

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
THE SUPREME COURT  
OF THE  
UNITED STATES

CAPTION: MARC GILBERT DOGGETT, Petitioner,  
V. UNITED STATES

CASE NO: 90-857

PLACE: Washington, D.C.

DATE: October 9, 1991

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SUPREME COURT, U.S.  
WASHINGTON, D.C. 20543

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----X  
3 MARC GILBERT DOGGETT, :  
4 Petitioner :  
5 v. : No. 90-857  
6 UNITED STATES :  
7 -----X

8 Washington, D.C.

9 Wednesday, October 9, 1991

10 The above-entitled matter came on for oral  
11 argument before the Supreme Court of the United States at  
12 1:00 p.m.

13 APPEARANCES:

14 WILLIAM J. SHEPPARD, ESQ., Jacksonville, Florida, on  
15 behalf of the Petitioner.

16 ROBERT S. MUELLER, III, ESQ., Assistant Attorney General,  
17 Department of Justice, Washington, D.C., on behalf  
18 of the Respondent.

C O N T E N T S

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|  | WILLIAM J. SHEPPARD, ESQ.    |      |
|  | On behalf of the Petitioner  | 3    |
|  | ROBERT S. MUELLER, III, ESQ. |      |
|  | On behalf of the Respondent  | 25   |

1 PROCEEDINGS

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 now in No. 90-857, Marc Gilbert Doggett v. United States.

5 Mr. Sheppard?

6 ORAL ARGUMENT OF WILLIAM J. SHEPPARD

7 ON BEHALF OF THE PETITIONER

8 MR. SHEPPARD: Mr. Chief Justice, and may it  
9 please the Court:

10 This case involves the constitutional right to a  
11 speedy trial in a situation where the defendant, the  
12 petitioner herein, had absolutely no knowledge of the  
13 existence of an indictment for a period of 8-1/2 years  
14 prior to being arrested.

15 For the last 6 years of that 8-1/2 years, it was  
16 clear that Mr. Doggett was available to the push of a  
17 button, running a credit check, to determine his  
18 whereabouts. Eight-and-a-half years after his indictment  
19 the United States Marshals Service, in conducting an  
20 operation entitled WANT II, which commenced on September 1  
21 of 1988, pushed a button on a credit bureau computer in  
22 the Savannah office of the Marshal's Office and within 5  
23 minutes found that Marc Doggett resided in Reston,  
24 Virginia, where he had been residing openly, freely, and  
25 above-board for the last 6 years.

1           The Government's efforts immediately after the  
2     indictment of Mr. Doggett demonstrates bad faith which  
3     constitutes prejudice. Shortly after Mr. Doggett's  
4     indictment, two State officials, at the request of the  
5     Jacksonville, Florida, DEA, went to his parents' home in  
6     North Carolina.

7           Mr. Doggett's mother is a Colombian national  
8     who's been married to an American citizen for many years  
9     and has three children. These two State officials, at the  
10    request of the Federal Government, dropped by her house  
11    one time in 8-1/2 years to determine where Mr. Doggett  
12    was. Mrs. Doggett immediately notified these officers  
13    that he had left for Colombia, and indeed gave him the  
14    flight number of his airplane in Miami, Florida, and the  
15    fact that he was updating his passport on his way.

16           QUESTION: But never told him of their visit?

17           MR. SHEPPARD: The record is absolutely clear,  
18    and both the magistrate, the district court, the Eleventh  
19    Circuit Court of Appeals, found that Mr. Doggett had no  
20    knowledge of his indictment through his mother or anyone.  
21    Indeed, the United States in the plea agreement entered  
22    into with Mr. Doggett stated that Mr. Doggett had no  
23    knowledge of the indictment and indeed the two co-  
24    defendants, who were apprehended and tried in 1980, had  
25    had no contact with Mr. Doggett. So the record is without

1 question that Mr. Doggett had absolutely no knowledge of  
2 this indictment.

3 QUESTION: Which you can say is as much his  
4 mother's fault as it was the Government's fault.

5 MR. SHEPPARD: No. I do not accept that. The  
6 reason I do not accept that is that probably a year-and-  
7 a-half after Mr. Doggett was indicted he was arrested in  
8 the country of Panama and he was incarcerated there for 8  
9 months. During that 8-month period, the DEA knew that he  
10 was there. The State Department visited Mr. Doggett on  
11 periodic basis during that 8-month period. Unfortunately,  
12 the State Department and the DEA didn't communicate with  
13 each other, and no one, including the State Department  
14 officials that visited him on numerous occasions, gave him  
15 notice of the indictment.

16 Thereafter, he was released in 1982 and returned  
17 to this country after a couple of months visiting family  
18 in Colombia. As long as 2 years -- 32 months, 38 months,  
19 the DEA agent in Jacksonville, based on information that  
20 he had received in 1981, fabricated three DEA 6 reports  
21 stating that Marc Doggett was still incarcerated in the  
22 country of Panama.

23 These fabricated reports caused the United  
24 States to exert no further effort to obtain the  
25 apprehension of Mr. Doggett, to his detriment.

1 Mr. Doggett returned to the United States, using  
2 his own name, through JFK Airport in New York City and  
3 returned to North Carolina for a brief period of time  
4 living with a grandmother, and then became married,  
5 obtained an AA degree, has had numerous jobs, had many  
6 credit cards, bought two houses, paid United States income  
7 tax, and made no effort to conceal his identity, which  
8 is --

9 QUESTION: Mr. Sheppard, cases from this Court  
10 dealing with the speedy trial clause have identified two  
11 concerns that are behind the provisions of the clause.  
12 One is the anxiety factor of someone who is aware of the  
13 indictment, and nothing has happened, and secondly the  
14 loss of liberty pending trial if someone's incarcerated.  
15 Now, we don't have either of those things at play here.

16 MR. SHEPPARD: I would certainly concede that,  
17 Justice O'Connor, but I would also state that the same  
18 precedent from which those two concerns were articulated  
19 also communicated a third concern, and that is impairment  
20 of the defense of a person. Further, the same cases,  
21 Barker --

22 QUESTION: No, but, did the courts below in this  
23 case find that both the State and the defendant were  
24 equally affected by the absence of any evidence as a  
25 result of --



1 MR. SHEPPARD: Indeed, the courts below did not  
2 find actual prejudice. However, we submit that that was  
3 an erroneous analysis of this record, and I'd like to  
4 communicate why Mr. Doggett was prejudiced.

5 Number one, there were 17 tapes made in the  
6 1979, '80 time period when this case was investigated.  
7 Mr. Doggett was involved in -- very peripherally in a  
8 large -- what turned out to be a large cocaine  
9 transaction. The Government in their brief, and I suspect  
10 in their argument, will attempt to lead you to believe  
11 that he was involved in a 40-kilogram cocaine transaction.

12 That would belie the record if one reviews the  
13 record closely. He pled -- entered a conditional plea  
14 involving 5.7 grams of cocaine, and the Eleventh Circuit  
15 opinion affirming the conviction of the two co-defendants  
16 in 1982 explicitly indicated that there was no involvement  
17 by Mr. Doggett.

18 Now, the prejudice that Mr. Doggett suffered  
19 was, number one, there were 17 tapes that were missing,  
20 and 8-1/2 years later it's hard to say (1) were the tapes  
21 totally blank, (2) whose voices were on the tape, (3) did  
22 the content of the tapes -- would they have exonerated  
23 Mr. Doggett?

24 Another factor was that the moving force in this  
25 investigation was a confidential informant named Ivan



1 Cifuentes. Ivan Cifuentes at the time of the hearing on  
2 the motion to dismiss in this case had not been  
3 communicated with by the DEA for a 1-1/2 year period, and  
4 as DEA Agent Driver stated, he, along with the tapes, was,  
5 quote, "missing in action," end quote.

6 The court -- the Eleventh Circuit found that  
7 that witness was available. If the Eleventh Circuit  
8 reviewed the record closely, as was their obligation, they  
9 would have not made that finding, because he was not  
10 available. He had entered the witness protection program,  
11 had voluntarily withdrawn, and Agent Driver had not  
12 communicated with him or had any information of his  
13 whereabouts for at least a year-and-a-half period.

14 QUESTION: Am I correct, Mr. Sheppard, that he  
15 hasn't been in any trouble in this latter period of his  
16 life?

17 MR. SHEPPARD: He has not been in any trouble  
18 other, Your Honor, than three civil traffic infractions,  
19 which we submit would have laid the paper trail that, if  
20 the Government was carrying out its due diligence  
21 obligation to apprehend fugitives, would have led them  
22 directly to him by plugging them into a computer to  
23 determine what his driving record is, but he had  
24 absolutely no criminal charges whatsoever.

25 QUESTION: What kind of a sentence did he

1 receive?

2 MR. SHEPPARD: He received a \$1,000 fine, a  
3 three-year probationary term, and most devastatingly, a  
4 felony conviction which he will carry for the remainder of  
5 his life due to the actions of the United States and its  
6 failure to carry out its duty.

7 QUESTION: Well, does it really make that much  
8 difference that he was -- other than, I suppose, the  
9 inherent equities of the case? Suppose he was out robbing  
10 banks? You'd have about the same argument here anyway,  
11 wouldn't you?

12 MR. SHEPPARD: Respectfully, I don't know that  
13 his clean record or his -- if he had engaged in criminal  
14 activity is the proper focus of the analysis. We  
15 respectfully submit that, compatible with the precedent of  
16 this Court, and going back to Justice O'Connor's inquiry,  
17 the cases that set up the concerns also don't foreclose  
18 consideration of other concerns.

19 QUESTION: Well, let me ask you about that. If  
20 we were writing on a clean slate, could you argue that a  
21 speedy trial is either speedy or not? It's irrelevant  
22 that he has anguish, it's irrelevant that he has  
23 prejudice, and it's irrelevant that he's lost or not lost  
24 liberty. He's entitled to a speedy trial whether or not  
25 any of those factors exist.

1 MR. SHEPPARD: Well, we are submitting a rule  
2 that isn't quite as radical as looking at just the  
3 duration of time.

4 We submit for this Court's consideration kind of  
5 a fine-tuning of this Court's precedent, where, as in a  
6 case like this, the time of the delay from indictment to  
7 arrest exceeds the period of time contained in the statute  
8 of limitations, which is 5 years, and that the defendant  
9 does not know of the existence of the charges against him  
10 and therefore is not a fugitive, that the defendant should  
11 not be required to show prejudice.

12 Now, we're not asking for a per se rule. We're  
13 just submitting that it is impossible for Marc Doggett to  
14 go back 8-1/2 years later and prove what he doesn't know,  
15 and that is that he was prejudiced. And we  
16 respectfully --

17 QUESTION: That does not go my question about  
18 the sentence. You concede he was in drugs in the early  
19 years?

20 MR. SHEPPARD: Conceded, Your Honor. Absolutely  
21 conceded.

22 QUESTION: Rather a light sentence, don't you  
23 think?

24 MR. SHEPPARD: Not a light sentence to pay the  
25 debt for a youthful mistake when you're 32 years old.

1 Eight-and-a-half years, or by the time we got to that  
2 point in the proceedings, 9-1/2 years from the alleged  
3 conduct.

4 QUESTION: Everything prior to 22 is a youthful  
5 mistake?

6 MR. SHEPPARD: Respectfully, Your Honor, I think  
7 in the case of Doggett, whose upbringing because of his  
8 parents' marriage, of a foreign national from Colombia and  
9 an American Ph.D. physicist in this country, which exposed  
10 him to Colombia, going to see his grandmother and his  
11 elderly aunts throughout his youth, yes. And I think  
12 Congress, prior to its abolition of the Youth Corrections  
13 Act and the Young Adult Offender Act felt that age 22 was  
14 not too old for special consideration of individuals who  
15 had made youthful mistakes in becoming involved in  
16 criminal activity.

17 QUESTION: Of course, it's pure speculation, but  
18 I wonder if the judge here in a way didn't take the  
19 passage of time into consideration in fixing sentence?

20 MR. SHEPPARD: I would be less than forthright  
21 with the Court to suggest that that is probably an  
22 appropriate observation. His co-defendant received 3  
23 years and was sentenced at the same time.

24 QUESTION: Mr. Sheppard, you're not saying that  
25 it was intentional on the part of the police here, but

1 just that they were grossly negligent, or negligent at  
2 least, in not finding him sooner. The police make  
3 mistakes. I suppose sometimes they're negligent in not --  
4 in not breaking a case sooner and not finding out who the  
5 guilty person is.

6 MR. SHEPPARD: Justice Scalia --

7 QUESTION: Suppose -- suppose that you have a 5-  
8 year statute of limitations and because of their  
9 negligence a crime that should have been solved right away  
10 and they should have known the criminal within weeks in  
11 fact is not solved until 4 years and 10 months, and then  
12 it takes them another 3 months to locate the malefactor,  
13 which means you're over the 5-year statute of limitations  
14 period, and most of that, 4 years 10 months, is due to the  
15 negligence of the police. Is that situation any different  
16 from the situation your client finds himself in?

17 MR. SHEPPARD: Absolutely.

18 QUESTION: Why?

19 MR. SHEPPARD: You suggest that the conduct of  
20 the police or the United States authorities in this case  
21 was negligence, which -- I'm stuck with that finding by  
22 the Eleventh Circuit, but it belies the record.

23 Marc Doggett --

24 QUESTION: Let's go with the finding for the  
25 time being. Let's assume it was just negligent.



1 MR. SHEPPARD: Assuming it was negligence, then  
2 I think it would rise up to the level of whether the  
3 defendant could demonstrate some prejudice, and I  
4 respectfully submit on this record we have.

5 QUESTION: Assuming it's negligent, is your  
6 situation any different from the hypothetical that I just  
7 gave you? In other words, if we found for your client  
8 here, wouldn't we have to find also for the person who  
9 claims that the police negligently did not solve the crime  
10 soon enough?

11 MR. SHEPPARD: I guess the best thing I could  
12 say about your hypothetical, it was 4 years and 2 months,  
13 and this is 8 years and 6 months, which is twice as long.

14 QUESTION: Well, there's another answer, too,  
15 isn't there? What causes the clock to start running under  
16 the Sixth Amendment?

17 MR. SHEPPARD: Well, absolutely. The indictment  
18 under Marion --

19 QUESTION: In Justice Scalia's example there's  
20 no Sixth Amendment issue at all.

21 MR. SHEPPARD: That's absolutely correct, and  
22 the indictment starts it running here --

23 QUESTION: Thank you, Justice.

24 (Laughter.)

25 MR. SHEPPARD: Indeed, and thank you for



1     thanking him, sir.

2             (Laughter.)

3             QUESTION: Mr. Sheppard, you presented two  
4     questions in your petition for certiorari, and both seem  
5     to assume that there was no actual prejudice shown and  
6     that there need not be. Isn't that the way we take the  
7     case?

8             MR. SHEPPARD: I think you take it that way, and  
9     what I'm suggesting by what I guess I would call a bright  
10    line rule is that in this extreme delay cases, and  
11    especially when there is a demonstration on the record of  
12    bad faith by the Government --

13            QUESTION: But I thought you said the court of  
14    appeals found negligence but no bad faith?

15            MR. SHEPPARD: They found negligence, but on a  
16    record that demonstrated that a law enforcement officer in  
17    1981 --

18            QUESTION: You're not being very helpful,  
19    Mr. Sheppard.

20            MR. SHEPPARD: I apologize.

21            QUESTION: We don't take these cases to resolve  
22    individual factual disputes, generally. You raise no  
23    question in your petition for certiorari that the court of  
24    appeals was wrong in finding negligence rather than bad  
25    faith.

1 MR. SHEPPARD: I didn't frame it specifically  
2 that way, but I believe that the first issue when we  
3 raised it of whether the -- when the factors in Barker are  
4 balanced as a whole, and even the Eleventh Circuit found  
5 that two of those four factors inured to the benefit of  
6 Doggett.

7 QUESTION: Yes, they did.

8 MR. SHEPPARD: One was neutral, and one we did  
9 not prove prejudice.

10 QUESTION: Well, what we would expect to get, I  
11 think, from you on this Court is a legal argument that you  
12 don't have -- the defendant shouldn't have to prove actual  
13 prejudice when the other factors were weighed the way they  
14 were.

15 MR. SHEPPARD: That's exactly my argument --

16 QUESTION: Yes, but it hasn't --

17 MR. SHEPPARD: Mr. Chief Justice.

18 QUESTION: I think it's been interspersed with a  
19 lot of other things.

20 MR. SHEPPARD: I -- two --

21 QUESTION: You said a minute ago that if you  
22 accepted the finding that there was only negligence you  
23 would have to prove negligence -- or have to prove  
24 prejudice.

25 MR. SHEPPARD: Assuming --

1 QUESTION: I thought that's what you'd said a  
2 minute ago.

3 MR. SHEPPARD: Justice Scalia said assume  
4 negligence, which --

5 QUESTION: Yes.

6 MR. SHEPPARD: And as the Chief Justice points  
7 out, I'm stuck with that record.

8 QUESTION: Well --

9 MR. SHEPPARD: And I accept that.

10 QUESTION: And therefore are you stuck with the  
11 notion that it must be you who must prove --

12 MR. SHEPPARD: Absolutely not, and what I'm  
13 suggesting by my bright line rule is that in an 8-1/2 year  
14 delay, and especially if you look at the record, DEA Agent  
15 Driver testified at the hearing that after 1985, when he  
16 coincidentally was transferred to Panama and learned 3-  
17 1/2 years later that Mr. Doggett was in Panama, that he  
18 could not recall what, if anything, he did as a result of  
19 that information.

20 He couldn't recall what he did -- a trained  
21 individual, trained to make -- preserve notes so that he  
22 could have refreshed recollections. It is inequitable to  
23 put that burden of proving prejudice on the defendant.  
24 This Court, in *More v. Arizona*, emphatically held that it  
25 is not one of the requirements under the Barker test --

1 QUESTION: Well, the Government -- the  
2 Government here argues that no matter whose burden it is,  
3 even if it's theirs, they've proved that there's just no  
4 kind of prejudice that should be cognizable in a case like  
5 this, since you didn't know anything about this  
6 indictment. And what would have been your -- what's your  
7 answer to their claim of no prejudice?

8 MR. SHEPPARD: My answer to their claim of no  
9 prejudice is that there is prejudice.

10 QUESTION: You at least have to -- you at least  
11 have to get up to even-stein with them, don't you?

12 MR. SHEPPARD: Yes, and I have 17 missing tapes,  
13 I have a missing critical witness. This individual --

14 QUESTION: This is on -- this, then, is  
15 prejudice at the trial?

16 MR. SHEPPARD: Prejudice at the trial.  
17 Additionally --

18 QUESTION: There's no other prejudice?

19 MR. SHEPPARD: No. There is further prejudice.

20 QUESTION: What?

21 MR. SHEPPARD: The interruption of someone's  
22 life, 8-1/2 years later, is prejudicial. A young person,  
23 for example, who at that time was eligible for treatment  
24 under the Young Offender Act, which is very preferential  
25 treatment, had he been put on notice while he was

1     incarcerated for 8 months in the Panamanian jail, when he  
2     was still eligible for treatment under that act, if the  
3     Government had put him on notice he could have triggered a  
4     treaty, a prisoner-transfer treaty to this country, to  
5     allow him to serve his time here and also to get on with  
6     what he's going to have to get on with, and that is the  
7     prosecution of this case.

8             QUESTION: Did you make that argument in the  
9     court of appeals or in the district court?

10            MR. SHEPPARD: Yes.

11            QUESTION: With respect to the tapes and the  
12     witness, is it correct that you have no idea whether they  
13     would have been anything exculpatory either in the tapes  
14     or in the testimony of the witness?

15            MR. SHEPPARD: The only thing that I know about  
16     the tapes, Justice Souter, are some DEA 6 reports that  
17     were prepared, and I think -- and it didn't deal with  
18     all -- there were 17 tapes. It didn't deal with all of  
19     the tapes.

20            Most of those tapes dealt with the later  
21     transactions, and the only tapes that dealt with my client  
22     dealt with 5.7 grams of cocaine, so that I think that  
23     arguably those tapes could have shown his very peripheral  
24     involvement in maybe a separate conspiracy. But I'm not  
25     sure that that was his voice on those tapes.



1 I've never heard the tapes. They're not  
2 transcripts of the tapes, they are just summaries of the  
3 tapes made contemporaneous by somebody, but they do not  
4 tell me the things that I know as an advocate rendering  
5 effective assistance of counsel that I have to know about  
6 tapes in order to properly advise my client and to defend  
7 those tapes. Tapes are very, very evasive and elusive  
8 type of evidence, as recent trials show.

9 QUESTION: Mr. Sheppard, why should -- why  
10 should the criterion for whether the Government is  
11 responsible for this sad state of affairs be whether they  
12 found and arrested him in time?

13 Why -- it's a sad state of affairs only because  
14 he does not know of the outstanding indictment. Why isn't  
15 it enough if the Government took reasonable action that  
16 would, in the normal course, have advised him of the  
17 existence of the indictment? Why wouldn't that be enough?

18 If that is enough, why isn't going to his last  
19 known address and telling his mother that there is an  
20 indictment outstanding and that the Government would like  
21 him to appear to stand trial, why isn't that enough?

22 MR. SHEPPARD: Perhaps if that was all in the  
23 record that there was, that would have been enough. I  
24 wouldn't really want to make that concession. But after  
25 all, the United States State Department was located



1 exactly two blocks from the DEA office in Panama for 8  
2 months, and the DEA -- I mean, the State Department  
3 employees of this Government were going to see Marc  
4 Doggett on a regular basis.

5 QUESTION: But that assumes that they have an  
6 obligation to find and arrest this man.

7 MR. SHEPPARD: They do, under Barker.

8 QUESTION: For the purpose of the interest that  
9 you're concerned about in this case, it seems to me their  
10 only obligation is to make sure that he gets notice of the  
11 fact that there's an indictment so that he may come and  
12 get the prompt trial to which he's entitled. And I don't  
13 know why going to the last known address, telling his  
14 mother about it, doesn't fulfill that obligation.

15 Thereafter, maybe they were negligent, as good  
16 cops, in not arresting him sooner, and that's something  
17 for which they're liable to the rest of the public for,  
18 but I don't know why they're under any special liability  
19 to him for that.

20 MR. SHEPPARD: I think it's important to recall  
21 the record that there was one trip to his mother, who I  
22 indicated earlier is not an American. She is a Colombian,  
23 and they communicated to her, and there's a great dispute  
24 in the record and some confusion in the record about what  
25 she was told.

1           The DEA agent testified that he was told by  
2   these two State officers, who never testified below, that  
3   they told her that he was wanted. She testified  
4   differently. So there's a conflict. Of course, the  
5   Government wants it both ways.

6           Respectfully, they never made another trip to  
7   that -- to that familial home over the next 8-1/2 years,  
8   and those folks were there, and had they come back 2-1/2  
9   years later I suspect that we wouldn't be here, and we  
10   wouldn't be here if the Government had carried out its  
11   duty as we understand that duty in Smith v. Hooey to in  
12   due diligence seek to apprehend fugitives.

13           QUESTION: Normally when you have an obligation  
14   to get notice to somebody, if the obligation can be  
15   satisfied by publication in the paper you publish it once.  
16   You don't have to go publishing it until the person  
17   appears, or if it -- if it -- if the notice can be given  
18   by mail, you mail to the last known address. You don't  
19   have to continue mailing and mailing until the person  
20   shows up.

21           I mean, if the problem here is that this person  
22   didn't have the notice so that he could take advantage of  
23   his -- of his right to enjoy -- a strange word, to  
24   enjoy -- a speedy trial, if that's the problem, it seems  
25   to me we should simply ask, did the Government take

1 reasonable steps to get notice to him, and if they did  
2 that, if they did it only once that ought to be good  
3 enough.

4 MR. SHEPPARD: And the question is, it's on this  
5 record with their -- the proximity to Mr. Doggett for the  
6 8 months that he was in Panama, is dropping by his house  
7 and having a chat with his mother adequate notice, and  
8 respectfully, for any other legal proceedings, I would  
9 submit that it would not be, sir.

10 It is inadequate based on the opportunities that  
11 were available to the Government. They bumbled around  
12 putting him in different computers, not knowing that he  
13 would automatically be deleted from some of those  
14 computers. Concededly, when he came through JFK he was in  
15 the NCI computer.

16 I thought it interesting in the prior argument  
17 before lunch, when counsel for the Government told you  
18 that certainly we would know if people came to our shores.  
19 Well, if that's the case and the Government says that, why  
20 doesn't Marc -- didn't Marc Doggett get arrested in 1982?

21 QUESTION: No fair using other cases.

22 (Laughter.)

23 QUESTION: I'm sure that somewhere in the  
24 Government somebody knew it, but the people who were  
25 responsible for arresting him maybe didn't.

1 MR. SHEPPARD: The people that were responsible  
2 for arresting him, I would respectfully submit, impacted  
3 on the other Government entities actions by fabricating  
4 three reports 24 months after the fact, 32 months after  
5 the fact, and 36 months after the fact. And these  
6 fabricated reports contribute to a prejudiced analysis.  
7 You cannot be free from prejudicial conduct to others if  
8 you act in bad faith, and I think that the core of that  
9 was candidly testified to by that DEA agent. We asked  
10 him.

11 QUESTION: You're back to the bad faith  
12 argument.

13 MR. SHEPPARD: I'm suggesting that bad faith  
14 equals prejudice when you take the collective bad faith  
15 actions in this case. And I think the easy way for this  
16 Court --

17 QUESTION: To say bad faith equals prejudice  
18 certainly is equating two words that ordinarily are not.  
19 If bad faith refers to the state of mind with which an  
20 actor goes about doing something, prejudice refers to the  
21 effect of something on someone else.

22 MR. SHEPPARD: In 1985, 3 years after Marc  
23 Doggett left Panama, the DEA agent who was the case agent  
24 in Jacksonville, Florida, coincidentally got transferred  
25 there. When he got there, there wasn't one shred of paper

1 in Panama on Marc Doggett. It had been destroyed.

2 So maybe my choice of words is wrong, but if  
3 that file were available -- and it wasn't Marc Doggett  
4 that destroyed it; it was the Government that destroyed  
5 it -- perhaps he could come forward and articulate the  
6 prejudice that the Government contends that we ought to be  
7 able to articulate, despite Moore v. Arizona, despite  
8 Barker v. Wingo.

9 Neither -- one case says prejudice is not  
10 absolutely required; the other one says emphatically it's  
11 not required. The reason we articulate to this Court a  
12 very narrow rule -- and it would enhance the public's  
13 interest in speedy trial. This idea of a speedy trial is  
14 not just for a criminal defendant, it is for the public.  
15 If you follow our bright line rule, it will give the  
16 Government the incentive not to bungle old cases, and that  
17 incentive is important.

18 QUESTION: Will you give me your bright line  
19 rule again.

20 MR. SHEPPARD: When, as in a case such as this,  
21 that the time of the delay from indictment to arrest  
22 exceeds the statute of limitations, then the defendant is  
23 not required to prove prejudice, and the burden shifts to  
24 the Government to prove no prejudice. And we respectfully  
25 submit --



1 QUESTION: And when -- when it's the  
2 Government's fault. I mean, if he's on the lam for 5  
3 years, hiding from the Government --

4 MR. SHEPPARD: No, no. Absolutely. No.

5 QUESTION: It's rather important.

6 MR. SHEPPARD: A component of our rule -- and I  
7 thought I'd articulated it. Let me state it one more  
8 time. And I submit that it would eliminate a lot of the  
9 impossible arguments that occur in these old cases, and it  
10 is in the interest of the public, it is in the interest of  
11 the Government, and it's in the interest of the individual  
12 criminal defendant.

13 In a case such as this, where a defendant has no  
14 knowledge -- when he has no knowledge that he has been  
15 indicted or charged, and the time equal to the statute of  
16 limitations passes prior to his arrest, then he is not  
17 required to prove prejudice, and indeed the burden shifts  
18 to the Government to prove no prejudice. No one is  
19 harmed, everyone is -- individual and respective interest  
20 is enhanced, and I urge the Court to adopt that rule and  
21 reverse this conviction.

22 QUESTION: Thank you, Mr. Sheppard.

23 Mr. Mueller, we'll hear now from you.

24 ORAL ARGUMENT OF ROBERT S. MUELLER, III

25 ON BEHALF OF THE UNITED STATES



1 MR. MUELLER: Mr. Chief Justice, and may it  
2 please the Court:

3 This Court traditionally has looked at the four-  
4 pronged test of Barker v. Wingo in resolving issues  
5 relating to the deprivation or alleged deprivation of a  
6 Sixth Amendment speedy trial violation.

7 Those four factors identified in Barker are the  
8 length of the delay, the cause of the delay, the  
9 defendant's assertion of their right to a speedy trial,  
10 and prejudice. And we submit that the Eleventh Circuit  
11 and the magistrate before entered into the appropriate  
12 balancing test set out in Barker to determine that there  
13 was no violation of Mr. Doggett's Sixth Amendment right to  
14 a speedy trial in this case.

15 QUESTION: Are you -- are you in complete  
16 agreement with the analysis below?

17 MR. MUELLER: I am not in complete agreement --

18 QUESTION: I didn't think you were.

19 MR. MUELLER: -- with my counsel's analysis.  
20 There are a number of areas in which I think we part  
21 company, which I would hope to explore.

22 QUESTION: I mean with the -- with the analysis  
23 of the court of appeals.

24 MR. MUELLER: There are areas in which we  
25 disagree with the analysis --

1 QUESTION: Yes, all right.

2 MR. MUELLER: -- of the court of appeals.

3 QUESTION: And I'm sure you'll let us know about  
4 that.

5 (Laughter.)

6 MR. MUELLER: Turning to the first factor, and  
7 that is the length of delay, the Court traditionally looks  
8 at this factor as a triggering mechanism, and indeed below  
9 we indicated that the length of delay in this case is a  
10 triggering mechanism. But as we stated in our brief, this  
11 case is somewhat unique, in as much as those core concerns  
12 of the Sixth Amendment were not implicated for the period  
13 between the time of the indictment in 1980 and the time of  
14 the arrest in 1988.

15 Those core concerns being the fact that  
16 Mr. Doggett suffered no restraints on his liberty, he was  
17 not incarcerated, he suffered no anxiety, no humiliation.  
18 He knew not, allegedly, of the indictment, and the pending  
19 indictment had no effect on his life until the time that  
20 he was arrested.

21 QUESTION: Mr. Mueller, do you think the  
22 concerns that underlie the policy of repose and the  
23 statutes of limitation have any relevance at all to this  
24 case?

25 MR. MUELLER: Only to the extent that they play

1 in the evaluation of the four factors that I've identified  
2 and that were identified in Barker v. Wingo.

3 QUESTION: I'm talking about evaluative factor  
4 number 1. Is that even relevant, that there -- that some  
5 appointed time should come when a citizen no longer has to  
6 worry about things that happened long ago?

7 MR. MUELLER: I do not believe that particular  
8 concern is articulated in the Constitution. I do not --

9 QUESTION: I'm not asking you to --

10 MR. MUELLER: -- believe that the  
11 Constitution --

12 QUESTION: You don't think it should play any  
13 part in the analysis?

14 MR. MUELLER: I do not, except the -- on the  
15 fourth prong, where one looks at prejudice.

16 QUESTION: Well, none of that --

17 QUESTION: I take it the statute -- the statute  
18 had not run here because he was a few -- he was abroad?

19 MR. MUELLER: The statute had not run because it  
20 was tolled at the time of his indictment in 1980.

21 QUESTION: And what tolled it?

22 MR. MUELLER: The filing of the indictment  
23 tolled the statute of limitations.

24 QUESTION: Okay, yeah.

25 QUESTION: You indicated that the length of time

1 was not articulated in the Constitution. I take it none  
2 of the concerns you rest upon are reflected in the  
3 Constitution either?

4 MR. MUELLER: That is so, and the concerns  
5 articulated are those articulated by this Court in  
6 previous cases as supporting or giving body -- giving body  
7 to that Sixth Amendment right to a speedy trial.

8 QUESTION: But you -- you don't assert that  
9 that's the end of the case? You're saying, factor 1,  
10 there is nothing at all, so we then --

11 MR. MUELLER: Yes.

12 QUESTION: We then move on the other factors?

13 MR. MUELLER: You move on to factor --

14 QUESTION: Each factor is worth 25 percent, or  
15 how does this work?

16 MR. MUELLER: No, it depends on --

17 QUESTION: You need all four present, or two out  
18 of four?

19 MR. MUELLER: No --

20 QUESTION: Is there any -- is there any way we  
21 go about this at all?

22 MR. MUELLER: Unfortunately, and I understand  
23 from the dialogue with counsel in cases such as a  
24 determination of whether or not there's been a deprivation  
25 of the speedy trial right, it is fact bound, because in

1 order to give substance to that particular right one has  
2 to look at the facts of a particular case and where it is  
3 on the continuum.

4 QUESTION: Although it's fact bound, factor 1 is  
5 a crucial factor. If none of the interests that, as you  
6 say, the -- the speedy trial guarantee is intended to  
7 serve is affected, end of the case. But you don't want to  
8 say that.

9 MR. MUELLER: We are --

10 QUESTION: You want to go on and consider the  
11 other three factors to some extent in this case.

12 MR. MUELLER: In this particular case I think  
13 the Court has not addressed the circumstance where a  
14 defendant does not know about an indictment and whether or  
15 not that defendant is accused when he has not suffered the  
16 humiliation or public scorn which comes from a knowing  
17 indictment.

18 One could push that the Court say that the Sixth  
19 Amendment right does not come into play until such time as  
20 that person is actually brought into court to face the  
21 charges. However, we're not --

22 QUESTION: Well, are you asking us to --

23 MR. MUELLER: -- asking the Court to go that  
24 far.

25 QUESTION: Do that? Are you asking us to do



1 that?

2 MR. MUELLER: We are not asking the Court to go  
3 that far in this case.

4 QUESTION: Under your theory, would length of  
5 the delay and Government negligence alone, those two  
6 factors, ever, in any case, amount to a violation of the  
7 speedy trial clause?

8 MR. MUELLER: I'm sorry, Government delay and --

9 QUESTION: The delay -- a long delay and  
10 Government negligence --

11 MR. MUELLER: In and of itself --

12 QUESTION: Those two factors.

13 MR. MUELLER: -- I don't believe so. Not alone.

14 QUESTION: What's missing?

15 MR. MUELLER: The defendant's assertion of the  
16 right, and prejudice.

17 QUESTION: Well, assuming he's asserting the  
18 right, of course.

19 MR. MUELLER: If the defendant --

20 QUESTION: But you think the crucial thing is  
21 prejudice in every case?

22 MR. MUELLER: I think it is important to look at  
23 prejudice in every case, but this Court has found in Moore  
24 v. Arizona that you can have cases -- there are those  
25 cases, as was the case in Moore v. Arizona, where the



1 defendant can successfully have the case dismissed under  
2 the Sixth Amendment right as a result of the Court finding  
3 that the other three factors weighed heavily against the  
4 Government -- the length of delay, the reason for the  
5 delay, and the defendant's assertion, and the defendant  
6 did not have to -- would not have to, in that context,  
7 prove prejudice. So the Court --

8 QUESTION: And it wouldn't --

9 QUESTION: So it is --

10 QUESTION: I'm sorry.

11 QUESTION: It is possible, then, that length of  
12 delay and Government negligence alone will be enough, if  
13 we follow Moore?

14 MR. MUELLER: If you follow Moore, yes, that  
15 is -- that is possible.

16 QUESTION: It's your intent to leave the Sixth  
17 Amendment speedy trial on the very much ad hoc, fact-  
18 bound state in which it now is, I take it?

19 MR. MUELLER: Yes. We're asking for the Court  
20 to affirm the Eleventh Circuit's opinion and not  
21 attempting to drive the Sixth Circuit law past where it  
22 has been placed principally by Barker v. Wingo, which is  
23 guidance to each court who looks at a problem similar to  
24 this.

25 As to those factors that are critically

1 important, it is not -- they are not the only factors the  
2 court must look to, but in order to give body, substance  
3 to that Sixth Amendment right, one has to identify,  
4 those -- that particular factor which plays a prominent  
5 role in that particular case.

6 In Barker v. Wingo, as an example, the  
7 defendant's failure to assert his right in that particular  
8 case was critical, even though he'd spent time  
9 incarcerated, even though the Government had sought the  
10 delay in order to enable it to better its case by having a  
11 co-defendant testify, and that particular factor in that  
12 case was the prominent factor.

13 QUESTION: What made it the factor in that case?  
14 I mean, why does that -- what makes it the central factor  
15 in a particular case?

16 MR. MUELLER: In that -- on that particular case  
17 it appeared from the opinion that the defendant wanted it  
18 both ways. He was claiming a violation of a Sixth  
19 Amendment right, but it was clear from the record in that  
20 case that he had concurred in a substantial portion of the  
21 delay in order to better his position, so the court  
22 found -- I think it can be read from the opinion -- that  
23 the defendant did not effectively carry the burden of  
24 asserting his right.

25 QUESTION: Well, that's almost a waiver theory.

1 That -- I'm not sure that has much to do whether he  
2 asserted the right or not.

3 MR. MUELLER: The Court --

4 QUESTION: I take it you would say that the  
5 length of -- the length of delay should never be a basis  
6 alone to prove prejudice in his defense at trial?

7 MR. MUELLER: That's correct. We would -- we  
8 would say that. One has to look at what exactly occurred  
9 during that delay. What was the reason for the delay?  
10 And that is --

11 QUESTION: No presumption of prejudice at trial  
12 based on delay?

13 MR. MUELLER: It should not follow at all. And  
14 I would -- I do part company with counsel in terms of who  
15 bears the burden of showing prejudice. And who should  
16 bear the burden of showing prejudice?

17 The Government would have a very difficult time  
18 in proving a negative. How does the Government prove an  
19 absence of prejudice when the defendant is the one who is  
20 in control of the facts of the case, understands what his  
21 or her defense might be. What counsel is asking the Court  
22 to do --

23 QUESTION: Well, the Government has to do this  
24 an awful lot of times in various situations.

25 MR. MUELLER: Not in the area of -- not in

1 the -- I'm unaware of an occasion where the burden has  
2 been placed on the Government to prove an absence of  
3 prejudice.

4 QUESTION: Well, you're asking him to prove  
5 prejudice from tapes that are absent from existence at  
6 this point.

7 QUESTION: We may hear of one.

8 MR. MUELLER: That's correct. The defendant was  
9 a participant on those tapes. If the defendant has some  
10 reason to believe --

11 QUESTION: Was the defendant a participant on  
12 all -- on all of these tapes?

13 MR. MUELLER: No. He was not a participant. He  
14 was a participant on some, but he would know what was said  
15 in the course of those conversations, and should be able  
16 to articulate if there is something exculpatory in the  
17 course of those conversations.

18 QUESTION: You're arguing that you have a  
19 stronger case because he did not know of the indictment?

20 MR. MUELLER: No. I'm arguing that --

21 QUESTION: Your case is weaker because he did  
22 not know of the indictment? Your case is weaker because  
23 he did not know of the indictment?

24 MR. MUELLER: I have a hard -- I have a  
25 difficult time in saying a case is stronger or weaker

1 without looking at the particular factors in the Barker v.  
2 Wingo analysis.

3 QUESTION: Well, I take it that the citizens of  
4 this country do have some interest in assurance that there  
5 are not pending indictments against them that they don't  
6 know about. It's a valid interest, isn't it?

7 MR. MUELLER: That is, and it goes to the point,  
8 I believe, of whether or not the Government in this case  
9 was in fact negligent. And one of the areas in which we  
10 would take exception with a court of appeals that the  
11 Government was negligent. We feel that --

12 QUESTION: Well, you don't really want us to  
13 reexamine that question, surely? I mean, don't we take  
14 this case with the finding that the Government was  
15 negligent? You didn't petition for certiorari in a cross-  
16 petition. Why would we want to upset that?

17 MR. MUELLER: I'm not asking the Court to upset  
18 that.

19 The point I do want to make is that in  
20 evaluating what the responsibility or burden of the  
21 Government is in order to apprehend fugitives, one should  
22 look not only at the facts of this case, but what standard  
23 should be applied. And the standard that I would suggest  
24 should be applied is one of reasonableness.

25 And if an indictment issues the Government does,



1 we will concede, have a responsibility to do -- to take  
2 certain steps to bring that individual before the bar of  
3 justice. And I would suggest that if the Government knows  
4 where that individual is located there is a responsibility  
5 to go and find that individual at that place.

6 If the Government knows where family is located,  
7 the Government probably reasonably has a responsibility to  
8 go to that place and locate the person. And finally, if  
9 the Government believes that --

10 QUESTION: Of course, they knew where his mother  
11 was, didn't they?

12 MR. MUELLER: And I was going to say that in  
13 this particular case we did what was reasonable. Agents  
14 went to the house --

15 QUESTION: You were negligent --

16 MR. MUELLER: And talked to the mother --

17 QUESTION: You were negligent but reasonable?

18 MR. MUELLER: Well, I would -- I would -- I'm  
19 not asking the Court to overturn the --

20 QUESTION: Well, you were -- you were in your  
21 brief. I thought you were really dancing away from the  
22 trial court's findings, and the counsel for the petitioner  
23 said he's stuck with the finding, and I think you are,  
24 too.

25 MR. MUELLER: I don't think that the case rises

1 or falls on whether or not the Eleventh Circuit is correct  
2 in its characterization of the facts of this case as  
3 negligence. And when this Court has addressed factual  
4 situations like this in the past -- in Barker v. Wingo it  
5 looked at the facts and not necessarily at the conclusions  
6 based on those facts.

7 QUESTION: As I understand it, the lower court  
8 found that the Government was negligent in failing to  
9 arrest or apprehend the individual, not necessarily that  
10 the Government was negligent in failing to do what was  
11 reasonable to get notice to the individual of the pendency  
12 of the suit, and the two are quite different things. And  
13 if it's the latter rather than the former that triggers a  
14 speedy trial obligation, the finding of the court below  
15 doesn't necessarily govern.

16 Doesn't the finding of the court below just go  
17 to negligence in failing to apprehend the individual, or  
18 does it go to negligence in failing to do what was  
19 reasonable to bring the pendency of the indictment to his  
20 attention?

21 MR. MUELLER: No, it does address and focus on  
22 the failure to arrest him and does not address the failure  
23 to give him notice.

24 QUESTION: Well, the Government never tries to  
25 give somebody notice in advance that we're going to try

1 and catch you later on, do they?

2 (Laughter.)

3 MR. MUELLER: Well, it depends on the  
4 circumstances.

5 QUESTION: That's kind of an absurd idea, isn't  
6 it? You go out and give them notice -- you've been  
7 indicted. A few months from now we'll try and arrest you?

8 (Laughter.)

9 MR. MUELLER: It depends on the circumstances.

10 QUESTION: It would be a pretty good idea,  
11 though, if we listened to Mr. Sheppard, wouldn't it?

12 MR. MUELLER: Well, that's what -- I think Mr.  
13 Sheppard and his clients -- that Mr. Sheppard and his  
14 clients would certainly support that idea wholeheartedly.

15 QUESTION: I doubt you'd be here in this  
16 argument if you had taken the indictment and you knew  
17 exactly where the fellow was and you took the indictment  
18 and served it on him and didn't arrest him, and you knew  
19 he knew about it and yet you did not do anything about  
20 arresting him or trying to try him. You wouldn't be here,  
21 would you?

22 MR. MUELLER: We would not be here. We -- we'd  
23 stand with the position that --

24 QUESTION: So the fact of his not knowing about  
25 it is critical.

1 MR. MUELLER: In this particular case, it makes  
2 it unique, yes.

3 QUESTION: Is there no prejudice in your view by  
4 having the defendant's life uprooted after so long a time?  
5 You find that that can never be prejudicial?

6 MR. MUELLER: I think what one looks to is  
7 whether or not the delay resulted in excessive prejudice  
8 in some fashion, prejudice in addition to that prejudice  
9 which would have come from his having been arrested and  
10 prosecuted in 1980.

11 In 1980, he presumably not only would have been  
12 arrested and prosecuted but quite probably, as Mr.  
13 Sheppard has indicated, would have spent substantial time  
14 in incarceration. So there was no additional prejudice  
15 attributable to the delay in this case. Yes, his life was  
16 disputed. It would have been disrupted in 1980.

17 Now, turning back to the factor of prejudice,  
18 and in particular the prejudice articulated by -- or  
19 alleged prejudice articulated by counsel with regard to  
20 the tapes. As I've indicated, those tapes -- on the one  
21 hand there was no allegation or assertion by defendant  
22 below that there was anything specifically exculpatory on  
23 those tapes.

24 Secondly, with regard to the confidential  
25 informant there was and is an indication in the record

1 that had this case gone to trial then he would have been  
2 available, and thirdly, the defendant did plead guilty in  
3 this case, and has acknowledged his guilt.

4 QUESTION: May I ask about the tapes again? I  
5 guess nobody knows what's on the tapes, but if you rely in  
6 part on the fact that he should be responsible for  
7 bringing forth any relevant information on the tapes,  
8 wouldn't that be somewhat harder after 8 years than it  
9 would be probably after they were transcribed?

10 MR. MUELLER: I would say that over a period of  
11 time, yes, it might be more difficult to remember what  
12 happened in any particular instance. Yes.

13 QUESTION: And the tapes may not be in  
14 existence.

15 MR. MUELLER: The tapes may not be in existence  
16 at that point in time, or at the point in time when it was  
17 going to go to trial. That is true. But there has to be  
18 an affirmative showing that there is something  
19 exculpatory, something that would adversely affect his  
20 ability to obtain a fair trial, and that showing was not  
21 made in this case.

22 QUESTION: What about his argument on the  
23 nontrial argument that had you not been negligent and  
24 gotten to him earlier, he might have had the advantage of  
25 some statutory mechanisms that are no longer available?



1 MR. MUELLER: The Eleventh Circuit disposed of  
2 his argument that he would have been entitled by -- to  
3 take advantage of the Youth Offender Act by reason of the  
4 fact that he voluntarily absented himself from the country  
5 until such time as he was 22 and was not thereby -- at  
6 that late age that act was not available to him. So the  
7 Eleventh Circuit in our opinion --

8 QUESTION: Yeah, but he says -- he says that if  
9 you'd have -- he was in jail. He says if -- that you  
10 should have known he was in jail, and if you'd have gotten  
11 to him soon enough he could have -- he could have  
12 triggered some mechanisms that would have brought him up  
13 here --

14 MR. MUELLER: Well, the --

15 QUESTION: -- to stand trial. Isn't that what

16 --

17 MR. MUELLER: Again, what we had done is what is  
18 reasonable under the circumstances. Again, if you're  
19 going to the notice issue as opposed to the objective of  
20 arresting him, we had satisfied whatever obligation there  
21 is by going to his house and telling his mother that there  
22 was an outstanding indictment against him. And going to  
23 the time that he was in Panama, if you look at what Agent  
24 Driver, the agent on the case, understood at that time, he  
25 understood that when Mr. Doggett would be -- were released

1 from incarceration in Panama, the Attorney General of  
2 Panama would expel him to the United States.

3 And so the agent who was in charge of that case  
4 accomplished what was reasonable under the circumstances,  
5 given what he understood the case to be. And the  
6 Constitution does not put, in our minds, a further burden  
7 on the Government either with regard to notification or  
8 with regard to a duty to --

9 QUESTION: But you must have known he wasn't  
10 about to be in jail for 8-1/2 years.

11 MR. MUELLER: Well, it was the assumption of the  
12 agent at that time that --

13 QUESTION: Eight-and-a-half years --

14 MR. MUELLER: That he was going to be for a  
15 substantial period of time, based on his experience with  
16 those who are incarcerated in Panama as a result of drug  
17 trafficking.

18 QUESTION: Well, the -- when did -- how do you  
19 suppose the court below decided that the United States was  
20 negligent in -- when did the delay, and why did it become  
21 negligent?

22 MR. MUELLER: Well, it -- if one looks at the --

23 QUESTION: It was after -- after he got back in  
24 the United States that they focused on it?

25 MR. MUELLER: The characterization of negligence

1 I think flows from counsel's deft argument that there were  
2 things the Government could have done and should have done  
3 as opposed to looking at what was done and the reason why  
4 it was done in this circumstance. The magistrate --

5 QUESTION: Mostly focusing on the period after  
6 he arrived back in this country.

7 MR. MUELLER: That's correct, but if you look  
8 at -- if you look at the particular segments of time. The  
9 time he was in Panama, the agents legitimately believed  
10 that once he was believed from the Panamanian jail he  
11 would be expelled back to the United States. They had the  
12 assurances of the Panamanian Attorney General.

13 Thereafter, when the agent went down in 1985, he  
14 found, still there, papers of Mr. Doggett, and they  
15 indicated that he had a Colombian address and that he was  
16 using his mother's Colombian surname as his alias, and  
17 accordingly the agent at that time believed that  
18 Mr. Doggett would be in Colombia. Also --

19 QUESTION: And so you saved your case just by a  
20 computer.

21 MR. MUELLER: It's not a question of saving the  
22 case, Your Honor --

23 QUESTION: His name just came up on a computer  
24 somewhere?

25 MR. MUELLER: No.

1 QUESTION: How come you never looked him up?

2 MR. MUELLER: Well, he was -- in 1988 he was  
3 still in NCIC as a fugitive and there was a marshals'  
4 sweep, as one would call it --

5 QUESTION: Well, that's a -- yeah.

6 MR. MUELLER: And they did find him at that  
7 time, yes, but he came back into the United States without  
8 having gone through -- without having been picked up when  
9 he came back in 1982.

10 QUESTION: Mr. Mueller, you mentioned on the  
11 point of prejudice that he had after all pleaded guilty.  
12 Did you mean to suggest by that that in any case in which  
13 there is a guilty plea there cannot be a finding of  
14 prejudice on the assumption that prejudice goes to issues  
15 of guilt and innocence and the consequences of guilt, and  
16 since one is pleading guilty, by definition that kind of  
17 prejudice could not be present, or could not at least be  
18 present in some sufficient quantity?

19 MR. MUELLER: There is some case law to support  
20 that. I don't think this Court has ever addressed that  
21 particular issue. What we do say --

22 QUESTION: Are you urging that on us now?

23 MR. MUELLER: I do not think the Court has to  
24 reach that in this particular -- reach that issue in this  
25 particular case.

1           However, when one talks about prejudice, actual  
2     prejudice to a defendant's case, that prejudice to be  
3     serious and to be -- given a great deal of weight should  
4     bear on the guilt or innocence of that individual. And by  
5     pleading guilty in any circumstance like this -- and I'd  
6     go to the circumstances that were the subject of the plea.  
7     Not the 40 kilos that was brought out, but the  
8     circumstance of the plea, which was a hand-to-hand  
9     distribution of cocaine and money.

10           QUESTION: Well, Mr. Mueller, was there any  
11     assurance in connection with taking this plea that it was  
12     without prejudice to the right to litigate this question  
13     of speedy trial violation?

14           MR. MUELLER: That -- under Rule 11, it was.

15           QUESTION: And wouldn't your argument undercut  
16     that agreement? I mean --

17           MR. MUELLER: No.

18           QUESTION: No?

19           MR. MUELLER: I do not believe that's the case,  
20     because one can urge --

21           QUESTION: Well, if you suggest a blanket rule,  
22     that if there's a guilty plea that cuts you off, then it  
23     certainly isn't going to do any good to preserve the right  
24     to litigate it, is it?

25           MR. MUELLER: Well, it may cut you off as to



1 certain allegations of prejudice with regard to your guilt  
2 or the proof of your guilt or innocence on particular  
3 elements of the case. It does not preclude you from  
4 alleging -- asserting prejudice from the delay other than  
5 that which would bear directly upon your guilt or  
6 innocence. And it would make a difference as to how the  
7 Court looked to that.

8 I would ask the Court to look back and look at  
9 the facts of this case and weighing what the Government  
10 did, which we believe to be reasonable under the  
11 circumstances, against the absence or lack of prejudice.  
12 And one has the impression that there as no injustice done  
13 in this particular case, and indeed the length of time  
14 inured to Mr. Doggett's defense in that -- or, to his  
15 benefit in that I think it quite probable that, had he  
16 been arrested earlier, he would have spent a substantial  
17 period of time incarcerated.

18 QUESTION: May I ask if you think that argument  
19 is consistent with the Court's holding in the Strunk case?

20 MR. MUELLER: I am not certain of that, Your  
21 Honor.

22 QUESTION: Well, the Strunk case was one in  
23 which, during the period that he was -- the delay occurred  
24 he was incarcerated on another offense, and the court of  
25 appeals said we'll chop that off, a period of double

1 service, off of the remedy instead of dismissing the  
2 indictment, and the Court reversed unanimously and said  
3 no, you -- the remedy regardless of the penalty and the  
4 amelioration of the previous penalty through the delay.  
5 The remedy is to dismiss the indictment. You don't look  
6 at the amount of the punishment, the kind of factor you're  
7 looking at here.

8 MR. MUELLER: Well, I think that is not one of  
9 the factors that one looks at. I'm just saying that the  
10 assertion of prejudice from the delay --

11 QUESTION: So in analyzing the case we should  
12 just assume he would have gotten precisely the same  
13 sentence when he was tried --

14 MR. MUELLER: Yes.

15 QUESTION: And it would be the same?

16 MR. MUELLER: Yes.

17 QUESTION: Okay.

18 MR. MUELLER: Yes. There is dicta in cases  
19 which say that under similar circumstances the delay can  
20 inure to the benefit of the defendant in a number of ways,  
21 one of which is it allows the defendant to show to the  
22 Court that he or she has resumed a normal lifestyle and is  
23 an honest citizen. So in --

24 QUESTION: May I just sum up in this -- sum up  
25 your argument in this way? You've agreed that the other

1 side does not have to prove prejudice, so what you're  
2 saying is that the three other factors don't add up to  
3 enough in the defendant's favor to justify any relief?

4 MR. MUELLER: That is correct. That is correct.

5 And unless there are further questions, Your  
6 Honor, I would ask that you affirm the Eleventh Circuit's  
7 ruling in this case.

8 QUESTION: Thank you, Mr. Mueller.

9 Mr. Sheppard, do you have rebuttal? You have 1  
10 minute left.

11 MR. SHEPPARD: I think not. Thank you.

12 CHIEF JUSTICE REHNQUIST: Very well. The case  
13 is submitted.

14 (Whereupon, at 1:55 p.m., the case in the above-  
15 entitled matter was submitted.)  
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## CERTIFICATION

*Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: 90-857*

*Marc Gilbert Doggett, Petitioner -v- United States*  
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*and that these attached pages constitutes the original transcript of the proceedings for the records of the court.*

BY *Leon M. May*-----

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