

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 86-6

TITLE JAMES G. RICKETTS, DIRECTOR, ARIZONA DEPARTMENT OF
CORRECTIONS, ET AL., Petitioners V. JOHN HARVEY ADAMS

PLACE Washington, D. C.

DATE April 1, 1987

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 JAMES G. RICKETTS, DIRECTOR, :
4 ARIZONA DEPARTMENT OF :
5 CORRECTIONS, ET AL., :
6 Petitioners :
7 v. : No. 86-6
8 JOHN HARVEY ADAMSON :
9 -----x

10 Washington, D.C.

11 Wednesday, April 1, 1987

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States
14 at 11:53 a.m.

15 APPEARANCES:

16 WILLIAM J. SCHAFER, III, ESQ., Chief Counsel, Arizona
17 Attorney General's Office, Phoenix, Arizona; on
18 behalf of the Petitioners.

19 ROY T. ENGLERT, JR., ESQ., Assistant to the Solicitor
20 General, Department of Justice, Washington, D.C.; as
21 amicus curiae, supporting Petitioners.

22 TIMOTHY K. FORD, ESQ., Seattle, Washington; on behalf of
23 the Respondent.

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C-O-N-T-E-N-T-S

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on behalf of Petitioners	3
ROY T. ENGLERT, JR., Esq.	
as amicus curiae, supporting Petitioners	17
TIMOTHY K. FORD, Esq.	
on behalf of Respondent	23
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P R O C E E D I N G S

(11:50 a.m.)

CHIEF JUSTICE REHNQUIST: Mr. Schafer, you may proceed whenever you are ready.

ORAL ARGUMENT OF WILLIAM J. SCHAFER, III
ON BEHALF OF PETITIONERS

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

The issue in this case is whether the State of Arizona can prosecute John Adamson for the crime it dismissed when it entered into a plea bargain with him after he breached the plea agreement. As we were selecting the jury to try Mr. Adamson for the murder of Don Bolles, he struck a bargain with the State.

He would testify in four different cases in return for a sentence of 48 to 49 years. If he refused to testify or refused to be interviewed in reference to preparation for trial in this specific instance in any of these cases, the agreement was void and he would be subject to the original charge.

Adamson testified in three of the four cases. One was the murder of Don Bolles. On his testimony Dunlap and Robison were convicted. When their convictions were reversed on appeal in March of 1980, Adamson refused to testify at their retrials.

1 He wrote us a letter --

2 QUESTION: In the meantime he had been
3 sentenced? In the meantime he had been sentenced?

4 MR. SCHAFER: Yes, he had been, Your Honor.

5 QUESTION: Why did the State rush to judgment
6 on the sentence?

7 MR. SCHAFER: I wouldn't classify it a rush to
8 judgment, Your Honor, but I would say this, although it
9 does not appear in the record.

10 I -- we were concerned as to the problems not
11 sentencing him would raise. This was a unique case in
12 many ways. One of the unique features about it is that
13 Mr. Adamson all during the time he was testifying up
14 until the time of sentencing had been in local custody
15 which was really a county jail.

16 That facility, as most county facilities in
17 the State of Arizona, are not really adequate for
18 holding anyone for an indefinite period of time. It was
19 our consideration that we should get on with sentencing
20 Mr. Adamson so that he could get into federal custody as
21 he finally did.

22 QUESTION: Don't you normally wait until all
23 the litigation is concluded? How did you know you might
24 not get reversed on the pending appeal?

25 MR. SCHAFER: We did not know that, Your

1 Honor. We also did not know how long that appeal would
2 take and we were considering more than one case in this
3 regard.

4 We also did not know how long the appeals
5 would take in the other cases, and at the same time
6 there was a problem that we could see about the
7 incarceration itself.

8 QUESTION: Well, it seems to me there ought to
9 be a place in the great State of Arizona where you could
10 have safe incarceration.

11 MR. SCHAFER: Well, it was more than safety,
12 Your Honor. I believe safety was a factor, but it was
13 also expense and it was also inconvenience for not only
14 the jailor but the jailed, and all those were a
15 consideration in our minds.

16 QUESTION: Where are Dunlap and Robison now?

17 MR. SCHAFER: Mr. Robison is still in prison
18 on a different charge. Mr. Dunlap is out. He is not in
19 prison.

20 QUESTION: He is free?

21 MR. SCHAFER: Yes, he is.

22 Mr. Adamson wrote us a letter saying he would
23 not testify unless we made additional concessions. We
24 told him that we would not make more concessions and
25 that his refusal was a breach of the agreement which

1 reinstated the original charge which included a possible
2 death sentence.

3 We tried to force him to testify but he
4 refused and we re-filed the original charge. He
5 attacked that re-filing unsuccessfully in the trial
6 court immediately, and then with a special action in the
7 Arizona Supreme Court, arguing in both instances that
8 the re-filing was barred by double jeopardy principles.

9 We then did two things. We filed a response
10 to the special action in the Arizona Supreme Court
11 urging that Court to construe the agreement and
12 determine whether he had breached it, and then we also
13 filed a motion in the trial court seeking to have
14 Dunlap's retrial continued because it was just a week
15 away.

16 After those two convictions were reversed by
17 the Arizona Supreme Court, those cases were separated
18 although they had started out as one case. So, what we
19 were facing were two retrials, one for Dunlap and one
20 for Robison. The first one was set, as I said, just a
21 week away was the retrial for Mr. Dunlap.

22 The same day that we did these two things,
23 Adamson moved to withdraw his Petition for Special
24 Action. He later said in one of his federal habeas
25 corpus pleadings that he did that when it became clear

1 to him that the question of his breach might be decided
2 by the Arizona Supreme Court.

3 The Supreme Court refused to dismiss his
4 petition. They set the matter for a hearing and
5 Dunlap's pending trial was stayed.

6 It was now clear what Adamson was trying to
7 do. He was trying to delay a judicial determination of
8 whether he had breached the agreement until after the
9 Dunlap trial started, with no resolution of that
10 question, and the jury seated in the Dunlap trial.

11 If we wanted to pursue Dunlap, we would have
12 no choice but to accede to Adamson's demands. The only
13 other choice would be to forget Adamson as a witness and
14 dismiss the cases against both Dunlap and Robison, and
15 Adamson was betting that we would not do that.

16 Adamson lost in the Arizona Supreme Court.
17 They decided that the plea agreement included retrials
18 and that Adamson had breached the agreement and they
19 reinstated the original information. That was on
20 Thursday. The stay of Dunlap's trial was lifted on
21 Friday, the following day, and his trial was set for the
22 following Monday.

23 Our attempts at negotiation with Adamson were
24 not successful, and without him --

25 CHIEF JUSTICE REHNQUIST: We will resume there

1 at 1:00 o'clock, Mr. Schafer.

2 (Whereupon, at 12:00 o'clock noon, the Court
3 recessed, to reconvene at 1:00 o'clock p.m. this same
4 day.)

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1 AFTERNOON SESSION

2 (12:59 p.m.)

3 CHIEF JUSTICE REHNQUIST: Mr. Schafer, you may
4 proceed.

5 ORAL ARGUMENT OF WILLIAM J. SCHAFFER, III

6 ON BEHALF OF PETITIONER - RESUMED

7 MR. SCHAFFER: Mr. Chief Justice, thank you and
8 may it please the Court:

9 When we decided that we did not have John
10 Adamson as a witness, we moved to dismiss the cases
11 against Dunlap and Robison, and Dunlap's was dismissed
12 on that Monday, the day set for trial.

13 Adamson then was tried and convicted. His
14 conviction was affirmed on appeal by the Arizona Supreme
15 Court. He then went into federal court with a Petition
16 for Writ of Habeas Corpus.

17 The Ninth Circuit held that we could not
18 prosecute Mr. Adamson on the original charge because of
19 the lesser included offense rule of Brown versus Ohio,
20 and secondly, that Adamson did not waive his double
21 jeopardy rights.

22 We believe that the circuit court was wrong on
23 both of those counts. First, the circuit court drew its
24 own conclusions as to the meaning of the plea agreement
25 and Adamson's letter to us. It should not have done

1 that, as that was a question for the Arizona courts.

2 That was, we contend, a matter of Arizona law
3 and it was composed of determinations on factual issues,
4 both things which are commonly set aside for decision by
5 a state court, and once made, entitled to great
6 deference and as to factual issues in a habeas corpus
7 case, a presumption of correctness.

8 If, then, the finding of the Arizona court
9 that Adamson breached his plea agreement is accepted,
10 the next question is whether anything prevented
11 prosecution on that original charge. The Ninth Circuit
12 said that Brown versus Ohio prevented the prosecution
13 but we do not believe that that is correct.

14 As this Court noted in Jeffers versus United
15 States, there are exceptions to the Brown lesser
16 included offense rule. One of those exceptions is where
17 the defendant asks for two trials, or where his
18 deliberate actions result in two trials.

19 In this case, Adamson's deliberate breach
20 resulted in two trials and he knew that would be the
21 result of his breach for he had agreed to that.

22 QUESTION: Mr. Schafer, let me just ask one
23 procedural question, if I may. I guess the respondent
24 raised the double jeopardy issue in his first federal
25 habeas proceeding and he lost at the district court and

1 in the Ninth Circuit.

2 MR. SCHAFFER: That is correct, Your Honor.

3 QUESTION: And certiorari was sought here and
4 refused?

5 MR. SCHAFFER: That is correct.

6 QUESTION: And in the second federal habeas he
7 did not raise the issue?

8 MR. SCHAFFER: He did not raise it.

9 QUESTION: And the Ninth Circuit Court of
10 Appeals sui sponte ordered it briefed?

11 MR. SCHAFFER: Correct, Your Honor.

12 QUESTION: When the second habeas was on
13 appeal there?

14 MR. SCHAFFER: Yes.

15 QUESTION: But your petition for certiorari
16 raises no objections to that rather curious procedure?

17 MR. SCHAFFER: We have not, Your Honor. We
18 find it curious but we have not raised it in the
19 Petition.

20 QUESTION: All right.

21 MR. SCHAFFER: As this Court noted in Jeffers,
22 there are exceptions to the Brown lesser included
23 offense rule, and as I say, one of those is where the
24 defendant himself asks for two trials or where his
25 deliberate actions force two trials.

1 In this case Adamson's breach resulted in
2 those two trials and he knew what he was doing.

3 QUESTION: Mr. Schafer, if the Supreme Court
4 of Arizona had come out the other way in construing
5 Adamson's plea bargain, you would concede, I suppose,
6 that what he said was correct?

7 MR. SCHAFFER: I think I would have to, Your
8 Honor.

9 QUESTION: Yes. If he hadn't breached his
10 plea then he was entitled to have the government perform
11 too?

12 MR. SCHAFFER: Yes, if they had ruled that way.

13 QUESTION: And as I understand, what he says
14 is that as soon as he got the final word from the
15 Supreme Court of Arizona on their construction of it, he
16 offered to restore matters to the status quo ante as
17 best he could. Do you disagree with that.

18 MR. SCHAFFER: I don't disagree with what he
19 did. I think I would phrase it a little differently
20 than you did.

21 It wasn't as best he could. What he said was,
22 we'll go back to the original plea agreement and there
23 is not much question. We said no, we cannot do that.
24 We cannot go back to the agreement that you just
25 breached.

1 We tried to come up with an agreement that
2 would allow us to trust Mr. Adamson, and we could not
3 construct such an agreement.

4 QUESTION: And so, you say he construed -- and
5 I am not saying you are wrong, but you say he construed
6 the agreement at his peril, so to speak, like most other
7 contracting parties do. If you are wrong in the eyes of
8 the court, there is the final say, you have breached?

9 MR. SCHAFER: Yes. Perhaps my question, the
10 word "construe" -- I think he just took a position,
11 "This is it. We are not going to testify."

12 QUESTION: Isn't it rather hair-splitting to
13 say that the state court has the ultimate word on what
14 the contract means? You agree that the federal courts
15 have to have the ultimate word on whether indeed there
16 was a voluntary waiver of the double jeopardy
17 protection, isn't that right?

18 MR. SCHAFER: I think we have to concede, Your
19 Honor, that that would be a federal question as to
20 whether double jeopardy was waived.

21 QUESTION: Well, there could hardly be a
22 voluntary waiver if the meaning of the contract was
23 unclear, could there?

24 MR. SCHAFER: Your Honor, I see that quite
25 clearly and that's a factual determination, as to what

1 were the terms of the agreement which, if I liken to --

2 QUESTION: That's right, so it comes down to
3 saying that the state court decides what the agreement
4 meant but we decide whether the agreement clearly meant
5 that? I mean, you know, if that makes you feel better,
6 I suppose you can put it that way. But don't we have to
7 decide whether the agreement clearly meant what the
8 Arizona court said it meant?

9 MR. SCHAFFER: I wouldn't concede that, Your
10 Honor. I believe that is a factual question as to what
11 the agreement actually said.

12 QUESTION: How could it be -- how could we
13 hold that there was a voluntary waiver if we think the
14 agreement was unclear?

15 MR. SCHAFFER: I don't believe -- well, in that
16 kind of a scenario I believe I would have a problem and
17 so would the Court in that regard.

18 QUESTION: Right.

19 MR. SCHAFFER: But I don't believe this Court
20 can go back over to what the Arizona Supreme Court has
21 already done, which is supported by the record.

22 QUESTION: But do you agree that there must be
23 a voluntary waiver?

24 MR. SCHAFFER: Your Honor, it was just for the
25 purpose of the answer to that question. I do want to

1 argue to this Court that Johnson versus Zerbst, for
2 instance, which is played throughout the briefs, really
3 does not apply in this kind of a situation.

4 I would make two arguments in answer to both
5 of those questions in Johnson versus Zerbst, although it
6 has been argued at length before we even got to this
7 Court. I do not believe that Johnson versus Zerbst
8 would require anything different than what we have here.

9 If this Court were to say that Johnson --

10 QUESTION: Well, what does apply if Zerbst
11 doesn't, Scott?

12 MR. SCHAFER: Your Honor, I believe that this
13 Court has said, and I think the two cases are Tateo and
14 Dinitz, if I recall, that in this kind of a situation,
15 and I liken it to this where there is a retrial after
16 reversal, that the considerations that go into Johnson
17 versus Zerbst really do not apply and perhaps they
18 should not apply in this situation.

19 QUESTION: Well, I agree with you on that, but
20 because I think that is what U.S. versus Scott said
21 specifically. Hence, I am asking you whether you are
22 content with the Scott standard.

23 MR. SCHAFER: I believe I would be, Your
24 Honor, and my argument is that Johnson versus Zerbst
25 really should not apply here because there are other

1 considerations that this Court has to have in mind and
2 they could not be fulfilled, I think in most of the
3 cases, if we were to apply a Johnson versus Zerbst
4 theory to this and require that there be a knowing and
5 voluntary waiver by the defendant.

6 However, if this Court is to say that Johnson
7 versus Zerbst applies, it seems to me that this record
8 is quite clear that Mr. Adamson knew exactly what he was
9 doing. There is a very lengthy plea taking by Judge
10 Birdsall, which as I recall is about 35 pages, where
11 this is discussed with Mr. Adamson, the plea agreement.

12 In fact, every one of the paragraphs in the
13 plea agreement is discussed and at the end of that, and
14 all through it, he indicates that he knew exactly what
15 he was doing.

16 I believe this case is more like Ohio versus
17 Johnson in that Mr. Johnson pleaded to two of four
18 counts. The argument was raised that the lesser
19 included offense rule came into play and double jeopardy
20 barred it, and this Court said no, that that is not true.

21 Underlying the double jeopardy principle is a
22 realization that there are few hard rules that can be
23 drawn, and that the solution in each case lies more in
24 an analysis of the respective interests involved.

25 Adamson had an interest in seeing to it that the state

1 did not prosecute him repeatedly for the same crime. He
2 also had an interest in retaining control over whether
3 his guilt would be determined at one sitting before one
4 tribunal.

5 He has not been denied either of those
6 interests. We have not prosecuted him repeatedly and he
7 retained control over the course his trial would take,
8 giving up that control when he entered into the plea
9 agreement.

10 On the other hand, the state's interest is in
11 seeing to it that we have an opportunity to marshal our
12 forces and present our case against John Adamson. The
13 Ninth Circuit opinion denies us that opportunity and it
14 should be reversed.

15 I would like to reserve the rest of my time.

16 QUESTION: All this could be avoided had you
17 not had him sentenced, couldn't it?

18 MR. SCHAFER: It may well have been.

19 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
20 Schafer. We will hear now from you, Mr. Englert.

21 ORAL ARGUMENT OF ROY T. ENGLERT, JR., ESQ.

22 AS AMICUS CURIAE SUPPORTING PETITIONERS

23 MR. ENGLERT: Thank you, Mr. Chief Justice,
24 and may it please the Court:

25 There is no need in this case for a knowing,

1 intelligent and voluntary waiver of double jeopardy
2 rights above and beyond that which is clearly contained
3 in the plea agreement itself. Indeed, in Scott this
4 Court has held that when it is the defendant's action
5 that brings about the need for successive prosecution,
6 concepts of waiver need not be invoked. The Court's
7 decisions in the appeal cases and the mistrial cases
8 have not rested on waiver rationale.

9 To take another concrete example, in Jeffers
10 the defendant objected to the government's attempt to
11 have the continuing criminal enterprise and conspiracy
12 counts all joined in one trial. When he failed in that
13 effort, he -- I am sorry, when he succeeded in that
14 effort he surely was not entering into a Johnson v.
15 Zerbst knowing and voluntary waiver of his right not to
16 be free of double jeopardy, because it wasn't until this
17 Court's decision in Jeffers that it was clear whether
18 CCE and the underlying conspiracy were greater and
19 lesser included offenses.

20 Nonetheless, this court held that because of
21 the defendant's action it was appropriate for him to be
22 tried separately on the greater and lesser included
23 offenses in that case.

24 The fundamental question in this case is
25 whether a defendant can breach his plea agreement but

1 nevertheless prevent charges from being reinstated as
2 the plea agreement said they would be, on the grounds
3 that the double jeopardy clause automatically prevents
4 reinstatement.

5 QUESTION: Mr. Englert, do you think that it
6 would be possible for a defendant who had entered into a
7 plea agreement of this type to ever make a good faith
8 challenge to a provision in the agreement that the
9 defendant thought was unclear without thereby in effect
10 waiving the double jeopardy --

11 MR. ENGLERT: It most certainly would, Your
12 Honor. To take this case as an example, if what the
13 defendant had done had been to file some kind of a
14 motion for clarification before Judge Birdsall or before
15 any other appropriate court in Arizona, saying a
16 legitimate disagreement about the meaning of this
17 agreement has arisen, I cannot imagine that a state
18 court would find pursuing that route to be a breach of
19 the plea agreement.

20 QUESTION: But by taking the route of
21 challenging the enforceability of the agreement and
22 refusing to testify unless and until it was clarified as
23 it was in this manner, would not suffice?

24 MR. ENGLERT: I should think not, Your Honor.
25 I should think it would not suffice. And I might add a

1 word about what exactly was done in this case.

2 Mr. Adamson did not -- Mr. Adamson's counsel
3 did not write a letter saying, "We have a disagreement
4 about this. Let's work it out." The letter of April
5 3rd, 1980, which is reprinted at pages 106 to 110 of the
6 Joint Appendix, stated Mr. Adamson's refusal to testify
7 unless his non-negotiable demands were met.

8 QUESTION: You are speaking now of the April
9 1980 agreement?

10 MR. ENGLERT: Your Honor, I am speaking of the
11 April 30, 1980 letter from Mr. Adamson's counsel.

12 QUESTION: Do you feel that was a breach of
13 the agreement?

14 MR. ENGLERT: Absolutely.

15 QUESTION: Well, I thought it was conceded
16 that it was not one.

17 MR. ENGLERT: Your Honor, I was not at the
18 argument before the Ninth Circuit. I understand it may
19 in fact have been conceded at that point.

20 But I think if you look through the pleadings
21 that the State filed --

22 QUESTION: Well, if it is conceded, why are we
23 bothering with it up here?

24 MR. ENGLERT: That concession was mistaken,
25 and that, I believe, is made clear starting with the

1 letter of April 9th, 1980 from the State and continuing
2 through six years of proceedings in State courts,
3 federal habeas courts.

4 It certainly has been the State's position
5 that the April 3rd letter was breached. There was a
6 preceding conversation on April 2nd which was
7 reconfirmed by that letter of April 3rd, in which Mr.
8 Adamson refused to testify unless his non-negotiable
9 demands were met.

10 That is shown by the very first sentence in
11 Mr. Adamson's counsel's letter. That refusal to testify
12 on April 2nd was a breach of the agreement.

13 Mr. Schafer's letter of April 9th reflects
14 another conversation, a conversation which defendant now
15 denied, to be sure, but nothing else in the record shows
16 any denial. That April 9th conversation appears to be a
17 breach of the agreement.

18 It was not Mr. Adamson's position that this
19 was a disagreement that needed to be gotten before a
20 court as quickly as possible. Indeed, Mr. Adamson
21 resisted the State's attempt to get the agreement
22 construed.

23 On page 86 of the Joint Appendix there is a
24 very clear statement by Mr. Adamson's counsel to the
25 Supreme Court of Arizona that Mr. Adamson has never

1 asked any court to construe this agreement. His
2 position was that he did not want the agreement
3 construed, and as Mr. Schafer suggested in his argument,
4 the timing of the Dunlap and Robison retrials is
5 critical to take into account in terms of what was going
6 on in the month of May, 1980, when this action was being
7 brought before the Arizona Supreme Court.

8 It is the position of the United States that
9 there really is no double jeopardy issue in this case,
10 and despite the holding of the Ninth Circuit,
11 respondent's brief doesn't place most of its effort in
12 an attempt to say that there is any real double jeopardy
13 issue in this case.

14 Their position is that there is something
15 special and unusual about this case, that somehow it was
16 fundamentally unfair for the Supreme Court of Arizona to
17 find the breach it did in this case because there was
18 just a good faith disagreement and as soon as it got
19 resolved Mr. Adamson was willing to testify.

20 First of all, I don't know what federal
21 constitutional issue that raises. At best, in some
22 extreme case, there might be an argument that an
23 insupportable state finding of breach violated due
24 process, but this is not that case.

25 There is ample evidence in the record that Mr.

1 Adamson refused to testify unless his demands were met.
2 The agreement, as interpreted by the Supreme Court of
3 Arizona, made clear his obligations.

4 The Ninth Circuit and the district court, the
5 first time they had heard this case, found the
6 interpretation of the agreement to be eminently
7 reasonable, and we submit, correctly so. We think that
8 this case was summed up extremely well by the Ninth
9 Circuit in 1981, the first time it considered this
10 precise issue.

11 As the Court said, on page 161 of the Joint
12 Appendix, "In his written refusal to testify, and list
13 of demands, Adamson acknowledged that he ran the risk of
14 reprosecution for first degree murder under the terms of
15 the plea agreement. He cannot now claim immunity in
16 what proved to be a losing gamble."

17 If the Court has no further questions, thank
18 you.

19 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
20 Englert.

21 We will hear now from you, Mr. Ford.

22 ORAL ARGUMENT OF TIMOTHY K. FORD, ESQ.

23 ON BEHALF OF THE RESPONDENT

24 MR. FORD: Thank you, Mr. Chief Justice, and
25 may it please the Court:

1 This case most certainly does involve a double
2 jeopardy issue. Mr. John Adamson was in prison serving
3 the second year of a prison term for the murder of Don
4 Bolles when he was charged with the murder of Don Bolles.

5 Now, the issue here arises at an unusual
6 context. The context has to do with -- and begins with
7 an agreement between attorneys and a disagreement over
8 what the terms of that agreement were.

9 Like most such disagreements, it arose because
10 something happened that nobody anticipated when the
11 agreement was entered into. What everybody anticipated,
12 when the agreement was entered into, is that Mr. Adamson
13 would plead guilty.

14 He would tell the State who else was involved
15 in this murder. He would testify against those people
16 and he would testify against others involved in other
17 crimes and at the conclusion of that testimony he would
18 be sentenced and after that, in a separate provision of
19 the agreement, it said he would be transferred from Pima
20 County Sheriff's custody into a different form of
21 custody which turned out to be Federal Witness
22 Protection program custody.

23 Mr. Adamson did plead guilty. He did solve
24 this crime for the State of Arizona. He did testify
25 against these other people, and not just once or twice

1 or five times or ten times, but he counted 14 times, 31
2 days, 190 hours, In court, 205 he counted and it is
3 undisputed, Interrogative sessions outside of court.

4 He waived his rights. Now, that includes some
5 occasions after the breakdown of the plea agreement
6 where he continued to voluntarily cooperate with federal
7 authorities in this matter.

8 What happened that was not anticipated was
9 that after the State sentenced Mr. Adamson, and he was
10 sentenced after he testified in all those cases and
11 everybody was convicted, and after he was transferred
12 into federal custody one of the convictions was reversed.

13 It was reversed on a ground that required Mr.
14 Adamson's immunity agreement to be renegotiated because
15 the State for some reason, and it's not in the record --
16 and I'm at a disadvantage here because I have to stick
17 to the record that's before this Court, and of course
18 there has never been an evidentiary hearing on these
19 questions and I was not counsel at this stage -- but for
20 some reason the State refused to give Mr. Adamson
21 immunity as to a receiving stolen property crime that
22 involves selling an illegal suit that got tied up in
23 this set of facts.

24 Because of that he took the Fifth Amendment
25 and there was cross examination limitations during the

1 Dunlap and Robison trials, and that was why their cases
2 were reversed. So, when that happened everybody knew
3 that there had to be further negotiations between Mr.
4 Adamson and the State because that changed his situation.

5 Mr. Schafer said so in the newspaper, and Mr.
6 Adamson read that. Mr. Adamson's counsel said so, and
7 in fact there were negotiations. They started
8 discussing, what are the terms and Mr. Adamson's
9 position and his lawyer's position was, "We have
10 performed. We have testified time and time and time
11 again. We have been sentenced. We have been
12 transferred. Our part of the bargain has been
13 completed. So for further testimony, we want further
14 considerations."

15 Primary in his mind was safety. This is an
16 extremely volatile, dangerous case involving allegations
17 of organized crime and governmental corruption, and Mr.
18 Adamson's safety was placed in the record by Mr. Schafer
19 as the reason why they couldn't find a place for him in
20 the State of Arizona and had to transfer him. For his
21 own safety, is what Mr. Schafer said back then.

22 Mr. Adamson's lawyers took a tough position.
23 In Mr. Adamson's words in that letter of April 3rd, he
24 asked for the moon. That was their position in
25 negotiations.

1 He said it may have been untutored, but it was
2 in good faith because in that letter he never said, "I
3 repudiate this agreement. I want to go back. I want
4 this to be undone."

5 He said, "This is how we read this agreement,"
6 or his lawyer said this. "This is how we read this
7 agreement. This is what we agreed on when we entered
8 this agreement, that we would testify and then we would
9 be sentenced, and that has been done and now there has
10 to be additional consideration and here is the
11 consideration that we demand."

12 He did not say, and it is important to
13 remember the context that we are in here of negotiations
14 between attorneys, and frankly there is nothing in the
15 record that there was any meeting on April 2nd. We have
16 a footnote regarding the reference to April 9th. We
17 know nothing about any such meeting. There has never
18 been an allegation of any of those two things happening.

19 Again, we have a problem here. There has
20 never been an evidentiary hearing. But I know nothing
21 of those.

22 The question that has been raised, and what I
23 understand to have happened, is there was this call on
24 April 2nd and the response was this letter. And the
25 letter did not say, John Harvey Adamson hereby refuses

1 to testify in any further cases, signed William
2 Feldhacker.

3 The letter said, here's our legal position.
4 Here is how we construe the agreement. Here are the
5 additional items of consideration we wish in addition to
6 testimony, and if you find that there is an absolute
7 prohibition to any of these we can anticipate that Mr.
8 Adamson will not testify in any future trials.

9 Now, that is bargaining. That is negotiating
10 position. That is not a breach of the plea bargain
11 agreement.

12 The plea bargain agreement never said
13 anywhere, you will not write a letter, you will not
14 assert a position through counsel.

15 QUESTION: In the sentence before that, Mr.
16 Ford, he said, "I would like to advise you that the
17 demands outlined above are basically non-negotiable
18 demands."

19 That doesn't sound like a letter asking for
20 negotiations.

21 MR. FORD: Well, I think it is an inartful
22 letter asking for negotiations, Your Honor, and I think
23 that both sides in this case, if they were at this point
24 the negotiations broke down, and I think partly because
25 of these kind of miscommunications between counsel.

1 The position Mr. Schafer has described his
2 response as taking -- of trying to get Mr. Adamson to go
3 along. It's not how Mr. Adamson said, and his counsel
4 have placed on the record, that they interpreted it,
5 they interpreted it as, "You have already breached," and
6 that is how the Solicitor General read it in their brief
7 here in this Court and that is how I read it.

8 "We may now prosecute you. You are subject to
9 prosecution." Therefore, then, Mr. Adamson did not
10 refuse to testify, or did not testify at this pretrial
11 hearing.

12 Justice Rehnquist, it is important for me to
13 differentiate, I think throughout this, the contract
14 questions and the waiver questions and the syllogism
15 that Mr. Schafer's argument proceeds with, which says he
16 agreed, if he breached, he would be reprosecuted. He
17 breached; therefore he can be reprosecuted.

18 What that does is just substitute one legal
19 conclusion for another. The legal conclusion of breach
20 is not what leads to the legal conclusion of waiver.

21 What the plea agreement said is, if he should
22 refuse to testify then the agreement is null and void
23 and he may be reprosecuted. The only time in all these
24 years Mr. Adamson refused to testify was in those
25 proceedings before Judge Myers after the State had said,

1 "You are already in breach. We are going to prosecute
2 you for all these things."

3 Mr. Adamson's lawyers -- when Mr. Adamson
4 refused he did not refuse in the sense of saying, "Well,
5 whatever the Court says, I am not going to say another
6 word. I am standing on my Fifth Amendment privilege."

7 Indeed, Judge Myers did at first go along with
8 the State's argument and say, "Mr. Adamson, you have to
9 testify. I'm ordering you to testify." And then what
10 happened was, he did not defy the court or the agreement.

11 His lawyer stood up and said, "Just a minute,
12 Judge Myers, please let me explain to you what has
13 happened here," and he explained this chronology and he
14 showed the letter that Mr. Schafer had written that had
15 threatened and said that he was subject to reprosecution
16 then. And he said, "In light of this and in light of
17 our position the plea bargain agreement has been
18 satisfied, we believe we have no double jeopardy" -- or,
19 I'm sorry, "self-incrimination protection."

20 QUESTION: I don't understand your position.
21 Is your position that that letter does not constitute a
22 refusal to testify?

23 MR. FORD: That letter does not constitute a
24 refusal to testify.

25 QUESTION: You mean if I say, "I will only

1 testify if you pay me ten million dollars," that's not a
2 refusal to testify?

3 MR. FORD: If you say --

4 QUESTION: Sort of like assault or --

5 MR. FORD: -- I want ten million dollars for
6 my testimony and if you don't give it to me we can
7 anticipate that I won't be testifying. That is a
8 posturing. That is an attempt to try and achieve
9 something through a very tough negotiating position, but
10 it is not an absolute refusal to testify.

11 He was not called into court and asked a
12 question and said, "I refuse to testify."

13 QUESTION: The agreement surely contemplates
14 his agreement to testify without any further
15 preconditions, so whether you're breaking the agreement
16 simply depends upon whether you are refusing to testify
17 without preconditions or not.

18 Did the agreement envision that he could
19 comply with it by saying, "Of course I'll testify;
20 however you have to pay me ten million dollars"? That's
21 not what the agreement contemplated, is it?

22 MR. FORD: I think the agreement contemplated
23 that he could be reprosecuted if he refused to testify.

24 QUESTION: If he refused to testify period,
25 not if he refused to testify including with conditions,

1 right?

2 MR. FORD: That's correct. But Justice Scalia
3 -- I mean, saying, "When you call me into court next
4 week I don't think I am going to testify unless you pay
5 me ten million dollars," is not a refusal to testify.
6 Even in contract law it is not.

7 QUESTION: A person wouldn't be entitled to
8 treat a contract as breached upon that statement?

9 MR. FORD: Under the restatement, no. Under
10 the vast majority of state laws, my understanding is
11 no. This kind of a statement as far as I can tell,
12 nowhere in the law is treated as a breach of the
13 contract and certainly not one that permits and relieves
14 the State from all of its obligations.

15 This is not just a situation -- if this had
16 happened in the commercial media where somebody had
17 ordered 1,000 widgets and 900 were delivered and then
18 there was a dispute among their lawyers over whether the
19 additional hundred had to be delivered, one side could
20 never say even if they were proven right that the other
21 hundred was owing, "We get all our money back, we" --

22 QUESTION: But supposing the seller delivers
23 the 1,000 widgets and says, "I know the agreed price was
24 \$200 but I now want \$300 for them," I think the buyer
25 under the law of anticipatory breach can refuse and say,

1 "You have breached."

2 MR. FORD: Well, under the law of anticipatory
3 breach as I understand it, Mr. Chief Justice, if the
4 person says, "Unless you come up with \$300 we can
5 anticipate that on the due date for these widgets I am
6 not going to deliver." That is not treated as a breach
7 by most courts.

8 But remember --

9 QUESTION: You use the word, "We can
10 anticipate that," instead of, "I won't"? Is the magic
11 word "anticipate"?

12 Anyway, it isn't "anticipate" here. It says,
13 "It is John Adamson's position that if the State of
14 Arizona desires Adamson's testimony the following
15 conditions must be met." I read that as quite
16 categorical.

17 "You meet these conditions or I don't testify."

18 MR. FORD: It is very close to a refusal, but
19 it is -- again, Justice Scalia, I think it is important
20 that we are talking in a context of agreements between
21 lawyers and discussions between lawyers, where lawyers
22 can take and disagree over their position without
23 forfeiting all their client's rights.

24 QUESTION: But that is not just what the law
25 -- when you make noises like a lawyer you have

1 consequences like lawyers, and that's what the doctrine
2 of anticipatory breach is all about. You can't go
3 around saying "I'm not going to do it," without
4 consequences.

5 MR. FORD: Without -- well, let me retreat
6 from the position and point out, because I do not want
7 to get fixed to this question of whether or not -- I
8 mean the State, the important thing is, I guess, if this
9 is a breach, I think as your question earlier to Mr.
10 Schafer pointed out, Mr. Roberts, the Assistant Attorney
11 General of the State of Arizona conceded in the Ninth
12 Circuit this wasn't a breach.

13 QUESTION: But we are not bound by concessions
14 made in the Ninth Circuit.

15 MR. FORD: Well, perhaps you are not, Mr.
16 Chief Justice, but at least it indicates that a
17 reasonable person with some knowledge of this case and
18 the law could believe that Mr. Adamson could write that
19 letter or his lawyers could write that letter without
20 breach.

21 QUESTION: That it may indicate, but certainly
22 we evaluate for ourselves what is before us. We are not
23 bound by concessions made by parties in another court.

24 MR. FORD: I agree, Your Honor, and of course
25 it's not -- again the question is not breach. It seems

1 to me the question is whether in the context of this
2 agreement Mr. Adamson committed an action that
3 constitutes a waiver of a constitutional right which
4 clearly had attached to him.

5 Now, in order to even get to this question, of
6 course we have to say, a waiver can occur through
7 counsel. We have to say that the obligations of the
8 contract were so clear that by taking this position that
9 he was making a waiver --

10 QUESTION: Well, why do you need a waiver in
11 this case, Mr. Ford? Certainly cases like Dinitz and
12 Scott say that where a retrial occurs as a result of
13 something the defendant did the waiver doctrine doesn't
14 apply?

15 MR. FORD: Well, Dinitz and Scott, as I
16 understand them, involve a different double jeopardy
17 interest. And what this Court, I think has emphasized
18 to be a secondary double jeopardy interest and that is
19 the interest in continuing before -- or completing the
20 trial before a single fact finder.

21 QUESTION: That is secondary.

22 MR. FORD: This Court certainly said, I
23 believe in Dinitz itself, that this is not the same as
24 the central common-law basis for the double jeopardy
25 clause which are the three common-law pleas and one of

1 those is what is involved in here.

2 The French, and my French is awful --
3 autrefois, convict. That is Mr. Adamson's plea and it
4 is the center and the core of the double jeopardy clause
5 that he is relying on for protection here, not -- he's
6 not -- again although those cases say, we're not
7 analyzing this in a waiver term, that of course, that
8 whole line of authority arose out of the Green case
9 where the State was arguing and based on some 19th
10 Century precedent that this is a waiver.

11 The Court refused to inject that body of law
12 against the defendant. But even if you take the Court's
13 terms, and I have looked at all these cases, Jefferson,
14 Scott, Dinitz, and they talk about voluntary choice and
15 the defendant's deliberate election and indeed, they are
16 all absolutely accurate in my mind.

17 The defendant in those cases chose to have
18 exactly the consequence that he got. He said, "I want
19 to have another trial. I want this trial suspended and
20 to try again." Or he said, "I want to vacate my plea."

21 QUESTION: Well, that depends on what
22 voluntary election you want to talk about. You are
23 insisting that the voluntariness apply to the April 2nd
24 letter.

25 Why shouldn't the voluntariness apply to the

1 original plea bargaining agreement? That is, he
2 voluntarily agreed when he signed that agreement that if
3 he should breach it he could be retried.

4 It later happened that he did breach it. Now,
5 why must one insist that the condition of knowing and
6 voluntary apply to the breach as opposed to merely the
7 signing of the agreement?

8 That was the deal. He voluntarily agreed that
9 if he should breach the agreement he could be retried.
10 And he --

11 MR. FORD: Justice Scalia, I hate to split
12 this hair, but it's a critical hair in this case.

13 QUESTION: I understand.

14 MR. FORD: And that is, he did not agree that
15 if he should breach he could be retried. He agreed that
16 if he refused to testify he could be retried. And that
17 is a different thing, and that is the difference between
18 a state law question in this case and a federal law
19 question in this case.

20 Now, with regard to that agreement the Ninth
21 Circuit, I think, was absolutely correct when they said
22 there is no way to read the plea agreement itself as a
23 waiver of double jeopardy because it only says, if
24 something happens in the future then a consequence can
25 occur that implicitly waives double jeopardy, if you

1 read everything against Mr. Adamson.

2 Now, there is no explicit -- there were many
3 constitutional rights listed there and they didn't put
4 that one in. The reason they didn't put that one in is
5 because they didn't think he was going to be sentenced
6 until everything was over.

7 What happened was, he was sentenced and he
8 thought everything was over and the other side thought
9 it was not, with the exception of this Ashford Plumbing
10 thing. At that point it seems to me that you can't have
11 a defendant sign kind of a contract of adhesion that
12 says, "I agree" -- perhaps that's the wrong phrase. I'm
13 not a contract lawyer.

14 But you can't have a defendant say, "By
15 entering into this agreement we've got you; now you've
16 waived your double jeopardy rights."

17 QUESTION: Why can't you?

18 MR. FORD: There is a question of
19 voluntariness in the future.

20 QUESTION: Just bringing waiver, what's the
21 matter with it?

22 MR. FORD: It's a waiver that involves two
23 different events. Even if you imply the waiver, which
24 this Court refused to do in Menna versus New York, the
25 implied waiver only occurs with first, the signing of

1 the agreement and then the later event.

2 It seems to me that at least the later event
3 has to be voluntary. You couldn't -- this Court would
4 not entertain a situation where if Mr. Adamson was
5 unable to -- was hospitalized and was unable to get to
6 the courthouse the state could say, "He refused to
7 testify and it says in here he has failed to testify."

8 That kind of -- there's got to be a
9 voluntariness. If we're going to allow these kind of
10 agreements to supplant constitutional rights, they can't
11 take away the basic essence of those constitutional
12 rights and the loss of them.

13 The --

14 QUESTION: So, there was really no way to
15 enter into this plea agreement? Given what later
16 happened, there was no way that the State could have
17 struck an agreement with your client?

18 MR. FORD: I think there absolutely was. They
19 could have written into the agreement, either as they
20 did, it will be over at sentencing or if the defendant
21 is sentenced prior to any testimony then he agrees to
22 waive double Jeopardy with regard to any later refusals
23 to testify.

24 Then, they would have had exactly the same
25 agreement and that's what -- in fact, that's what the

1 State of Arizona does now. There is a reported case
2 which we have cited. That is what prosecutors do all
3 over the place.

4 It is a very simple thing to do. It avoids
5 misunderstandings and that is what we had here.

6 QUESTION: Well, what if the agreement had
7 just right out said he would testify as often as
8 necessary against these people, if they are convicted
9 after the first trial and appeal successfully he will
10 testify at the second trial? Let's suppose the
11 obligation he undertook was very plain and then he --
12 there was a reversal of the conviction and then he
13 refused?

14 MR. FORD: It has been our position from the
15 beginning, at least arguendo, I think, Justice White,
16 that if he were with clear knowledge that he was in
17 breach to have done an act that the agreement said
18 clearly was -- waived his double jeopardy rights --

19 QUESTION: Well, he just refused to testify
20 and refused to perform a contractual obligation. Do you
21 say that just automatically is a waiver of his double
22 jeopardy right?

23 MR. FORD: Again, I am having difficulty with
24 the contract language. I think the language is
25 important because the contract question is separate from

1 the federal question. But if the agreement said, "I
2 hereby" -- in the clearest terms -- "I hereby waive my
3 double jeopardy rights and agree" --

4 QUESTION: No, no, my example is, he says, "I
5 will testify against these people as often as necessary."

6 MR. FORD: And I agree that --

7 QUESTION: And then, then after the reversal
8 he says, "Yes, I know I promised that I would testify
9 again but I'm not going to now. I just refuse. I know
10 I am breaching my agreement but here I've been in jail.
11 You can't retry me. That's double jeopardy."

12 MR. FORD: If the agreement says, "Under those
13 circumstances I agree I can be retried," then I think
14 that the --

15 QUESTION: Well, the agreement didn't say
16 that. All it said was what his obligation was.

17 MR. FORD: I don't see how -- the loss of
18 federal constitutional rights doesn't follow
19 automatically from any breach of contract. That is why
20 I think the contract question --

21 QUESTION: Would you answer Justice White's
22 question for me if you won't answer it for him?

23 MR. FORD: I am sorry, Mr. Chief Justice. I
24 guess I don't understand.

25 QUESTION: The question is, if the agreement

1 said, "I will testify over and over again as long as
2 necessary," he testifies once, he is sentenced, the
3 cases -- the Dunlap case is reversed and the Robison
4 case, the State says, "Come on, perform your duty."

5 He says, "I know that's what the contract says
6 but I refuse." There is nothing more than the present
7 plea agreement has in there about double jeopardy.

8 MR. FORD: I am sorry. That is the part I
9 didn't understand, Mr. Chief Justice. If the present
10 plea agreement language is in there that says he may be
11 reprosecuted under those circumstances --

12 QUESTION: It simply says, "I will testify as
13 often as necessary," and then he just refuses and he
14 says, "And by the way, you can't retry me because I have
15 been in jail and I've already been convicted."

16 You know, that old French phrase --

17 MR. FORD: Unless there is something in the
18 plea agreement that either implicitly or explicitly
19 waives double jeopardy --

20 QUESTION: Well, say what's in this plea
21 agreement.

22 MR. FORD: If what is in this plea agreement
23 was in the plea agreement in the situation that Justice
24 White has described, we would say that a waiver could be
25 found under those circumstances, and a knowing and

1 voluntary waiver could be found. If he actually went
2 into court and did what he had promised --

3 QUESTION: Even if he hadn't been sentenced
4 and spent time in jail?

5 MR. FORD: If he has waived the double
6 jeopardy right. I have not taken the position in this
7 case, which the Tenth Circuit has taken, and if it is
8 not necessary, certainly for the Court to reach the
9 question in this case that double jeopardy can never be
10 waived.

11 The Ninth Circuit was very clear in saying
12 that their holding was, even if it can be waived.

13 QUESTION: So, you say that --

14 MR. FORD: It certainly was not here.

15 QUESTION: Didn't he -- I guess he did plead
16 -- he pled guilty to the lesser offense before there was
17 any trial of these other people?

18 MR. FORD: It was mid-trial, mid-jury
19 selection, Your Honor.

20 QUESTION: He pled guilty?

21 MR. FORD: Yes.

22 QUESTION: He pled guilty and suppose then
23 after pleading guilty to the offense, suppose that he
24 then refused to testify at all, even once?

25 MR. FORD: Right at that moment?

1 QUESTION: Right.

2 MR. FORD: Number one, again, of course, it
3 could be construed as a waiver of double jeopardy under
4 the same circumstances and should be.

5 Number two, though --

6 QUESTION: Well, he did -- from a refusal to
7 perform his contractual duty, you would say, is
8 equivalent, you would say, to a waiver of double
9 jeopardy?

10 MR. FORD: I do not say they are equivalent
11 to. I say that from the language in this contract the
12 Court could under those circumstances find a waiver but
13 that breach --

14 QUESTION: Suppose we found that, and you
15 would say weren't wrong then?

16 MR. FORD: Found that with regard to a waiver
17 under those --

18 QUESTION: Yes.

19 MR. FORD: -- circumstances, I would say you
20 were not wrong. At least I could concede that arguendo
21 for this case.

22 There is a difference. Let me -- perhaps one
23 illustration can explain it.

24 QUESTION: Well, wasn't the conviction when he
25 pled guilty?

1 MR. FORD: Well, that's a good question. I
2 think that, as I understand double jeopardy law now from
3 reading Dinitz and the cases that have gone over the
4 history of it and the interests involved, I think that
5 double jeopardy does not attach until in a guilty plea
6 situation, there is a sentence.

7 I think that really, implicitly, that is what
8 is held by Ohio versus Johnson, that you can't just say
9 guilty now, double jeopardy; that there has to be more
10 that implicates the core principles of the double
11 jeopardy clause and that the sentencing does that,
12 certainly under Arizona law and the understanding of the
13 parties here, the sentencing did that.

14 So, the double jeopardy question -- the
15 contract question, for example in this case, the
16 contract protected Mr. Adamson from prosecution for a
17 number of other crimes. The federal Constitution did
18 not because jeopardy had not attached as to those crimes.

19 After this breakdown in the Arizona Supreme
20 Court's holding he was prosecuted and given lengthy
21 prison sentences for those other crimes. We have raised
22 no double jeopardy objection to those because that was a
23 separate question. That was a state law contract
24 question.

25 QUESTION: Mr. Ford, can I ask you a question

1 about the agreement because you are getting into the
2 other crimes now which are one of the things that
3 interests me. In paragraph 8 of the agreement it says
4 that he will be sentenced at the conclusion of his
5 testimony in all of the cases referred to in this
6 agreement and Exhibits A and B which accompany it.

7 Is it -- do I correctly understand that his
8 sentencing did not take place until all of the testimony
9 the State wanted had been given?

10 MR. FORD: There was one case left, Justice
11 Stevens, and that involved this Ashford Plumbing case.
12 What happened was, just before they went down to
13 sentencing Mr. Schafer and Mr. Adamson's lawyers got
14 together and Mr. Schafer said, well, I want you to
15 understand we may still call you for Ashford Plumbing.

16 Mr. Martin Feldhacker said, "fine," and they
17 told Mr. Adamson that and that's why the statement was
18 made on the record that was, and of course that's the
19 statement -- that's what the Arizona Supreme Court found
20 was the binding agreement, not the plea agreement.

21 They found there was ambiguity in the plea
22 agreement clarified by this colloquy, but what they
23 didn't know is that counsel had had an out of court
24 discussion in which they said, "We're talking about one
25 case, Ashford Plumbing, and that's what we're agreeing

1 to."

2 QUESTION: And also I want to be sure on
3 this. Paragraph 18 says, "The defendant is to remain in
4 the custody of the Pima County Sheriff from the date of
5 the entry of his plea until the conclusion of his
6 testimony in all of the cases in which the defendant
7 agrees to testify as a result of this agreement."

8 Now, when was he transferred from the custody
9 of the Pima County Sheriff elsewhere?

10 MR. FORD: The day after sentencing.

11 QUESTION: The day after sentencing, so it was
12 also before that one bit of testimony, the last one you
13 mentioned, had taken place?

14 MR. FORD: The last one never has taken
15 place. It has never been prosecuted.

16 QUESTION: You did not contend, I take it, at
17 any time that the transfer of custody violated the
18 agreement?

19 MR. FORD: No, it was the --

20 QUESTION: Your interpretation was the
21 agreement had been fully performed at the time of the
22 transfer; that's your reading?

23 MR. FORD: I wasn't there. That was their
24 understanding and that is our position now, that that
25 was what the agreement meant.

1 The Arizona Supreme Court again, in construing
2 this, they never said, "Oh, no, this contract means he
3 doesn't have to testify," or, "He does have to testify
4 for sentencing."

5 This says, well, maybe there is an ambiguity
6 created by paragraph 8, if you read their statement.
7 But then look at this colloquy, and they relied on the
8 colloquy to establish this ongoing obligation.

9 Counsel knew and Mr. Adamson knew --

10 QUESTION: That that only pertained to the one
11 case?

12 MR. FORD: It pertained to the one case and
13 that's what Mr. Schafer said. This is a case in which
14 the double Jeopardy clause was being asserted as a
15 shield by a defendant who said, "I have testified. I
16 have testified truthfully. Many people have gone to
17 prison. I have endangered myself. I have done what I
18 was obligated to do, and then took perhaps an extreme
19 position in trying to get something more in advance of
20 the State's request for more."

21 But the double jeopardy clause, I believe,
22 must give him some assurance that, having done that,
23 having fulfilled his obligations to the best of his
24 knowledge and belief and to his counsel's knowledge and
25 belief, and having been sentenced and sent to prison for

1 this crime, that at some point there is an end.

2 The State cannot continue to demand from him
3 more and more and more or at the least when they do, he
4 has the right to object and to say, "No, this is not my
5 obligation. This is my position and it's a different
6 one from yours," without fear of losing everything and
7 letting the State keep all the benefits of its bargain
8 and all the people in prison that he's testified against
9 and him and his admission of guilt and give him nothing
10 and indeed in this case, take his life.

11 Thank you very much.

12 CHIEF JUSTICE REHNQUIST: Thank you very much,
13 Mr. Ford.

14 Mr. Schafer, you have two minutes remaining.

15 ORAL ARGUMENT OF WILLIAM J. SCHAFER, III, ESQ.

16 ON BEHALF OF PETITIONERS - REBUTTAL

17 MR. SCHAFER: The agreement was that Mr.
18 Adamson would testify in four cases. He testified in
19 three.

20 Paragraph 8 of the plea agreement concerning
21 the sentencing was gone over by Judge Birdsall at the
22 plea taking of Mr. Adamson, and I don't think there is
23 much question that the explanations of Mr. Adamson, the
24 explanation to his attorneys, and nothing was said
25 controverting that, was that this provision was in the

1 agreement to get around the requirement of the State of
2 Arizona that you must be sentenced within 30 days of the
3 plea.

4 At page 24 of the Joint Appendix that you have
5 before you, that is exactly what Judge Birdsall says.
6 It reads, paragraph 8 and it says, "You have a right to
7 be sentenced within 30 days," and that's what --

8 QUESTION: And this of course waives that. It
9 does say -- one could read this agreement to indicate
10 that the parties thought that at the time he was
11 transferred from the Sheriff's custody to prison or
12 wherever he was transferred that he would not get that
13 transfer until he had fully performed his testimonial
14 obligation?

15 It is certainly a permissible reading, isn't
16 it?

17 MR. SCHAFER: Your Honor, I hearken back then
18 to the Arizona Supreme Court findings. I believe there
19 is no question in their opinion, and this was
20 specifically argued at the oral argument before the
21 Arizona Supreme Court, the paragraph 8.

22 They said, and I quote to you -- this is from
23 page 113 -- "If item 8 specifically appears to limit the
24 availability of the petitioner for additional testimony,
25 the foregoing exchange" -- and that was the exchange at

1 the sentencing itself about he has to come back --

2 QUESTION: But what did they say about
3 paragraph 18?

4 MR. SCHAFER: They do not discuss paragraph 18.

5 QUESTION: Because it does say he is to remain
6 in the Sheriff's custody until the conclusion of his
7 testimony in all of the cases in which the defendant
8 agrees to testify as a result of this agreement.

9 MR. SCHAFER: Yes.

10 QUESTION: So, does not that contemplate his
11 transfer will not occur until he has performed his
12 testimonial obligation?

13 MR. SCHAFER: Well, I think a reasonable
14 reading of that provision is that simply when he is
15 sentenced he is going to go into federal custody. There
16 was a reason for the federal custody.

17 No, and I don't think a reasonable reading of
18 that would be that his obligation is totally finished.
19 It is much like the paragraph number 8, which says he
20 will be sentenced at the completion of his testimony in
21 these cases.

22 That is what the Arizona Supreme Court was
23 referring to as I was going to quote on page 113.

24 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
25 Schafer. The case is submitted.

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(Whereupon, at 1:50 o'clock p.m., the case in
the above-entitled matter was submitted.)

Paul A. Richards
(REPORTER)

CERTIFICATION

erson Reporting Company, Inc., hereby certifies that the
ached pages represents an accurate transcription of
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reme Court of The United States in the Matter of:

#86-6 - JAMES G. RICKETTS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.,

Petitioners V. JOHN HARVEY ADAMSON

that these attached pages constitutes the original
manuscript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)