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PROCEEDINGS BEFORE

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THE SUPREME COURT
OF THE
UNITED STATES

CAPTION:

RAYMOND J. MOSKAL, SR., Petitioner
-v- UNITED STATES

CASE NO:

89-964

PLACE:

WASHINGTON, D.C.

DATE:

October 1, 1990

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IN THE SUPREME COURT OF THE UNITED STATES.

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RAYMOND J. MOSKAL, SR., :
Petitioner :
v. : No. 89-964
UNITED STATES :
- - - - - X

Washington, D.C.
Monday, October 1, 1990

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:07 a.m.

APPEARANCES:

DENNIS M. HART, ESQ., Washington, D.C.; on behalf of the
Petitioner.

STEPHEN L. NIGHTINGALE, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of the Respondent.

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P R O C E E D I N G S

(11:07 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in No. 89-964, Raymond J. Moskal, Sr. v. United States.

ORAL ARGUMENT OF DENNIS M. HART

ON BEHALF OF THE PETITIONER

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

From the lofty world of holding companies to the more mundane world of a 1984 Ford, I'd like this Court to revisit section 2314 of title 18 and decide what Congress meant when it inserted two words into that statute 50 years ago. Those two words are "falsely made."

As petitioner sees it, the question, really the bottom line question is whether the term falsely made means false in execution versus false in content. The Government has asserted, and so far they have won that assertion, that the term should mean false in content. They call this the broader definition of the two words. The petitioner submits that this Court should reject that position, because in the final analysis the only good reason the Government can give for defining falsely made as false in content is that it catches more people, and we don't think that should be good enough for a criminal

1 statute.

2 QUESTION: (Inaudible) claim that you have to
3 give some meaning to this provision, and it hasn't any
4 meaning if it really -- if we accept your interpretation
5 of the statute it has really no meaning.

6 MR. HART: Yes, sir, that is their first
7 argument, and if the tape could reflect that I am
8 scratching my head, because I don't know why it must have
9 an independent meaning. Certainly courts, the lower
10 circuit courts who have considered the question have often
11 used the words forgery and falsely made interchangeably,
12 and --

13 QUESTION: Don't we usually follow the principle
14 that each -- each word or sentence or phrase of a law is
15 supposed to be given an independent meaning so that it
16 won't be simply superfluous?

17 MR. HART: Yes, and that is the general rule. I
18 do agree with that. But that is not a rule that covers
19 everything, because, as I think anyone who reads these
20 statutes can find that the words falsely made, forged,
21 altered, or counterfeited are sort of a term of art, that
22 are contained in dozens of Federal statutes. And falsely
23 made is never defined. And that is why lower courts over
24 many years have always concluded that falsely made equals
25 forged, with the exception of one or two cases which the

1 Government points out. Yet the Government also agrees --

2 QUESTION: Like this case.

3 MR. HART: Yes, Your Honor, like this case. The
4 Government also agrees that that is not, number one, the
5 common law definition of falsely made, and number two,
6 they also agree that if you are to give this the
7 independent meaning which they advocate, it is a much
8 broader definition than what courts have normally
9 accepted. But even if we accept the United States'
10 position that this must have an independent meaning, the
11 term falsely made, we believe this Court can supply that
12 meaning, that is, give an independent meaning to the word
13 falsely made, yet still not necessarily include the
14 conduct for which petitioner is charged with, that is the
15 inclusion of false information in an otherwise valid
16 document.

17 Now, the second position the Government
18 advocates is that -- if I can phrase this correctly -- is
19 that they agree that the common law definition of falsely
20 made would not include what Mr. Moskal did. They also say
21 that Congress is usually presumed to know what the common
22 law meaning was, and that it is the usual presumption that
23 Congress used the common law definition when they wrote
24 the words. Yet they then argue that Congress cannot be
25 presumed to use the arcane, or what they call the

1 antiquated definition of the word. And then they argue
2 that what we posit as falsely made is arcane and
3 antiquated.

4 And we submit they have never shown that. We
5 submit that the only reason they can suggest the broader
6 definition is more modern is that it encompasses more
7 conduct. Yet the United States and petitioner both agree,
8 number one, that there is nothing in the statute to
9 indicate that Congress wanted to expand the common law
10 definition of falsely made. There is no legislative
11 history that indicates Congress wanted to expand the
12 common law definition of falsely made. And there is no
13 subsequent conduct by the Congress which reflects on that.

14 Now --

15 QUESTION: Mr. Hart, may I ask whether there is
16 any other statutory provision under which your client
17 could have been charged for transporting these Virginia
18 certificates?

19 MR. HART: Certainly, Your Honor.

20 QUESTION: What might that be?

21 MR. HART: He was also charged with section 513
22 violation, which is the possession of forged State
23 securities. There were two counts in the indictment for
24 that. But even if that -- that were not permitted he
25 could be charged under the mail fraud statute. I think

1 this Court last term decided a case, I am going to call it
2 Schmuck, I can't remember exactly how it is spelled, where
3 the operation was nearly identical to what Mr. Moskal did.
4 This Court affirmed that conviction. But if this Court
5 will remember, that man was not charged with section 2314
6 at all. He was charged with mail fraud, criminal mail
7 fraud.

8 QUESTION: Could Mr. Moskal have been charged
9 under section 2314 with regard to the Pennsylvania
10 certificates?

11 MR. HART: Certainly, Your Honor.

12 QUESTION: Just not the Virginia titles.

13 MR. HART: Certainly, and let me --

14 QUESTION: But he wasn't charged with
15 transporting those?

16 MR. HART: No, Your Honor. And that -- that
17 really -- the crux of our argument, is that the Government
18 argues that Mr. Moskal has found a loophole in this law
19 and he is trying to squeeze through it. And they say this
20 with such force that it makes me even feel guilty when I
21 read that. But that is really rhetoric, because Mr.
22 Moskal didn't determine the charges that were placed
23 against him. The U.S. attorney for the Eastern District
24 of Pennsylvania decided to charge him only with the
25 Virginia titles.

1 QUESTION: Is this whole case just a tempest in
2 a teapot then? If we decide for you the Government isn't
3 hurt, because it could have charged him with transporting
4 the Pennsylvania certificates. Is that it?

5 MR. HART: Well, to Mr. Moskal it's not a
6 tempest in a teapot. We submit that --

7 QUESTION: And for you, if you win you are still
8 -- your client or people like him are still going to be
9 subject to prosecution.

10 MR. HART: Certainly, Your Honor, but not the
11 type of prosecution that Mr. Moskal was.

12 QUESTION: Not prosecution under a -- under a
13 regiment such as Virginia's.

14 MR. HART: Exactly, Your Honor. Well, let me
15 take that back. I should add, in response to Justice
16 O'Connor's question, that it also is a violation of State
17 law.

18 QUESTION: Yes, but not subject to Federal
19 prosecution under a licensing scheme such as that of
20 Virginia. Is that correct?

21 MR. HART: I am not certain I understand the
22 Court's question.

23 QUESTION: Why can he be charged under your
24 theory with the Pennsylvania titles but not the Virginia
25 titles?

1 MR. HART: That's a -- that's an important
2 question, I think. I would be happy to answer it in
3 detail. The Pennsylvania titles were physically altered.
4 They were changed. They were changed in a number of ways.
5 They were changed in Pennsylvania by what in the title-
6 washing business is called an artist. The artist takes
7 the titles, changes them, gives them to an office manager,
8 who is Mr. Moskal. Mr. Moskal sends them to another
9 State, and in this case it was Virginia. The titles come
10 back clean.

11 QUESTION: Now, in Virginia -- how would you
12 describe those washed certificates? Forged?

13 MR. HART: No, Your Honor.

14 QUESTION: Falsely made?

15 MR. HART: No, Your Honor.

16 QUESTION: Altered?

17 MR. HART: No, Your Honor.

18 QUESTION: Well, how could you be prosecuted
19 under this statute?

20 MR. HART: Our belief is we could not be
21 prosecuted under 2314 for those Virginia titles.

22 QUESTION: No, no, not the Virginia, the
23 Pennsylvania titles.

24 MR. HART: The Pennsylvania titles were altered.

25 QUESTION: Yes, well all right, so he could have

1 been charged under 2314 --

2 MR. HART: Most certainly.

3 QUESTION: -- for sending those in interstate
4 commerce.

5 MR. HART: Most certainly, Your Honor, most
6 certainly.

7 QUESTION: What you're getting down to then is
8 merely prosecutorial error, aren't you?

9 MR. HART: I would be happy to call it that.
10 But the point is that we argued that both in the trial
11 court and the appellate court and they disagreed with us.
12 They said it was perfectly all right to charge Mr. Moskal
13 for those Virginia titles under 2314.

14 QUESTION: Maybe we'll find out -- excuse me, go
15 ahead.

16 QUESTION: Did you indicate at the outset that
17 you think the terms forged and falsely made may have a
18 different meaning?

19 MR. HART: Well, we have two positions on that.

20 QUESTION: Yes and no.

21 (Laughter.)

22 QUESTION: Yes and no.

23 MR. HART: Yes, they can have different
24 meanings.

25 QUESTION: What is the different meaning? Can

1 you give me an example of where a document is not forged
2 but it is falsely made?

3 MR. HART: Yes. A document that's obtained, for
4 instance, through bribery. That is a valid vehicle title
5 in this case, we'll take vehicle titles. A vehicle title
6 is obtained by someone passing a \$50 bill to the title
7 clerk to generate a title.

8 We recently tried a case down the street where
9 someone stole a drivers license making machine, and just
10 spewed out drivers licenses that were valid in every
11 aspect.

12 QUESTION: Well, those are forged, are they not?

13 MR. HART: Well, that wasn't the question, but
14 they -- they were valid in the sense that they contained
15 the person's picture, his correct name, address.
16 Everything was valid, except it wasn't issued by the State
17 where they stole the license-making equipment. Such a
18 situation can happen --

19 QUESTION: I would be very surprised to see that
20 that is not forgery. And your bribery, I'm not quite sure
21 how that works.

22 MR. HART: Well, Your Honor, it would not be
23 forged in the sense that anything was changed on the
24 title. It would be a correct title. It may well reflect
25 actual ownership of the vehicle. Everything on the face

1 of the title may be correct, but the point is it wasn't
2 obtained through the State Secretary of State; it was
3 obtained through illegal means, bribery or theft or
4 something of that nature.

5 QUESTION: I think what you are arguing is that
6 falsely made, if it does not mean the same thing as
7 forged, altered, or counterfeited, at least means that the
8 person who makes it must know that he is falsely making
9 it.

10 MR. HART: Yes.

11 QUESTION: So the bribery doesn't have anything
12 to do with it. The point is that if the person who makes
13 it is not being false, if he thinks it's accurate, you
14 would not consider that falsely made.

15 MR. HART: I would agree with that.

16 QUESTION: Whereas if the official himself knows
17 he is writing down something that is in error, he would be
18 making it falsely.

19 QUESTION: But how does that help you? I'm
20 sorry, go ahead.

21 QUESTION: And you assert that that helps your
22 case by giving some different meaning to falsely made, if
23 a different meaning is required. And that is your other
24 position, that a different meaning isn't required anyway.

25 MR. HART: I couldn't have said it better.

1 QUESTION: Well, but Mr. Hart, the statute
2 itself says "knowing the same to have been falsely made"
3 as an additional requirement. What is the sense of
4 reading that language into one of the other provisions of
5 the statute? How does that help make it clear?

6 MR. HART: I am not sure that it does make it
7 clear.

8 QUESTION: Well, I thought you just said that
9 you agreed with Justice Scalia's hypothesis?

10 MR. HART: Well, I -- I do, but I don't think
11 that necessarily makes it clear in Mr. Moskal's case.

12 QUESTION: But the knowingly, knowing the same
13 to have been so and so applies to the defendant in the
14 criminal case.

15 MR. HART: Certainly.

16 QUESTION: Not to some State official who may or
17 may not know that this instrument is falsely made.

18 MR. HART: Yes.

19 QUESTION: Because the Virginia people didn't
20 know that there was anything phony about this whole deal,
21 did they?

22 MR. HART: That's correct. That's correct.

23 QUESTION: But if they had -- what if the
24 Virginia guy was in on it? Then I think you would think,
25 you would say it was falsely made.

1 MR. HART: Yes, yes. But the question then
2 would be is Mr. Moskal guilty of the transportation of
3 those facially valid titles from Virginia to Pennsylvania.

4 QUESTION: They were falsely made.

5 MR. HART: No. No, they -- because there was
6 nothing wrong with the execution of the document. If the
7 document accurately reflects what its intended purpose is,
8 and that is the ownership of the vehicle, it is a valid
9 title, and the transportation of that across a State line
10 should not be against the law.

11 QUESTION: Even if the official preparing and
12 issuing the document has knowledge of the falsity and
13 intends thereby that people be deceived by it?

14 MR. HART: I would say yes, Your Honor.

15 QUESTION: Is that your position now?

16 MR. HART: Yes, I would say yes.

17 QUESTION: So you have changed your position a
18 little bit, I take it.

19 MR. HART: Yes, but I would make one
20 distinction, because the case -- that question has arisen
21 before. If the intention is to deceive ultimate consumers
22 by the identity of the vehicle or the ownership of the
23 vehicle, then we believe that that piece of paper, even if
24 facially fine, is invalid as a document. But that was not
25 the case here, because ownership or identity of each

1 vehicle was never questioned. It was only the odometer.

2 QUESTION: I don't understand why that makes a
3 difference.

4 MR. HART: It makes a -- well --

5 QUESTION: Because the odometer reading is an
6 important material part of the piece of paper, isn't it?

7 MR. HART: Well, I disagree with that, Your
8 Honor.

9 QUESTION: You think that is just put in for the
10 fun of it?

11 MR. HART: No, sir, but I don't believe it is
12 any more important than say horsepower, or color, or make.

13 QUESTION: Maybe not, or what about the name of
14 the former owner? Why is that important to a purchaser?

15 MR. HART: Well, it's important for title
16 purposes, that is you would want to know the chain of
17 title.

18 QUESTION: Well, but if the statute on titles
19 requires the odometer reading to be put in, I presume it
20 wants an accurate one, doesn't it?

21 MR. HART: Yes, and there are laws that make
22 that an offense to --

23 QUESTION: Well, sure, and there are separate
24 laws that make it an offense to forge documents, too. We
25 are talking about an offense of transporting certain kinds

1 of documents in interstate commerce, documents that are
2 equivalent to false documentary evidence. And that is
3 what this is, as I understand it.

4 MR. HART: Well, yes, in some respects it is,
5 but if I can pose the question would the title pass if the
6 odometer was completely false? And the answer to that --

7 QUESTION: It would pass even if you had a
8 forged signature of the owner, you had a forged name --
9 you have all sorts of forgery on that title and it will
10 still pass.

11 MR. HART: It will still pass, but it's subject
12 to challenge. Whereas an odometer reading, it would not.
13 It would be no different than the wrong color of the car.

14 QUESTION: You don't think if someone could come
15 in and prove that the seller lied about the odometer
16 reading he could rescind the transaction?

17 MR. HART: Not under the theory that the title
18 did not pass.

19 QUESTION: Are you telling me that it's
20 important to have the name of the person who owned the
21 car?

22 MR. HART: I believe that the State statutes
23 usually require that.

24 QUESTION: But is it important to the purchaser?

25 MR. HART: Well, I imagine that would vary from

1 purchaser to purchaser. Many purchasers --

2 QUESTION: Because my next question is the
3 odometer interesting to the purchaser?

4 MR. HART: It certainly is. It certainly is.

5 QUESTION: And that was what was changed on this
6 one.

7 MR. HART: I am sorry, Your Honor.

8 QUESTION: That's what was changed on this one.

9 MR. HART: Yes, yes. But we --

10 QUESTION: I want to make sure that --

11 QUESTION: (Inaudible).

12 QUESTION: Are you talking about material
13 misrepresentations when you are discussing, such as you
14 could set aside the thing that is between the buyer and
15 the seller, or something that would enable -- enable a
16 bona fide purchaser to prevail?

17 MR. HART: No, I am talking about --

18 QUESTION: Are you talking about materiality in
19 the sense of is this particular representation important
20 to a possible purchaser?

21 MR. HART: Yes, and our answer to that is no. I
22 am sorry, our answer to that is yes.

23 QUESTION: It would have to be. That surely the
24 representation of the odometer reading is important to a
25 potential purchaser, if that means anything in construing

1 the statute.

2 MR. HART: Yes, I certainly agree it's
3 important, and it may be very important. But the question
4 is is that -- is that document which contains the false
5 odometer reading an invalid document? And the answer to
6 that is no.

7 QUESTION: Well, the statute doesn't say invalid
8 document.

9 MR. HART: It does not.

10 QUESTION: Yeah, the question is is it falsely
11 made?

12 MR. HART: Yes, yes.

13 QUESTION: But is it your position that if in
14 Pennsylvania they altered the certificate to show a
15 different year of car, different odometer reading,
16 different owner, and then it was washed in Virginia, that
17 it is falsely made because there are some materials --
18 misstatements? It seems to me you are switching your
19 argument, that all of a sudden you conceded that
20 materiality is the test.

21 MR. HART: No. We don't concede that
22 materiality is the test.

23 QUESTION: So that even if -- suppose there's no
24 car at all, and you have a Pennsylvania certificate that
25 is forged, falsely made to show that there was, and then

1 it is washed in Virginia. And the title comes back, or
2 the certificate comes back purporting to be an authentic
3 Virginia certificate. Falsely made?

4 MR. HART: No.

5 QUESTION: That has to be your position.

6 MR. HART: Yes.

7 QUESTION: So materiality has nothing to do with
8 it.

9 MR. HART: No, as our back-up position, if I may
10 point that out, a number of courts, lower courts have
11 considered the question of materiality, and they have
12 concluded, quite frankly, that odometers are a material
13 part of the transaction. But they have done that in the
14 context of stolen cars and frauds in which the identity of
15 the owner was concealed, in which vehicle identification
16 numbers were changed. A traditional fraud in which cars
17 are -- are stolen, in which cars are, the parts are
18 interchanged, in which new vehicles are made and titles
19 are created to reflect ownership of that vehicle, which is
20 a fraud in itself. So that is my problem with
21 wholeheartedly embracing that position, is that the lower
22 courts have always considered materiality as an important
23 part, as what they call material, only in the context of
24 stolen cars. And that's not the case here.

25 The United States, as their final argument,

1 believes that broad purpose of 2314 as an antifraud
2 statute could only be upheld by a definition of the broad
3 meaning of falsely made. We don't believe that's the
4 case. We believe this Court has considered similar
5 arguments, for instance when this Court considered the
6 case of bootleg records, as whether they were counterfeit
7 or whether they were stolen, under 2314 and rejected that.

8 Although this Court many years ago considered
9 the prospect of the inclusion of aircraft as vehicles
10 under the predecessor of the Motor Vehicle Theft Act, the
11 statute, the language of the statute at that time said any
12 vehicle that -- any self-propelled vehicle that wasn't on
13 rails, if it were transported would be a violation of the
14 Motor Vehicle Theft Act. And the Government's position
15 was well, you now have airplanes, and if you steal one of
16 those it should be included in that because the meaning
17 was arcane and antiquated. This Court rejected that
18 argument.

19 We think similar reason should apply to this
20 case. There is no indication that Congress ever
21 considered this type, this specific type of fraud. That
22 is -- and I will admit that it's a fraud. But the
23 specific conduct of sending facially valid titles from one
24 State to another as within the gambit of 2314. And this
25 Court has -- has long concluded that when Congress has the

1 will it makes thing clear. When this Court has to make
2 decisions for what Congress didn't talk about, because
3 it's a criminal statute, the less broad meaning has
4 preference, that the Government position in this case to
5 broaden the statute is given a very careful and scrutinous
6 eye by this Court.

7 But our position is that this Court does not
8 have to reach that -- that interpretation of what Congress
9 meant, because the plain meaning of the words falsely
10 made, even if this Court must assign an independent
11 meaning to those words, can be defined as conduct which
12 does not cover Mr. Moskal's conduct. And of course then
13 we reach the problem of -- of notice. Because if the
14 Government has their way, they have a problem with the
15 notice requirements of criminal statutes, and exactly what
16 Mr. Moskal did was that effective notice to all
17 individuals. We suggest that if the Government has its
18 way in broadening the statute, they have that problem.
19 But we suggest that --

20 QUESTION: It was on notice that if he shipped
21 these Pennsylvania titles across the State line he was
22 subject to prosecution.

23 MR. HART: No question about it. And I can tell
24 the Court that in Pennsylvania for years dealers were
25 given what amounted to a ticket for that activity. In

1 Pennsylvania it was against the law to tamper with the
2 odometer and change the odometer documents, and I believe
3 it was a \$100 fine for each document. So he knew that
4 that was against the law. The question is when he got the
5 facially valid Virginia titles back, did he know that was
6 against the Federal law 2314? He did not. We believe he
7 was correct in that.

8 Thank you.

9 QUESTION: Thank you, Mr. Hart.

10 Mr. Nightingale.

11 ORAL ARGUMENT OF STEPHEN L. NIGHTINGALE

12 ON BEHALF OF THE RESPONDENT

13 MR. NIGHTINGALE: Thank you, Mr. Chief Justice,
14 and may it please the Court:

15 This case presents the question whether washed
16 automobile titles constitute falsely made securities
17 within the meaning of section 2314. Our position is that
18 they are, for essentially three reasons. First, the
19 ordinary meaning of the term falsely made securities fits
20 those documents. Second, that interpretation accords with
21 the history and purpose of this statute. And third, there
22 are -- is no canon of construction that would justify
23 imputing an artificially narrow interpretation.

24 QUESTION: Who made that -- how were these
25 Virginia certificates falsely made?

22

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1 MR. NIGHTINGALE: Your Honor, the making of a
2 automobile title involves the incorporation of information
3 from the prior title, plus some additional information
4 supplied by the new purchaser to State authorities. They
5 then return a new title incorporating the information. A
6 washed automobile title is falsely made because that
7 process is corrupted through the addition of false
8 information, and the end product, the Virginia title
9 bearing false odometer figure, is indistinguishable in
10 substance from the classic forgery, a situation in which
11 you get a purportedly valid document that is capable of
12 being used to mislead used car purchasers.

13 QUESTION: And so the same rationale would apply
14 to the color of the car on the title?

15 MR. NIGHTINGALE: There may be a limit on the
16 statute for materiality. I mean, if you made a mark on an
17 automobile title that had no effect on it, whatever, that
18 might not violate the statute. But the color of the car I
19 don't think would fall within the de minimis situation.
20 That would be a means by which, if for example it was a
21 stolen car, someone could mislead the purchaser as to the
22 true identity of the car. But I believe that a false
23 addition or an introduction of a falsity through this
24 process --

25 QUESTION: Would the name of the seller --

1 MR. NIGHTINGALE: The name of the seller would
2 qualify, because it would prevent the purchaser from being
3 in touch with him to find out the history of the car.

4 QUESTION: Would you read the same sort of
5 materiality requirement into the terms forged, altered, or
6 counterfeited?

7 MR. NIGHTINGALE: Your Honor, I would in this
8 sense, that if you had a valid title and the only
9 alteration was the addition of a pencil mark on it, I
10 guess it would be altered in some sense. But it would be
11 completely immaterial.

12 QUESTION: Mr. Nightingale -- I'm sorry.

13 QUESTION: Mr. Nightingale, do we normally look
14 at the terms used in the statute in light of their common
15 law meaning?

16 MR. NIGHTINGALE: That is a general principle,
17 yes, Your Honor, but it's -- it's one that has some
18 important limitations as well.

19 QUESTION: Well, do you, before you get to the
20 limitations, do you concede that at common law the terms
21 falsely made would not include the Virginia title?

22 MR. NIGHTINGALE: The term falsely made at
23 common law drew a distinction between false in execution
24 and false in content.

25 QUESTION: Right.

1 MR. NIGHTINGALE: Now, there were fictions
2 developed because that line was not entirely satisfactory.
3 I agree that none of the fictions present in 1934 would
4 have covered the Virginia title, but it's important to
5 recognize that they existed.

6 QUESTION: Your answer to the question is that
7 these Virginia titles would not have been falsely made at
8 common law?

9 MR. NIGHTINGALE: At common -- under the old
10 common law term.

11 QUESTION: And presumably the Government could
12 have charged Mr. Moskal with transporting altered
13 certificates, the Pennsylvania certificates?

14 MR. NIGHTINGALE: Your Honor, in this case the
15 option was available, because Mr. Moskal was both the
16 sender and the receiver. He was at both ends. But I want
17 to add, in light of the Court's questions about the
18 significance of this case, that that is by no means a
19 certainty in these cases. There are many cases in which -
20 - potential cases one can visualize in which a different
21 person sends the altered documents one way, then receives
22 them on the return trip. And there may also be problems -
23 -

24 QUESTION: Are there other statutes, such as the
25 mail fraud statute and some of these others that might be

1 available?

2 MR. NIGHTINGALE: In some of them, right, but in
3 this case the evidence demonstrated that the documents
4 were sent by Federal Express, and in some cases hand
5 carried. And the prevailing rule in the courts of appeals
6 right now is that Federal Express does not qualify as a
7 use of the mails. So that was not an available option in
8 this case.

9 QUESTION: Mr. Nightingale, don't you think it's
10 at least a reasonable meaning of falsely made, when I say
11 a document is falsely made, that I would -- assuming it
12 means something beyond the common law meaning, don't you
13 think I would think that the person who made it must know
14 that it's false, as opposed to just having been given
15 incorrect information and then he writes it out, and you
16 say it is falsely made because he has written down false
17 information that somebody else has given him? That's a
18 very --

19 MR. NIGHTINGALE: Your Honor, there were --

20 QUESTION: Isn't it at least reasonable to give
21 it the other meaning? And if it's reasonable, why doesn't
22 the rule of lenity suggest that that is the meaning we
23 ought to give it?

24 MR. NIGHTINGALE: In the context that this
25 statute operates it is not a reasonable interpretation. I

1 would --I want to point out as well that --

2 QUESTION: I don't know what you mean by that,
3 in the context in which this statute operates. You mean -
4 -

5 MR. NIGHTINGALE: Let me indicate -- let me
6 refer to a case decided 8 years ago by the Court, Bell v.
7 United States, in which the question was whether a statute
8 that prohibits people from taking and carrying away money
9 from a bank was designed to extend beyond common law
10 larceny. Now, those words had a distinct common law ring
11 to them, and the question was did -- did Congress, when it
12 enacted a statute prohibiting taking and carrying away
13 money, mean to incorporate all of the common law
14 limitations.

15 In general the common law required that the
16 taking be from the possession of the owner rather than the
17 acquisition of title. And the Court found that in the
18 context of a statute that was designed to protect banks
19 from losing money, the distinction between title and
20 possession made no sense whatever. And essentially that
21 is our position in this case.

22 In the context of securities there is no
23 difference in substance between a document run off an
24 illicit printing press with a false odometer reading and a
25 document prepared by means of the scheme that Mr. Moskal

1 and his confederates followed. The question is in the
2 context that Congress acted, did the statute -- would the
3 distinction drawn by the common law make sense.

4 QUESTION: Well, you could have said that about
5 the common law, too. The very first statute wouldn't make
6 -- I don't know why there is anything special about this
7 statute.

8 MR. NIGHTINGALE: Your Honor, in fact in the
9 common law there was difficulty with your proposition.
10 There is a case cited in our brief, Count de Toulouse
11 Lautrec, in footnote 10 of our brief on page 17. The
12 facts there were that a printing company printed
13 securities for a corporation, printed a few extra copies
14 for its own files by way of samples of its work. The
15 defendant obtained the samples and negotiated them as
16 valid bonds. And that defendant was convicted of forgery.
17 The Court found that where there was no authority to use
18 the documents in that fashion there was a forgery.

19 There was another case, one not cited in our
20 brief, Commonwealth v. Foster out of Massachusetts in
21 around the 1870's. In that case the defendant called in a
22 gentleman who had the same name as a rather well known
23 commercial firm, had him sign some notes in his Wilson &
24 Co., by Mr. Wilson, and then that person took the -- of
25 course Mr. Wilson was not a party to the fraud. The

1 defendant took those notes out and represented them to be
2 the notes of the large commercial outfit. And again there
3 the Court held that that qualified as forgery.

4 This is illustrative, Your Honor, of the sorts
5 of distinctions and difficulties that were present in the
6 common law at the time Congress was called upon to
7 legislate in the area of falsely made production of
8 securities.

9 QUESTION: Well, if at the time the statute was
10 passed the committee report had said "and we expect these
11 terms to be given their normal common law meaning," would
12 you still be making the same argument? Same context.

13 MR. NIGHTINGALE: If there were an indication
14 that that meaning could be attributed to Congress as a
15 whole, yes, Your Honor. Those circumstances aren't
16 present here. Let me review, if I could, the history of
17 the statute.

18 QUESTION: Yes, you would -- you say you would
19 still be making the same argument?

20 MR. NIGHTINGALE: Let me -- I don't believe
21 there is an ambiguity in this statute, in its context, for
22 which legislative history would be helpful in clarifying,
23 no.

24 QUESTION: When was this passed?

25 MR. NIGHTINGALE: It was passed in 1939, Your

1 Honor. Essentially the history was as follows. In 1934
2 the Attorney General sent a series of bills --

3 QUESTION: Has the department made any effort to
4 clarify it in Congress?

5 MR. NIGHTINGALE: Not that I am aware of. There
6 is one --

7 QUESTION: You want us to clarify it.

8 MR. NIGHTINGALE: The Justice Department has not
9 made -- the Justice Department has not made an effort to
10 clarify it. Maybe I should back up and review the history
11 of this statute.

12 In 1934 Attorney General, the Attorney General
13 sent a set of bills to the Hill, all of which had as their
14 common purpose the creation of Federal criminal penalties
15 for criminal activity that extended across State lines.
16 Congress enacted those bills, recognizing that interstate
17 criminal activity is more difficult to detect, it is more
18 difficult to prosecute, threatens, in a large number of
19 cases, more serious harm to the individuals.

20 As originally enacted that bill, the National
21 Stolen Property Act, prohibited the interstate
22 transportation of stolen securities; 5 years later
23 Congress extended the prohibition by adding a separate
24 paragraph including falsely made securities. And it is
25 fair to assume that Congress' intention in enacting the

1 extension was its recognition that -- of the difficulty of
2 detecting and apprehending offenders and prosecuting those
3 sorts of offenses.

4 There is no distinction in terms of that
5 context, and I recall Bell again, where the purpose was to
6 protect the assets of banks.

7 QUESTION: In your view were these certificates
8 forged?

9 MR. NIGHTINGALE: The jury was not instructed on
10 a theory that would have --

11 QUESTION: But we're talking about questions of
12 law here, and so --

13 MR. NIGHTINGALE: Yes, it is our position that
14 there could be jury instructions that would encompass the
15 sort of activity I spoke of with Justice Scalia. The last
16 footnote in our brief indicates that we believe that were
17 the Court to reverse the conviction, the proper
18 disposition would be a remand for a new trial in which
19 forgery would be defined.

20 QUESTION: So, in your view this was both forged
21 and falsely made?

22 MR. NIGHTINGALE: That's true, Your Honor.

23 QUESTION: Can you give me an example of a case
24 where a document is falsely made but not forged? Because
25 if you can't, then your argument that we have to give

1 independent meaning to the two terms, it seems to me,
2 fails.

3 MR. NIGHTINGALE: Your Honor, the one that comes
4 to mind is as follows. A check signed by an agent,
5 purportedly for a principal, in which the agent has no
6 authority is at common law not a forgery. The reasoning
7 behind that is that that check is made by the person
8 purporting -- is endorsed by the person purporting to make
9 it. It contains, though, only a false representation,
10 which is that the agent had authority to act for the
11 principal. In my judgment that would qualify as a falsely
12 made security within the meaning of the statute.

13 QUESTION: But if you run that analysis there, I
14 think your answer to whether -- whether this document was
15 forged would probably come out the other way.

16 But I had a similar question to Justice
17 Kennedy's. Can you tell me -- give me an example of
18 something that is forged but not counterfeited or
19 counterfeited but not forged?

20 MR. NIGHTINGALE: Your Honor, no.
21 Counterfeiting is a subset of forged.

22 QUESTION: So -- so isn't that whole thing just,
23 you know, just a vera test? You know, lawyers use the
24 same words to mean the same things often, and you admit
25 that two of those words mean exactly the same thing.

1 Falsely made, forged, altered, or counterfeited. Altered
2 perhaps is something different, although it's a sub -- a
3 subcategory in common law, a type of forgery, a type of
4 counterfeiting. You could either falsely make or alter.

5 But once you say that counterfeit and forge mean
6 one and the same thing I think your argument that we have
7 to depart from the common law meaning, because otherwise
8 falsely made would also mean the same thing, doesn't have
9 much force.

10 MR. NIGHTINGALE: I don't believe that we need
11 view this statute as a series of independent boxes for the
12 Government to prevail. I do believe that when you
13 consider this statute in the context of its passing, you -
14 - you are justified in recognizing the fuzziness at the
15 edges of the definition of forgery.

16 QUESTION: I thought we'd give the fuzziness to
17 the defendant. That -- that's what the rule of lenity
18 means.

19 MR. NIGHTINGALE: Your Honor, again harkening
20 back to the Bell case, the words take and carry away have
21 both an ordinary meaning and, as my colleague indicates,
22 they have a term-of-art meaning. The common ordinary
23 meaning is when you go into a bank without money and you
24 come out with money, that is taking it and carrying away.
25 The common law term-of-art meaning was that when you go

1 into a bank without money you have to get it by means of a
2 scheme that involves depriving the victim of possession.

3 And I think that the same can be said of this
4 situation. If we walked out through those doors and asked
5 100 people in the street whether there was a difference in
6 substance between the documents that Mr. Moskal sent to
7 Virginia and those that came back, 100 people would fail
8 to perceive that. They would all recognize that the
9 corruption of the process of making, through the
10 introduction of the falsity, made those documents falsely
11 made.

12 Now it is true that at common law those words
13 had a somewhat narrower meaning. They entailed a basic
14 distinction which, as I have indicated, was somewhat
15 riddled with fiction, that there was a distinction between
16 truth in the execution and truth in content. But I
17 believe that there's a situation there where we have a
18 common ordinary meaning that can be given effect by the
19 Court in the context of this statute.

20 Again, without harping on it, it's fair to point
21 out that Mr. Moskal's confederates were paying the people
22 in Virginia \$100 to convert the altered documents into
23 washed documents. They recognized that not only were they
24 equally deceptive, but they were significantly more
25 deceptive enough to justify the \$100 a shot. And in that

1 situation, and given the common ordinary understanding of
2 falsely made, there is no justification for reverting back
3 to what we submit are arcane, obsolete distinctions
4 without meaning in this context.

5 I do want to call attention to one subsequent
6 enactment that bears on the problem before the Court. In
7 1984 Congress amended the definition of security to which
8 this statute applies to include valid or blank automobile
9 titles. The legislative history is very sparse on this.
10 The one indicator of Congress' intention was a committee
11 report directed to the same bill in a prior Congress, but
12 the indication is that Congress believed that valid titles
13 were already covered by the statute. The amendment was
14 needed to add blank titles to those sorts of securities
15 that could be transported.

16 It is clear though that in 1984 Congress
17 understood there to be such a thing as a falsely made,
18 forged, counterfeited, or altered valid automobile title.
19 And it is our position that one cannot conceive of a
20 forged, counterfeited, or altered valid automobile title.
21 There has to be something for the -- that operates on the
22 term valid, and we believe it is falsely made. This Court
23 has --

24 QUESTION: Did this -- assuming that the statute
25 before 1984 had meant something else, that is assuming

1 that falsely made meant what your opponent says, or meant
2 what the common law says, this incident in the 1984
3 legislation, or rather the legislative history of
4 legislation that preceded the 1984 legislation but didn't
5 get passed, has the effect of altering the meaning that
6 the statute originally had?

7 MR. NIGHTINGALE: Not at all, Your Honor. This
8 Court --

9 MR. NIGHTINGALE: Then what does it, then what
10 is the purpose of that? Just to show that Congress
11 misunderstood it or understood it correctly, one or the
12 other.

13 MR. NIGHTINGALE: There was no alteration in
14 1984. In 1984 Congress by action (inaudible) its
15 position.

16 QUESTION: Well, but the position of the 1984
17 Congress which did not enact this statute is totally
18 irrelevant, isn't it?

19 MR. NIGHTINGALE: Your Honor --

20 QUESTION: This statute was enacted in 1937 you
21 told us -- '37?

22 MR. NIGHTINGALE: '39, Your Honor.

23 QUESTION: '39. Of what possible relevance
24 could be the 1984's Congress' misunderstanding of the law,
25 or correct understanding, whichever one it was? Of what

1 possible relevance is it, unless it is amending the law?

2 MR. NIGHTINGALE: Your Honor, the Court has
3 often indicated that subsequent interpretations of a
4 statute by Congress, though not dispositive, are entitled
5 to significant weight.

6 QUESTION: And you think this is an
7 interpretation of a statute by Congress, this snippet of
8 legislative history in '83 pertaining to an '84 statute?

9 MR. NIGHTINGALE: Your Honor, it's not just the
10 legislative history. It is the action. This is not a
11 situation where congressmen got up in committee hearings
12 and said we believe that this statute we passed 3 years
13 ago meant X. In this case the Congress as a whole passed
14 a statute that makes sense only if there is such a thing
15 as a valid automobile title that can violate section 2314.

16 And I think the closest parallel that I was able
17 to find is the Red Lion case. That was a case in which
18 the FCC had promulgated a rule adopting the Fairness
19 Doctrine. There was question about whether the Commission
20 had authority to do that, and a subsequent piece of
21 legislation, Congress amended the FCC act and noted --
22 provided however that this amendment is not intended to
23 alter the obligation that in effect broadcasters have
24 under the fairness doctrine. The Court relied very
25 heavily on that as an indication that Congress believed

1 the FCC had the authority before to issue the doctrine.

2 QUESTION: Suppose -- suppose you have an
3 automobile title that is counterfeited only with the --
4 the odometer, that that is the only thing altered.

5 MR. NIGHTINGALE: Yes.

6 QUESTION: It is issued correctly by the State,
7 and somebody alters the odometer reading, or the color of
8 the car. Is that a valid automobile title?

9 MR. NIGHTINGALE: Your Honor, I believe that the
10 State that issued it would not believe it was a valid
11 automobile title, but --

12 QUESTION: Because the color of the car has been
13 altered?

14 MR. NIGHTINGALE: It's not the same title that
15 was issued by the State. It doesn't validly --

16 QUESTION: Would you acknowledge that as a
17 highly debatable proposition at least?

18 MR. NIGHTINGALE: Your Honor, the reason it's a
19 difficult question to answer, I don't believe that that is
20 what -- that the situation that you have in mind is what
21 Congress had in mind. The difficulty in answering --

22 QUESTION: Well, I don't know, but if it is you
23 could fully explain the language Congress enacted in the
24 1984 statute as covering a situation where you have a
25 title in which something quite irrelevant has been --

1 irrelevant to the title at least, has been altered.

2 MR. NIGHTINGALE: Your Honor, let's focus a
3 little bit on what automobile titles do, and then I think
4 it will become clear why I am having difficulty with the
5 question. States have attached different significance to
6 automobile titles. In some States a title is the
7 exclusive means by which you can pass title to a car. If
8 you buy my car but I don't give you the title, I sell it
9 to someone else, he gets it. In other States titles are
10 prima facie evidence of ownership, but the -- the
11 transaction involves the sale of the car, and the evidence
12 is altered to reflect the real transaction.

13 In that context, Your Honor, I believe that we
14 are cut loose in many States from the concept that the
15 title is needed to pass title as such. The validity of
16 the title, it seems to me, refers to the title being in
17 its, in the condition that it had when it is issued by
18 State authorities.

19 QUESTION: But you just said in many States.

20 MR. NIGHTINGALE: Yes, Your Honor.

21 QUESTION: But in order for you to run the
22 argument you are with respect to the 1984 statute, you
23 would have to be able to say in all States, and therefore
24 the 1984 statute can have no meaning unless it refers to
25 what you claim it refers to.

1 MR. NIGHTINGALE: Your Honor, I think that the
2 way that would be handled in the rules of evidence would
3 be to say that it would go to the weight assigned to the
4 argument, but not to the correctness of the argument. I
5 don't believe that it's necessary to exclude all
6 possibilities.

7 QUESTION: No, your argument is that this '84
8 statute is utterly meaningless. And what I am suggesting
9 is even if there are only a few States where the title
10 would be valid even though there has been an alteration
11 -- alteration, the statute would not be utterly
12 meaningless. It doesn't go to weight. It goes to whether
13 your argument is valid or not.

14 MR. NIGHTINGALE: Your Honor, I believe that the
15 -- again, looking at it in the context -- let me say that
16 the 1984 legislation that added this provision was
17 designed to deal with the problem of washing and changing
18 titles to deal with stolen cars primarily, although there
19 was indication of odometer fraud as well. The committees
20 that were dealing with the problem were told that a good
21 way to title a stolen car would be to get a hold of an
22 automobile title, alter the identification number to match
23 the one of the car that had been stolen, wash that title,
24 and then end up with an apparently valid -- validly titled
25 document.

1 And I believe that when Congress enacted the
2 legislation making it a -- making a valid title one that
3 could be the subject of 2314, it was intending to deal
4 with the same aspects of that kind of fraud and scheme
5 that we have before us today. And that they had evidence
6 before them of -- Congress had evidence before it of this
7 type of operation, altered only in the fact that the
8 identification number was altered rather than the odometer
9 reading. So I believe it is a fair inference.

10 QUESTION: Mr. Nightingale, at the beginning of
11 your argument you said your third point was going to be
12 that no canon of construction interferes with your
13 position. Would you want to discuss the rule of lenity at
14 all?

15 MR. NIGHTINGALE: Your Honor, I would like to do
16 that. I believe the classic statement of the rule of
17 lenity is Justice Blackmun's in the Huddleston case in 415
18 U.S. There are two reasons for the rule of lenity in
19 effect. One reason is to give fair notice to individuals.
20 The second is to be sure that legislatures define crimes
21 and not courts. And the rule is subject to the important
22 qualification that although penal laws are to be strictly
23 construed, they ought not to be construed so strictly as
24 to defeat the obvious intention of the legislature.

25 I submit that this is a case in which neither of

1 the underpinnings of the rule of lenity are applicable.
2 Mr. Moskal was not endowed as to the illegality of his
3 conduct, and if he had given any attention to section
4 2314, I submit that looking at the common ordinary meaning
5 of falsely made, he would not have believed that he would
6 have been free -- not free to send the documents down, but
7 free to receive them back.

8 In the context that this statute operates, I
9 think that it's clear that Congress was acting against an
10 evil, the interstate transportation of falsely made
11 securities, which fully covers this situation. It would
12 be highly inconsistent with Congress' intention to exclude
13 from this statute a scheme, the essence of which was the
14 use of interstate transportation --

15 QUESTION: Suppose the Virginia issuer knew that
16 this odometer reading was false. That would be -- this
17 document then would be within the common law definition,
18 wouldn't it?

19 MR. NIGHTINGALE: I'm sorry, Your Honor, I
20 didn't understand.

21 QUESTION: Suppose the issuer, the Virginia
22 issuer knew that there was a false -- false information in
23 that document that he was issuing. Wouldn't that document
24 then satisfy the common law meaning of falsely made?

25 MR. NIGHTINGALE: There was dispute on that

1 question, Your Honor. The Goucher and Corfield cases in
2 footnote 9 of our brief, even a corrupt official could not
3 forge an official document. Under the Hibbs and Wilson
4 cases --

5 QUESTION: Could he falsely make it?

6 MR. NIGHTINGALE: The -- those cases did not
7 distinguish between falsely made and forgery. Under the
8 Hibbs and Wilson cases though, that was a forgery. It's
9 -- it's our belief that Congress meant not to, meant to go
10 beyond that dispute.

11 QUESTION: But assume it was a forgery and was
12 falsely made because the fellow knew it. Will the person
13 who sent in the false information, who sent in the false
14 titles, if he could be prosecuted it would only be because
15 the Virginia fellow knew it. So I don't see what
16 difference it makes whether the Virginia fellow knew it or
17 not as far as his liability under the statute's concerned.

18 MR. NIGHTINGALE: That is our position, Your
19 Honor. The end product is a document which is falsely
20 made because false information has been introduced into it
21 in the process of its making.

22 QUESTION: And this defendant was responsible
23 for the false information.

24 MR. NIGHTINGALE: Right. The defendant in this
25 case had intent to defraud, and made the interstate

1 transportation knowing of the falsely made document.
2 Those are the two mental elements of this statute, and
3 they are fully satisfied.

4 QUESTION: Mr. Nightingale, in determining
5 whether the rule of lenity should be applied, it doesn't
6 seem to me it is fair to take this particular defendant as
7 the sole example. Suppose somebody who intends to get his
8 car painted, but it isn't painted yet, and he tells the
9 person when he is making over the title put down red. It
10 isn't red yet; it is actually green. And then he
11 transports it in -- in interstate commerce. He would be
12 in violation of this law, although, you know, if I were he
13 reading the law I certainly wouldn't think that it would
14 cover anything like that.

15 MR. NIGHTINGALE: Your Honor, I don't think a
16 jury could find that that gentleman had the intent to
17 defraud that is required for this statute. The statute
18 prohibits -- covers whoever with unlawful or fraudulent
19 intent transports in interstate commerce, and so on and so
20 forth.

21 I see my time is up. Thank you.

22 QUESTION: Thank you, Mr. Nightingale.

23 Mr. Hart, do you have rebuttal?

24 REBUTTAL ARGUMENT OF DENNIS M. HART

25 ON BEHALF OF THE PETITIONER

1 MR. HART: Yes, Your Honor. If I may, I would
2 like to make four observations. The first is the
3 Government places great reliance on congressional action
4 and section 2311, the amendment that they spoke about,
5 about the valid or blank titles.

6 I had to wade through all that congressional
7 testimony, and I didn't see one mention of odometer fraud,
8 of title washing for roll-backed odometers. What Congress
9 was concerned with in 1984 was interstate car thefts and
10 what they called chop shops, the assembly of vehicles from
11 odd parts. They were concerned with vehicle
12 identification numbers, and there was no concern at all
13 for odometer roll backs of title washing. The Government
14 is in error if it tries to convince this Court that that
15 was the purpose of the 1984 amendments. It does not in
16 any way affect section 2314.

17 The second observation I would like to make is
18 the Court asked the United States --

19 QUESTION: I don't understand that last point.
20 Why wouldn't it affect 2314 if it affected chop shops and
21 all that that put together different pieces --

22 MR. HART: I am sorry, the Court is correct. It
23 does affect it in that sense.

24 QUESTION: It just doesn't affect odometer roll
25 backs.

1 MR. HART: Yes.

2 QUESTION: And this is just another species of
3 phony documents for getting to the same purpose, though,
4 really.

5 MR. HART: No, it's not for the same purpose.
6 It is -- if the general purpose is defraud, yes, it is the
7 same purpose. But --

8 QUESTION: Well, fraud and selling automobiles
9 that are represented as having a certain history when they
10 have quite a different history.

11 MR. HART: Yes, yes. But we submit there is a
12 significant difference between an old car sold as a new
13 car, and a car sold that was assembled from 23 other
14 different cars or was stolen across State lines --

15 QUESTION: The latter one might be a better car.
16 (Laughter.)

17 MR. HART: The -- secondarily we would like to
18 make the observation that in 1979 a district court in Iowa
19 decided the Rudge case, which decided that what Mr. Moskal
20 did in this case wasn't a violation of 2314. In 1980 I
21 believe it was the Tenth Circuit in Sparrow made basically
22 the same decision, that if it was a valid automobile title
23 that passed title, even though it had alterations, it was
24 not subject to 2314 prosecution.

25 Now subsequent to that other courts have

1 disagreed. But since 1980 Congress has had the
2 opportunity to clear that up, and has not. And the reason
3 I mention that is because in examining the history of 2314
4 circuit courts have concluded that 2314 did not cover
5 certain things. And what comes to mind specifically is
6 travelers' checks. There was a circuit court decision in
7 the 1960's, I believe, that said this statute doesn't
8 cover interstate transportation of travelers' checks.
9 When that opinion was issued Congress came back and
10 changed the law and said put travelers' checks into the
11 section. They realized they could change it, they
12 realized it wasn't there, and they made the effort to
13 change it. And they have never done anything since
14 Sparrow and Rudge in 1980.

15 QUESTION: But we have a different history here.
16 Most of the lower courts have agreed with the Government,
17 haven't they?

18 MR. HART: I disagree with that entirely, Your
19 Honor. I believe two of the circuit courts have agreed
20 with the Government, the Tenth Circuit has agreed with the
21 petitioner, and what we consider a similar case, the
22 district court in Rudge have agreed with the petitioner.
23 And so I would call it at best an even split, and at
24 worst, for the Government, it's consideration of different
25 factors, because no one has ever considered exactly what

1 the petitioner did in this case.

2 And finally we'd observe that the Government is
3 going to get into problems if it talks about materiality,
4 because what the Government didn't mention is that one of
5 the titles in this case was altered by a pencil mark, just
6 a small pencil mark in the number. And that's all that
7 was done in Pennsylvania. Now, if the Government is going
8 to draw a bright line between vehicle model and vehicle
9 make, and odometer, and put on the other side of the line
10 a pencil mark, they are going to run into problems with
11 this case. We suggest no such bright line can exist.

12 Thank you.

13 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Hart.

14 The case is submitted.

15 (Whereupon, at 12:04 p.m., the case in the
16 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: 89-964

Raymond J. Moska, Sr., Petitioner -v- United States

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

BY *Raymond H. Hartzel*
(REPORTER)

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