

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
THE SUPREME COURT  
OF THE  
UNITED STATES

CAPTION: UNITED STATES, Petitioner, v. R.L.C.

CASE NO: 90-1577

PLACE: Washington, D.C.

DATE: Tuesday, December 10, 1991

PAGES: 1 - 44

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

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 now in 90-1577, United States v. R. L. C.

5 Mr. Larkin.

6 ORAL ARGUMENT OF PAUL J. LARKIN

7 ON BEHALF OF THE PETITIONER

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

10 This case involves an interpretation of the  
11 Federal Juvenile Delinquency Act in the Sentencing Reform  
12 Act of 1984. At issue is the meaning of the commitment  
13 provision under the Federal Juvenile Delinquency Act.  
14 That statute provides in part as follows, and is reprinted  
15 at page 2 of our opening brief: "The term for which  
16 official detention may be ordered for a juvenile found to  
17 be a juvenile delinquent may not extend, in the case of a  
18 juvenile who is less than eighteen years old, beyond the  
19 lesser of the date when the juvenile becomes twenty-one  
20 years old; or" -- and here is the pivotal part of the  
21 statute -- "the maximum term of imprisonment that would be  
22 authorized if the juvenile had been tried and convicted as  
23 an adult."

24 QUESTION: I knew we were in trouble when they  
25 said or. I mean, that's ungrammatical right there, isn't

1 it?

2 MR. LARKIN: Well --

3 QUESTION: You know it's poorly drafted. It  
4 should be lesser of something and something, not lesser of  
5 something or something.

6 MR. LARKIN: If they poorly drafted it by  
7 putting in the or, they at least drafted what comes after  
8 the or with sufficient clarity, we believe, to make clear  
9 that the Eighth Circuit misread it in this case.

10 The question here is whether that part -- the  
11 last part of the statute that I just read, the maximum  
12 term of imprisonment that would be authorized if the  
13 juvenile had been tried and convicted as an adult -- is  
14 the statutory maximum term authorized by Congress or is  
15 the maximum sentence that can be imposed under the  
16 sentencing guidelines.

17 Put another way, the question in this case is  
18 whether the sentencing guidelines fix the maximum term of  
19 imprisonment, even though the sentencing guidelines  
20 themselves do not apply to juvenile delinquency  
21 proceedings.

22 QUESTION: Another way to put it I suppose,  
23 Mr. Larkin, is whether the sentencing guidelines authorize  
24 a term of imprisonment any higher -- or whether the judge  
25 is authorized to impose a sentence in excess of that

1 permitted by the sentencing guidelines.

2 MR. LARKIN: Well, the judge is always  
3 authorized to impose a sentence if the statute allows a  
4 sentence of imprisonment to be imposed, but 5037, in our  
5 view, does not in any way incorporate the sentencing  
6 guidelines.

7 QUESTION: No, that isn't my question. Is a  
8 sentence -- is a district -- say you've got a case in  
9 which the maximum sentence is 3 years, but the maximum  
10 sentence under the sentencing guidelines would be 2 years,  
11 is a district judge authorized to impose a sentence of  
12 more than 2 years?

13 MR. LARKIN: Yes.

14 QUESTION: Oh, he is?

15 MR. LARKIN: We clearly think the statute --

16 QUESTION: Wouldn't it be reversible error?

17 MR. LARKIN: The statute authorizes --

18 QUESTION: No, I understand the statute  
19 authorizes, but is the judge authorized to impose more  
20 than 2 years in that hypothesis?

21 MR. LARKIN: Yes, because the statute is what  
22 governs in this case, not the sentencing guidelines at  
23 all.

24 QUESTION: But would it not be reversible? I'm  
25 talking about an adult, not a juvenile.

1 MR. LARKIN: Oh, I'm sorry. My -- I thought you  
2 were referring to juveniles.

3 QUESTION: No, no, no. I'm talking about an  
4 adult. I'm saying in the case of an adult, would the  
5 judge be authorized to impose a sentence of more than  
6 2 years?

7 MR. LARKIN: Yes. That is still true, but the  
8 reason is -- is a little different.

9 QUESTION: I understand, but the question -- the  
10 simple question, yes or no question, would the judge be  
11 authorized to impose a sentence of more than 2 years?

12 MR. LARKIN: Yes, the answer is yes. The reason  
13 is, the guidelines do not provide authority to impose a  
14 sentence. We think that's an important distinction  
15 between the way we look at the statute and the way the  
16 court of appeals did.

17 QUESTION: But you would agree it would be  
18 reversible error were the judge to do that.

19 MR. LARKIN: No, I would not, because the  
20 statute, if you -- the statute dealing with adult  
21 sentencing --

22 QUESTION: I'm talking about an adult  
23 sentencing.

24 MR. LARKIN: Right. The statute dealing with  
25 adult --



1 QUESTION: You're saying there would not be  
2 reversible error for a judge to impose a sentence higher  
3 than authorized by the sentencing guidelines?

4 MR. LARKIN: Well, I would say two things in  
5 response to what you just said. First, it would not  
6 necessarily be reversible error, and secondly, the  
7 guidelines do not authorize the sentence to be imposed.

8 QUESTION: I understand that argument, but why  
9 wouldn't it be reversible error?

10 MR. LARKIN: Because if you look to 18 U.S.C.  
11 section 3553, subsection (b), it says that a district  
12 court should impose a sentence within the guidelines range  
13 that the Commission has set out, unless the Commission --  
14 excuse me, the district court were to find an aggravating  
15 or mitigating factor --

16 QUESTION: No, but I'm assuming a situation in  
17 which you make all the proper analysis and you either  
18 conclude there is no aggravating circumstance, or you  
19 conclude that, even with the aggravating circumstance  
20 included, a proper application of the sentencing  
21 guidelines, the maximum that the -- judge -- the sentence  
22 the judge could impose would be 2 years, and you're  
23 telling me he is authorized to impose a higher sentence.

24 MR. LARKIN: I would say yes, because the term  
25 authorized here is one we use --

1 QUESTION: Would you also say it was not  
2 reversible error to do so?

3 MR. LARKIN: No, if -- under those  
4 circumstances, it would be an error to impose that  
5 sentence in this case, but it would still be a sentence  
6 that would be authorized.

7 QUESTION: So you're saying he's authorized to  
8 commit reversible error.

9 MR. LARKIN: No. A judge who imposes a  
10 sentence, for example, without first giving the defendant  
11 the opportunity to engage in --

12 QUESTION: No, no, no, no. Forget all the  
13 procedures. All the procedures are complied with. The  
14 sentencing is accurately computed, as the maximum under  
15 the guidelines is 2 years, and I thought you said if he  
16 imposed more it would be reversible error.

17 MR. LARKIN: It would be an error, but it would  
18 not -- but it's, we think, an incorrect use of the term,  
19 authorized.

20 QUESTION: Well, I understand all that. I'm  
21 just trying to get an understanding of what -- but you  
22 would agree that it would be reversible error if he did  
23 it.

24 MR. LARKIN: Yes.

25 QUESTION: But you are therefore saying he is

1 authorized to commit reversible error.

2 MR. LARKIN: If you want to put it that way,  
3 Your Honor, I will be glad to go along with you.

4 QUESTION: Okay. That's all I wanted -- it was  
5 rather obvious, but I had a hard time getting out of you.  
6 You're a very good lawyer.

7 MR. LARKIN: Let me continue just -- and briefly  
8 summarize the facts and procedural posture, because both  
9 are very simple.

10 Shortly after midnight on the evening of  
11 November 5, 1989, LeTasha Mountain was killed when the  
12 automobile in which she was driving was hit from the rear  
13 by a stolen automobile, driven by respondent. The  
14 district court, after a hearing at which respondent was  
15 represented by counsel, concluded that his conduct  
16 amounted to involuntary manslaughter and that respondent  
17 was a juvenile delinquent.

18 There followed a commitment hearing at which the  
19 district court considered a variety of matters such as  
20 respondent's drinking problem, the possibility of his  
21 rehabilitation, and the juvenile facilities available for  
22 detention. After that hearing, the district court  
23 sentenced respondent to 36 months' confinement.

24 On appeal, the Eighth Circuit vacated the  
25 sentence and remanded it for resentencing. The court

1 acknowledged that the sentencing guidelines did not apply  
2 to juvenile delinquency adjudications. The court  
3 nonetheless ruled that using the sentencing guidelines to  
4 define the maximum sentence that could be imposed on the  
5 juvenile under section 5037 would eliminate any  
6 unwarranted disparities that could arise between the  
7 sentencing of juveniles and adults in the Federal courts  
8 today.

9 The Eighth Circuit believes that the legislative  
10 history of the Comprehensive Crime Control Act of 1984  
11 made clear that Congress didn't intend for such  
12 disparities to exist.

13 Finally, the Eighth Circuit also relied on the  
14 Rule of Lenity.

15 Now, we believe that the Eighth Circuit misread  
16 the statute. In our view, the pivotal part of the  
17 statute, the phrase dealing with the maximum term of  
18 imprisonment that would be authorized if the juvenile were  
19 tried and convicted as an adult, refers to the statutory  
20 maximum term and not to the maximum sentence that would  
21 have been imposed under the sentencing guidelines. And we  
22 think part of the reason --

23 QUESTION: Well, Mr. Larkin, why do we have two  
24 separate things, a statutory maximum and sentencing  
25 guidelines? Were they -- was the statutory maximum

1 enacted before the sentencing guidelines came into effect?

2 MR. LARKIN: The statutory -- yes, Your Honor,  
3 the statutory maximum for involuntary manslaughter is ,  
4 3 years.

5 QUESTION: When was that enacted by Congress?

6 MR. LARKIN: I don't know the precise year, but  
7 I know it was before November 1 of 1987, which is the date  
8 that the sentencing guidelines went into effect. My guess  
9 is the statutory maximum, Your Honor, would have been  
10 enacted a very long time ago because it's part of the  
11 series of laws dealing with homicide, which probably  
12 extend back into the 19th century at some point.

13 QUESTION: Well, that really is your very simple  
14 issue in the case.

15 MR. LARKIN: It is, Your Honor. We think it's a  
16 simple and straightforward issue.

17 We think that it is erroneous to look at the  
18 statute in the way the court of appeals did. The Eighth  
19 Circuit assumed that the sentencing guidelines authorized  
20 the maximum term of imprisonment that could be imposed,  
21 but the sentencing guidelines do not authorize punishment  
22 to be imposed at all.

23 Perhaps the most elementary principle of Federal  
24 criminal law, one stated in this Court's very first  
25 Federal criminal law case, the case of United States v.

1 Hudson and Goodwin, is that only an act of Congress can  
2 authorize imprisonment as the punishment for crime. The  
3 Sentencing Reform Act carries through that principle.  
4 When Congress adopted the Sentencing Reform Act --

5 QUESTION: Excuse me, I thought your argument  
6 was that the authority is in one place and the guidelines  
7 are just a limitation upon that authority, but that's not  
8 your argument. You're relying upon the fact that it's a  
9 different person, not the Congress personally?

10 MR. LARKIN: No, Your Honor. My point -- I  
11 think I haven't changed it -- is that it is an act of  
12 Congress that can authorize imprisonment, and when  
13 Congress used that term in conjunction with, for example,  
14 the maximum term of imprisonment, what the statute is most  
15 naturally read to refer to is the maximum term of  
16 imprisonment authorized by a statute, since it's only a  
17 statute that can authorize imprisonment. The guidelines  
18 do not authorize imprisonment in that respect.

19 QUESTION: Yes, but they do limit the authority  
20 of the judge to impose sentences, don't they?

21 MR. LARKIN: They establish procedures that the  
22 judges must go through --

23 QUESTION: They also impose limits. They impose  
24 limits on the period of time that can be imposed, don't  
25 they?

1           MR. LARKIN: In that sense they limit the  
2 judge's proper exercise of the authority that is given him  
3 by the statute, but it is still --

4           QUESTION: But don't they limit the scope -- or  
5 don't they limit the scope of his authority?

6           MR. LARKIN: They can limit the scope of his  
7 authority in the way that we discussed earlier.

8           QUESTION: Sure. They limit it to 2 years  
9 instead of 3.

10          MR. LARKIN: But it is still, we think,  
11 incorrect to look at having -- that the district court is  
12 vested with that authority by virtue of the guidelines.  
13 It works in the other direction. The statutes gave the  
14 district court that authority long before the guidelines  
15 came into existence, and the guidelines are simply  
16 designed to regularize the process of exercising that  
17 authority.

18          QUESTION: If you had a statute that said you  
19 get 10 years for a particular crime and then you have a  
20 later statute that says, however, if the crime is  
21 committed on a Sunday 10 years will not be imposed; you  
22 can only impose 5, then it would be the 10-year statute  
23 that authorizes the penalty and we would disregard for  
24 purposes of this provision the 5-year statute, because  
25 that just limits the prior authority.

1           MR. LARKIN: Well, in both case, Your Honor, the  
2 common denominator was they were both statutes, and  
3 Congress, if it wants to, can say, I'm authorizing you to  
4 sentence a defendant on Monday through Saturday to  
5 10 years, and in a second statute, I'm authorizing you to  
6 sentence a defendant on Sunday to 5 years. They're both  
7 statutes.

8           QUESTION: That's what I said before. You're  
9 relying on the difference between Congress and the  
10 Commission, not on the difference between authorizing and  
11 limiting an authorization.

12          MR. LARKIN: Well, the latter, Your Honor, I  
13 think is reflected in the former. When Congress created  
14 the Commission it didn't authorize the Commission to set  
15 maximum terms of imprisonment. What the Congress did was  
16 give the Commission the authority, if you will, to define  
17 presumptive ranges of sentencing. That's reflected in  
18 section 3553 of title 18.

19          The Sentencing Commission does not have the  
20 authority to deal with the maximum or minimum sentences  
21 that Congress has posed --

22          QUESTION: And I suppose that while the judge is  
23 free to escalate the term beyond the norm if there's an  
24 aggravating circumstance, he can't go above the maximum  
25 term set by statute.



1 MR. LARKIN: Correct. As a matter of fact, this  
2 Court made that point in the Mistretta case in a passage  
3 that we have quoted on page 13 of our opening brief. The  
4 Court there made clear, as the statutes themselves made  
5 clear, that every sentence the Sentencing Commission  
6 designates as a sentencing range must be within the range  
7 of sentences that Congress has authorized in the statutes  
8 that form title 18 and the other parts of the United  
9 States Code.

10 QUESTION: Mr. Larkin, it really seems to me you  
11 can use authorize either the way you're using it or the  
12 way Justice Stevens is using it. I mean, you can say he's  
13 not authorized to impose any more than the guidelines  
14 permit. That's why we reversed the judge. I mean, it's  
15 permissible to use it both ways.

16 MR. LARKIN: But it is not --

17 QUESTION: Just make believe that I think it's  
18 -- that it bears both meanings, okay. If I believe that,  
19 why shouldn't I apply the Rule of Lenity and say, you  
20 know, where you can bear either meaning you take the more  
21 lenient meaning.

22 MR. LARKIN: Because that's not the most natural  
23 meaning of the statute. The meaning we've put forward is  
24 the one this Court has used in its own cases, as we've  
25 mentioned in our brief.

1           While it may be true that the term "authorized,"  
2 if you will, has within it a broad range of meanings, the  
3 one we're putting forward is the most natural one, and  
4 it's the most -- particularly the most natural one when  
5 you look at the clause as a whole. It refers to the  
6 maximum term of imprisonment that would be authorized.

7           QUESTION: But you're assuming it reads as  
8 though it were written "would be authorized by statute."  
9 If they'd put the words "by statute" in, there could be no  
10 doubt about the meaning.

11           MR. LARKIN: Well, there is always a possibility  
12 of making any statute clearer.

13           QUESTION: Well, not the one I've drafted. You  
14 can't make it any clearer than I've just made it.

15           MR. LARKIN: Well, the one -- their version of  
16 the statute should read as follows: the district court  
17 should not impose a sentence greater than the same  
18 sentence that would have been imposed on an adult, if he  
19 had been tried and convicted as an adult.

20           QUESTION: No, not that would have been imposed.  
21 Then the judge could have imposed without committing  
22 reversible error.

23           MR. LARKIN: Or that could have imposed without  
24 committing reversible error, if you will.

25           QUESTION: Right, which is quite different from

1 would have been imposed, because it's a maximum.

2 MR. LARKIN: Well, and that we think strengthens  
3 our interpretation a little bit, because what you're  
4 referring to is the possibility, the range -- the sentence  
5 that Congress had set forward that existed prior to  
6 November 1 of 1987 and prior to 1984 when the Sentencing  
7 Reform Act was adopted.

8 What you have here in essence is this: for  
9 almost 100 years there have been two types of criminal  
10 justice systems. There's been a juvenile justice system  
11 that's reflected here in the sections beginning with 50 --

12 QUESTION: But didn't that all change with the  
13 Sentencing Reform Act?

14 MR. LARKIN: No, it didn't, Your Honor. In  
15 three ways Congress made clear that the sentencing  
16 guidelines do not apply.

17 QUESTION: Well, but the guidelines don't apply,  
18 but the basic system changed.

19 MR. LARKIN: Well, no, Your Honor. It changed  
20 with the limitation that it changed for adults. That's  
21 what Congress did. In fact --

22 QUESTION: But when was this statute adopted  
23 that we're construing today, in the same act, wasn't it?

24 MR. LARKIN: It was readopted in that, but when  
25 it was readopted it wasn't readopted with the purpose of

1 making the same sentencing system as applicable to adults  
2 applicable to children.

3 QUESTION: No, but it seems rather anomalous to  
4 say they wanted uniformity of sentencing across the board  
5 with one exception, that juveniles can get a more severe  
6 sentence than adults.

7 MR. LARKIN: Well, Your Honor, respondents made  
8 that argument. We think they're assuming the conclusion.  
9 They're assuming that Congress wanted uniformity across  
10 the board to include juveniles, and it's our view that  
11 Congress did not.

12 Congress, for example, in section 995,  
13 subsection (a)(19) of title 28, which deals with the  
14 powers of the Sentencing Commission, said that the  
15 Sentencing Commission has the power by a majority vote to  
16 -- to study the feasibility of developing a guideline  
17 sentencing system for juveniles. That is not simply one  
18 indication that the sentencing guidelines don't apply to  
19 juveniles. It also represents the fact that Congress was  
20 asking the Sentencing Commission for guidance in this  
21 regard.

22 After all, you had a discretionary sentencing  
23 system before for juveniles and for adults, and Congress  
24 saw that there were terrible problems that had arisen in  
25 the adult criminal justice system. It decided that a

1 sentencing guidelines mechanism was the way of reducing  
2 those disparities, and it directed the Commission to adopt  
3 a sentencing guidelines system to eliminate those  
4 disparities.

5 But this section I've just cited to you, which  
6 is excerpted in footnote 1 in our opening brief at pages  
7 10 to 11, is strong proof that Congress didn't believe  
8 that it needed at that time to address the problems of the  
9 juvenile justice system. That's one of the reasons that  
10 Congress is -- indicated that juvenile justice system  
11 sentencing mechanisms with only one minor modification  
12 should remain as they were.

13 The minor modification is a second reason why  
14 the guidelines don't apply. If you look to section  
15 1537(a) of title 18, one of the sections -- subsections  
16 immediately preceding the one I quoted, you'll see that  
17 Congress said that at juvenile commitment proceedings a  
18 district court should consider any pertinent policy  
19 statements that the Sentencing Commission has adopted, and  
20 to date the Commission hasn't adopted any.

21 QUESTION: Mr. Larkin, that second statute that  
22 you refer to on page 11 in the footnote, I agree with you  
23 that it does make it clear that the Congress did not  
24 intend the guidelines to apply to juveniles, but that's  
25 not the issue here, that the guidelines will apply to

1 juveniles. It's a quite different issue -- whether the  
2 maximum of the guidelines will be the maximum for a  
3 sentencing of a juvenile, and that's quite different.

4 MR. LARKIN: Well, it's not quite different,  
5 Your Honor. At most, it's only slightly different, for  
6 two reasons.

7 First, as I've tried to summarize, what it does  
8 indicate is that Congress left alone the juvenile  
9 sentencing mechanisms so that it could address that at a  
10 future date if Congress desired to, perhaps after the  
11 Sentencing Commission has come forward with a study  
12 showing that it is -- is or is not feasible to have a  
13 guideline sentencing system just for juveniles.

14 After all, there are caps that apply to the  
15 juvenile sentences that can be imposed that don't apply in  
16 the case of adults, so you have at least half of the  
17 possible sentences that could be imposed under the  
18 sentencing guidelines, or more than half, that don't apply  
19 in the case of a juvenile.

20 If you look at the sentencing table that is in  
21 the guidelines --

22 QUESTION: But then that's easy. Then you look  
23 at the statutory maximum.

24 MR. LARKIN: Right, but the point is, if you're  
25 setting up a guideline system and you say we're not going

1 to apply this system, this new system to the juvenile  
2 justice system because we want somebody to study it, that  
3 indicates you're looking at the juvenile justice system as  
4 something that you may address later, and that's what they  
5 decided here.

6 It's not necessary, or any logical implication  
7 from that, that it means we want the statutory maximum  
8 sentence from the guidelines automatically to be applied.  
9 I mean, after all, the purpose of a guidelines is to have  
10 not simply a maximum but a minimum, and it would be odd  
11 for Congress, knowing that the Commission --

12 QUESTION: No, but the purpose of the statute  
13 here is to say we don't want juveniles to get a longer  
14 sentence than adults get. That's what -- sort of the  
15 simple meaning that comes through. We don't -- then we  
16 get a -- have a maximum sentence that would be higher than  
17 the maximum for an adult. And you're saying that's not  
18 true; they can get a higher one. That's the message I get  
19 out of the statute.

20 MR. LARKIN: Well, Your Honor, we would  
21 disagree, that what Congress did was say that the maximum  
22 authorized sentence shouldn't be any greater, but by  
23 leaving the juvenile justice system alone --

24 QUESTION: But you don't really advance a  
25 plausible reason for Congress saying, we don't care if

1 juveniles get a stiffer sentence than adults. I don't --  
2 it's just rather counterintuitive to think Congress would  
3 have wanted that particular conclusion.

4 QUESTION: Mr. Larkin, under the 1950 act,  
5 couldn't juveniles get a longer sentence than an adult?

6 MR. LARKIN: The 19th -- I'm not sure which act  
7 you're referring to, Your Honor.

8 QUESTION: The Youth Corrections Act. Wasn't  
9 that --

10 MR. LARKIN: Oh, the Youth Corrections Act.  
11 Yes, a juvenile could get a longer sentence than an adult  
12 under the Youth Corrections Act.

13 QUESTION: Wasn't that repealed in 1984?

14 MR. LARKIN: Yes, it was.

15 QUESTION: Well, so don't -- you can't really  
16 say that Congress didn't address the juvenile sentencing  
17 system when they repealed that act.

18 MR. LARKIN: Well, but that act dealt with  
19 different age groups than what you have here under the --

20 QUESTION: Well, nevertheless it did repeal a --  
21 an act that had to do with juvenile sentencing.

22 MR. LARKIN: Not juveniles, young adult offender  
23 sentencing.

24 QUESTION: Well, all right. This statute we're  
25 now talking about was in place before 1984.



1 MR. LARKIN: Yes.

2 QUESTION: And I suppose everybody would agree  
3 that then to apply the act you would look to the maximum  
4 term authorized by the statute.

5 MR. LARKIN: Correct.

6 QUESTION: And now the suggestion is on the  
7 other side that the meaning of that statute has changed.

8 MR. LARKIN: Correct. What they have said that  
9 Congress now has required that the courts look to the  
10 guidelines to fix -- to figure out what --

11 QUESTION: Although it's the same words. The  
12 statute reads exactly like it did before 1984.

13 MR. LARKIN: No. They modified it in some  
14 respects.

15 QUESTION: And they did reenact it.

16 MR. LARKIN: They reenacted with some  
17 modifications in language. The --

18 QUESTION: (Inaudible) --

19 QUESTION: Specifically it no longer refers to  
20 the statute.

21 QUESTION: Just a minute, Justice Scalia, I  
22 think I started before you did.

23 In any respects that were relevant, here -- the  
24 modifications?

25 MR. LARKIN: Not on this point, as we stand

1 today.

2 If you look to the statute as it was adopted in  
3 1984, you will see that it included three additional words  
4 that aren't there today. It referred to the maximum term  
5 of imprisonment that would be authorized by section 3581.

6 QUESTION: Yes.

7 MR. LARKIN: That was put in there because  
8 section 3581 is the new section that says imprisonment can  
9 be authorized for adult offenders.

10 Now, that three-word phrase came out later to  
11 eliminate an anomaly that could have arisen by virtue of  
12 the fact that that specific statute was mentioned in the  
13 1984 act, but as we've explained in our brief, Congress  
14 took that three-word phrase out in order to make sure that  
15 juveniles would not receive a longer maximum sentence to  
16 which they would be exposed rather than just to cap the  
17 sentence that a juvenile could receive as being the  
18 sentence that would be imposed under the sentencing  
19 guidelines.

20 We think that the statute as a whole, as well as  
21 the different policies that Congress could have had in  
22 mind, which was we think addressing this at a later date  
23 after it had gotten the advice of the Sentencing  
24 Commission, indicate that it is the statutory maximum term  
25 of imprisonment that is what was being referred to here.

1 Now, the Sentencing --

2 QUESTION: Can I ask it now?

3 QUESTION: Certainly.

4 QUESTION: You don't think it significant that  
5 it used to specifically refer to a statute and it now does  
6 not refer to a statute? I consider that a significant  
7 change.

8 MR. LARKIN: I didn't say it wasn't significant,  
9 but it's not dispositive, and it's certainly not  
10 dispositive in respondent's direction, because if you look  
11 at the reason why they took that out, and if you look at  
12 what is left, we think it still as a whole refers to the  
13 maximum punishment authorized by statute because it is  
14 only Congress that can authorize a maximum punishment, and  
15 so we think that is the most natural reading of that  
16 entire phrase.

17 Unless the Court has any further questions, I'd  
18 like to reserve the remainder of my time.

19 QUESTION: Very well, Mr. Larkin.

20 Ms. Roe, we'll hear now from you.

21 ORAL ARGUMENT OF KATHERIAN D. ROE

22 ON BEHALF OF THE RESPONDENT

23 MS. ROE: Mr. Chief Justice, and may it please  
24 the Court:

25 If R. L. C. had been tried and sentenced as an

1 adult, the Federal sentencing guidelines would have  
2 limited the maximum term of imprisonment that was  
3 authorized for R. L. C. We are not arguing, nor did the  
4 Eighth Circuit Court of Appeals find, that the Federal  
5 sentencing guidelines directly control juvenile  
6 sentencing. We are not arguing, and nor did the Eighth  
7 Circuit Court of Appeals find, that a juvenile must  
8 receive the same sentence that an adult receives. But  
9 what we are arguing is the language, the maximum term of  
10 imprisonment authorized, has to be the same as an adult,  
11 and it also -- and it means that it has to be the same  
12 under the sentencing guidelines.

13 The reality is that if an adult had been  
14 sentenced for the crime of involuntary manslaughter the  
15 sentencing court would have had no choice but to determine  
16 what the applicable sentencing guidelines would be.

17 It would only be after the court looked to the  
18 guidelines -- at that point, and only at that point, could  
19 the court determine what the maximum sentence would be,  
20 and that is exactly what you have to do for an adult,  
21 because the plain language in this statute -- although the  
22 Government tries to read it in a different manner, the  
23 plain language says that the maximum term of imprisonment  
24 that would be authorized if the juvenile had been tried  
25 and convicted as an adult -- if R. L. C. had been tried

1 and convicted as an adult in this case, the maximum term  
2 of imprisonment authorized would have been 21 months. He  
3 was sentenced to serve 36. The Eight Circuit Court of  
4 Appeals found that to be in direct violation of section  
5 5037.

6 QUESTION: Ms. Roe, you say that you're not  
7 arguing to have the guidelines fully applied to juveniles,  
8 but that's cold comfort to the district judge, isn't it?  
9 Isn't it the case that if we find in your favor in this  
10 case the district judge is going to have to go through the  
11 same steps that one would go through under the guidelines?  
12 He's going to have to compute what the maximum sentence  
13 would be.

14 MS. ROE: Yes, that's correct, justice, that he  
15 would have to compute what the maximum sentence would be,  
16 but that's different than applying the guidelines. We're  
17 not arguing that the guidelines are applicable. What  
18 we're arguing is that you have to look to the maximum and  
19 then from there you make your determination.

20 QUESTION: I understand that, but as far as the  
21 amount of work that the district judge has to go through  
22 --

23 MS. ROE: Your Honor --

24 QUESTION: -- it comes to the same, right? He  
25 has to go through the same steps that he would have to do

1 in a criminal proceeding.

2 MS. ROE: Your Honor, in 1990 there were  
3 approximately 47,000 cases in the Federal courts; 170 of  
4 those cases were juvenile. I think that's less than  
5 approximately one-third of 1 percent, and for this to be  
6 applicable what the court would have to do is they would  
7 have to determine that the maximum guidelines -- maximum  
8 under the guidelines would be more than the statutory  
9 maximum. Excuse me, actually --

10 QUESTION: Would the judge determine upward  
11 departures -- the possibility of upward departures?

12 MS. ROE: Yes, there is a possibility of upward  
13 departures, but I think in the Eighth Circuit Court of  
14 Appeals decision and as well as the way we argue this,  
15 Your Honor, that is no different than if it had been an  
16 adult. You still make the same determination. If there  
17 are egregious --

18 QUESTION: I'm just asking to verify your  
19 position. Your position is the judge would take into  
20 account any upward departures.

21 MS. ROE: Yes, Your Honor. If there were  
22 egregious circumstances or aggravating circumstances that  
23 would result in an upward departure, then that would be  
24 the same as if it had been an adult.

25 QUESTION: Ms. Roe, who was the district judge

1 in Minnesota?

2 MS. ROE: The judge was -- Judge MacLaughlin,  
3 Your Honor.

4 QUESTION: You mention there are only 170. Was  
5 this cases in a 1-year period, was it, that you get --

6 MS. ROE: Yes, Your Honor, that's correct.

7 QUESTION: Do you have any idea how many within  
8 that 170 the maximum would have been fixed by the age of  
9 the juvenile as opposed to the maximum for an adult?

10 MS. ROE: No, Your Honor. We --

11 QUESTION: I would suppose this is a fairly rare  
12 case, the one we have here.

13 MS. ROE: Yes, we believe it is a fairly rare  
14 case, Your Honor, but we get our statistics from the  
15 administrative office of the court --

16 QUESTION: And they don't break them down.

17 MS. ROE: And they don't break those down.

18 The concept that a juvenile should not be  
19 subject to a harsher penalty than an adult is certainly  
20 not a new concept. The Federal Juvenile Delinquency Act  
21 was enacted in 1938, and ever since that time there has  
22 been one constant in the area of Federal juvenile  
23 sentencing, and that constant has been that a juvenile  
24 will not be subject to a term of imprisonment that would  
25 be harsher than that which an adult would receive.

1 Juvenile sentencing has -- or at least maximum  
2 for a juvenile sentencing -- has always been linked to  
3 adult sentencing. The thing that has changed is how we  
4 determine what the maximum sentence for an adult would be,  
5 and the reason it's changed is with the adoption of the  
6 sentencing guidelines.

7 QUESTION: Before the sentencing guidelines were  
8 adopted, Ms. Roe, would it have been impossible for a  
9 district judge considering a juvenile's case to sentence  
10 the juvenile to some sort of confinement if faced with the  
11 argument well, you would have paroled -- you would have  
12 given an adult probation here?

13 MS. ROE: No, Your Honor, I don't believe it  
14 would have been, because they would have still been  
15 subject to the same maximum term of imprisonment, because  
16 prior to the sentencing guidelines you determine what the  
17 maximum term of imprisonment would be for both an adult  
18 and a juvenile by looking at the statutory maximum for the  
19 offense.

20 QUESTION: So although the rule you speak for is  
21 that -- and a juvenile could never have received a higher  
22 maximum sentence than an adult, you're not saying that a  
23 juvenile could never have received a harsher sentence than  
24 a similarly situated adult.

25 MS. ROE: That's correct, Your Honor. What I'm



1 saying is that the juvenile couldn't be subjected to a  
2 higher maximum, not that the judge couldn't decide in his  
3 discretion that the juvenile should in fact receive a  
4 higher sentence than that which he might have given an  
5 adult.

6 QUESTION: Is that changed under the guidelines?  
7 I mean, the guideline does not leave you, does it, with  
8 one sentence? Doesn't it leave a little range?

9 MS. ROE: Your Honor --

10 QUESTION: Even after you apply all the  
11 guidelines, does it leave you at least a couple of months  
12 to play with?

13 MS. ROE: For an adult, it does, Your Honor. I  
14 believe it's basically a 25 percent spread between the  
15 bottom and the top of the guidelines. For an adult that  
16 would be true, but we're not arguing that that -- range  
17 would be applicable to a juvenile. What we are arguing is  
18 that the only thing that applies in a juvenile case is the  
19 maximum.

20 QUESTION: But my point is that the situation,  
21 if we agree with you, would still be what the situation  
22 was before this legislation was passed. That is to say,  
23 on some occasions a juvenile may get a harsher sentence  
24 than an adult would get --

25 MS. ROE: That's correct, your Honor.

1 QUESTION: Because they'd both be applying the  
2 guidelines but the judge in the juvenile case may take the  
3 upper limit of it and the judge in the adult case may take  
4 a lower limit of that particular guideline, right?

5 MS. ROE: I think that's true, but they would  
6 both be subjected to the same maximum. It's just that the  
7 judge in his discretion, or her discretion, would choose  
8 perhaps to sentence a juvenile to a higher sentence and an  
9 adult to a lower sentence.

10 QUESTION: How do you find the maximum?

11 MS. ROE: You determine the maximum by  
12 essentially making a determination under the guidelines.  
13 In this case, the determination was for the offense of  
14 involuntary manslaughter, and for --

15 QUESTION: So you're really say that whatever  
16 the maximum might have been in a case like this, what  
17 would have a judge -- what would a judge -- what would  
18 have a judge been able to sentence this particular person  
19 for if he had been an adult.

20 MS. ROE: If he had been tried and convicted as  
21 an adult, you need to determine what the maximum would  
22 have been for that adult, and then that will be the  
23 maximum that you apply to the juvenile.

24 QUESTION: And the maximum could have been --  
25 could it ever reach the maximum authorized by statute?

1 MS. ROE: Yes, sir. Yes, Your Honor, it could.  
2 In those rare circumstances where the court would find  
3 that there are egregious circumstances or aggravating  
4 circumstances that would be cause for an upward departure,  
5 it certainly could reach the statutory maximum.

6 QUESTION: But absent aggravating circumstances,  
7 it could never go up.

8 MS. ROE: Only, Your Honor, if the person had --  
9 was probably a very significant criminal history, then the  
10 possibility exists that they could come very close to the  
11 statutory maximum, if not reach it.

12 QUESTION: Is there some reason why as a matter  
13 of policy Congress would not have wanted the juvenile to  
14 be subjected to this process of determining whether upward  
15 departures are required, because that's what -- for  
16 instance, in this case there was a stolen automobile which  
17 was not included in the manslaughter offense. I think  
18 that may be a reason for an upward departure. Is there  
19 some policy reason why the Congress would not have  
20 subjected the juvenile -- want -- would not have wanted  
21 the juvenile to be subjected to this process?

22 MS. ROE: First -- I believe that's a two-part  
23 question, Justice Kennedy. The first part I'll answer is  
24 that there was a stolen car in this case. There was never  
25 any determination as to exactly who stole the --

1 QUESTION: Let's just assume that that would be  
2 a ground for an upward departure.

3 MS. ROE: All right.

4 QUESTION: I'm not sure that it would be.

5 MS. ROE: Then your question I believe is, is  
6 there any reason why Congress would not want to subject a  
7 juvenile to this proceeding?

8 QUESTION: Yes.

9 MS. ROE: No, Your Honor, I don't believe so. I  
10 think that it's more likely that the Congress would not  
11 want to subject a juvenile to a harsher penalty than an  
12 adult would receive, and I think that that's been  
13 consistent with their policies from 1938, when they first  
14 enacted the Federal Juvenile Delinquency Act. And I  
15 believe that's also consistent with the changes that they  
16 made when they drafted the Comprehensive Crime Control Act  
17 and made changes to the Federal Juvenile Delinquency Act  
18 as part of those -- as part of that.

19 QUESTION: I suppose the district judge would  
20 have in front of him all of the history and all of the  
21 factors that would be taken into account in the guidelines  
22 anyway.

23 MS. ROE: That's correct, and Your Honor, when  
24 the case did go back for resentencing, the district judge  
25 did not find any aggravating circumstances or any grounds

1 for departure.

2 QUESTION: Ms. Roe, the defendant here has  
3 served the shorter sentence, hasn't he?

4 MS. ROE: That's correct, Your Honor.

5 QUESTION: So if you lose here, what happens?  
6 He has to go back to jail?

7 MS. ROE: He was released over 9 months ago,  
8 Your Honor. My understanding of the law, sir, is that if  
9 he would lose, the court would have it within its power to  
10 reinstate the sentence of the original court and sentence  
11 him to -- and send him back for an additional 18 months  
12 imprisonment, or official detention, if you will.

13 QUESTION: What's your guess as to what Judge  
14 MacLaughlin might do?

15 MS. ROE: Well, Your Honor, it's hard to say,  
16 but certainly when he went back on remand for resentencing  
17 Judge MacLaughlin recognized that there were  
18 circumstances, and that the circumstances had changed, and  
19 sentenced R. L. C. to only 18 months.

20 QUESTION: Well, he's not the hardest nose of  
21 the Minnesota Federal judges by any means.

22 MS. ROE: That's correct, Your Honor, he's not.

23 QUESTION: Ms. Roe, I have one puzzlement. The  
24 section we're talking about is subsection (c). Subsection  
25 (a) of 5037 says that the sentencing judge in these

1 juvenile cases, after considering any pertinent policy  
2 statements promulgated by the Sentencing Commission,  
3 shall, you know, impose sentence, take the action and so  
4 forth. Why would it say that if he has to apply the  
5 guidelines anyway?

6 MS. ROE: Your Honor, I think that  
7 subsection (a) essentially addresses a different interest.  
8 What subsection (a) addresses is that they want the court  
9 to look towards the guidelines, or the policy statements,  
10 to determine or help the court to determine what the  
11 sentence should be, and what the appropriate sentence  
12 should be.

13 In subsection (c), where they actually talk  
14 about what the maximum term a juvenile can receive is, I  
15 think at that point then the judge is looking at something  
16 different. The judge is determining what the maximum  
17 sentence would be. So he's addressing basically two  
18 different concerns.

19 QUESTION: Well, but, why wouldn't the  
20 guidelines as a whole be relevant to determining the  
21 sentence? Only the policy statements? I mean, I would  
22 have expected (a) to refer to the entire guidelines. It's  
23 a very strange reference. I don't understand it.

24 MS. ROE: It's possible, Your Honor, that they  
25 didn't actually address the guidelines because this was

1 part of the comprehensive Crime Control Act.

2 The amendments were part of the act, and they  
3 may have believed -- they may have incorrectly believed  
4 that everyone would understand what they were referring  
5 to, because clearly after the Comprehensive Crime Control  
6 Act was passed and the guidelines became effective, the  
7 sentencing guidelines determined and limited the sentence  
8 that an adult would receive, and the language I believe in  
9 the statute is very clear.

10 The maximum term of imprisonment that would be  
11 authorized if the juvenile had been tried and convicted as  
12 an adult. No question, if the juvenile had been tried and  
13 convicted as an adult the sentencing guidelines would  
14 limit the sentence that a court could impose, and if the  
15 court imposed a sentence in excess of the sentence that  
16 the sentencing guidelines authorized, then it would be  
17 reversible error under U.S.C. 3742.

18 QUESTION: Do you think -- well, go ahead.

19 QUESTION: Just going back to (a) for a minute,  
20 isn't the more normal reading of that that that refers to  
21 sentencing guidelines -- Commission policy statements that  
22 were contemplated by Congress but that have never actually  
23 been written? Isn't that a possible reading?

24 MS. ROE: I think that --

25 QUESTION: They thought that maybe the

1 Sentencing Commission would develop policy statements for  
2 juvenile offenders but they've never gotten around to  
3 doing it. I'm not sure that cuts either way in the case,  
4 but isn't that a possible reading?

5 MS. ROE: It's a possible reading, Your Honor.  
6 I'm not sure that I would ascribe to that reading. I  
7 think that what they're talking about is that they wanted  
8 the court to look at the -- excuse me, to look at the  
9 policy statements and determine what the reasons might be  
10 for sentencing a certain person to a certain amount of  
11 time, not necessarily what the maximum was, because that  
12 would come later in subsection (c), but in (a) just to  
13 look at the policy statements to determine what Congress'  
14 thoughts were and what the Sentencing Commission's  
15 thoughts were when they enacted these guidelines.

16 QUESTION: I was going to suggest something  
17 else, and that was to focus on the word "pertinent."  
18 Doing that, you would say well, the sentence in (a) in  
19 effect was saying look, we're not importing every possible  
20 policy statement that might be applicable in adult  
21 circumstances, but you should at least winnow through them  
22 and winnow out the ones that would be pertinent to a  
23 juvenile proceeding and consider them.

24 So that that would be consistent both with the  
25 theory that they were not subjecting juvenile sentencing



1 to the guidelines across the board, or indeed to the  
2 guideline philosophy across the board, but they were doing  
3 so if the sentencing court could figure out on a selective  
4 basis what might be applicable in a juvenile case and tell  
5 them to consider that, and of course ultimately, on your  
6 theory, be subject to the cap of the highest possible  
7 adult sentence. Does that make sense?

8 MS. ROE: I think that's also a possible  
9 interpretation, Justice Souter. I haven't seen anything  
10 in the legislative history or in any other documentation  
11 that indicates exactly what their intent was, but I think  
12 that all those are possible interpretations.

13 The Government argues that sentencing  
14 guidelines -- essentially the sentencing guidelines cannot  
15 authorize a sentence, and I think that -- or it appears,  
16 based on the Court's decision in *Mistretta*, that the  
17 sentencing guidelines do authorize a sentence, because  
18 this Court recognized in *Mistretta* that there was a  
19 delegation of authority to the Sentencing Commission, a  
20 broad delegation of authority, and that the authority that  
21 was delegated was the authority to formulate binding  
22 sentencing guidelines, and that there would be determinate  
23 ranges, that the guidelines would be mandatory -- a judge  
24 would have no choice but to impose them -- and that if the  
25 judge did not impose them there was a provision written

1 right into the act that it would be reversible error.

2 So clearly the practical and legal effects of  
3 the guidelines are that they create an enforceable  
4 provision and they set limits that are below the statutory  
5 limits, and I believe the Government's interpretation of  
6 the word authorized and the fact that the sentencing  
7 guidelines are not authorized fails to take that into  
8 account.

9 Our position is and has been since the beginning  
10 that this statute is not ambiguous. Clearly, they could  
11 have said what the Government reads the statute to have  
12 said, but it doesn't say that, and maybe one of the most  
13 important things is that at one time it did make a  
14 reference to statutory maximum, and that reference was  
15 deleted by Congress. And I think it's important to know  
16 that that reference was deleted before this statute ever  
17 became effective.

18 So the statute, whereas it may have once  
19 referred to the statutory maximum, it never referred to  
20 the statutory maximum when it became effective. At the  
21 time it became effective, that language was gone.

22 We do not believe this is an ambiguous statute,  
23 but if the Court determines that it is an ambiguous  
24 statute, I think that the Court must apply the Rule of  
25 Lenity as did the Eighth Circuit Court of Appeals, because

1 in this case to not apply the Rule of Lenity would place  
2 the respondent in a position where essentially he would be  
3 punished because this Court has to guess -- albeit an  
4 educated guess, but would have to guess as to what  
5 Congress intended. And the Rule of Lenity has long  
6 established that if the Court has to guess, then it should  
7 guess in favor of the person, the individual, and it  
8 should guess in favor of the shorter sentence.

9 QUESTION: Could we apply the Rule of Lenity to  
10 authorize sentences as well as to these substantive  
11 elements of crimes?

12 MS. ROE: Your Honor, I think the answer to that  
13 is no. Well, let me rephrase that. I think the answer to  
14 that is yes.

15 (Laughter.)

16 QUESTION: That is a rephrasing.

17 MS. ROE: I think this case, Your Honor, is not  
18 that inconsistent with the Chapman case, because in the  
19 Chapman case where the Court did not apply the Rule of  
20 Lenity, the Court said that when Congress wants to say  
21 something, they know how to say it, and if they don't say  
22 it, then we can assume that they didn't mean it. And I  
23 think that that's analogous with our case, because  
24 Congress clearly knew how to say it if they meant  
25 statutory maximum, and as I indicated earlier they did say

1 it at one point, but they deleted it.

2 QUESTION: Did we speak of the Rule of Lenity in  
3 so many words in the Chapman opinion?

4 MS. ROE: Your discussion in the Chapman  
5 opinion, Your Honor, is very brief.

6 QUESTION: Well, but I think you can answer that  
7 question fairly specifically if you remember the Chapman  
8 opinion, which I don't. Did we speak of the Rule of  
9 Lenity in so many words in that case?

10 MS. ROE: Yes, Your Honor, you did.

11 QUESTION: We did, okay.

12 MS. ROE: Yes, Your Honor, you did. In that  
13 case, Your Honor, you held that the case was not -- or,  
14 the statute was not ambiguous, and I don't believe the  
15 statute is ambiguous in this case, but if the Court does  
16 believe that the statute is ambiguous, I think you must  
17 find in the favor of the shorter construction, the one  
18 that's been urged by the -- or, the one that was applied  
19 by the Eighth Circuit Court of Appeals and the one that's  
20 urged by the respondent in this case.

21 QUESTION: And Chapman was a sentencing case.

22 MS. ROE: No, Your Honor, Chapman was not a --  
23 no, Your Honor, Chapman was not a sentencing case.

24 QUESTION: Well, I think the Chief Justice was  
25 asking for the closest case you have that involved the

1 application of the Rule of Lenity to sentencing, as  
2 opposed to whether an act is a crime. I'd appreciate --

3 MS. ROE: I'm sorry. I misunderstood the  
4 question.

5 I think the closest case I would be able to cite  
6 for that is U.S. v. Bifulco, and that was in fact a  
7 sentencing case, Your Honor, and in that case the Court  
8 said you can't increase the penalty -- it was a United  
9 States Supreme Court case, where it said you can't  
10 increase the penalty for an individual if all you can do  
11 is guess as to what Congress intended. So yes, you have  
12 applied it to sentencing.

13 QUESTION: Is that in your brief? Is that cited  
14 in your brief?

15 MS. ROE: Your Honor, that is cited in the  
16 Eighth Circuit Court of Appeals decision, which is in the  
17 record.

18 Thank you.

19 QUESTION: Thank you, Ms. Roe.

20 Mr. Larkin, do you have rebuttal?

21 MR. LARKIN: No, Your Honor, not unless the  
22 Court has any further questions.

23 CHIEF JUSTICE REHNQUIST: Very well. The case  
24 is submitted.

25 (Whereupon, at 1:45 p.m., the case in the above-

1 entitled matter is 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. 90-1577 - UNITED STATES, Petitioner V. R.L.C.

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BY Michelle Sanders

(REPORTER)