

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-2116

TITLE PUERTO RICO, Petitioner V. TERRY E. BRANSTAD, ET AL.

PLACE Washington, D. C.

DATE March 30, 1987

PAGES 1 thru 51



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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 PUERTO RICO, :

4 Petitioner :

5 v. :

No. 85-2116

6 TERRY E. BRANSTAD, ET AL. :

7 -----x
8 Washington, D.C.

9 Monday, March 30, 1987

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 12:59 p.m.

13 APPEARANCES:

14 LINO J. SALDANA, ESQ., Santurce, Puerto Rico; on
15 behalf of the Petitioner.

16 BRENT R. APPEL, ESQ., Des Moines, Iowa; on behalf
17 of the Respondent.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

LINO J. SALDANA, ESQ.

on behalf of Petitioner

3

BRENT R. APPEL, ESQ.,

on behalf of the Respondent

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P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear arguments first this morning in No. 85-2116, Puerto Rico again Branstad.

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

ORAL ARGUMENT OF LINO J. SALDANA, ESQ.,

ON BEHALF OF THE PETITIONER

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

Petitioner in this case requested extradition of Mr. Ronald Calder, who was charged with murder and attempted murder, and is a fugitive from the courts of justice in the courts of Puerto Rico, and had fled to Iowa.

The Governor of Iowa denied extradition. The commonwealth filed a complaint in the District Court for the Southern District of Iowa seeking a writ of mandamus directing the Governor to extradite Calder.

The writ was refused.

The Court of Appeals affirmed. The case is here on certiorari.

The issue is whether or not the Federal courts have power to order the governor of a state to extradite a fugitive from justice in the courts of Puerto Rico

1 who has been accused of murder and attempted murder.

2 There is no dispute in this case that the
3 extradition request made by Puerto Rico fully complies
4 with all statutory and constitutional requirements.

5 There is no dispute, either, that the duty of
6 the Governor of Iowa to extradite Mr. Calder is an
7 absolute duty, both mandatory and ministerial, under the
8 Constitution and the statute.

9 All that is at issue here is whether the
10 court, the Federal court, may command the governor to
11 obey that duty, or whether the governor may violate it
12 with impunity.

13 Now the facts are as follows. Mr. Ronald
14 Calder on -- in 1981 drove his car into a married
15 couple in a parking lot of a grocery store in Puerto
16 Rico. The husband was injured but survived. His
17 pregnant wife was killed, as well as her unborn child.

18 The justice -- a judge, I'm sorry, of the
19 Superior Court of Puerto Rico, after a preliminary
20 hearing, found probable cause to charge Calder with
21 murder and attempted murder.

22 This was done after a hearing, as I said, in
23 which the judge heard testimony from sworn witnesses,
24 and in which Calder was represented by counsel.

25 The witnesses, the eyewitnesses, told the

1 judge that Calder had deliberately run his car over --
2 drove his car into the couple, attempted to run down the
3 couple with his car, and that after the wife was down,
4 he repeatedly run over the body, her body, with his car.

5 Mr. Calder was freed on bail after the
6 District Attorney filed informations against him for
7 these two alleged crimes, and he failed to appear at two
8 successive hearings in the criminal case.

9 And the court -- another judge in the district
10 -- in the Superior Court ordered him to be arrested,
11 issued a warrant of arrest, after declaring him a
12 fugitive.

13 He was found in Iowa, his native state, and
14 there a request was made to the Governor of Iowa that
15 Calder be extradited.

16 The request of the Governor of Puerto Rico was
17 -- fully complied with all the requirements, both
18 statutory and constitutional.

19 In spite of that, an extradition hearing was
20 held.

21 QUESTION: Iowa was his home, was it not?

22 MR. SALDANA: Iowa was his home, yes, sir.

23 QUESTION: Do you know why so low a bond was
24 imposed under a murder charge?

25 MR. SALDANA: In Puerto Rico, you mean, sir?

1 QUESTION: Yes, in Puerto Rico.

2 MR. SALDANA: Well, he was first charged with
3 manslaughter, and a small bond was requested from him.
4 Apparently, what the court felt was that there was no
5 danger that he would not appear. And he was working in
6 Puerto Rico as an air controller.

7 And only \$5,000 bond was required from him.

8 That's about all the explanation I can give
9 Your Honor to that.

10 QUESTION: I suppose there isn't any
11 explanation. But it strikes me as a low bond on a
12 murder charge.

13 MR. SALDANA: Yes, it is.

14 The Governor of Iowa in the -- on the basis of
15 the extradition hearing, denied the request for
16 extradition.

17 At the hearing, evidence was admitted to -- by
18 the declarations and testimony of Calder, of Calder's
19 companion at the scene of the crime, of the alleged
20 crimes, and of Calder's attorneys, to the fact that the
21 Puerto Rico courts were unable to administer properly
22 justice in this case, in Calder's case.

23 Calder and his other two witnesses stated that
24 there was a prejudice against white American men like
25 Calder, and that, under those circumstances, the trial

1 would not be fair to him.

2 They also brought hearsay evidence to the
3 effect that witnesses had been bought -- bought off in
4 Puerto Rico in some cases, and they attacked in that way
5 the integrity and the quality of the justice of -- that
6 is afforded by the Puerto Rico courts.

7 Now, the Governor of Iowa tried to intercede
8 on Calder's behalf in some plea bargaining between
9 Calder's attorneys and the Puerto Rico prosecutors.
10 They were bargaining on whether to accept a plea of
11 guilty from Calder on a lesser charge, and also, whether
12 a sentence of probation would be imposed.

13 The prosecutors conditioned all plea
14 bargaining upon Calder's voluntary return to Puerto
15 Rico. And the governor then tried to intercede and had
16 some talks with Governor Romero of Puerto Rico. These
17 talks failed, and thereon, the Governor of Iowa denied
18 extradition.

19 The Commonwealth filed a complaint in the
20 District Court seeking a writ of mandamus against the
21 Governor of Iowa to order him to extradite Calder.

22 The court refused to issue the writ. It held
23 that it was bound by the decision of this Court in
24 Dennison -- in Kentucky v. Dennison; that the Federal
25 court had now power to order the state governor to

1 extradite Calder.

2 The United States Court of Appeals for the
3 Eighth Circuit affirmed that judgment reluctantly,
4 stating that the reasoning and the underpinnings of the
5 Dennison case had been undermined, had been eroded to
6 such a degree that the court -- the only court empowered
7 to do so, the Supreme Court, should reconsider it.

8 Now --

9 QUESTION: You agree, Mr. Saldana, don't you,
10 that we would have to overrule Kentucky against Dennison
11 to rule in your favor here?

12 MR. SALDANA: Yes, sir. Now, the --

13 QUESTION: Mr. Saldana, why is that -- why is
14 that so? That is so only if you insist that Puerto Rico
15 is a state within the meaning of the provision here.

16 You have a statute that purports to require
17 extradition to either a state, a district or a
18 territory. Might now the power of the United States be
19 different insofar as its ability is concerned to require
20 a state to extradite to a territory, than it is with
21 regard to its power to require a state to extradite to
22 another state?

23 MR. SALDANA: Well, the power of Congress to
24 enact the extradition act is based on the implied power
25 of Congress to implement the extradition clause.

1 And the --

2 QUESTION: Well, maybe this statute, insofar
3 as it might apply to Puerto Rico, is not an
4 implementation of the extradition clause of the
5 Constitution but is an implementation of Congress' power
6 to govern territories.

7 MR. SALDANA: Well, that power cannot justify
8 the Congress ordering a state to extradite a fugitive to
9 a territory.

10 It would operate for Congress to direct a
11 territory to extradite to a state, or to extradite to
12 another territory.

13 But the power of Congress to implement the
14 clause as it did, ordering a state to extradite a
15 fugitive to a territory, must rest on something other
16 than the territorial power.

17 It rests on the implied power of Congress,
18 under the very -- under the extradition clause itself,
19 to implement that statute.

20 And for -- history reveals that the
21 extradition statute was approved in 1793 a few years
22 after the Constitution was ratified; and the people and
23 the Congressmen who were there were, many of them were
24 members of the Convention, lawyers and framers of the
25 Constitution, who had at least drafted the Constitution

1 and participated in the process of ratification.

2 Now it has long been considered -- it is
3 really beyond question -- that this contemporary
4 interpretation of Congress, of the meaning of the
5 extradition clause, is valid, and that it shows that
6 Congress, in the extradition -- that the extradition
7 clause of the Constitution goes beyond states, beyond
8 the 13 states of the Union; that it includes other
9 entities like territories, like the Commonwealth, like
10 the District of Columbia.

11 Now we may not have -- it may not be necessary
12 to decide that question, because the statute, as Justice
13 Scalia points out, imposes the duty of extradition upon
14 the Iowa State Governor. There is no problem, no doubt,
15 that it is a valid statute.

16 And there is no doubt that it applies to
17 Puerto Rico. Before 1952, this Court so expressly
18 held. And after 1952, it is also clear that the
19 extradition act was undisturbed in its application to
20 Puerto Rico.

21 QUESTION: But that statute was in effect at
22 the time Kentucky against Dennison was decided, wasn't
23 it?

24 MR. SALDANA: I'm sorry, I did not hear you.

25 QUESTION: I thought you were referring to the

1 statute of 1793.

2 MR. SALDANA: Yes.

3 QUESTION: And that statute was in effect at
4 the time that Kentucky v. Dennison was decided.

5 MR. SALDANA: That's right, sir. And the
6 Dennison decision interprets both the Constitution and
7 the statute. And it did interpret both together because
8 the statute and the Constitution are coterminous.

9 They speak in the same language. They use the
10 same words. They must be read in pari materia.

11 And it is impossible for this Court to decide
12 the statutory issue without reaching the Constitutional
13 issue. So both -- they are inseparable.

14 QUESTION: Mr. Saldana, not that it matters,
15 but what position do you hold in the government of
16 Puerto Rico?

17 MR. SALDANA: I am special counsel in this
18 case.

19 QUESTION: I mean, I notice on the brief that
20 everybody has a title but you.

21 MR. SALDANA: That's right.

22 QUESTION: And I was just wondering, you're
23 authorized to speak for the government?

24 MR. SALDANA: Yes.

25 QUESTION: Thank you.

1 MR. SALDANA: Well, we feel that no case, or
2 few cases at least, would better demonstrate that
3 Dennison should be overruled that this, the present one.

4 First, the Dennison decision leaves the
5 governor free to violate with impunity his duty to
6 extradite, the duty that is imposed both by the
7 Constitution and by the statute.

8 Ronald Calder has been able to find precisely
9 what the extradition clause and the extradition statute
10 intended to prevent. He has found an asylum, a free
11 asylum, in Iowa.

12 And he has been able to avoid altogether
13 responding for his alleged crimes.

14 He has obtained what really amounts to an
15 immunity in Iowa.

16 That violates the concern of the extradition
17 clause, the concern that was at the core of the
18 extradition clause, to -- which is the protection of law
19 and order within the respective borders of each state
20 and defeats and frustrates the administration and
21 enforcement of criminal law in every state.

22 The result, of course, is unsound, and is
23 contrary to the express mandate of the Constitution and
24 of the statute.

25 Second, the Dennison rule, as seen in this

1 case, the result it has in this case, is that it
2 frustrates and defeats, also, the concern of the
3 extradition clause for comity and respect between
4 states.

5 This case shows how the Dennison rule invites
6 precisely the kind of friction, the kind of
7 disagreements and retaliation that the clause, the
8 extradition clause, was designed and intended to prevent.

9 QUESTION: Well, Mr. Saldana, the State of
10 Iowa in its brief suggests, as a last argument, that
11 Puerto Rico isn't entitled to use the clause or the
12 statute at all, because you aren't a state; that you're
13 a territory.

14 MR. SALDANA: Well, Your Honor, that argument
15 really is not in point. Because, as I explained awhile
16 ago, Puerto Rico is invoking both the Constitution and
17 the statute, and it does so because of the fact that it
18 believes that the Constitution of itself, on its own
19 power, extends to Puerto Rico, the constitutional clause
20 involved here, the extradition clause; as do the other
21 clauses, the privileges and immunities, and the full
22 faith and credit clauses.

23 Because those clauses are designed to create a
24 national unity within the federation, the American
25 federation. And there is a need to extend those

1 provisions to a state like Puerto Rico that is so near --

2 QUESTION: You say it's -- Puerto Rico is a
3 state?

4 MR. SALDANA: Well, it's a state not in the
5 sense that it is a state of the Union, but it is a state
6 that is joined with the United States by a compact, and
7 has the degree, the same degree, a similar degree, of
8 autonomy and independence as the other states of the
9 union.

10 QUESTION: Do you think just any territory of
11 the United States could employ the extradition clause?

12 MR. SALDANA: I think so, sir, I think so,
13 yes. I think so because --

14 QUESTION: Even though that isn't what the
15 clause says.

16 MR. SALDANA: The clause refers only to states
17 of the union. But for functional purposes, and for
18 historical reasons, the clause should be read to extend,
19 of itself, to states, to other entities like the
20 Commonwealth and the territories.

21 However, it did not --

22 QUESTION: Maybe it should be written that
23 way, but why should it be read that way if it wasn't
24 written that way?

25 MR. SALDANA: Well, it wasn't written that

1 way, but it was interpreted by the members -- by
2 Congress at an early date when the object and scope of
3 the clause was common knowledge.

4 And the Congressmen who dealt with the
5 statute, the 1793 statute, which has not been
6 substantially changed until today, interpreted that
7 clause to mean that it extends to the territories. At
8 that time there were two territories, the territory
9 northwest of the river Ohio and --

10 QUESTION: Well, it didn't need to interpret
11 that clause to pass that statute. But it did; it said
12 any state or territory, the extradition statute does.

13 And so you may claim protection of the
14 statute, may you not?

15 MR. SALDANA: Yes. And once the statute
16 applies, as we claim it does, then as I stated a second
17 ago, the constitutional issue raised in the Dennison
18 case as to the interpretation of the clause, of the
19 extradition clause, must also be reached by this Court,
20 because the statute and the Constitution --

21 QUESTION: If we -- if we interpreted the
22 statute differently than the Dennison case did, we
23 wouldn't have to reach any constitutional issue at all.

24 MR. SALDANA: But the statute, Mr. Justice
25 White, the statute repeats the words of the Constitution.

1 QUESTION: Except it's got the word
2 "territory" in it.

3 MR. SALDANA: Yes, but we are concerned here
4 with not only whether territories are covered but what
5 kind of duty is imposed on the state governor to
6 extradite.

7 QUESTION: Well, isn't there some indication
8 in the Dennison case that the court actually thought the
9 statute imposed a duty, but only a moral duty.

10 MR. SALDANA: That's right.

11 QUESTION: And that it wasn't an enforceable
12 duty, and wasn't intended to be enforceable. Isn't that
13 what the Court said?

14 MR. SALDANA: That is right.

15 QUESTION: So that's a construction of a
16 Federal statute.

17 MR. SALDANA: The Court interpreted both the
18 Constitution and the statute to mean that. And as a
19 matter of fact Chief Justice Taney said, the
20 Constitution leaves the performance of the duty to the
21 fidelity of the governor to the Constitution of the
22 United States.

23 It is not a legal duty; it's a moral duty.
24 And the statute necessarily does so, necessarily leaves
25 the duty as one which is unenforceable, which is a moral

1 duty.

2 So it is impossible, I respectfully submit, to
3 decide this case on the basis of a statutory
4 interpretation, without reaching the Constitutional
5 question involved.

6 QUESTION: That may be, but not because Puerto
7 Rico is a state, but because in order to interpret the
8 statute as being mandatory, since it applies to both
9 states and territories, you would have to contravene
10 Kentucky v. Dennison, whether or not Puerto Rico is a
11 state.

12 I mean, I'm quite -- it's an uphill battle to
13 convince me that when the Constitution refers to states,
14 and says states, and elsewhere it refers to territory,
15 it makes no difference between the two.

16 So it seems to me that if Puerto Rico comes
17 under this statute, it comes under it as a territory,
18 not as a state, which --

19 MR. SALDANA: Well, that's an alternative
20 ground for reaching the Constitutional question. But
21 the Constitutional issue --

22 QUESTION: I'm not anxious reach the
23 constitutional question. I mean, I would as soon avoid
24 it.

25 But it may well be that you can't read the

1 statute the way you want to read it, or you couldn't
2 read it to be mandatory for territories and permissive
3 for states, because it doesn't purport to distinguish
4 between the two.

5 But I hope you will tell me we don't have to
6 reach it because Puerto Rico is a state, because I don't
7 think you will persuade me that Puerto Rico is a state.

8 MR. SALDANA: Well, if you interpret the
9 Constitution narrowly and literally, with all due
10 respect, you're right, Justice Scalia.

11 If you interpret the Constitution functionally
12 and from an historical point of view, you may not be
13 right as to that point.

14 But again, I say it's unnecessary to decide
15 that issue, because there is the alternative ground
16 whether Puerto Rico is a state today or a territory, it
17 is covered by the statute.

18 And the case can be decided under the
19 statute. But in deciding the statutory issue, this
20 Court will have to reach the constitutional issue.

21 QUESTION: Why? Why?

22 MR. SALDANA: Because they, both the statute
23 and the Constitution, read -- must be interpreted in a--

24 QUESTION: Well, what if there were no
25 extradition clause at all? Do you think Congress could

1 have passed the extradition statute?

2 MR. SALDANA: I don't think so.

3 QUESTION: But Mr. Saldana, is it not true
4 that even if we read the statute in your favor and say
5 the constitutional clause doesn't reach it, there
6 remains the constitutional question decided in Dennison,
7 whether a Federal court has the constitutional power to
8 order a governor to perform this duty.

9 That's a constitution question, isn't it?

10 MR. SALDANA: That is right.

11 QUESTION: And if you win on the statute, we
12 must then reach that constitutional question.

13 MR. SALDANA: That is right.

14 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
15 Saldana.

16 We'll hear now from you, Mr. Appel.

17 ORAL ARGUMENT OF BRENT R. APPEL, ESQ.,
18 ON BEHALF OF THE RESPONDENT

19 MR. APPEL: Mr. Chief Justice, and may it
20 please the Court:

21 I think I can best assist the Court today with
22 a three-part presentation about the extradition clause.

23 First, I would like to engage in a brief
24 survey of its history, with special emphasis on the
25 constitutional foliage that has grown up in the

1 extradition area in the absence of judicial
2 intervention.

3 Second, I'd like to take a look at the court
4 as an institution, and ask ourselves question: Would it
5 be preferable for this Court to intervene and make
6 extradition decisions rather than the governors of the
7 state as a matter of constitutional policy?

8 And then finally, I'd like to take a quick
9 survey of the facts in this case, in which the State of
10 Iowa has a fundamentally different presentation to make
11 than does Puerto Rico.

12 First, let's look briefly at the history --

13 QUESTION: I think that's probably how Marbury
14 v. Madison was argued, too.

15 MR. APPEL: I read Marbury --

16 QUESTION: It lost there.

17 MR. APPEL: I read Marbury yesterday. And
18 we'll get back to it, because I think it has some
19 relevance, Justice Scalia.

20 The history of the --

21 QUESTION: You spent most of the day reading
22 it?

23 MR. APPEL: Only a part of it, Justice.

24 The history of the extradition clause is,
25 first, that the courts have consistently stayed out of

1 its interpretation; not simply the Federal courts, but
2 the courts of all 50 states. And there's some 8,000
3 state-years of accumulative experience have stayed out,
4 and have not intervened under state constitutions which
5 deal with extradition as well.

6 And as a result, in the absence of this
7 judicial intervention, an executive common law tradition
8 of interpreting the extradition clause of the
9 Constitution and the state constitutions has developed.

10 And what that executive common law tradition
11 is basically is that the -- the extradition clause in
12 the Constitution does establish a general principle to
13 be applied when states request that a fugitive be
14 delivered up. And the language is, of course "shall".

15 Just as the First Amendment says Congress
16 shall pass no law. And the full faith and credit clause
17 says, full faith and credit shall be given.

18 And that has been recognized by all the
19 governors. And extradition occurs on a routine basis,
20 day-in and day-out.

21 The question in this case is what happens at
22 the edges of the doctrine. Every constitutional bone
23 has cartilage on the edge.

24 And that's where we are in this case. We're
25 at the very edges of the doctrine. And the question is,

1 who decides when to extradite and when not to extradite,
2 and under what conditions?

3 And the governors have come up with the
4 following executive common law tradition. As I said,
5 first it's generally a duty to extradite.

6 However, where there is a serious question of
7 the safety of the individual in the demanding state,
8 extradition may be denied.

9 Where there's a question of --

10 QUESTION: What's the source -- how can you
11 tell what this common law tradition is? Are there
12 governors' statements and that sort of thing?

13 MR. APPEL: There's a smattering of case law.
14 And admittedly, I must say, some of the case law is
15 fairly oblique. Why? Because the governors' statements
16 are not necessarily sweeping judicial statements.

17 In general, it's a summary executive
18 proceeding. There isn't findings of fact and
19 conclusions of law, or anything like that.

20 But my sources on these, if you look through
21 Moore, Spear and Scott, which are the key extradition
22 treatises, they present to you circumstances in which
23 states have declined to extradite.

24 And if you look at South Dakota v. Brown, the
25 latest Supreme Court case -- California Supreme Court

1 case -- there's a canvass.

2 My bottom line point, however, is that this
3 executive tradition has developed over a hundred years
4 in interpreting -- over 200 years, really -- in
5 interpreting that constitutional provision.

6 Secondly, informal mechanisms of resolution of
7 extradition disputes have grown up. There's a National
8 Governors Association, of course. And there was
9 reference to discussion between the governors of these
10 states with respect to this extradition matter, and that
11 occurred in this case.

12 There's a national association of extradition
13 officials, and they put out these manuals and pamphlets
14 and so forth. And they get together and debate and
15 discuss extradition questions.

16 So there's been -- in the absence of judicial
17 intervention, which has been gone from the environment
18 for 200 years, these informal mechanisms have grown up.

19 QUESTION: (Inaudible) needn't perform what
20 otherwise would be his duty?

21 MR. APPEL: Well, as to how to deal with the --

22 QUESTION: Well, that's what it amounts to in
23 this case.

24 MR. APPEL: Well, our interpretation, of
25 course, is the governor has done his duty; and that the

1 governor --

2 QUESTION: Well, he needn't carry -- he
3 needn't extradite.

4 MR. APPEL: And that's our interpretation of
5 the Constitution, that's correct, that while --

6 QUESTION: Sometimes he has to and sometimes
7 he doesn't?

8 MR. APPEL: Well, that's correct, just like
9 the First Amendment says Congress --

10 QUESTION: Well, are you defending the
11 judgment that -- are you defending Kentucky, the
12 Kentucky case, that there is no power to make a
13 government extradite?

14 MR. APPEL: I think that prong of Kentucky v.
15 Dennison has been much chipped away.

16 QUESTION: Well, I know, but how about my
17 question?

18 MR. APPEL: Am I saying that this Court has no
19 power?

20 QUESTION: Yes.

21 MR. APPEL: Yes, I would say that.

22 QUESTION: Has no power to order a governor?

23 MR. APPEL: Has no power under the
24 constitutional scheme, because that was not anticipated.

25 QUESTION: You know what you're asking for? A

1 haven for any criminal from Iowa. Any criminal charged
2 with a serious -- all he has to do is run to Puerto
3 Rico. Is that what you're advocating?

4 MR. APPEL: What I'm advocating is that the
5 governors have authority to interpret that
6 constitutional provision.

7 But the Governor of Iowa has no interest in
8 harboring fugitives, murderers and all this kind of
9 stuff on a regular basis. The Governor of Iowa
10 routinely extradites.

11 QUESTION: (Inaudible.)

12 MR. APPEL: Affected by the facts, yes,
13 exactly. And I think that the Governor of Iowa, if the
14 case were presented a-

15 QUESTION: He thinks this is a manslaughter
16 case.

17 MR. APPEL: That's right, or less.

18 QUESTION: You mean when you drive over a
19 pregnant woman three or four times, that's manslaughter?

20 MR. APPEL: Well, that's what's alleged in the
21 affidavits, of course.

22 QUESTION: Well, that's all you have to go on.

23 MR. APPEL: Well --

24 QUESTION: That's all you have to go on under
25 the extradition act.

1 QUESTION: Well, again, I'd like to know, you
2 think the governor, anytime he wants to, can refuse
3 extradition, and that he may not be ordered to extradite
4 by a Federal court?

5 MR. APPEL: That's correct. That's correct.

6 QUESTION: Well, Mr. Appel, what about cases
7 like ex parte Young? Do they have any relevance, do you
8 think?

9 MR. APPEL: I think we need to perhaps
10 distinguish between practical power and interpretation
11 of the extradition clause.

12 Our view is that when the extradition clause
13 was put into the Constitution, as it's been interpreted
14 over the years, the courts have said, judicial people
15 stay out; hands off kind of policy. It wasn't designed
16 for us to intervene.

17 If you're talking about power itself, and does
18 this Court -- can it issue orders and so forth and so
19 on, that's a different matter. And let me make it very
20 clear: I'm here to say, the Governor of Iowa of course
21 is going to follow whatever order this Court comes down
22 with.

23 We're not challenging in any kind of physical
24 way whether the Court can enforce its own mandates.

25 QUESTION: The question is just whether that

1 aspect of Dennison is valid today.

2 MR. APPEL: Right, right. And --

3 QUESTION: It grew up a long time ago in
4 different circumstances.

5 MR. APPEL: Right.

6 QUESTION: And the Court has gone a long way
7 since then --

8 MR. APPEL: True.

9 QUESTION: -- in saying that Federal courts
10 generally have power to enforce --

11 MR. APPEL: Surely true. And I think -- I
12 think much of that underpinning, in terms of the
13 rationale in Dennison, has been undercut today; no
14 question about it.

15 But that doesn't mean -- that doesn't
16 necessarily turn the interpretation of the extradition
17 clause upside down.

18 In fact, it was never contemplated that the
19 judiciary become intensively involved in these kind of
20 extradition --

21 QUESTION: Well, didn't Dennison say that
22 there was an absolute duty, a ministerial duty, on the
23 part of the governor to comply with the extradition
24 request?

25 MR. APPEL: Dennison did say --

1 QUESTION: And I read it as turning only on
2 the question of whether Federal courts had the power to
3 enforce the ministerial duty.

4 MR. APPEL: Dennison did say that. In the
5 governor's opinion, that was dicta. And indeed, this
6 very Court, in Taylor v. Taintor, which was decided in
7 1873, declares -- and I'm just reading from the case --
8 where demand is properly made by the governor from one
9 state, the duty is not absolute and unqualified. It
10 depends on the circumstances of the case.

11 And it goes on to use the term "discretion".

12 So the court has been across the board on that
13 issue. But I would submit to you --

14 QUESTION: Well, if you're going to defend on
15 the case, the Dennison case involved the slave act.

16 MR. APPEL: That's correct.

17 QUESTION: Which you agree that doesn't apply
18 today.

19 MR. APPEL: Oh, well, obviously there's no
20 slavery today.

21 QUESTION: I hope you do. I don't want to get
22 down off the bench.

23 MR. APPEL: Of course not. Of course not.

24 QUESTION: Getting back to my other point, the
25 State of Iowa says, Calder has been charged by Puerto

1 Rican authorities with murder in connection with an
2 automobile accident.

3 Do you agree with that? That is was just an
4 automobile accident?

5 MR. APPEL: There's never been any fact
6 finding in this case, Justice Marshall. That was --

7 QUESTION: Well, do you agree that it was just
8 an automobile accident?

9 MR. APPEL: That's the -- there clearly was an
10 automobile accident, yes.

11 QUESTION: Automobile accident, when you
12 deliberately run over somebody?

13 MR. APPEL: That was the allegations in the
14 affidavits presented in support of probable cause.

15 QUESTION: Is there anything to disprove it?

16 MR. APPEL: Yes, there's an entirely --

17 QUESTION: Is the woman dead?

18 MR. APPEL: Absolutely. Undisputable.

19 QUESTION: And the baby's dead?

20 MR. APPEL: Undisputable.

21 I'd like to move on to the question of why was
22 bail so low, which is a good --

23 QUESTION: Kentucky v. Dennison, by the way,
24 not only involved a fugitive slave problem, but also in
25 1860, right?

1 MR. APPEL: That's true, of course.

2 QUESTION: At a time when, if we had said we
3 had had the power to compel it by the states, it's not
4 at all clear that the states wouldn't have laughed at
5 us, right, until after the Civil War.

6 MR. APPEL: That's quite true, isn't it.

7 QUESTION: You don't think that maybe things
8 are a little different now, and we should reconsider
9 whether that case was unduly influenced by the times in
10 which it was decided?

11 MR. APPEL: No question that things are a
12 little different now.

13 But it seems to me, as a matter of
14 constitutional policy, the courts ought to stay out of
15 these matters.

16 And I'd like to move on to my second --

17 QUESTION: Well, I'm suggesting that the
18 policy was a very pragmatic one; that the times were
19 such that the Court might not have thought it could have
20 made a different decision stick.

21 MR. APPEL: Let me try and justify Kentucky v.
22 Dennison on other grounds, other rationale, if I may,
23 Justice Scalia.

24 The issue in this case is simply a shifting of
25 power from governors to the judiciary. If the judiciary

1 decides to administer the extradition clause, there will
2 be play in the joints. There's no such thing as a
3 ministerial constitutional provision.

4 And just as the full faith and credit clause,
5 for instance, says, full faith and credit shall be
6 given, the courts have engaged in a process of
7 interpretation of when that clause applies and when it
8 does not apply.

9 Secondly, of course mandamus doctrine allows
10 for all kinds of equitable defenses. It's not -- the
11 mandamus is not granted in an automatic fashion. That's
12 what Marbury v. Madison says in passing, good government
13 requires, and so forth and so on.

14 And so what we're going to do --

15 QUESTION: But those defenses would not
16 pertain to whether indeed it was just an automobile
17 accident or an attempt -- or a murder.

18 And they wouldn't pertain to whether there is
19 a good system of justice in the state to which the
20 individual is sought to be -- they would pertain to
21 quite different factors that the governors usually don't
22 worry about.

23 MR. APPEL: Well, suppose -- let me give you a
24 fact hypothetical. Supposing there was a lynch -- lynch
25 mob mentality in a jurisdiction. And there mobs in

1 Puerto Rico, if I get back to the record, from our
2 perspective.

3 Supposing the governor had good evidence that
4 this person gets extradited, and there's going to be a
5 lynching. Or there's a serious question of the physical
6 safety of someone.

7 Under the extradition clause, must a governor,
8 simply by looking at the affidavits on its face, and the
9 fact that he's a fugitive, must a governor in all
10 instance extradite?

11 Answer: I don't think so. And I don't think
12 this --

13 QUESTION: In the '20s and '30s, I can give
14 you thousand cases where that was just what happened.

15 MR. APPEL: I suspect so, and it might happen
16 again in the future, unfortunately.

17 QUESTION: Was that all right.

18 MR. APPEL: No, extradition should not have
19 been granted in those instances.

20 QUESTION: Oh, we should have left them up
21 there. Well, it's a little --

22 MR. APPEL: Well, a number of governors
23 declined to extradite on just those facts. It's our
24 footnote 7, the Pennsylvania case.

25 QUESTION: A case?

1 MR. APPEL: There's a case out of
2 Pennsylvania, yes, there is, where a governor -- a
3 judge, actually, a court, declined to extradite under
4 those circumstances.

5 QUESTION: Well, you said the governor.

6 MR. APPEL: Well, I'm sorry.

7 QUESTION: That's right. I know you're
8 wrong. I had a few of those cases.

9 QUESTION: Suppose we overturned Kentucky and
10 said, yes, governors may be ordered to do their duty
11 under the extradition clause.

12 I take it you don't think the case is over
13 even then?

14 MR. APPEL: Oh, it is not.

15 QUESTION: Because?

16 MR. APPEL: Well, if we look at the way the
17 shape -- the way this case is framed. It's a petition
18 for a writ of mandamus. And it characterizes the duty
19 under the extradition clause as ministerial, and then
20 says that the governor looked at materials outside the
21 sufficiency of the affidavits accompanying the warrant
22 and the fact that he's a fugitive.

23 No factual dispute on that. The governor did
24 consider material outside the scope of the stack of
25 papers. No question about it.

1 And what Puerto Rico has said is, bzzz, that's
2 illegal right there. Mandamus, you cannot consider
3 matters outside the question of whether or not he's
4 substantially charged and whether he's a fugitive.

5 Our position is, oh, yes, yes, because of this
6 executive common law tradition, you can consider the
7 safety of the individual.

8 QUESTION: Well, so the case wouldn't be over.

9 MR. APPEL: Right.

10 QUESTION: But the case would be over in this
11 Court.

12 MR. APPEL: Well, it would be remanded back to
13 the District Court for appropriate proceedings.

14 QUESTION: So those issues, if you've got
15 them, would be open in the district court?

16 MR. APPEL: That's correct.

17 QUESTION: And it didn't sound very much like
18 the lower court would be too sympathetic with your
19 position. But they may be.k

20 MR. APPEL: Well, we haven't had any
21 development of it --

22 QUESTION: Right.

23 MR. APPEL: -- because we relied on Kentucky
24 v. Dennison, and the motion to dismiss and all this.

25 QUESTION: Well, why is mandamus the only

1 conceivable remedy for the demanding state if Kentucky
2 v. Dennison were to be overruled?

3 I mean, couldn't you just bring an ordinary
4 1983 action against the governor?

5 MR. APPEL: I think it would be very difficult
6 to bring a 1983 action and obtain a compulsive remedy of
7 getting ahold of the individual.

8 But I do want to speak to alternative
9 remedies.

10 First, the Congress of the United States has
11 acted in this extradition area. It has not passed a
12 mandamus statute authorizing district courts or this
13 Court to issue writs of mandamus for fugitives.

14 It's passed a mandamus statute, you're all
15 familiar with it, 1361, which authorizes mandamus
16 against Federal officials; and there's been much
17 litigation about that in the Heckler case and so forth.

18 QUESTION: Yes, but isn't there an easy
19 explanation for that? They couldn't do that without
20 defying the last sentence in the Dennison case?

21 MR. APPEL: Of course. Of course, that's
22 right. But you see, that's the Catch-22 situation.
23 It's the fact that this doctrine has been historically
24 established, and this constitutional vegetation has
25 grown up.

1 And Puerto Rico's argument is really a
2 constitutionally violent one in the sense that it strips
3 away all these informal mechanisms, and strips away the
4 fugitive felon act, which is Congress' method of
5 approaching the problem.

6 QUESTION: But your informal mechanism, as I
7 understand it, is that the governor of the asylum state
8 should be free to decide whether the jurisprudence of
9 another state -- or the governor of another state is
10 equipped to protect the extradited defendant from
11 lynching.

12 And you're suggesting there's enough danger of
13 lynching around a different -- one state or another that
14 we should simply ignore the constitutional command.

15 MR. APPEL: We're not ignoring the
16 constitutional --

17 QUESTION: Well, but that's your policy
18 argument.

19 MR. APPEL: No, no. No, the question then is
20 what is the constitutional command. I mean, it's like a
21 First Amendment argument saying, well, you know, the
22 First Amendment says, Congress shall pass no law. And
23 then we say, fire in the theater, and we pass a
24 Congressional regulation saying you can't do that.

25 It's a question of substance. And I don't

1 think there's such a thing as a ministerial
2 constitutional duty.

3 QUESTION: Don't you think that sometimes the
4 governors' determinations about whether to extradite a
5 particular individual may be affected by what kind of
6 press coverage the case has gotten?

7 MR. APPEL: Surely.

8 QUESTION: And how he thinks he'll fare in the
9 next election if he should extradite this individual?

10 MR. APPEL: I suspect --

11 QUESTION: And that problem is eliminated by
12 having the -- if indeed there are mandamus discretionary
13 equitable kinds of considerations that should be taken
14 into account, wouldn't they better be taken into account
15 by a life-tenured Federal judge on a mandamus action,
16 who doesn't have to worry about what the electorate
17 would do the next time around?

18 MR. APPEL: A couple of difficulties, I think.

19 First, the governors have access to all kinds
20 of informal channels of communications that may not be
21 available to a sitting Federal judge.

22 They get on the phone, they call the other
23 governors. They have frank and candid discussions about
24 it.

25 QUESTION: They can oppose the extradition if

1 they want. They can come into the court, I assume, and
2 provide whatever information those informal channels
3 would yield.

4 MR. APPEL: But of course, the reaction, if
5 that were the law that the Federal courts were going to
6 be involved, is, the governors are just going to more or
7 less hand the issues over to them.

8 I think we want to encourage this informal
9 method of discussion that we have.

10 Secondly --

11 QUESTION: Well, I don't follow that argument.

12 Isn't it true that in 90 percent of
13 extradition requests, or maybe a higher percentage,
14 they're routinely processed?

15 MR. APPEL: Surely true.

16 QUESTION: It's only the exceptional case that
17 produces this kind of controversy.

18 MR. APPEL: Surely true.

19 QUESTION: And that would not change, would it?

20 MR. APPEL: No. The only -- the questions in
21 this case really are -- in fact the governor's
22 interpretation of the extradition clause I don't think
23 is fundamentally very much different than what frankly
24 the members of the Court are likely to come up with,
25 though on the margins apparently there's some question.

1 The governor believes that he can go beyond
2 the affidavits to look at the safety of the individual
3 and issues of fairness and so forth. That's what the
4 governor believes as part of the constitutional
5 provision.

6 The question is, who administers, more than
7 anything.

8 I'd also like to point out if I may --

9 QUESTION: You say -- the question is, which
10 governor shall have the final say? That's really what
11 it boils down to.

12 MR. APPEL: The question is, who shall have
13 the --

14 QUESTION: The governor of the state in which
15 the crime was allegedly committed, or the governor of
16 the state in which the defendant seeks asylum.

17 One of them has to have the final say.

18 MR. APPEL: Well, indeed, I think if the Court
19 becomes involved, the Court of course will have the
20 final say. And it may --

21 QUESTION: Well, the only thing the Court
22 would decide is what's been admitted in this case,
23 whether there was compliance with the procedural
24 requirement.

25 MR. APPEL: Well, I'm not sure of that.

1 QUESTION: Well, what issue would be open for
2 the court?

3 MR. APPEL: Well, let me ask this: Supposing
4 -- supposing again, and I'm posing --

5 QUESTION: Supposing a lynch situation?

6 MR. APPEL: Yes.

7 QUESTION: The answer would be, if you follow
8 the Constitution, that the governor of the state where
9 the crime is committed has a duty to prevent lynching.

10 MR. APPEL: No, I don't think so. It's like,
11 for instance, the full faith and credit clause, for
12 example, let's use that analogy.

13 In the full faith and credit context, in the
14 -- in the so-called foreign state, you can challenge
15 that foreign decree on the basis that were no
16 jurisdictions, there was no due process, a number of
17 other things.

18 QUESTION: Right, but you can't challenge an
19 extradition on that ground. There are certain specific
20 requirements that must be met.

21 MR. APPEL: I don't read that in the
22 Constitution, quite frankly.

23 I mean, that's like saying -- look at the full
24 faith and credit clause. Talk about sweeping. It says,
25 full faith and credit shall be given to each --

1 blah-blah-blah -- for all acts, et cetera, et cetera, et
2 cetera.

3 QUESTION: (Inaudible) changed to whether it
4 is a valid judicial act of the other state. And I
5 assume that there can be fights here about whether there
6 -- there indeed was a valid request from the other
7 governor.

8 MR. APPEL: Well, Justice Scalia, that's not
9 entirely true. For instance, in the Antelope case, for
10 instance, back in Justice Marshall's day, it was held
11 that penal provisions aren't enforceable under full
12 faith and credit.

13 It was also --

14 QUESTION: (Inaudible) because no state
15 generally enforced the criminal laws of another.

16 MR. APPEL: Right, but I think we're --

17 QUESTION: That's why -- that's why they put
18 it in the Constitution.

19 MR. APPEL: I understand that. But I think
20 you're assuming the question of the scope of the clause.

21 It's like a -- it's like a First Amendment
22 type setting once again. We understand that the general
23 obligation, as is the general obligation under the First
24 Amendment, is that --

25 QUESTION: And if we read Dennison, it's a

1 ministerial obligation.

2 MR. APPEL: Well, and I just don't -- I must
3 say, I don't --

4 QUESTION: We should overrule that part of
5 Dennison, you'd have us reject?

6 MR. APPEL: I think that is not correct.

7 QUESTION: Do you think that your governor
8 could relitigate the question of probable cause to
9 arrest in this state? And he'd say, well --

10 MR. APPEL: No, the probable cause, we have
11 stipulated that there was, on the face of the affidavits
12 --

13 QUESTION: Well, that isn't what I was asking
14 you. What if the governor said, you know, I just don't
15 believe there was probable cause to arrest this fellow
16 in Puerto Rico. They just don't have the facts there,
17 despite this warrant and despite these affidavits.

18 Now, can he relitigate that?

19 MR. APPEL: If the Court becomes involved, I
20 assume he could. I assume he could.

21 QUESTION: Well, what have we held in that
22 regard?

23 MR. APPEL: Oh, sure. Right, Michigan v.
24 Dorn. But what did you hold in that regard?

25 QUESTION: What did we hold?

1 MR. APPEL: Well, as the Justice well knows,
2 you held that a court -- a court -- would not look
3 beyond --

4 QUESTION: Where the governor has decided to
5 extradite.

6 MR. APPEL: When the governor has decided to
7 extradite, precisely. There's a whole host of cases --

8 QUESTION: Do you think the governor could
9 decide not to extradite because he didn't think there
10 was probable cause.

11 MR. APPEL: Yes, of course.

12 QUESTION: (Inaudible) on the face of the
13 document.

14 QUESTION: Well, then the provision of the
15 Constitution really doesn't do anything at all. If your
16 answer to that is --

17 MR. APPEL: Excuse me, I'm going to back off
18 that. I think that's not correct.

19 But -- I know when I'm out on a limb, and
20 that's one.

21 QUESTION: A weak limb, too.

22 MR. APPEL: But I want to come back to the
23 basic constitutional point, and that is, again, this
24 business, frankly, about is his duty mandatory or is
25 ministerial, this is not a helpful distinction.

1 There's no question that the -- that the
2 extradition clause in general establishes a norm of
3 constitutional conduct, just as full faith and credit
4 does, and just as the First Amendment does.

5 And once again, the question is, what do we do
6 at the margins? And I might add -- let's look at this
7 Article IV; I think it's kind of interest. Full faith
8 and credit, et cetera.

9 Congress shall provide how the record shall be
10 proved, and the effect thereof.

11 Congress is expressly authorized to prove the
12 effect thereof of full faith and credit, and it has
13 under 1738 --

14 QUESTION: If full faith and credit applied,
15 you wouldn't need the extradition act.

16 MR. APPEL: But if we look under --

17 QUESTION: Would you? Would you? Would you?
18 If full faith and credit applied, you wouldn't need the
19 extradition act.

20 MR. APPEL: Yes, I think that's probably true.

21 QUESTION: But we have the extradition act.

22 MR. APPEL: Yes.

23 QUESTION: So obviously, full faith and credit
24 didn't apply.

25 MR. APPEL: Yes, but the point --

1 QUESTION: Well, why are you arguing full
2 faith and credit?

3 MR. APPEL: Well, I'm trying to argue by
4 analogy, to make two points, Justice. One is, just the
5 provision says "shall" doesn't mean that it answers all
6 our questions.

7 And secondly, Congress is given express
8 authority to determine the effect thereof on the full
9 faith and credit.

10 We move down, then, to the extradition clause,
11 and we don't have such language. Indeed, the framers no
12 doubt thought that the states in their own -- that each
13 state's governor would determine how to interpret that
14 extradition clause.

15 There's no further -- say, Congress shall give
16 effect, et cetera.

17 In closing, I do want to go -- raise --

18 QUESTION: (Inaudible) have now with respect
19 to the fugitive slave provision that Congress has
20 authority to implement. There's no reason to think as
21 far as the implementation power is concerned, the one is
22 different from the other, is there?

23 MR. APPEL: Well, I think there is. And the
24 reason for that is, again, the constitutional history of
25 judicial nonintervention that's grown up.

1 QUESTION: Yes, to be sure. I mean you can
2 answer that -- you can answer all my questions that way.

3 MR. APPEL: I suspect I could.

4 QUESTION: Just citing Kentucky v. Dennison.

5 MR. APPEL: I wanted to address your concern
6 about the power under the territories clause, and that
7 we could conceivably put aside Article IV, the
8 extradition clause, and go under the territory clause,
9 right.

10 First, that hasn't been raised in this
11 proceeding. Indeed, it's not in the petition for writ
12 of certiorari. The petition is only based on Article
13 IV.

14 And it seems to me that Puerto Rico is seeking
15 for an opinion of this Court to declare that it's a
16 state. There's an ideological interest at stake here, I
17 think.

18 They haven't raised the claim.

19 But let me address the claim --

20 QUESTION: (Inaudible) you think there might
21 be some problem? Let's assume we were talking about a
22 territory in which Congress had not even established any
23 local courts; it was governing it by Federal courts, all
24 right?

25 Could Congress require a state to hunt down a

1 -- a state to hunt down a fugitive from an indicted
2 crime in that territory?

3 MR. APPEL: I think not.

4 QUESTION: Yeah, that's the problem I have.

5 MR. APPEL: And the reason for that is that,
6 Your Honor, the Tenth Amendment, all rights are reserved
7 to the states.

8 The extradition clause plainly says, when a
9 sister state requests it, you know, that's cut into.

10 But I think if Congress attempted to pass such
11 a statute, it wouldn't pass constitutional muster.

12 QUESTION: You say, Congress' remedy is, if
13 it's a Federal offense in a Federal territory, use your
14 own police to do it; you can't lay that burden on the
15 states.

16 MR. APPEL: That's right. And that can be
17 done under the Fugitive Felon Act, which allows --
18 someone who flees from one state to another is guilty of
19 a Federal crime, if the Attorney General authorizes
20 prosecution.

21 You can see that Congress has been very chary
22 about getting into this field. By passing the Fugitive
23 Felon Act, which says it's a Federal crime to jump from
24 one state to another, and a Federal prosecution can be
25 brought with the approval of the Attorney General or the

1 assistant Attorney General, which may not be delegated.

2 And so there's no serious threat of a
3 constitutional breakdown occurring in this case at all.
4 The system has worked well. If it ain't broke, don't
5 fix it, is part of our argument.

6 It's hard to see how the injection of the
7 judiciary into the environment is going to help improve
8 things.

9 In closing -- this is my second closing -- I'd
10 like to briefly go through some of the facts that were
11 stated.

12 The question about bond being so low: One of
13 the reasons is, they were afraid that this person if
14 incarcerated in Puerto Rico would be killed; and that
15 appears in the Appendix as part of the extradition
16 proceeding.

17 There was a serious concern about the safety
18 of this individual.

19 I want -- I want to stress, Justices, this was
20 on a motion to dismiss and a petition for writ of
21 mandamus, and there hasn't been a factual development in
22 a traditional sense down below.

23 These are materials that were before the
24 governor. But I just want to share with you some of the
25 concerns that were motivating Governor Branstad, who

1 normally extradites, of course.

2 There was serious concern about the safety of
3 the individual; fear that he'd be killed.

4 QUESTION: This is the kind of thing we hear
5 about extradition to foreign countries.

6 MR. APPEL: I understand that.

7 QUESTION: Would you make the same argument if
8 Michigan instead of Puerto Rico were involved?

9 MR. APPEL: Yes. Yes, I'd have to.

10 QUESTION: Things are tough up in the Upper
11 Peninsula?

12 MR. APPEL: Well, I think -- no -- the basic
13 construct is this, what is the substance of the
14 extradition clause?

15 It vests administrative authority in the
16 governor to decide whether or not that general duty
17 applies.

18 And on the margins, the governors determine
19 what the exceptions are. And in the course of this 150
20 years, there's been kind of a common law type evolution,
21 documented perhaps kind of illy because there haven't
22 been that many litigated cases.

23 But the governors have developed a number of
24 exceptions, just like exceptions have been developed to
25 full faith and credit, and just like exceptions have

1 been developed --

2 QUESTION: You think they really like to do
3 that? It is curious that no other states have come in
4 on either side of this thing.

5 I really wonder whether governors like to have
6 to worry about this stuff; whether they wouldn't be
7 delighted to have these questions about whether
8 somebody's going to be hung if he goes somewhere else,
9 worried about by courts.

10 It seems like a strange thing for the Governor
11 of Iowa or anywhere else to be worrying about. Are you
12 sure you're doing your governor a favor?

13 MR. APPEL: I'm here at his instructions.

14 I think there's some ambivalence about
15 extradition to be sure among the governors. That's just
16 my speculation; I haven't taken any poll.

17 But again, we have to wonder, how will the
18 best institutional results be fashioned here? It seems
19 to me that --

20 QUESTION: You're suggesting in that regard
21 that we should treat the states -- this is an
22 aggregation of sovereign states that are just like
23 Europe, might decide not to -- it's the same -- similar
24 thing in that area.

25 MR. APPEL: Obviously, it's not just like

1 Europe.

2 QUESTION: And the reason it's not is because
3 we have this clause in the Constitution.

4 MR. APPEL: My red light's on, but to answer:
5 What is the purpose of this extradition clause? What is
6 has done, and no one can dispute this fact, what the
7 extradition clause has done is ensured that each
8 governor has authority to extradite a person to a sister
9 state; and no one can go into Federal habeas corpus or
10 state habeas corpus and say, look, no authority; you
11 can't do it.

12 And the extradition clause has made that
13 absolutely, crystal, perfectly clear, and no court has
14 held otherwise; just as they've also held that no courts
15 should coerce a governor.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
17 Appel. Your time has expired.

18 The case is submitted.

19 (Whereupon, at 10:333 a.m., the case in the
20 above-entitled matter was submitted.)

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85-2116 - PUERTO RICO, Petitioner V. TERRY E. BRANSTAD, ET AL.,

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BY Paul A. Richardson

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