

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: DONALD J. WILLY, Petitioner V.

COASTAL CORPORATION, et al.

CASE NO: 90-1150

PLACE: Washington, D.C.

DATE: December 3, 1991

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 DONALD J. WILLY, :

4 Petitioner :

5 v. : No. 90-1150

6 COASTAL CORPORATION, et al. :

7 - - - - -X

8 Washington, D.C.

9 Tuesday, December 3, 1991

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:05 a.m.

13 APPEARANCES:

14 MICHAEL A. MANESS, ESQ., Houston, Texas; on behalf of the
15 Petitioner.

16 MICHAEL L. BEATTY, ESQ., Houston, Texas; on behalf of the
17 Respondents.

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1 P R O C E E D I N G S

2 (11:05 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 90-1150, Donald J. Willy v. Coastal
5 Corporation. Mr. Maness, you may proceed.

6 ORAL ARGUMENT OF MICHAEL A. MANESS

7 ON BEHALF OF PETITIONER

8 MR. MANESS: Thank you Mr. Chief Justice, and
9 may it please the Court:

10 The second section of article III of the
11 Constitution limits the judicial power of the United
12 States to nine carefully defined kinds of cases and
13 controversies and none others.

14 The question presented in this case is whether
15 the United States District Court violated that
16 constitutional limitation by awarding attorney's fees to
17 Coastal and the other defendants as a sanction from Mr.
18 Willy's asserted bad faith litigation, even though the
19 Federal court never possessed article III subject matter
20 jurisdiction over the controversy following the
21 defendant's wrongful removal of the case from a State
22 court, and even though Mr. Willy did not impede, obstruct,
23 or delay the Federal court's resolution of any
24 jurisdictional question, but instead correctly and
25 repeatedly, and eventually successfully, contested the

1 Federal court's unconstitutional exercise of the Federal
2 judicial power over the case.

3 We believe that this case is controlled by the
4 court's decision in United States Catholic Conference
5 against Abortion Rights Mobilization, Incorporated, that
6 the district court's sanction order violated article III,
7 and that that order and the judgment of the United States
8 Court of Appeals for the Fifth Circuit mistakenly
9 affirming it are unconstitutional and therefore should be
10 reversed.

11 QUESTION: Did you just refer, Mr. Maness, to
12 one of our cases in saying that it was controlled by that
13 case?

14 MR. MANESS: Yes, sir.

15 QUESTION: What case was that?

16 MR. MANESS: United States Catholic Conference
17 against Abortion Rights Mobilization, Incorporated.

18 QUESTION: And when was -- do you have a
19 citation for that or what?

20 MR. MANESS: Yes, Your Honor, I do. It's cited
21 in our blue brief.

22 QUESTION: Okay. That's fine. Thank you.

23 MR. MANESS: Catholic Conference was a 1988
24 decision of this Court.

25 I would like to state very briefly and very

1 quickly some relevant facts which are for the most part
2 entirely uncontradicted. Donald Willy worked as an
3 in-house environmental attorney for the a subsidiary of
4 Coastal Corporation in Houston from 1981 until 1984 when
5 the company fired him.

6 In 1985, represented by another Houston lawyer,
7 George Young, Mr. Willy filed a State court lawsuit
8 against Coastal and other defendants alleging a number of
9 exclusively State law causes of action. The principal one
10 of these arose under a Texas supreme court decision,
11 Sabine Pilot Service Company against Hauck, which
12 recognizes a remedy in Texas for those whose employment is
13 wrongly terminated solely because of their refusal to
14 violate the law.

15 Mr. Young's petition on Mr. Willy's behalf
16 alleged that Coastal had fired him because of his refusal
17 to falsify environmental reports or to participate in the
18 company's ongoing violations of State and Federal
19 environmental laws at several of its facilities.

20 Coastal and the other defendants wrongly removed
21 the case to the United States District Court in Houston on
22 December 30, 1985, almost 6 years ago.

23 QUESTION: What was the basis for it?

24 MR. MANESS: I think, certainly the court of
25 appeals felt that there was more than an arguable basis

1 for the removal and characterized it as having been
2 undertaken in good faith. We don't, Justice White,
3 dispute that characterization.

4 QUESTION: If there weren't any legitimate basis
5 for removal, do you suppose the Federal district court
6 would have the power to sanction the party removing the
7 case wrongfully?

8 MR. MANESS: No. No. It would not.

9 I think, Justice O'Connor, what is implicit in
10 this case and something I would like to touch on --

11 QUESTION: Even under the court's inherent
12 authority?

13 MR. MANESS: That's correct.

14 Our view is that the court's article III power
15 over a case or controversy isn't determined by how clear
16 or how difficult the jurisdictional question is. Our view
17 is that the court either has the power to act under
18 article III of the Constitution or it does not. And if it
19 does not have the power, then no complexity of the
20 jurisdictional issue or no good faith or, for that matter,
21 bad faith be it with the parties or the judge can affect
22 the outcome of the decision.

23 QUESTION: Well, do you think that would be true
24 for criminal contempt sanctions for someone who wrongfully
25 removed the case, but then has an outburst in the

1 courtroom and insults the judge and the judge imposes a
2 criminal sanction?

3 MR. MANESS: No, I think our position
4 straightforwardly draws a distinction between criminal
5 contempt penalties --

6 QUESTION: And what is the article III power
7 there?

8 MR. MANESS: Basically it's that criminal
9 contempt sanctions implicitly or explicitly are cases that
10 involve the United States. Cases to which the United
11 States is party are specifically mentioned in the second
12 section of article III. And, of course, as I think the
13 court --

14 QUESTION: Well, what if the United States were
15 not a party, but there is a suit between private parties
16 and there is a wrongful removal and there is some outburst
17 in court?

18 MR. MANESS: I think in those circumstances,
19 Your Honor, the court would have a criminal contempt power
20 that is --

21 QUESTION: Some kind of inherent power to
22 protect its own dignity.

23 MR. MANESS: I'm not sure, quite honestly, that
24 it should be characterized as an inherent power, given the
25 fact that since the Judiciary Act of 1789 there has always

1 been a statute that authorizes Federal courts to impose
2 criminal contempt sanctions. The present statute, as Your
3 Honor knows, is title XVIII, section 401.

4 So it seems to me in the existing environment in
5 which we operate, it's more appropriate to say in the
6 event of such an outburst that the Federal court could
7 punish it under the criminal contempt power conferred by
8 article III, which Congress has implemented under
9 title XVIII, section 401.

10 QUESTION: Why, why do you choose to read that
11 as applying to cases in which the court has jurisdiction
12 and does not have jurisdiction both, whereas the other
13 statutory authorities that exist you insist must be
14 interpreted to apply only to cases where the court has
15 jurisdiction? I mean, they don't say that, but you say
16 that's the only reasonable way to read them. Why --

17 MR. MANESS: Yes.

18 QUESTION: Why is that reasonable for the civil,
19 but not for the criminal sanctions?

20 MR. MANESS: I think, I think perhaps the best
21 way to answer that, if I can do it directly, is that
22 that's the distinction that the Mine Workers case brought.
23 The Mine Workers case holds that there is implicit in this
24 entire area a meaningful, principal distinction between
25 vindications of judicial authority by criminal contempt

1 sanctions and equivalent efforts to vindicate, in that
2 instance, court orders, by civil contempt sanctions.

3 It seems to me that that's logical and makes a
4 great deal of sense when one undertakes to analyze what's
5 at stake here. What's at stake is the authority of the
6 court, the ability to undertake the functions consigned to
7 it by Congress in article III.

8 QUESTION: Do you think criminal sanctions,
9 criminal contempt sanctions could have been imposed here
10 if the court, if the court regarded what was being done as
11 contemptuous, as an obstruction of its procedures?

12 MR. MANESS: I think if the court had reached
13 that conclusion and it were supported by the evidence, and
14 of course, if Mr. Willy and Mr. Young had been accorded
15 the procedural protections that criminal contempt
16 implicates, yes, I think that would have been an instance
17 in which criminal contempt sanctions could have been
18 imposed.

19 QUESTION: Excuse me, Mr. Maness, your opponent
20 cites the case of Chicot County Valley Drainage District,
21 the opinion by Chief Justice Hughes, in which this Court
22 held that even though a grant of Federal jurisdiction was
23 unconstitutional, nonetheless a lot of consequences flowed
24 from something having been acted on under that grant.
25 What's your -- how do you distinguish that case?

1 MR. MANESS: I think that case and such cases as
2 Stoll against Gottlieb indicate clearly that
3 notwithstanding the fundamental importance of the
4 article III power, and the fact that a court in order to
5 act has to have that power under both article III and
6 ordinarily a statutory grant of jurisdiction from
7 Congress, but nonetheless, there are also countervailing
8 considerations that sometimes can override that.

9 And the example, of course, of res judicata,
10 collateral estoppel, similar sorts of administrative
11 devices that are simply more important constitutionally
12 than allowing, for example, absence of subject matter
13 jurisdiction to be raised long after the judgment is
14 entered and long after the case has otherwise been closed.

15 QUESTION: So it isn't just a totally clear line
16 between black and white. There has to be some evaluation
17 of for what the claim is.

18 MR. MANESS: I think so. But I'm troubled if
19 the Court were to extend that principle to going back to
20 what I think was soundly repudiated in Catholic
21 Conference. And that's the idea that there's something
22 called colorable jurisdiction.

23 I was perviewing the transcript of the argument
24 in Catholic Conference yesterday. I recall the question
25 coming up that the Court was interested in knowing what is

1 colorable jurisdiction. And counsel for the parties were
2 unable to define it. Then the question was asked, what
3 did the Second Circuit mean when it used the term
4 colorable jurisdiction. And I think there was still some
5 question.

6 I think the Court in Catholic Conference
7 decisively and soundly repudiated the idea that because a
8 Federal court looks like it has the constitutional power
9 to act, that that's the functional equivalent of its
10 having the constitutional power to act.

11 I think we've also pointed out in our brief that
12 there's an observation in Szabo Food, which was quoted in
13 Cooter & Gell, a very important case that I would like to
14 turn to in a moment, Judge Easterbrook suggested that if a
15 district court elects to proceed forward with the case and
16 to supervise discovery under rule 16 and to conduct a
17 trial and to enter a judgment, and then discovers at the
18 end that the court doesn't have article III subject matter
19 jurisdiction, it can nonetheless treat any derelictions by
20 counsel of the parties that occurs during that period as
21 appropriately sanctionable, either under rule 11 or under
22 an inherent power.

23 But we think that's flatly mistaken. I had
24 thought since Capron against Van Noorden that
25 jurisdictional issues have to be decided at the first of

1 the case, not at the end. And I had thought that at least
2 since Turner against the President and Directors of the
3 Bank of North America, a case decided by this Court in
4 1799, that if it's a tossup, if the judge says to herself,
5 gee, I don't know whether I have jurisdiction or not, it's
6 equally balanced, the presumption is the court doesn't
7 have jurisdiction unless promptly dismissed or remand the
8 case.

9 We've also pointed to some 12 decisions --

10 QUESTION: What if the, what if the case goes up
11 to the appellate court, there's never been any
12 jurisdictional question raised, but the appellate, the
13 court of appeals, like it should, raises a jurisdictional
14 issue and says there's no, never has been any jurisdiction
15 in the lower court. I suppose that you would take the
16 same position.

17 MR. MANESS: Absolutely. I want to make it
18 plain, Justice White, that, the fact that Mr. Willy and
19 his counsel raised the absence of constitutional power
20 from the get-go is just icing on the cake for us. The
21 result would be exactly the same even if they had never
22 raised it, even if it had never been raised in the court
23 of appeals, even if it had not even been raised in the
24 petition for certiorari, but the court had suddenly said,
25 wait a minute, there's no article III power.

1 QUESTION: Mr. Maness, you acknowledge that this
2 thing is not black and white and that sometimes we allow
3 consequences even when there's no jurisdiction. Why isn't
4 a very logical line to draw, and one that would put the
5 Catholic Bishops case on the right side of the line, the
6 line between the litigant who submits himself to the
7 allegedly wrongful jurisdiction of the court, voluntarily
8 goes ahead with litigation.

9 In Catholic Bishops, as I recall, it was
10 contended from the outset by the Catholic bishops that the
11 court had no part of that and had no jurisdiction over
12 them. And we would not allow them to be punished by the
13 court's contempt power.

14 But where you come and willingly litigate, why
15 can't we treat that differently and do no damage to the
16 Catholic Bishops case?

17 MR. MANESS: Well, oddly enough I attempted all
18 the way through to persuade both the district court and
19 the court of appeals that that was a logical and
20 sensible accomodation --

21 QUESTION: Because that's your -- your client is
22 in that position.

23 MR. MANESS: Exactly. But I also want to state
24 that --

25 QUESTION: But you went ahead with the

1 litigation. You went ahead with the litigation and filed
2 a whole batch of documents that were just ridiculous.

3 By --

4 MR. MANESS: I didn't do them. My
5 predecessor --

6 (Laughter.)

7 QUESTION: Right. I'm sorry. But the point is
8 you did not stand on your refusal. You did not stand on
9 your refusal.

10 MR. MANESS: That's correct.

11 QUESTION: Which the bishops did. They just
12 refused to turn over the stuff.

13 MR. MANESS: That's correct.

14 QUESTION: Now why can't I put you to that
15 choice?

16 MR. MANESS: It seems to me first of all that
17 that would entail Mr. Willy simply refusing to go forward.
18 What -- as I understand it, he's supposed to say, I'm so
19 sure that the court lacks article III subject matter
20 jurisdiction that I'm going to not do anything, I'm not
21 going to prosecute the case, I'm not going to attend the
22 first rule 16 scheduling conference, I'm just going to go
23 home.

24 QUESTION: Foreign sovereigns do, they don't
25 even show up.

1 MR. MANESS: And I think first of all, and I
2 don't mean to be rhetorical when I say this, but I think
3 it's an answer to your question is, where do you find that
4 in the Constitution?

5 It seems to me that the Constitution, both
6 simultaneously extends the judicial power in the second
7 section of article III and limits it.

8 QUESTION: See, I don't find the gray in the
9 Constitution. I only find the black and the white in the
10 Constitution. We've passed that once you acknowledge that
11 there are some grays. We're just arguing over whether
12 this is one of the shades of gray permitted.

13 MR. MANESS: But it seems to me that's an
14 unworkable and untenable distinction.

15 QUESTION: But you, you would also, I suppose,
16 say that the, if people are, a lot of times litigate over
17 jurisdiction. And if it turns out that the court doesn't
18 have any jurisdiction, is the court without power to
19 sanction attorneys who should be sanctioned in litigating
20 jurisdiction?

21 MR. MANESS: First of all, we've made it, I
22 think, clear in light of the Court's decision in Catholic
23 Conference that interferences with or obstructions with
24 jurisdictional determinations are as sanctionable as any
25 other case in which the court does have --

1 QUESTION: I know, but I would think you're, I
2 would think if you accept that you have to accept some
3 other things.

4 MR. MANESS: Well, we certainly conceded that in
5 terms of, when we talk of sanctions, this case involves an
6 award of attorney's fees as a sanction. But we've
7 conceded and indeed maintained that misconduct by an
8 attorney or a litigant --

9 QUESTION: Well, you concede then that courts
10 have the jurisdiction to determine their own jurisdiction.

11 MR. MANESS: Absolutely.

12 QUESTION: Well, in this district court, it
13 thought it had jurisdiction. It determined it. And there
14 you were, you were stuck until you got to the court of
15 appeals..

16 MR. MANESS: I saw that thought Justice White
17 expressed in the transcript in the argument in Catholic
18 Conference. And all I can say is as I understand the
19 Constitution, it is that the court at the time it
20 entertains the suit from the very beginning either has the
21 jurisdiction or it doesn't. And if it mistakenly thinks
22 it does but really doesn't, it doesn't somehow by virtue
23 of having made that mistake empower itself to act.

24 This is certainly a very strange constitutional
25 power for which Coastal contends. It's one that can only

1 be exercised if the district court has booted the
2 jurisdictional determination.

3 QUESTION: And you don't think that the attorney
4 could have been held in contempt?

5 MR. MANESS: Oh, yes, I do. Absolutely. If in
6 fact the attorney's conduct was criminally contumacious --

7 QUESTION: I didn't say criminal.

8 MR. MANESS: Civil contempt?

9 QUESTION: Yes.

10 MR. MANESS: Oh, no. I wouldn't say the civil
11 contempt sanctions were imposable on the basis of the Mine
12 Workers.

13 QUESTION: But criminal?

14 MR. MANESS: Criminal contempt could be, yes.
15 That is assuming that sanctions were imposed in accordance
16 with Federal Criminal Rule 41.

17 QUESTION: Yes, but, you're arguing -- I'm
18 sorry.

19 QUESTION: I was going to say, do you think that
20 sanctions here are more akin to criminal or civil?

21 MR. MANESS: I think the Court has already
22 answered that question in Chambers against NASCO last June
23 when it quoted Hutto against Finney and said that they're
24 more equivalent to civil penalties rather than criminal.

25 And if they're more equivalent to criminal

1 penalties, why aren't they in the Federal Criminal Rules?
2 Why don't we have a Federal Criminal Rule 11(a) that
3 authorizes the imposition of something equivalent to or
4 functionally equivalent to criminal contempt penalties via
5 an amended rule 11(a) that would award attorney's fees
6 perhaps as a fine.

7 We've also pointed out in our brief that apart
8 from the fact that Mr. Willy and Mr. Young weren't
9 accorded any of the procedural protections that a criminal
10 prosecution for criminal contempt would entail, if these
11 sanctions are like criminal contempt, then Coastal's
12 counsel should not be here, because interested parties
13 under Young against Vuitton can't prosecute a criminal
14 contempt proceeding. And indeed, if under Providence
15 Journal, Mr. Beatty couldn't be here, but we should have
16 General Starr instead. And I suggest that General Starr
17 would not touch this case with a 10-foot pole.

18 QUESTION: Your position is that in Catholic
19 Conference the bishops, in addition to contesting
20 jurisdiction, filed fraudulent and misleading documents,
21 purportedly in response to the subpoena -- the only
22 sanction available to the court is a criminal sanction?

23 MR. MANESS: No. The lawyers responsible for
24 that misconduct would be sanctionable by suspension or
25 disbarment.

1 QUESTION: But not under rule 11.

2 MR. MANESS: Not under rule 11.

3 And the reason I suggest that that must be true
4 and I say must as if it's an inevitable consequence, and I
5 know it is not, is the alternative argument that Coastal
6 makes, it says basically that the courts, apart from the
7 inherent power argument has power, under rule 11, even in
8 the absence of subject matter jurisdiction.

9 I've read Catholic --

10 QUESTION: But don't lawyers have a special
11 obligation under rule 11 quite without reference to
12 jurisdiction?

13 MR. MANESS: Certainly. I believe that rule 11,
14 as Cooter & Gell makes plain, entails a very significant
15 obligation for lawyers who sign pleadings.

16 QUESTION: In this case, were the lawyers and
17 the client both sanctioned?

18 MR. MANESS: Yes. One lawyer, one client.

19 QUESTION: All right. So do you take the
20 position that the lawyer can be sanctioned?

21 MR. MANESS: Certainly the lawyer could have
22 been suspended or disbarred assuming he --

23 QUESTION: But can he be sanctioned under
24 rule 11?

25 MR. MANESS: No, not in the absence of

1 article III subject matter jurisdiction. And in fact --

2 QUESTION: Well, but disbarment is not a
3 criminal penalty.

4 MR. MANESS: Certainly it's not. But it also
5 doesn't involve the adjudication of a case or controversy
6 that's not within the second section of article III,
7 either.

8 QUESTION: Well, I'm not sure that it doesn't if
9 the unprofessional conduct takes place in the course of
10 the proceeding.

11 MR. MANESS: Well, conceivably, arguably, it is.
12 But at least it's an alternative remedy, an alternative
13 mechanism that the court can use apart from awarding
14 attorney's fees to the people who have wrongly invoked --

15 QUESTION: Because it seems to me here that the
16 gravamen of the injury to the court was the misfeasance of
17 the attorney.

18 MR. MANESS: Yes.

19 QUESTION: And the court has a special authority
20 over attorneys under rule 11. It seems to me that that
21 quite distinguishes this case from Catholic Conference.

22 MR. MANESS: And of course, I don't represent
23 the attorney. I represent the litigant who was also
24 himself an attorney and who presumably the court of law --

25 QUESTION: Well, that leads to the next point.

1 Isn't the litigant's liability derivative of the attorney
2 in a sense?

3 MR. MANESS: I don't think so. I guess there's
4 an argument to be made that when the litigant is herself
5 or himself an attorney that the attorney/litigant should
6 be held to a higher standard.

7 QUESTION: Was there a finding here that the
8 client conspired with the attorney or was an accessory
9 with the attorney in the perpetration of the violation?

10 MR. MANESS: There was no specific finding of
11 that. There was no --

12 QUESTION: I take it's implicit.

13 MR. MANESS: I certainly think that's true. In
14 fact, so implicit that both the district court and the
15 court of appeals used a technique in their order and
16 opinion of saying plaintiff or Willy when they actually
17 were referring to actions that had occurred and the
18 records revealed were undertaken by Mr. Young, the
19 attorney.

20 QUESTION: Because the whole point of rule 11 is
21 to control the conduct of attorneys.

22 MR. MANESS: Exactly. But of course, the whole
23 point of article III is to restrain excessive uses of
24 judicial power. When the Constitution limits the
25 judiciary as it does the political branches --

1 QUESTION: Yes, but it seems to me that the
2 point of the sanction against your client is to discourage
3 him and others from permitting their attorneys to engage
4 in this sort of conduct.

5 MR. MANESS: I think that's certainly true.

6 QUESTION: Don't you have to take it, then, a
7 further step that the object of doing that is essentially
8 to protect the other party. And by the same reasoning
9 that we accept the court's authority to impose criminal
10 contempt sanctions for the purpose of protecting the
11 court, why doesn't this essentially the same reasoning
12 extend to allowing these civil sanctions whether it be
13 under rule 11 or inherent power to protect the other
14 parties once they are accepted by the court as being
15 before them?

16 MR. MANESS: I think, Justice Souter, that that,
17 that that argument and that reasoning could, in fact, be
18 used in this case if the Court were prepared to say that
19 exigency and necessity are a substitute for the
20 article III judicial power.

21 QUESTION: What have we said in criminal
22 contempt?

23 MR. MANESS: Well, I think you, and I may be
24 mistaken here, I think the Court has said in the Mine
25 Workers case that the court in that case did have the

1 article III judicial powers, a case to which the United
2 States was a party, a case in which the court was
3 entertaining a Federal question, a very real question as
4 to whether or not the court has the authority to impose a
5 specific remedy, the injunction.

6 QUESTION: But don't you, don't you concede, I
7 mean, you have conceded in this case that there would be a
8 criminal contempt power.

9 MR. MANESS: I conceded, Your Honor, that that
10 conceivably if the evidence were sufficient to overcome
11 the presumption of innocence, for example, that Mr. Willy
12 would have enjoyed had he known that he was going to be
13 accused of criminal --

14 QUESTION: But, I mean, right, but that
15 essentially goes to the factual basis of the action as
16 opposed to the jurisdiction of the court to engage in it.

17 And why doesn't the protective justification for
18 that concession go as far as conceding the issue here as
19 well?

20 MR. MANESS: Because at least, since what,
21 Michaelson and I suspect probably in a number of other
22 criminal contempt proceedings, the Court has said that
23 criminal contempt, even if it arises in a civil lawsuit,
24 is a separate case. It's a different proceeding. It's
25 designed not to adjudicate the rights of the parties, but

1 to vindicate the authority of the court.

2 QUESTION: I don't want to be impatient, but, I
3 mean, that's kind of the analytical structure of the
4 Court's answer. But the ultimate reason for engaging in
5 that kind of analytical exercise was a protective reason,
6 wasn't it?

7 MR. MANESS: Certainly.

8 QUESTION: And why doesn't the same protective
9 reason argue just as persuasively here?

10 MR. MANESS: Well, Justice Souter, if the Court
11 were to accept that reason, it would essentially be saying
12 that even in the absence of article III subject matter
13 jurisdiction, a United States district court that
14 mistakenly undertakes to hear and decide a case over which
15 it lacks the judicial power nonetheless has a form of
16 judicial power.

17 QUESTION: And isn't, isn't, isn't one rationale
18 for that that although the court may lack article III
19 subject matter jurisdiction as finally adjudicated, the
20 court has an article III obligation to the parties before
21 it while they are before it, and isn't that sufficient?

22 MR. MANESS: Yes. But the answer, I think, is
23 the parties should not be before the court if it lacks
24 article III subject matter jurisdiction. They should be
25 dismissed or remanded.

1 QUESTION: You wanted --

2 MR. MANESS: Yes, I'm asking the Court to hold
3 district judges as accountable as we are under rule 11.
4 Absolutely.

5 QUESTION: I suppose you think personal
6 jurisdiction is another matter?

7 MR. MANESS: Yes, absolutely, under Insurance
8 Corporation of Ireland.

9 QUESTION: Well, what if, what if the reason,
10 what if the reason you don't have personal jurisdiction is
11 because the Constitution forbids it?

12 MR. MANESS: I think that then would presumably
13 implicate article III subject matter jurisdiction and
14 would be in our case then.

15 QUESTION: So if some court is wrong in thinking
16 it has long-arm jurisdiction and wrong because the
17 Constitution says it's wrong, then you would be making the
18 same argument.

19 MR. MANESS: I don't think so, because the
20 Insurance Corporation of Ireland draws a very clear line
21 between personal jurisdiction that can be, for example,
22 established by rule 37 sanction and article III subject
23 matter jurisdiction.

24 Before I reserve, with the Court's permission, a
25 few moments for rebuttal, I would like to suggest that

1 Cooter & Gell, which is the linchpin of Coastal's
2 arguments, really doesn't control this case. It's not a
3 constitutional decision. The Court wasn't confronted with
4 an article III issue in that case. And perhaps most
5 significantly, the Court in Cooter & Gell specifically
6 adverted to the district court's article III subject
7 matter jurisdiction as the source of its authority, both
8 for considering the merits of the case and for imposing
9 sanctions.

10 With the Court's permission, I will reserve just
11 a few moments.

12 QUESTION: Very well, Mr. Maness.

13 Mr. Beatty. Is it Beatty or Beatty?

14 MR. BEATTY: Beatty.

15 ORAL ARGUMENT OF MICHAEL L. BEATTY

16 ON BEHALF OF THE RESPONDENTS

17 MR. BEATTY: Mr. Chief Justice, and may it
18 please the Court:

19 Just as opposing counsel has already
20 acknowledged, there are two bases upon which we believe
21 that the court has jurisdiction in this case. The first
22 is the inherent power and manifestations of that inherent
23 power represent both the inherent power to police
24 proceedings as well as the inherent power to determine
25 jurisdiction.

1 As a separate and independent basis, however, we
2 suggest to the Court that the necessary and proper cause
3 through which the Rules Enabling Act was passed and
4 rule 11 was promulgated also provides a sufficient
5 constitutional basis which is the question presented.
6 That is the constitutional basis for rule 11 sanctions in
7 this case.

8 Now, opposing counsel is willing to concede that
9 inherent power certainly exists. Inherent power exists
10 outside of article III, section 2 subject matter
11 jurisdiction. And once this concession is made, it
12 becomes extremely difficult, indeed, I would suggest
13 impossible, to reconcile the position of the petitioner in
14 this case.

15 QUESTION: Except for, except for the Catholic
16 Conference of Bishops case. Why wouldn't that have come
17 out the other way if it's inherent power that you argue
18 for, exists in this context.

19 MR. BEATTY: What we had in Catholic Conference
20 was a situation in which the bishops did exactly what Mr.
21 Willy could have done. The bishops had a situation where
22 they were held in civil contempt. They then sought an
23 immediate interlocutory appeal. And they said, we are not
24 going to participate in this proceeding any longer because
25 we believe that you do not have jurisdiction in the

1 underlying case, and as a result we must respectfully
2 decline to tender any documents or to honor the subpoena.

3 As a result, that case went up. Justice Stevens
4 has already pointed out if the Catholic bishops' attorneys
5 had said we believe that there is no jurisdiction, but we
6 want to brief the issue on the merits, we would like to
7 address the merits of this case and in the context of
8 that, what they did was they cited misleading citations,
9 rules of evidence that didn't exist, tendered documents to
10 the court with affidavits that were wholly inadequate to
11 establish them, 1,200 pages, and said, oh, and read this
12 by the way, then I submit that Catholic Conference would
13 say, first of all that this was a civil contempt matter
14 and what happens is there's no jurisdiction, but the court
15 will retain jurisdiction on the rule 11 issue and will
16 sanction and should sanction attorneys when their
17 misbehavior reaches a --

18 QUESTION: So you would draw the line between
19 standing on your rights and refusing to proceed further
20 and that cannot be the subject of a sanction. But if you
21 do proceed even while protesting all the time that there
22 is no jurisdiction, then you're subject.

23 MR. BEATTY: Certainly. I think, I was trying,
24 I'm trying to go through all the hypotheticals that I
25 could imagine in my mind.

1 QUESTION: Instead of a hypothetical, what about
2 this very case? What is the plaintiff supposed to do?
3 The plaintiff has filed the lawsuit in a State court, got
4 removed to the Federal court, he says I won't go ahead, he
5 goes ahead and files another lawsuit in the State court,
6 gets removed again. How is he ever going to get his
7 rights vindicated if he keeps getting removed to the
8 Federal court?

9 MR. BEATTY: Well, the short answer, Your Honor,
10 is that he can behave. That is what --

11 QUESTION: Well, of course. But I don't see how
12 your line works in this case. If there's no contempt, you
13 got no problem. And you can also punish him by criminal
14 contempt. Your opponent agrees to that.

15 But I don't understand the line you draw as
16 applied to this fact situation.

17 MR. BEATTY: I'm sorry, perhaps I didn't
18 understand your fact situation.

19 If what happened is there was a removal and he
20 believed that there was not appropriate subject matter
21 jurisdiction in the case --

22 QUESTION: Right.

23 MR. BEATTY: -- and he simply refused to
24 respond, then what would happen is a judgment would be
25 entered against him and he would then have the opportunity

1 to appeal the lack of subject matter jurisdiction to the
2 Fifth Circuit.

3 QUESTION: Oh, I see. But he's not in effect,
4 he continues, he litigates the jurisdictional issue.

5 MR. BEATTY: Certainly he litigates the
6 jurisdictional issue because it's even conceded by
7 petitioner that the Federal court has the jurisdiction to
8 determine jurisdiction. He can't escape that fact. And
9 he would willingly submit to that. He would also say, I
10 would behave in that circumstance. So he has a choice.

11 QUESTION: Well, but did he do any more than
12 contest the jurisdictional issue in this case?

13 MR. BEATTY: Certainly, Your Honor. Absolutely,
14 he did. What happened, what happened after the case,
15 after the motion to remand was denied, a motion to dismiss
16 was filed and a motion for partial summary judgment was
17 filed by Willy, by the petitioner in this case, a motion
18 for partial summary judgment on the merits. What then
19 happened was misleading citations which were discussed in
20 the brief as though the omitted portion was not omitted,
21 what happened was citations to rules of evidence that did
22 not exist, all of those happened in the context of the
23 motion for summary judgment.

24 QUESTION: Let me just be sure I get the
25 procedure. You're suggesting he had to take an adverse

1 judgment on the merits and then appeal the jurisdictional
2 issue because he couldn't have appealed the --

3 MR. BEATTY: No. He did have, again, he did
4 have that one other alternative. It's a dichotomy, I
5 agree. One is that he can say, I'll take a judgment
6 against me and appeal jurisdiction. The other thing he
7 could do is say I will litigate the merits and I'll
8 behave.

9 QUESTION: Oh, right. Right.

10 MR. BEATTY: I hope and I would submit that
11 that's not a hard, that shouldn't be that difficult a
12 choice for a litigant to take.

13 QUESTION: Well, it's a little different choice,
14 though, than the choice of the subpoenaed party in the
15 Catholic Bishops case. That's the point I'm making.

16 MR. BEATTY: Yes. Yes. I would concur. And as
17 a result what happens is once we begin to say that there
18 is inherent power both to determine jurisdiction and
19 inherent power that exists within the court to police its
20 own proceedings, then there must be the ability to
21 sanction someone who does the kind of activity which is at
22 stake in this particular case.

23 Really, as a constitutional matter, the only
24 thing that petitioner can raise is the fact that somehow
25 attorney's fees might not be applicable. And yet that

1 argument has been rejected. The Court has held that
2 attorney's fees certainly can be imposed either under
3 rule 11 or under the court's inherent power.

4 QUESTION: Well, our, our cases in Chambers
5 against NASCO and Hutto against Finney suggests that fee
6 shifting sanctions are analogous to civil contempt. And
7 perhaps that answers the question.

8 MR. BEATTY: If I might, Your Honor, address
9 both that issue of Hutto v. Finney as well as the issue of
10 attorney fee shifting.

11 It was pointed out both in the majority by
12 Justice White that the reason that fee shifting is of
13 concern is because of concern for the American rule. Now
14 I submit that that is not a constitutional impediment,
15 that is, a court could take, act further. The Court has
16 just elected to stop short of that and say, on fee
17 shifting we're going to honor what we believe, what
18 Justice Scalia referred to in his dissent as deeply rooted
19 history and congressional policy. And so for that reason,
20 there's a slight rub, but it's not a constitutional rub at
21 the attorney's fee level.

22 And then with regard to Hutto v. Finney, if you
23 look at that, recall that that case was the prison case
24 dealing with a situation in Arkansas in which Arkansas had
25 repeatedly been told, please take action. It was more

1 than an exhortation of please, it was a take action. And
2 that that had not been done in order to clarify, in order
3 to remedy the problems in their prison system. And
4 therefore, the Court imposed a \$20,000 attorney's fee
5 sanctions, but said in that case we hope that will incline
6 them to behave in the future and hope that they -- and
7 that was civil contempt.

8 Here, and I would refer to your decisions over
9 and over in Business Guides as well as your decision in
10 Cooter & Gell.

11 QUESTION: I don't think they help you because
12 there there was article III jurisdiction at one point in
13 those cases. I don't see how that helps you.

14 MR. BEATTY: I don't raise it for that position.
15 I raise it for the position that it was repeatedly said
16 rule 11 sanctions are designed to punish. Rule 11
17 sanctions are designed to deter misconduct. Rule 11
18 sanctions are designed to curb abuses of the judicial
19 process. The language that's used. And therefore, in
20 Cooter & Gell you can get the results where even though
21 the case was dismissed and no longer present before the
22 court, the court could say, I nonetheless wish to sanction
23 this conduct because that's not the kind of behavior we
24 wish to condone, just as in this case either through the
25 inherent power or through the use of rule 11 sanctions,

1 the court should be able to say exactly the same thing.

2 You may certainly contest jurisdiction if you
3 wish. You may be here and contest the merits if you wish
4 to do that. But the one thing the court has a right to
5 demand of all litigants is that they follow the rules.

6 If I might, simply because it would appear that
7 from an attorney's fees standpoint, there certainly is not
8 a problem, a constitutional limitation, I would submit
9 also that there is not a problem with regard to the
10 inherent power operating outside of article III,
11 section 2. Gompers is an example of that situation,
12 albeit Gompers was a situation in which criminal contempt
13 was ultimately used as the sanction.

14 In Gompers v. Buck's Stove, what happened was
15 after the case had been litigated but was on appeal, there
16 was a settlement. As a result, the court noted in its
17 last paragraph this case is now moot, but, said, we
18 retained jurisdiction in order to see whether or not there
19 was a contempt which should be punished. And it's because
20 of that, the court's ability to go back and look and
21 punish activities which does take place within the court's
22 proper and justiciable sphere.

23 QUESTION: But your argument on punishment, I'm
24 not sure he disagrees with, with the distinction he
25 emphasized from United Mine Workers between civil and

1 criminal.

2 MR. BEATTY: But -- I understand that.

3 Rule 11 is not, is more like. And I think
4 that's the best way to describe it.

5 QUESTION: You think it's more like criminal.

6 MR. BEATTY: It's more like criminal.

7 QUESTION: But, wait a minute on it. Two
8 questions. One, are the procedures adequate for criminal
9 contempt? And secondly, who gets the money? Is it paid
10 to the court or paid to the opposite party?

11 MR. BEATTY: It is, in rule 11, in this
12 situation, it is paid to the opposite party.

13 QUESTION: And is that typical of criminal
14 situations?

15 MR. BEATTY: In a criminal contempt situation it
16 might be, but normally is not done. And certainly there
17 are additional constitutional safeguards.

18 However, in the inherent, in the use of the
19 inherent power what has happened, and I would like to
20 quote if I might Justice White, when he refers in Chambers
21 v. NASCO to the parties and to Hutto, he says the
22 imposition of sanctions in this instance transcends a
23 court's equitable power concerning relations between the
24 parties and reaches the court's inherent power to police
25 itself, thus serving the dual purpose of vindicating

1 judicial authority without resort to the more drastic
2 sanctions available for contempt of court and making the
3 prevailing party whole for expenses caused by his
4 opponent's obstinacy.

5 That's the inherent power as noted in the
6 majority opinion, gave the court the opportunity to do
7 something less than criminal contempt.

8 QUESTION: But have we ever described that kind
9 of inherent power in a case over which the court has no
10 jurisdiction?

11 MR. BEATTY: The Court has not dealt with this
12 particular situation before, inherent power in this
13 particular situation where subsequently --

14 QUESTION: Inherent power when they've got no
15 power at all.

16 MR. BEATTY: I beg your pardon?

17 QUESTION: Inherent power, when we have no power
18 at all.

19 MR. BEATTY: Oh, but no --

20 QUESTION: We have power to, now the criminal
21 contempt power, that's easy. That's settled and so forth.
22 But is there any case, do you have any case that's really
23 held that in a case of where there's no jurisdiction you
24 can impose a sanction on an adverse party to pay, you
25 know, to pay to your opponent in litigation?

1 MR. BEATTY: No. I cannot cite you --

2 QUESTION: But in Hutto against Finney, I may be
3 fuzzy about it, but that was really a statutory case.
4 That was enforcement of the civil rights attorney's fee
5 award action.

6 MR. BEATTY: Yes, but the argument that was
7 raised was a rule 11 case because it was, Arkansas was
8 arguing that there couldn't be an imposition of attorney's
9 fees against them because it would interfere with their
10 position --

11 QUESTION: The Eleventh Amendment, yes. But
12 that wasn't the sole grounds for rejecting that.

13 MR. BEATTY: I apologize. That's the reason
14 this case is here.

15 But once you say that the court has this
16 inherent power to govern proceedings -- let me, for
17 example, turn to jurisdiction to determine jurisdiction.
18 If what happens is, let's assume just by way of assumption
19 that what happens is that you have an environmental case
20 in which a standing issue is raised regarding someone in
21 Sri Lanka. It could be entirely possible that that case
22 could be litigated a significant way down the road without
23 having a jurisdictional determination made.

24 Indeed, it could be possible that the
25 jurisdictional circumstance could change. For example,

1 the litigant could die. The case could thereby become
2 moot. We couldn't even solve the problem by overruling
3 Catland v. United States in saying before anything else
4 will happen, before anything else will happen, we must
5 make certain that we have subject matter jurisdiction.
6 You take the case from the district court to the court of
7 appeals to the Supreme Court and then you would say you
8 have jurisdiction, go back to the district court. It can
9 be raised at any time. It may well happen that
10 circumstances change such that all of a sudden the court
11 is divested of jurisdiction.

12 And what the argument of petitioner seems to
13 suggest is that during that entire preceding period there
14 would be no opportunity to impose rule 11 sanctions on a
15 litigant in a case. And that's what's so troublesome.

16 I come here --

17 QUESTION: Since we got along without rule 11
18 for a long time, that wouldn't be the end of the world.

19 (Laughter.)

20 MR. BEATTY: Your Honor, I --

21 QUESTION: And the question is really that,
22 whether it isn't enough to protect the court's integrity
23 against these assaults to have the criminal sanctions
24 available, which you call, you call the rule 11 lesser
25 sanctions, but in one respect they're greater. You don't

1 have the kind of safeguard, the kind of protections that I
2 think the contumacy can be less probably under rule 11
3 than is needed for criminal sanctions.

4 MR. BEATTY: The importance of the case I don't
5 underestimate. However, it's important to note, remember
6 that the 1983 amendment indicated that what happened was
7 that they needed to change the sanctions in order, for
8 example, to establish an objective test as opposed to a
9 subjective test. The advisor said, we need to be able to
10 get at this conduct.

11 I come to you as a person who practices
12 primarily in front of the district courts. We all know
13 the problems that are existing down there. I would
14 suggest that even though we may have gotten along well for
15 200 years, primarily we've gotten along well for 200 years
16 because people have obeyed the rules and do believe that
17 rule 11 would apply. That's what the majority of the
18 lower courts have always suggested is that the rules would
19 apply.

20 Certainly, the plain language of the rule
21 applied and no one argues with it. The rules apply in
22 every case. And this is the judicial standard that has
23 always been used, utilized, which if you look at the plain
24 language of the rule, and no one questions that it applies
25 in all civil cases, it applies by rule 81(c) in all cases

1 which are removed.

2 QUESTION: Yes, but counsel, you're talking
3 about the relatively narrow category of cases. And they
4 really are very -- they're a fair number, but they're
5 comparatively small in which it turns out there was no
6 jurisdiction to start with. And defeating your position
7 would in effect impose on lawyers a very careful
8 obligation to be darn sure about jurisdiction before they
9 file rule 11 motions or anything else.

10 And your client booted it on that issue.

11 MR. BEATTY: Of course, my suggestion with
12 regard to my client is that, and I've had, we've had a
13 couple of cases come up like this. You get up and all of
14 a sudden the Supreme Court makes a decision like
15 Merrell-Dow and all of a sudden everybody says, whoops,
16 let's go back and look at subject matter jurisdiction. Or
17 for example --

18 QUESTION: Yes, but that isn't this kind of
19 case. That isn't this case.

20 MR. BEATTY: Well, this is this case. This is
21 what happened on the jurisdiction issue. It's the
22 Merrell-Dow which says positively, ultimately if the Fifth
23 Circuit Court of Appeals on the jurisdictional issue.

24 It's also true of Carden v. Arkoma Associates.
25 And neither things were all of a sudden, here, we're

1 questioning whether or not limited partnerships can meet
2 the diversity jurisdiction. Parties litigate and go
3 through the process and then all of a sudden find out that
4 what they were doing was not proper. But that doesn't
5 mean that litigants shouldn't behave once they're in front
6 of a courtroom and in the courtroom, once these issues
7 have been decided and can properly be brought up on
8 appeal.

9 All we're asking is that rule 11 sanctions be
10 available so that people will behave.

11 As a constitutional matter --

12 QUESTION: It's certainly a reasonable position.
13 Maybe there should be a statute like that.

14 MR. BEATTY: Well, but, my argument, of course,
15 would be that there is, that there is the equivalent of a
16 statute on that. What we have is, we have the necessary
17 and proper cause as the constitutional issue. What we
18 secondly have is we have the Rules Enabling Act. And
19 certainly 27(b)(2)(b) says it should not abridge, enlarge,
20 or modify substantive rights.

21 But here, I want to emphasize that Mr. Willy's
22 substantive rights are absolutely intact. His case on the
23 merits proceeds in the district court in the State of
24 Texas today. It has not been affected one iota, unlike
25 many of the other cases in which we're looking at

1 procedural rules and we're asking about the impact on a
2 litigant and he may well lose his case on the merits as a
3 result of the impact of the Federal rule.

4 Here there has been no impact whatsoever. And
5 again, that would point out the point that, what I think
6 is a very important issue which is it would seem that
7 either from the standpoint of separation of powers or from
8 the standpoint of Federalism, that there's not a competing
9 interest on the other side.

10 QUESTION: Wouldn't that argument about, you
11 know, that Federal rules don't affect substantive rights,
12 wouldn't that have, again, produced a different result in
13 the Conference of Catholic Bishops case? I mean, that's
14 what stands between you and what you want to do, it seems
15 to me. That case comes out differently if we accept your
16 argument.

17 MR. BEATTY: No, Your Honor, again, and frankly,
18 because I accept the argument that you have, or the
19 distinguishing factor that you already made, which is that
20 that was a civil contempt case by a nonparty who all of a
21 sudden, who had that right, that immediate right of an
22 interlocutory appeal. He was able to bring that up.

23 Here what we have is we have the Court
24 consistently said we don't want to have piecemeal
25 litigation. Catland v. United States says raise your

1 jurisdictional issue, let's go through and litigate the
2 merits and take it on up.

3 QUESTION: My only point is that distinction is
4 not in rule 11. If you're going a constitutional route,
5 if you're going in an inherent power route, I think you
6 can make that distinction. But I'm not sure that you can
7 make it in rule 11.

8 MR. BEATTY: Well, Your Honor --

9 QUESTION: If your argument is no substantive
10 rights are affected, rule 11 simply covers this. It's an
11 easy case. Then Catholic Bishops was a hard case and you
12 got it wrong.

13 MR. BEATTY: Well, except, Your Honor, to the
14 extent that you say that the rules, the rules themselves,
15 recognize the jurisdiction of a court to its inherent
16 power. So what happens, all that does, all that does is
17 that just circles that. If what happens is the rules
18 apply where the courts have jurisdiction and the courts
19 have jurisdiction everywhere under article III, section 2.

20 QUESTION: If that's all you mean by your
21 rule 11 argument, it just falls back onto the
22 constitutional inherent power argument, I'm sure.

23 MR. BEATTY: But, Your Honor --

24 QUESTION: It doesn't get you very far.

25 Let's just talk about inherent power then and

1 forget about rule 11.

2 MR. BEATTY: Except, Your Honor, the thing that
3 is important to note there is the question presented to
4 the Court is a constitutional one and if the issue is does
5 the necessary and proper clause support the legislature
6 that the Congress, in this instant, is passing legislation
7 which would get at this type of behavior. And the answer
8 is yes.

9 And that's the reason I say there are two
10 separate -- and a constitutional basis for this.

11 QUESTION: Was the bishops' case a
12 constitutional case in your view?

13 MR. BEATTY: No, Your Honor.

14 Let me finally conclude that it would seem to me
15 that one ultimately has to come out with, yes, there is
16 inherent power, yes, that inherent power may well be
17 shaped, not only by Congress, but the inherent power is
18 reserved to the courts and the Court could use that since
19 the beginning of the republic, either of those
20 constitutionally to support the sanctions of rule 11 in
21 this case.

22 Thank you very much.

23 QUESTION: Thank you, Mr. Beatty.

24 Mr. Maness, you have 3 minutes remaining.

25 REBUTTAL ARGUMENT OF MICHAEL A. MANESS

1 ON BEHALF OF THE PETITIONER

2 MR. MANESS: Mr. Chief Justice, the Court stated
3 in Catholic Conference that a court, Federal district
4 court's subpoena power under Federal Civil Rule 45 cannot
5 be greater than its article III subject matter
6 jurisdiction.

7 I suggest exactly the same principle compels the
8 holding that a court's sanction power under rule 11 cannot
9 be greater than its article III subject matter
10 jurisdiction. I would have thought at least since Sibbach
11 against Wilson & Co. and in light of the express
12 provisions of Federal Rule 82, that this isn't a rule 11
13 case because rule 11 can't enlarge the jurisdiction of the
14 Federal district court. And we're talking here about
15 jurisdiction in a most fundamental sense, the power of a
16 court to do something.

17 Another distinction, and I think it's crucial in
18 light of the discussions we've had this morning is that in
19 Catholic Conference the civil contempt sanctions were
20 imposed against a nonparty and therefore were immediately
21 appealable. In this case, by contrast, we were stuck to
22 the fly paper. And conceivably, if the district court had
23 not granted Coastal's motion to dismiss, we might have
24 been in the Federal district court much longer than we
25 were.

1 Finally, I would like to leave the Court with
2 this hypothetical. What makes Coastal's argument somewhat
3 compelling is the assumption, and I think it's an
4 appropriate assumption, that the district court acted in
5 good faith. But suppose the district court acted in bad
6 faith, suppose from the beginning it said, look, I realize
7 I don't have article III subject matter jurisdiction, but
8 I've got to decide this case anyway since it's very
9 important question of State law. And if I leave it to the
10 State courts, they're probably going to botch it.

11 Is it conceivably arguable then if the district
12 court proceeds to hear and preside the case over a period
13 of years that the court could then attempt to award
14 attorney's fees to the party wrongly moving the case? And
15 if the Court is going to draw a distinction between good
16 faith exercises of colorable article III power and bad
17 faith exercises, then it's right back where it was at
18 Catholic Conference. And seven members of the Court,
19 seven members of the present Court, rejected that argument
20 fairly conclusively and fairly persuasively.

21 We think the Federal judicial power under
22 article III doesn't depend on subjective mental processes
23 of judges or litigants. It depends upon the Constitution
24 of the United States. The sanctions order in this case
25 violated the second section of article III and should be

1 reversed.

2 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Maness.

3 The case is submitted.

4 (Whereupon, at 11:54 a.m., the case in the
5 above-entitled matter was submitted.)

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CERTIFICATION

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

NO. 90-1150 - DONALD J. WILLY, Petitioner V. COASTAL

CORPORATION, et al.

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

BY Michelle Sander

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