is a substantial possibility of
6 intergovernmental conflict in barring the second
7 prosecution. Again, like the other two factors, this is
8 contrary to the explicit language of all the dual
9 sovereignty cases, and the petitioner cites no case
10 which interprets those cases as involving that factor.

11 Moreover, there is easily as great a
12 possibility of intergovernmental conflict in the area of
13 prosecutions among the 50 states as in the area of
14 prosecutions by the federal government and Indian
15 tribes, and this Court has already held in United States
16 versus Wheeler that the dual sovereignty doctrine
17 applies there.

18 The fact that these factors that the
19 petitioner cites were not the basis of the Court's
20 decisions as shown by the case of Waller versus
21 Florida. In that case we had different interests. The
22 person was prosecuted in municipal court for
23 misdemeanors. He was then prosecuted in state court for
24 a felony. So there was a difference in the punishment,
25 a significant difference.

1 There was concurrent territorial
2 jurisdiction. Furthermore, there is a substantial risk
3 of intergovernmental conflict and prosecutions involving
4 municipalities and states. For instance, every
5 vehicular homicide which occurs within city limits is
6 potentially a violation of a municipal traffic ordinance
7 and a state homicide statute, and it is certainly
8 possible the defendant can go into municipal court and
9 plead guilty and then try to use that to defeat or to
10 avoid a state homicide prosecution.

11 In short, this Court's dual sovereignty cases
12 are very concise and very logical, and above all very
13 workable. By contrast, the petitioner's proposed test
14 is not only contrary to what this Court has said in this
15 area --

16 QUESTION: Mr. Little, how did the murder in
17 Georgia interfere with the sovereignty of Alabama?

18 MR. LITTLE: Your Honor, under Alabama law the
19 offense that the petitioner was accused of and was
20 prosecuted for is murder during a kidnapping in the
21 first degree. Alabama courts have interpreted that as
22 being --

23 QUESTION: Could you prosecute him for
24 kidnapping in another state?

25 MR. LITTLE: Not if that kidnapping --

1 QUESTION: Well, how can you prosecute for
2 murder in another state?

3 MR. LITTLE: Under Alabama law, Alabama has
4 jurisdiction of an offense if it began in Alabama and
5 ended in another state. Alabama has interpreted our
6 capital murder offense of murder during a kidnapping as
7 being one offense consisting of two different elements,
8 so it began in Alabama and ended in another state.

9 QUESTION: But your real interest is, you want
10 a killing.

11 MR. LITTLE: Our real interest, Your Honor, is
12 in prosecuting him for violating our law.

13 QUESTION: Well, he has been prosecuted for
14 murder, and he has been convicted.

15 MR. LITTLE: He has been prosecuted in Georgia
16 for Georgia's offense of murder. Now, what Georgia --

17 QUESTION: And convicted.

18 MR. LITTLE: And he has been convicted.

19 QUESTION: And sentenced.

20 MR. LITTLE: And sentenced.

21 QUESTION: But he wasn't killed.

22 MR. LITTLE: Well, what Georgia --

23 QUESTION: And you want to kill him.

24 MR. LITTLE: What Georgia does with respect to
25 its offenses is simply not our business. We would

1 prosecute him regardless of whether Georgia did or did
2 not.

3 Now, there are several matters that Mr. Allen
4 touched on that I would like to just very briefly
5 discussed. He asserted that this is a joint
6 investigation in this case. The record shows that it
7 was not. These were two different states independently
8 investigating this crime.

9 QUESTION: Mr. Little, let me see if I follow
10 you. Suppose he had -- suppose the death penalty had
11 been imposed in Georgia but it had been delayed for some
12 reason. Did I understand you to say Alabama would have
13 prosecuted anyway?

14 MR. LITTLE: Well, Your Honor, we prosecuted
15 him. The explicit reason for prosecuting him in this
16 case stated by the prosecutor in his closing argument
17 was that he had violated Alabama law. He was subject to
18 the prosecution. I was not the prosecutor in that case,
19 and I cannot personally say what would have happened if
20 there had been a death sentence imposed in Georgia.

21 But the fact that there was a death sentence
22 imposed in Georgia would no affect the fact that this
23 man had committed an Alabama offense for which he was
24 subject to be prosecuted.

25 QUESTION: Are you conceding that the reason

1 Alabama prosecuted is because he didn't get the death
2 penalty in Georgia?

3 MR. LITTLE: NO, I am certainly not, Your
4 Honor. There is nothing in the record to support that.

5 QUESTION: Well, then your answer to my other
6 question is probably in the affirmative, that you would
7 have prosecuted anyway.

8 MR. LITTLE: Well, he would have --

9 QUESTION: -- the death penalty --

10 MR. LITTLE: Well, all I can say is, I don't
11 know. What I am going by is what the prosecutor stated
12 in the record. The man would have violated Alabama law
13 regardless of whether he had gotten a death sentence in
14 Georgia.

15 QUESTION: Well, you may -- I suppose you
16 insist that Alabama would have had the power to do it,
17 but may not have exercised it.

18 MR. LITTLE: Yes, Your Honor. Certainly. If
19 the defendant had gotten a death sentence in Georgia and
20 it appeared that that death sentence would stand up, a
21 prosecutor might in his discretion decide that he simply
22 had better things to do than to prosecute a case and
23 impose another death sentence. After all, a person can
24 only be executed one time. But that --

25 QUESTION: The fact is, you weren't satisfied

1 with a life sentence in Georgia.

2 MR. LITTLE: No, Your Honor, there is nothing
3 in the record to suggest that.

4 QUESTION: The facts rather suggest it, don't
5 they?

6 QUESTION: Would one of Alabama's concerns be
7 that under a judgment of conviction in Georgia, he might
8 be out on parole in 12, 15 years, and Alabama wanted him
9 in custody longer than that. Is that a factor that
10 would be legitimate for a prosecutor? I won't -- since
11 you don't know whether that happened here, would that be
12 a legitimate factor for the prosecutor in the state of
13 Alabama?

14 MR. LITTLE: Yes, Your Honor. That might be a
15 factor for a prosecutor exercising his discretion, and
16 whether to prosecute in a particular case, he might take
17 that into consideration. Whether he did that in this
18 case, I don't know.

19 QUESTION: Mr. Little, you did argue earlier
20 that one of the interests of Alabama was the death
21 penalty. Didn't you say that standing where you are?

22 MR. LITTLE: Maybe I could clarify my
23 position. Alabama has --

24 QUESTION: But did you say that?

25 MR. LITTLE: Yes, I did, but let me clarify

1 what I meant if I didn't say it correctly. Alabama
2 basically has two interests. Alabama has declared that
3 when a person is kidnapped from Alabama and murdered,
4 that is a capital offense in Alabama, regardless of
5 whether that violates the law of another state or
6 whether another state prosecutes.

7 We have an interest in seeing that a person is
8 prosecuted and sentenced according to Alabama law for
9 that Alabama offense. Now, if you want to simply boil
10 the case down to a matter of interest, and if you can
11 assume that the punishment or the proceedings in another
12 state can satisfy Alabama's interest under its law, then
13 Alabama does have an unsatisfied interest in this
14 particular case, because the minimum punishment, the
15 punishment he received in Georgia is less than what he
16 -- the minimum punishment he would have received in
17 Alabama, and a prosecutor certainly could take that into
18 consideration.

19 One other factor I would like to clear up, Mr.
20 Allen has asserted that the record is not clear that Mr.
21 Heath pled guilty in exchange for a life sentence. I am
22 not really sure I understand his argument with regard to
23 that, but Mr. Heath himself testified, I believe, that
24 he pled guilty in Georgia in exchange for a life
25 sentence. So he is the one who discussed the bargain

1 there.

2 QUESTION: In Georgia, when would he be
3 eligible for parole, if ever?

4 MR. LITTLE: In my understanding, he would be
5 eligible for parole in seven years in Georgia.

6 QUESTION: When?

7 MR. LITTLE: In seven years.

8 QUESTION: Seven years.

9 MR. LITTLE: As I understand.

10 QUESTION: You assert, I take it, that Alabama
11 or any other state so involved has the right to take
12 that into account in deciding to prosecute.

13 MR. LITTLE: So, Your Honor, Alabama in
14 exercising its discretion to prosecute certainly could
15 take that into account.

16 As to -- this is not an important point, but I
17 would like to assert the record is not clear where the
18 murder in this case took place. What we know about this
19 case is that this woman was forcibly abducted from
20 Alabama and that her body was later found in Georgia.
21 As to when -- now, the record probably suggests that she
22 died in Georgia, but as to where she was shot, we simply
23 don't know.

24 As to the assertion that the petitioner was
25 prosecuted because he took the Fifth Amendment in

1 Georgia or asserted his Fifth Amendment rights, there is
2 nothing in the record to suggest that other than the
3 coincidence of dates. It is pretty clear what happened
4 here. This man was charge in Georgia. Alabama simply
5 sat back and let Georgia proceed against them until
6 Georgia was through with him.

7 There were a number of trials taking place in
8 his co-defendants around this time, and it was simply
9 convenient for Alabama to wait until Georgia was through
10 with Mr. Heath for whatever purposes before they tried
11 to extradite him back.

12 Now, with regard to the case of Nielson versus
13 Oregon, what that is, in that case there is some dicta
14 which suggest that when one state, when two states have
15 concurrent jurisdiction over an area, and where one
16 state proceeds against a defendant for violation of its
17 laws, where the other state also prohibits that laws, it
18 then loses its jurisdiction.

19 Now, to the extent that that is good law
20 still, that holding or that dicta only relates to the
21 issue of jurisdiction. It is not a double jeopardy case
22 at all.

23 QUESTION: May I ask you one other question?
24 Assume -- we have been talking mostly about cases where
25 there is some difference in the law, one, there is a

1 death penalty that is imposed, and the other there
2 isn't. Supposing we had a non-capital offense for a
3 moment. Supposing the law of each state prescribed a
4 mandatory ten-year sentence, no deviation up or down,
5 and the same elements of the offense in both, but it had
6 some kind of an interstate quirk, as this one does, and
7 they prosecuted, sentence him to ten years, and he is
8 serving his ten years.

9 On your view of the double jeopardy clause,
10 could your state go ahead and prosecute him again for
11 the same offense and impose an additional ten years so
12 he would get a total of 20?

13 MR. LITTLE: Yes, Your Honor.

14 The Court in this case has a very clearcut
15 task, to apply a settled doctrine to another area. I
16 think it is clear the situation here -- that the
17 situation here falls within the established dual
18 sovereignty doctrine, and therefore this case should be
19 affirmed.

20 If there are no questions, thank you.

21 CHIEF JUSTICE BURGER: Do you have anything
22 further, Mr. Allen?

23 ORAL ARGUMENT OF RONALD J. ALLEN, ESQ.,

24 ON BEHALF OF THE PETITIONER - REBUTTAL

25 MR. ALLEN: A few points, Mr. Chief Justice.

1 QUESTION: Mr. Allen, suppose that Georgia had
2 arrested this -- Alabama had arrested this man first.
3 He ran to Alabama and they indicted him for murder, a
4 murder that took place in Georgia but in the course of a
5 kidnapping. Then you would be reduced to the
6 jurisdictional argument?

7 MR. ALLEN: That's correct.

8 QUESTION: But then could Georgia have
9 prosecuted him for murder?

10 MR. ALLEN: No, I think not. Under those
11 circumstances, if Alabama prosecuted him, that would be
12 double jeopardy in Georgia.

13 QUESTION: All right.

14 MR. ALLEN: Now, I have a number of points to
15 make if I may. With respect to the analogy to civil
16 jurisdiction, I would like to point out that there are
17 substantial differences between civil and criminal law
18 jurisdiction.

19 For example, full faith and credit, collateral
20 estoppel, res judicata. If you were to accept an
21 analogy to civil jurisdiction, presumably you would
22 accept an analogy to that. If that is true, then this
23 case in Georgia would be res judicata in Alabama, and
24 thus be -- we wouldn't be here today because it wouldn't
25 have arisen.

1 The respondent says there are no cases
2 discussing interest. We discussed these cases, and I
3 will not read from the quotes on Page 30 of our brief.
4 It is quite clear that one of the important issues that
5 this Court has faced has been the interest underlying
6 the institutional relationships when it has decided the
7 scope of the double jeopardy clause.

8 Alabama also asserts that even applying my
9 test, the test that I suggest, you ought to come out for
10 them here because there would be intergovernmental
11 conflict. I don't understand that. If you had a
12 situation, say, where Georgia wished to prosecute
13 somebody to preempt Alabama from doing so and wouldn't
14 cooperate, I take it they don't have to extradite them
15 either, so that extending the dual sovereignty doctrine
16 to resolve that conflict doesn't resolve it.

17 Now, Georgia could just keep custody of the
18 person and not let Alabama discharge their law no matter
19 what you do about the dual sovereignty exception.

20 I would also like to point out, Mr. Chief
21 Justice, in response to some of your questions that
22 every time you have two prosecutions, the second
23 prosecuting authority wants to raise the punishment. It
24 is the only reason to prosecute. That fact --

25 QUESTION: You say that is an invalid reason?

1 MR. ALLEN: Yes. Well, it is not invalid. It
2 is not enough. If it were enough, we would have no
3 double jeopardy clause. It is not enough, and what the
4 cases say here is, you need something other than that to
5 get around the prohibition that is in the double
6 jeopardy clause.

7 QUESTION: You agree that this man would be
8 eligible for parole in seven years under Georgia law?

9 MR. ALLEN: I don't know when he would be
10 eligible for parole. I do know what the average length
11 of sentence is in Georgia. It is 15 years. It is not --

12 QUESTION: Average length of life sentence is
13 15 years?

14 MR. ALLEN: Average length, average is about
15 15 years.

16 QUESTION: That is higher than the national
17 average by far.

18 MR. ALLEN: Your Honor --

19 QUESTION: And Georgia's statute that we dealt
20 -- new criminal code that we dealt with a few years ago
21 was apparently one of the most generous in terms of
22 short sentences of any in the country. Those two things
23 don't add up.

24 MR. ALLEN: I have been informed, and if you
25 would like us to give you statistics on this, I would be

1 most happy to provide it, that the average sentence in
2 Georgia is 15 years for life for murder.

3 I don't think it much matters whether there
4 was a joint investigation or simply close cooperation,
5 but I would like to point out that on Page 388 of the
6 record, Mr. Boswell, who works for Alabama, testified to
7 the following:

8 "Question: And these actions that you -- this
9 investigation, was it under the auspices strictly of
10 Russell County Sheriff's Office," which is in Alabama.

11 "Absolutely. Yes, sir.

12 "Question: You weren't aiding or
13 investigation another state's sheriff's department?

14 "Answer: It was a mutual thing. They were
15 assisting us with our investigation, and we were
16 assisting them with theirs.

17 "Question: In other words, you were working
18 with the sheriff's department or the district attorneys'
19 office in Trote County, Georgia.

20 "Right."

21 The significance to the extent there is any of
22 that, of course, is, it indicates you have two states
23 here doing what one state couldn't do, working in close
24 cooperation.

25 CHIEF JUSTICE BURGER: Thank you, gentlemen.

1 The case is submitted.

2 (Whereupon, at 2:45 p.m., the case in the
3 above-entitled matter was submitted.)
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CERTIFICATION

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84-5555 - LARRY GENE HEATH, Petitioner V. ALABAMA

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BY Paul A. Richardson

(REPORTER)

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